

## The AFGE Steward

### **AFGE Stewards Manual**

The Local AFGE Steward is the key person in AFGE. While many members may not personally know AFGE's National Officers, or even their Local officers, chances are that most know their Stewards (especially if they've needed help) and see them on the job daily.

Because of the Steward's high visibility, the example he or she sets will, by and large, determine what the Local's members think of AFGE as a union. If the Steward does a good job of protecting members' rights, then the Local's members will feel secure with AFGE.

A Local may have competent officers, but with incompetent Stewards the Local's program will be useless and its members will not be adequately protected. A Local may have the best negotiated agreement that's ever been written, but without an informed Steward to enforce it, the Local's contract will be worth little more than the paper it's written on.

It is the Steward, then, who is the union to AFGE's members in the shop or office, and to the agency supervisor. It is with the Steward that good labor-management relations stand or fall.

#### **The Steward's Function**

Because Stewards are the most important link between the Local and its members, they must have a good personality, be articulate, and know the Local's contract. In addition to being the Local's front line representative, the Steward is an organizer whose personal goal should be the achievement of 100 percent membership in the Local AFGE bargaining unit.

Not unlike the job of a police officer, the function of the Steward is to enforce the "Law of the Local," or it's contract with the agency. The Steward's "beat" is the office or shop within the Local's bargaining unit. And like a police officer, the Steward must be constantly on the lookout for violations of the Local contract.

When the contract is violated, the negotiated grievance procedure serves as the Local's judicial system -- where employees can redress their grievances against management violations of the Local's or an employee's rights. While arbitration -- the settlement of a dispute by an independent judge -- is the last step in the Local's negotiated grievance procedure. The fairness of both the Local's and the private citizen's system of justice, however, depends ultimately upon those whose responsibility it is to enforce the law -- the police officer and the Local Steward.

In order to be effective, the Steward must perform specific duties. These are to:

- . Organize and recruit new members;
- . Maintain a constructive relationship between the Local (and National) union and management. at the agency or installation;
- . Serve as the front-line representative of the Local (and National) union at the agency or installation;
- . Protect conditions of employment as well as the dignity and security of the jobs of all AFGE members, in addition to non-members in the bargaining unit;
- . Act and talk trade unionism;
- . Regularly attend meetings of the Local and motivate others to attend;
- . Increase members' understanding of the Local's contract with management;
- . Police the Local's agreement by handling grievances and by enforcing the contract by watching for violations and taking them up with management immediately.

#### **What the Steward Must Know**

## The AFGE Steward

To carry out their duties effectively, Stewards must have a good understanding of the following points.

### *Contract & agency regulations*

Stewards must know what the Local contract says and what the agency's policies and regulations are. Stewards must understand how the contract and agency regulations have been interpreted by past grievances and arbitration rulings.

### *The department & office*

Stewards must understand the nature of the department, shop, or office which they represent. How many employees, the number of jobs and their classification, the workers' wages, the type of work they perform, are all facts Stewards should be acquainted with.

### *Personality differences*

In handling grievances, Stewards must be aware of personality differences that exist between the member and supervisor. The Steward must get to know the Local's members and the supervisors in the shop and take into account the personality and attitude differences that are likely to exist.

### *AFGE policies & programs*

Stewards represent AFGE in their particular office or shop. They cannot explain AFGE programs to Local members, or carry out union policies with management if they do not know them. The Steward must be well informed about AFGE and Local union policies.

### *Federal Personnel Manual*

Stewards should also be familiar with the discontinued Federal Personnel Manual (FPM) and its numbering system which listed, by subject, Office of Personnel Management rules and regulations applied to federal employees. Currently the FPM has been reduced to certain appendixes, books, bulletins, letters, and supplements to cover personnel matters.

What follows are just some of the subject headings and what parts are retained from the FPM.

Subject	
Absence and Leave	Book 630
Discharge	Letter
Federal wage system	Supplement 532-1
Job grading (WG)	Supplement 532
Labor management relations	Subchapter / letter
Overtime	Letter, appendix, subchapter
Performance appraisal	Bulletin
Personnel records and files	Subchapter / letter
Position classification	Subchapter / letter
Reduction-in-force	351
Wage-in-grade increases	Bulletin, Letter, Supplement
Within-grade increases	Letter

## Grievances and Adverse Actions

Grievances are initiated by employees in response to adverse actions which are initiated by the employer or agency. Employees first take the grievance up with their first line supervisor and the union representative or Steward. If they do not receive what they feel is a satisfactory resolution, the grievance enters the formal process in accordance with the negotiated grievance procedure and may go to a hearing or arbitration.

### *What is an adverse action.?*

Most grievances are taken up by employees as a result of management's having taken an adverse action against them for an alleged violation of an agency rule or regulation. As defined by law, those actions management can take are:

- . removal;
- . suspension for more than 14 days;
- . reduction in grade or pay;
- . furloughs of less than 30 days.

The following management actions are not adverse actions:

- . suspension and removal for national security reasons;
- . reductions in force;
- . reductions in grade of supervisors or managers during special probationary periods;
- . reductions in grade or removal based upon unacceptable performance; and,
- . actions initiated by the Special Counsel of the Merit Systems Protection Board, or actions against administrative law judges.

Following the proposed notice of adverse action, employees can reply in writing, or personally. The response should answer all the charges both orally and in writing. The Steward should assist employees in preparing the written answer and should make the oral presentation. If management persists in following through with its intended action, the aggrieved should appeal the agency's decision through either the negotiated grievance procedure or to the Merit Systems Protection Board.

### *What is the purpose of the grievance and appeals procedure?*

Stewards should acquaint themselves with these four important points. The purpose of the procedure is to:

- . enforce the negotiated agreement and agency regulations, and to establish channels through which settlements can be reached;
- . provide a procedure for settling disputes in an orderly, reasonable manner, and to protect employee rights;
- . put the united strength and skill of AFGC behind every member who has a legitimate grievance; and,
- . give federal employees a voice in determining their conditions of employment and a method to fight management injustices against them.

In handling the grievance, the Steward must know the factors that make for good grievance handling. Here are some hints:

- . Settle grievances on the basis of merit only.
- . If the Steward and the first line supervisor who know the situation first hand can settle grievances fairly, it saves time, reduces irritation and builds members' confidence in the union.
- . Avoid delays. Delays worry the worker and result in a loss of confidence.
- . Define authority and responsibility clearly.
- . Avoid favoritism. Endorse the contract and settle grievances fairly.

In order to win a grievance, the Steward should first know the proper way to handle the grievance. Five good tips on how to best handle the grievance are spelled out below.

1 Listen to the problem presented by the unit member and ask questions to make sure that the unit member presents the facts and circumstances accurately, so that you understand the situation clearly.

## Grievances and Adverse Actions

2 Make sure the complaint is in fact a grievance -- not just a gripe. Test the complaint against the Local contract and agency rules and regulations to see if there is a violation involved. The Steward should know the kind of complaints or problems that unit members bring to their union. Some are problems arising within the office or shop. Others are problems arising outside. You must be able to distinguish between:

- . problems arising under the Local contract and agency rules and regulations;
- . outside shop and office problems;
- . complaints or misunderstandings about the Local;
- . problems or arguments between employees and members.

3 Before writing the grievance, investigate. Double check the facts surrounding the complaint with whatever records are available with the people who may be involved. Check as thoroughly as you can, but remember, don't delay filing the grievance.

4 Write a simple statement of the situation and conclude with the specific relief sought.

5 Present the grievance to the supervisor in a firm but polite manner. Determine what management's position is. Argue the grievance, explaining the facts of the case. If unable to win at this point, appeal to a higher step of the grievance procedure without delay.

If you win the grievance, obtain settlement in writing and obtain copies for the Local's files. They will be useful in handling other grievances.

If you lose the grievance, appeal without delay and keep the member of the unit informed of the progress of the case.

### *What is a grievance?*

A grievance is generally defined as any dispute between labor and management in an area over which management exercises some responsibility. This means that all disputes that arise are handled through the same grievance procedure regardless of whether they deal with promotions, layoffs, discharges, or conditions of employment. While a grievance is defined to include "any matter relating to the employment of an employee with the agency, and any claimed violation, misapplication of any law, or regulation affecting conditions of employment," grievances do not cover certain matters.

These are:

1. any claimed violation relating to prohibited political activities (those activities forbidden under the Hatch Act);
2. matters involving retirement, life or health insurance;
3. suspensions or removal for national security reasons;
4. any examination, certification, or appointment relating to initial employment; and
5. the classification of any position that does not result in a reduction in the pay or grade of an employee.

It is important that a steward be able to distinguish between a complaint and a bonafide grievance. This can be done by following the same procedure a good auto mechanic follows in attempting to discover why a car won't run. The mechanic approaches the problem on a systematic basis by running through a checklist. Among other things he or she looks for are:

1. Is the battery dead?
2. Is the gas tank empty?
3. Is the starter switch broken?

## Grievances and Adverse Actions

### 4. Are the plugs fouled? etc.

A steward should have a similar checklist to determine whether a grievance exists. The following points should be checked:

- 1 Is there a violation of the contract?
- 2 Is there a violation of a law?
- 3 Does it involve an area in which management can be held responsible?
- 4 Is there a violation of agency regulations?
- 5 Is there a Violation of Past Practice?
- 6 Has the employee been treated fairly?

#### *Contract violation*

Because most of the rules governing the relations of a worker to his or her job are contained in the contract, this is the first place the steward should look to see if the employee's complaint is a legitimate grievance. Some grievances are clear-cut violations of the contract and are easy to prove. Grievances concerning the interpretation of a contract are not as easy to determine. For example: Suppose the contract reads, "union members shall be granted leave without pay for union business." The local union receives an invitation to attend a conference on health and safety legislation. It designates three of its officers to attend, but management turns down their request for leave on the grounds that the conference is not sponsored by a labor organization. In this situation a legitimate difference of opinion exists regarding the interpretation of the phrase "union business."

#### *Violation of a law*

For example, present legislation provides all civil service employees under GS-10, and higher graded non-administrative or non-executive personnel, are entitled to time and a half overtime pay unless the individual personally chooses compensatory time off in its place. Merely because the agency says it is short of funds does not give it the right to force an employee to accept compensatory time off in lieu of overtime pay during the week in which overtime is worked.

#### *Management responsibility*

Grievances charging a violation in areas in which management can be held responsible occur most often over problems involving working conditions and health and safety issues. For example: There is nothing in the union contract stating that the workplace must be illuminated by a specified number of watts of electricity, or that the room temperature must be kept at a particular level. Yet the union will argue that management's responsibility includes the maintenance of proper heat, light, ventilation, etc. Likewise management is expected to maintain equipment and machinery in proper condition, as well as to provide safe vehicles to drive.

#### *Violation of agency regulations*

Even where management has established regulations on its own initiative, it cannot legitimately violate them. For example: A grievance would exist if an employee were told to produce a medical certificate after two days sick leave when the regulations specified none was needed unless the leave was for more than three days.

#### *Violation of past practices*

Grievances based on the past practice argument require careful investigation and presentation since the burden of proof is on the union to show that the practice exists. A practice can be defined as a reasonably uniform response to recurring situation over a substantial period of time which has been recognized either explicitly (orally or in writing) or implicitly (management knew the practice was occurring, but raised no objections). The practice argument can be made best in those cases where the contract is silent or unclear. It is often used in respect to grievances over working conditions, sub-contracting and in defining jobs that may affect layoffs. For example: It is customary to drink coffee on the job for as long as anyone can remember. A new supervisor appears on the scene and announces

## Grievances and Adverse Actions

that drinking coffee from now on can take place only during official break periods. In such a case the union would argue that past practice exists and management has no right to change such a condition.

### *When a complaint becomes a grievance*

Not all complaints are legitimate grievances. The steward must investigate the worker's story. He or she must check the facts to see whether they are accurate. Then the steward must determine if the worker's rights were violated and must look for the source of the violation. In short, the steward must check the six points listed earlier. If the steward's investigation indicates that the worker's complaint may be justified, the worker has a legitimate grievance. But if after investigation the steward finds that the worker misunderstood the contract or misrepresented the facts or the complaint cannot be regarded as a labor-management dispute, the worker's complaint is not a legitimate grievance. Sometimes the steward, even after the investigation, will not know if the worker's complaint is a legitimate grievance or not. Such a case is a borderline grievance.

### *Borderline grievance*

Sometimes a borderline case will arise where even the best steward will not know if a legitimate grievance exists. For example: A worker draws tools from the tool room during working hours because they are needed to perform the assigned job. The contract provides that the worker can do this only "when necessary." The worker is reprimanded because the supervisor maintains that the tools are not necessary for completing the job. It is up to the supervisor to decide what is necessary. Is the worker right to obtain the tools or should permission be obtained first from the supervisor? There is no clear answer in the contract to the problem. Therefore, the steward should give the benefit of the doubt to the employee and process the complaint as a grievance. The role of the steward is to act as the "defense attorney" for the people represented rather than as an "impartial judge." If in doubt about a given case, the steward should check with the chief steward or grievance committee, but even they may have no clear-cut answers. If legitimate doubt still remains, the grievance should be filed with the expectation that the case may become clearer as more information is made available in the higher steps of the grievance procedure.

Care must be exercised in taking up all grievances. The Local can lose face with its unit members if gripes which turn out to be just gripes are continuously filed. The Local will lose strength in its position with management and its members by filing grievances which are bound to lose.

### *Unjustified complaint - not a grievance*

There will also be times when the steward is approached by the employees who have no legitimate grounds for complaint. For example: Federal law reads that an employee is entitled to 20 days annual leave after three years of employment. The employee argues that although he or she has been on the payroll only 32 months he or she is entitled to 20 days because of a considerable amount of overtime which makes up for the time the employee is short.

It is important that the steward carefully explain why the employee has no grievance, in order that the complaint be voluntarily withdrawn if possible. If the employee is dissatisfied with the explanation, the steward should point out where, within the union, the complaint can be taken for a higher decision. In some unions the dissatisfied employee will be referred to the chief steward, in some unions to the grievance committee, in others to the executive board, and in some cases to the local union meeting. It is important that the steward be protected from charges of arbitrary action.

There is a basic danger involved in processing unjustified complaints. Management may lose respect for the steward if it feels that the steward does not have the knowledge or authority to distinguish between a legitimate and a nonexistent complaint. The result may be that management stiffens resistance on a legitimate grievance under the theory that the steward is "too dumb" to know when there is a good case, or management may seek to settle grievances directly with their employees bypassing the steward. The employees, too may lose respect for the steward if they think the steward will process everything. The steward may be snowed under with unjustified complaints. It will become doubly hard to say "no" at this stage of the game. A steward with a long list of lost

## Grievances and Adverse Actions

grievances to his or her credit will not have the confidence of the employees represented. The net result of the steward's taking up poor grievances can only be to reduce his or her effectiveness as a union representative. Because the Civil Service Reform Act requires that a union holding exclusive recognition must handle grievances for all members of the bargaining unit, every problem brought to them must be processed. The steward has every right to exercise his or her own judgement as to whether a bonafide grievance exists. If the steward feels that the employee has no justified grievance, the steward is under no legal requirement to process it. Likewise, no local union can be forced to take a case to arbitration, since it involves the expenditure of funds that the membership may feel is not justified by the nature of the grievance. Sometimes, the employees have justifiable complaints that are not grievances because they occur in areas where management does not exercise responsibility. For example: A member who has been injured goes to Federal Employees Compensation Office to check on a claim regarding work-related injury. The clerk tells the worker to go home and come back tomorrow, since the clerk is quitting early to go fishing. The employee obviously has a complaint, but not against the supervisor, since the claim is handled by a different agency.

In other kinds of situations, employees may be dissatisfied because the steward does not handle their complaints or handle them to their satisfaction. Again, this is an area for which management is not responsible, whether these be justified or unjustified complaints. If the steward is doing a poor job, this is a problem for the union to settle internally.

### *Disputes between union members*

Another complaint which is not a grievance often results from disputes between employees. For example: The typewriters of two employees are close to a window. They are constantly arguing over whether it is too hot or cold and are always opening and closing the window. Management states that it is willing to adopt any policy on which the combatants agree. Obviously management 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 employees may be disciplined and it will be difficult for the union to reverse the action.

## INVESTIGATING A GRIEVANCE

In investigating and presenting grievances, it should be clearly understood by all shop stewards and union officials that in disciplinary actions and grievances the issues and facts are clearest at the initial step of the action. The hidden factor in grievance actions and particularly in disciplinary actions, above Step 1, is the human factor. Representatives at levels above Step 1, are not familiar with the supervisor or the employees, so consequently in appealing to Step 2 or 3, they are forced to present the case based only on hard cold facts submitted to them by the representatives at Step 1. By the time your grievance or disciplinary action reaches the arbitration stage, it has become far removed from the level where the problem occurred. For this reason an arbitrator will often turn to issues, facts, and requested remedies that are presented at Step 1 of the procedures, to make a decision. When an arbitrator looks at a disciplinary case he or she must make two determinations: 1. Was the action taken by management for just cause? 2. Does the punishment fit the offense? A hearing officer or arbitrator does have the right to modify penalties that have been imposed either based on the facts presented or mitigation. Arbitrators assume the position that they have the responsibility to safe guard the employer's right to discipline, and also a further responsibility to assure that the penalties imposed are fair and not out of line with the offense.

### *Things to consider*

Some things that must be considered when initially investigating a grievance can be summed up in seven specific questions that must be answered in an arbitrator's mind to establish that a disciplinary action such as a suspension was for "just cause." A positive "no" answer to one or more of the questions would indicate that "just cause" did not exist.

- 1 Did the agency give the employee forewarning or knowledge of the possible or probable disciplinary consequences of the
- 2 Was the rule or managerial order reasonably related to the orderly, efficient, and safe operation of the agency's business?
- 3 Did the agency, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order?
- 4 Did the agency conduct the investigation fairly and objectively?
- 5 At the investigation was there substantial evidence that the employee was guilty as charged?
- 6 Has the agency applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
- 7 Was the degree of discipline administered by the agency in a particular case reasonably related to:
  - (A) the seriousness of the employee's proven offense and
  - (B) the record of the employee in his or her service to the agency?

### *Investigating the facts*

Investigating by definition means: A systematic inquiry. To conduct a proper investigation, you must look at cause and effect. Defining cause: Cause is anything bringing about effect. Defining effect: Effect is anything brought about by cause. Obviously, the effect shows that conduct creates an issue before the effect was felt. Now that that's clear. What do you as a steward, have to investigate? Naturally the first thing you must investigate is "did the conduct alleged by management actually occur?" If it didn't, your case is cut and dry. If it did, read on.

### *Check motives for conduct.*

You must look for motives or reasons for the employee's conduct. Normally if the union sees some justification for discipline (based on agency position as to facts) it will attempt to develop mitigating circumstances to temper or soften the discipline. Each decision to seek such a remedy must necessarily hang on differences in facts, situations, contracts, or past practices.

### *Check for progressive discipline.*

It is usually a prerequisite to future disciplinary actions. It is intended to be corrective and not punitive in nature. An employee who is counseled should be made aware of that fact by the supervisor. Counseling should do two things: (1) It should attempt to identify the alleged problem, and (2) If the problem exists, an effort should be made to correct it. Arbitrators pay particular attention to progressive discipline which, normally, includes counseling and a letter of warning. A key part of your investigation should include discussion with the aggrieved employee on any

## INVESTIGATING A GRIEVANCE

counseling or letters of warning he or she may have received. Ask the employee specifically: (1) Have you ever been counseled for the alleged offense? (2) Did you grieve the counseling? If so, what was the result? (3) Do you have any of your records or correspondence dealing with the issue of counseling and/or letters of warning? (If the answer is yes, Have the employees make them available to you.)

### *Check the facts.*

Once you are clear on the employee's facts, get permission to investigate the employee's record and attempt systematically attempt to challenge the facts as presented by management. If management fails to provide or denies you access to information, note the date, place, time, and the individual who refuses. Make that a part of your file. After you have interviewed the employee, you must check the facts dealing with the issue. Remember, management has obligations to the employee. One important obligation is that the action must be reviewed and looked into by the installation head or a designee. This does not mean the agency head rubber stamps the first level supervisor who initiated the action. The agency head is responsible for reviewing and, if necessary, investigating the proposed disciplinary action. Make sure this has been done. It is important to remember that a defense to disciplinary action usually developed by evidence of this kind:

- 1 Management failed to prove guilt of the employee beyond a reasonable doubt.
- 2 Management failed to produce pertinent evidence.
- 3 Length of service can be an important defense.
- 4 Past good record of employee.
- 5 Age of the employee and opportunity to find work.
- 6 Family obligations.
- 7 Challenges to the reasonableness of the discipline.

When collecting information for handling grievances, a steward must constantly ask the question: Is this information useful for this particular grievance? Training and practice with specific grievances will help stewards answer that question but some general guidelines might help. Two elements make information useful in grievances. They are:

- 1 Can this information be measured accurately?
- 2 Is the meaning of the information clear or must further investigation determine the meaning?

### *Measuring information*

There are many ways of measuring information. Distance can be measured in inches, feet, yards, or miles. Time is measured in seconds, minutes, hours, days, or years. These measures are used in many grievances. Others include:

Information:	Method of measure
Years of service:	Years months and days
Medical records:	Number of reported injuries in past period, hours lost from work, kinds of injuries
Absenteeism:	Number of days lost
Tardiness:	Number of days tardy, number of hours lost from work
Production:	Amount produced
Other jobs held:	Job titles, period of time on each job
Education and Training:	Years in school, training, programs attended, courses taken
Written reprimands:	Number, kind of violation
Quality of work:	Accuracy and quality

In each type of information, the investigator, can produce a number of measurements that can be compared with other cases. For example, a worker who has been absent five days in the past year has fewer absences than someone with seven absences. Every reasonable person who looks at that record will agree that five absences is less than seven absences in a one-year period. The same can be said for each kind of information shown. Although a large number of absences may appear on record, no reasons are given. A worker with seven absences may have better reasons than someone with five absences. With each kind of information listed, you have to know the reasons for

## INVESTIGATING A GRIEVANCE

each case. You have to know the meaning of most kinds of information.

### *Clarifying the information*

While people can measure the information listed, a skilled steward will ask the question: Why did it happen? or "Does the information apply to this particular grievance?" A worker has had production problems on his record which look pretty bad. A steward may find that the supervisor ordered him to do non-productive work during his regular operation. Additional investigation must take place to determine the importance of this information. A frequently used piece of information is years of education. Some questions that might be raised include: How good was the education or training? Does this education help a worker to do a better a job? Will any subject taken in school help a worker to do the job that is now open? After answering these kinds of questions, a steward can then determine the value of education in a union member's record. Years of education do not help very much. The same can be said for absenteeism, tardiness, and medical records. A steward must find out how long ago they happened, reasons for the occurrences, whether the reasons apply to present situations, whether the record looks poor in comparison to records of other workers.

This type of information is very important in many grievances and will be used by stewards frequently. Stewards only have to be certain that management understands the meaning. Much of grievance negotiations concern the difference between the steward and the supervisor about the meaning of measurable information.

### *Years of service*

Years of service are a type information that is clearly measurable and has quite clear meaning. While years of service do not show that one worker is superior to another, it tells the number of years that the employee has given satisfactory service to the employer. Presumably an efficient management discharges unsatisfactory employees and this happens regularly with companies, government agencies, and other types of employers. Union representatives defend their members. They insist on the right to defense, clear proof of misconduct and appropriate punishment. When the proper procedures are followed and guilt proven, workers are discharged for cause. On the other hand, a worker who stayed with the employer for a number of years has contributed physical effort, intelligence, and production to the employer's success. While some workers do better than others, little clearly measurable and meaningful information has been developed to prove how much, how often, and for what reasons. Consequently, unions advocate years of service as a basis for claiming advantages such as promotion and protection from disadvantages such as arbitrary reassignment.

### *Unclear information*

Some words, frequently used to describe a person or behavior has little or no use in processing grievances. They include the following: ability, attitude, personality, character, dependability "Ability" can be defined in terms of production, quality of work, and possibly attendance and medical records. But, the word "ability" alone has very little meaning. Supervisors have said "I can tell that one worker has more ability than another." If it cannot be measured and had no clear meaning, this statement is nothing more than the supervisor's opinion - maybe accurate, maybe inaccurate. In handling a grievance, the skilled steward must require proof for the statement, proof that is measurable and has clear meaning. "Attitude," "personality," "character," "dependability" - these words have never been defined in a way that produces agreement. One person's opinion about another person's attitude may be very different from other opinions. There is no way to compare people's personalities and character. How do we know that one worker is more pleasant or more honest than another? And even if we did, what does this have to do with a worker's ability to produce for the employer? Should people be punished because they didn't smile as frequently as another or disagrees with the supervisor? A steward must know the circumstances surrounding the sour disposition or disagreement and insist on measurable information that has clear meaning. Essential questions are: why do you say that the worker has a bad attitude? What happened? What did the supervisor do that contributed to the unpleasant situation? Did this interfere with production? The emphasis on proof, during the grievance procedure, helps cut through the main accusations made against workers that are accepted without challenge. One of the greatest contributions that a union makes on a worker's life is comparative freedom from punishment based on a supervisor's unproven opinion.

## INVESTIGATING A GRIEVANCE

### *Sources of information.*

- People:
- 1 The grievant
  - 2 Co-workers
  - 3 Witnesses to the grievance
  - 4 Union stewards and officers who can supply ideas about similar grievances in the past
  - 5 Foreman and other supervisors.

It is usually best to speak to management about a grievance before you actually fight the case. Get their views so you will have a clear idea of the agency's reasoning. You also get a clear idea of the facts after talking with both the worker and the supervisor.

- Agency records:
- 1 Retention records
  - 2 Production records
  - 3 Absentee records
  - 4 Medical records
  - 5 Agency regulations

- Union records:
- 1 Union contract
  - 2 Past grievance files

### EVIDENCE

Primarily, one should look at evidence from an arbitrator's point of view. It is important to emphasize that the issue and facts surrounding any grievance are clearest at the local level. It is imperative that all available data at Step 1 of the grievance procedure be made available at Step 2, 3, and 4. Grievances are most often initiated by individuals through their union, and except in discipline cases, the party filing the grievance assumes the burden of proof of whatever allegations it makes. It does not suffice to make an allegation without being able to support it with evidence - either documents or testimony. Opinion and hearsay is taken by most arbitrators for what it is worth. Opinions of experts in a particular field are given weight based on the relevancy of their specialty. The weight it carries may also depend on the other facts in the case.

The following will address itself to proof or evidence as it applies to grievance handling: What is evidence? That which tends to prove or disprove something. For our purposes, it is data in the form of testimony of witnesses and documents or other objects such as photographs, etc., identified by witnesses and offered as support of proof of the facts in the issue.

### *Types of evidence*

There are basically three types of evidence. There is "best evidence" or direct evidence which deals directly with either documents, or direct testimony with the issues at hand. In addition there is "secondary evidence" evidence which could include reproduction of document, hearsay, opinion, etc., and lastly there is "circumstantial evidence" evidence that would indicate that a sequence of actions or circumstances could, in fact be substantive evidence that such a situation or fact existed.

### *Best evidence*

The best evidence rule requires that the best that is possible to produce be presented as proof of the disputed facts. Usually, best evidence of anything in writing is the writing itself. This would include original documents of any kind as well as original data which is available. If the evidence used is a substitution for best evidence, note should be made of the reasons for the substitution .

Testimony is considered "best evidence" when the individual testifying has a direct knowledge with the issue. For example, a doctor testifying on the issue of sick leave would have more impact than a physician's certificate.

## INVESTIGATING A GRIEVANCE

### *Secondary evidence*

If secondary evidence must be used by the union and the best evidence is in the hands of the opponent, due note should be made of that fact. For example, the union has a copy of a memo proposing a RIF, and the agency has the original. Informal records kept by the union may be given significant consideration if the agency has not kept formal records of the activity in question.

### *Circumstantial evidence*

While it is admissible, it is still required that there must be clear and convincing proof to establish that the offense was committed or the allegation made was justified. New evidence in arbitration cases is largely mitigated or eliminated by the fact that most arbitrators who accept newly submitted evidence will take all reasonable steps necessary to insure the opposite party adequate opportunity to respond, regardless of whether the evidence has been withheld in good or bad faith. The arbitrator, if he or she deems it necessary, has the flexibility to return the case to the parties in the light of new evidence or may recess the hearing for whatever time necessary to prepare or revise its defense. Ordinarily, each party has the right to decide in which form it will present its evidence.

Arbitrators have the right to request information or data if they have a reasonable basis to believe that it will be germane to the case. While in some instances the arbitrator may request that such evidence be produced, in others, he or she may request the evidence be produced on the motion of the party who otherwise does not have access to the evidence in question. It is the general view of most arbitrators that withholding evidence intentionally and with calculation is the most severe breakdown of good faith bargaining. This applies in terms of grievance processing as well as negotiating contracts.

Sound collective bargaining requires the frank and candid disclosure at the earliest opportunity of all facts known to each party. There will undoubtedly be times when facts are discovered and therefore not revealed until a grievance has been partially processed. However, there is no justification for withholding information by either party after the time it is discovered. If either party withholds information or refuses to produce an important witness, it is not unusual for an arbitrator to accept what the other party claims would be true if the information or witness was made available.

Some arbitrators consider the delay in presenting evidence "mitigates its relative importance." Moreover, some have refused to accept evidence offered by a party for the first time at the arbitration stage where the evidence was known to the party at the grievance stage.

### *Evidence evaluation*

The general theory is that as long as evidence fits and is relevant to the case the unusual nature of the evidence should not bar it from admission and consideration.

### *Relevance*

The information demanded must be relevant to the issue between the employer and the union. The duty to furnish the union with relevant information does not end with the signing of the collective bargaining agreement. This duty continues through the life of the agreement so far as it is necessary to enable the parties to administer the contract and resolve grievances or disputes.

This policy is the result of a Supreme Court ruling in a case of the National Labor Relations Board versus Truit Manufacturing Company. The principle applies to federal labor relations as well. In an Unfair Labor Practice case decided on June 23, 1980, an Administrative Law Judge found that management had the obligation to provide the union information that was "relevant and necessary" to the performance of its representational functions including the conduct of negotiations and the administration of the collective bargaining agreement between the parties, and the existence of this duty depends on the circumstances of each case.

He further stated that the burden of proof as to relevance of information shifted depending on the circumstances

## INVESTIGATING A GRIEVANCE

under which it was requested. If the information which was requested was in connection with negotiations, including preparation for negotiations, such information is considered "presumptively relevant" and the employer must prove that it is not relevant. However, in other matters, such as grievances, the burden is on the union to demonstrate the relevance of requested information. Moreover, the union must specify the function for which the information is requested. (Director of administration, headquarters, U.S. Air Force and AFGE-GAIU Council, Headquarters, USAF Locals, AFL-CIO, 3CA94)

### *Shifting the burden of proof*

Normally, in a disciplinary action, the burden of proving the allegation rests with management however it is possible for the burden to shift. For example, an employee is disciplined for constantly making an unusual number of errors on a keypunch machine. To establish guilt, the burden of proof lies with the employer. However, if after the employer states its case based on the "facts," the union contends that the errors are due to a faulty machine, the burden of proof is then transferred to the union. If strong evidence supporting the union's contention is shown, the burden of proof, again, appears to be on the employer to substantiate its charges.

### *Precedents: use and value*

The use of prior awards issued by other arbitrators does have some impact in similar cases. Arbitrations at different locations under a national contract carry more weight than those on a similar issue under different contracts. However, it is possible that precedents will bear no weight at all or only in varying degrees. It is important to point out that precedents do not necessarily determine the outcome of a similar case. You must remember that the effect or impact of precedents is determined by the individual arbitrator. Arbitrators are normally alert to distinction between cases even though they may be swayed by cited awards. Circumstances surrounding the issue might differ considerably, and in the final analysis it is the arbitrator who makes the distinction. In some awards, arbitrators may even state that the award is not intended to be a precedent for future cases. Therefore it is important to note that the use of "precedents" in grievance handling and ultimately in arbitration, the relevancy to the issue is of prime importance. And the more closely associated the issue is to the prior award, the more weight it may carry regarding your position on the current issue.

### *Past practice*

The Federal Labor Relations Authority stated in an Unfair Labor Practice case that it is well established that parties may establish time and conditions of employment by practice or other informal agreement and that such terms and conditions may not be altered by either party in the absence of agreement or impasse following good faith bargaining. (Dept. of Navy, Naval Underwater Systems Center, Newport Naval Base and NAGE R-1-1144, FLRA 64) It is difficult to identify any standards by which arbitrators determine if a practice exists and how much weight it should be given in considering their decision and award. It often depends on the strength of contract clauses regarding past practices, management rights, and the obligation to bargain during the term of the contract.

However, there are some definite ingredients that appear to be evident when the question of past practice appears before an arbitrator.

Unequivocal - The past practice has been granted or applied consistently, uniformly, regularly, and without break.

Clearly enunciated - This means the practice has been agreed to by both parties and is operating without protest or objection from one party or the other.

Duration - The practice has existed and been followed over a long period of time. In this regard, a bridge effect may be significant to some arbitrators. The bridge effect results from the practice commencing under one agreement and continuing unchanged and unopposed into a renewed agreement. As a result, it bridges one collective bargaining agreement with another between the two parties without having been changed or discontinued.

## INVESTIGATING A GRIEVANCE

Jointly accepted and acted upon - Both parties, through their representatives, have operated as though the practice, in fact, existed and was a guiding rule. This may signify to some arbitrators a "mutuality aspect" which then makes the practice the result of bilateral action rather than unilateral action.

One important factor that should be noted is that the frequency of the practice may not be as consequential as the consistency of its application. For example, a practice which occurs only three times a year and which, on each occasion, the practice is consistently executed may have more weight on an arbitrator's decision than another practice which occurs 15 times a year, but is inconsistently administered each time.

Past practices as well as contract violations require documentation and evidence. It is essential that when a practice exists and is grieved that all possible documentation and facts be submitted along with the allegation of a violation of the past practice principle.

### TESTIMONY

There are three basic types of testimony: Direct, indirect, and incidental.

#### *Direct testimony*

Direct testimony associates itself with an event or occurrence which falls or has fallen directly and immediately under the observation of one of the basic senses: Sight, sound, smell, hearing, and touch. Using direct testimony should alert you to two factors to be given serious consideration in using this method of proof.

\* Knowledge: The individual offering the testimony should be able to obtain and reserve facts reliably. The facts in question should be important enough to be noticeable.

\* Character: The character of the individual should be such that his or her testimony cannot be impugned by the opposing party

#### *Indirect testimony*

Indirect testimony is submitted in lieu of direct testimony. This could be such things as signed and/or notarized statements and affidavits.

#### *Incidental testimony*

Incidental testimony is also indirect testimony and may be of special value and carry considerable weight. This form of testimony could include such things as diaries, private correspondence, informal notes, etc. No matter what type of testimony is utilized, relevance to the issue is necessary for it to be acceptable. Testimony given by disinterested party gives an extremely strong argument to the issue. For example, a citizen testifies to the fact that he or she observed and heard a supervisor harassing a claims examiner.

Reluctant testimony is weak because it creates a strong presumption that the individual is trying to soften or avoid giving testimony directly relating to the issue. The reason for this reluctance may be fear on the part of the witness of losing his or her job. Consequently, the witness avoids as much as possible the real issues, facts, and details.

## WRITING A GRIEVANCE

Under most grievance procedures a complaint formally enters the grievance procedure when it is first presented in writing. *However, our Master Labor Agreement allows an oral first step to formally present a grievance, with the second and third steps are always formally presented in writing . Whether oral or written, the grievance must address the issues and should adhere to the guidelines presented below.* The steward usually has the responsibility for the writing the grievance, should do so only after talking to the supervisor and evaluating the supervisor's side of the story. The steward should check carefully to make sure he or she has covered the six W's - the WHO, WHEN, WHERE, WHY, WHAT and WITNESSES of the grievance.

WHO: Refers to that which clearly identifies the employee with the grievance. This includes 1.employee's name; 2.pay or badge number; 3.office or shop; 4.classification.

WHEN: Refer to the time element. Often information regarding more than one date is needed:

- 1.the date on which the grievance is officially written;
- 2.the time and date on which the grievance officially happened;
- 3.the date on which the grievance was submitted to the immediate supervisor (first or informal step of the grievance procedure);
- 4.the date on which the immediate supervisor gave the decision.

WHERE : Refers to the exact place where the grievance took place - the department, aisle, or machine.

WHY: Refers to the reasons why the complaint is considered a grievance.

The WHERE and WHY must be clearly stated to present all the facts. Remember: It is possible to have a legitimate grievance without being able to point to a violation of a specific clause of the contract.

WHAT: Refers to what should be done about the grievance - the corrective action desired. The steward should be sure to request everything needed to redress the grievance. It is extremely important that this be done, since the arbitrator will base an award on the original request.

WITNESSES refers to those who may have seen what occurred in the incident which gave rise to the grievance being filed.

The same steward who can effectively present a grievance orally, sometimes experiences trouble in reducing the problem to writing. The steward can overcome this difficulty by following several simple rules:

1. Writing the grievance as concisely as possible;
2. Keeping a record of important details;
3. Say it first, then writing it;
4. Write legibly.

### *Writing the grievance as concisely as possible.*

A grievance should be written as simply and concisely as possible. The exact nature of the grievance as well as the settlement desired should be included. The inclusion of too many details may allow management to sidetrack the union when the issue is discussed. Here are the facts of a sample case: John Smith woke up on Tuesday morning with a severe headache. He called in and reported sick. He says that later in the day he went to the doctor and was told he had a severe sinus infection, and was given a shot of penicillin and told to stay home a couple of days. For some reason, the supervisor became suspicious and stopped by Smith's house at about 8:00 P.M. He said he wanted to see how Smith was feeling. Smith's wife said he was not in at the moment. The supervisor knew that Smith bowled on the union league on Tuesday nights and went to check. Just as he pulled up in front of the bowling alley, Smith walked out of the front door, bowling ball in hand. Smith maintains he went down to pick up the bowling ball to have some work done on it. He says he did not bowl.

Smith stayed home Wednesday as well. When he showed up at his usual working time Thursday, His supervisor gave him a written statement which contained a three week suspension for falsifying his sick leave, and a notice requiring a doctor's statement when he takes sick leave in the future.

The facts when reduced to grievance form would look like this:

## WRITING A GRIEVANCE

The nature of the grievance is that John Smith received a 3-week suspension on July 1 without justification. John Smith is also unjustly required to provide a medical certificate each time sick leave is taken.

The settlement desired is that Smith's 3-week suspension should be rescinded and he should receive back pay for all time lost. The requirement that Smith provide a medical certificate every time he takes sick leave should be rescinded.

### *Keeping a record of important details:*

The steward should keep his or her own written record containing additional factual information needed in arguing the case. Management disciplined Smith because they thought that he was bowling when on sick leave. Smith maintains he only stopped to pick up his bowling ball. "Does Smith have witnesses? Who are they?" It is important that these facts be gathered immediately, since most people have short memories.

### *Saying it first and writing it later:*

Writing is the equivalent of speaking with a pencil. Therefore, some stewards find it helpful - before filing the grievance - to first assume they are explaining the grievance to their supervisor. Then they write down the same language they would have used orally.

### *Writing legibly:*

The grievance should be written so that others may read and understand it. It is a basic document and should be understandable to various levels of management as well as to other union representatives who may be processing the case at a higher level, or presenting the case to an arbitrator.

### *Distribution of the grievance*

Grievances are usually made out with an original and three copies which are distributed to the following parties: 1) management, 2) steward, 3) chief steward or grievance committee 4) the aggrieved employee.

### *Grievance file*

The steward should file copies of grievance victories chronologically or on a subject-matter basis depending on how many there are. They can serve as an important precedent if similar cases arise. The lost grievance may also serve a useful function. Before the contract is reopened, the steward should examine the lost grievance file to see if he or she feels employees in the department are being treated unfairly because of weak contract language. If so, the steward should be prepared to recommend changes to the negotiating committee.

## DEALING WITH THE GRIEVANT

### *Steward & Employee*

Most unions endorse the policy of the employee and Steward processing a grievance together. There are several good reasons for this. The Steward is the trained union representative and, therefore, best qualified to present the case to management.

In addition, the employee should be present when the grievance is discussed with the supervisor so that the grievant knows exactly what transpired and can't argue later, "If I had been there, I wouldn't have been sold down the river."

The Steward and employee, operating as a team, also provide an additional witness for the union that may come in handy in a later step in the grievance procedure. Most important of all, this policy builds the collective strength of the union. It shows management that the members understand the importance of protecting the contract through the official procedure. It also demonstrates to management that AFGC Stewards have the support and confidence of the people they represent.

If the Steward and employee find themselves with differing views in the presence of management, they should recess their meeting and reconcile their differences.

### *The Steward Alone*

Sometimes it may be necessary that the Steward take up the grievance without the presence of the employee. This is usually done when the workforce is scattered and difficult to easily bring the Steward and the worker together. This is a bad practice because the employee does not directly participate in the discussion and, therefore, may not fully understand what has taken place.

In certain exceptional cases where strong emotional feelings exist between the employee and the supervisor, it may be necessary for the Steward to handle the grievance alone. Otherwise, the employee and supervisor may engage in a "shouting match" that produces "heat" but little "light."

### *Role of the Chief Steward*

When negotiating a grievance procedure, some Local unions fail to make provisions for the use of the Chief Steward. In the negotiated procedure, the Chief Steward should usually enter the procedure in the second step, meeting with the second line supervisor. Chief Stewards play a key role because they supervise a number of department unit Stewards, and therefore, have responsibility for ensuring uniform interpretation of the contract. If your Local does not have a Chief Steward, someone in the Local should have responsibility for providing guidance to the Stewards.

### *Role of the National Representative*

The National Representatives who serve the Local union should also be utilized in the grievance procedure when the Local feels it might be appropriate. Their experiences in dealing with a wide variety of management representatives will be valuable. In addition, National Representatives are not on the agency payroll and therefore, should have no hesitancy about forcefully expressing themselves.

### *Grievance of Non-Members*

Title VII, section 7114, of the Civil Service Reform Act requires that when a union has obtained Exclusive Recognition it must handle the grievance of members and non-members alike. However, as a matter of self-preservation, all grievances should be pushed hard by the union. A violation of a contract in regard to a non-member may serve as a precedent, to be used against a union member in the future.

Many unions in public employment have used the successful prosecution of nonunion members' grievances as a basic organizing tool. The successful handling of a grievance helps to answer the question, "What can the union do for me?" Even though the individual with the grievance may not join the union, some other nonunion worker may be persuaded to do so.

## DEALING WITH THE GRIEVANT

On the other hand not all grievances should or can be taken to arbitration. This is particularly true when the bargaining unit member is entitled to exercise an option to use either the negotiated grievance procedure (expanded scope) or the statutory procedure for matters involving discrimination or adverse actions. The union must advise and assist the employee in choosing either one but not both. Local officials must consider the merits of the case, as well as the financial liability to be incurred should it be taken to arbitration.

A union can refuse to invoke arbitration and still meet the requirements of "fair representation". Lack of Local funds can be one of the factors in making this determination. However, the Local's actions cannot be in an "arbitrary, discriminatory or bad faith manner".

A Steward fulfills the duty of fair representation when all steps are carefully taken to process the individual's grievance, meeting all time limits in a diligent manner. This means keeping accurate records, logs, and a calendar for each step of the grievance procedure; it also includes advising the employee of your decision on the matter and of the employee's right to appeal to the Chief Steward and/or Local President.

### *The Employee Backs Down*

Sometimes employees will refuse to sign the grievance form or seek to withdraw a grievance after filing it, for fear they will be penalized later by management. If the contract has been violated, the Steward should make every effort to get employees to sign the form and to support the grievance all the way -- explaining that to "stand on their own two feet" is part of all members' responsibility to themselves and the union. Otherwise, management may assume that the people have no respect for their representing Steward and consequently may be tougher to deal with on all matters brought to its attention. In addition, Stewards should point out that under the Civil Service Reform Act it is an unfair labor practice as well as a prohibited personnel practice for management to discriminate against an employee who files a complaint under the Act.

## DEALING WITH THE SUPERVISOR

### *Steward & Supervisor*

Stewards should understand their relationship with management. While the supervisor exercises certain authority over the Steward as an employee in the department, things change when they meet to discuss grievances: The Steward acts as an official representative of the union, and, therefore, has equal status. The Steward has every right to expect to be treated as an equal as well as the right to be self-expressive on the problem under discussion. Section 7116 (a) of the Civil Service Reform Act (unfair labor practices by agency management) protects union officials, including Stewards, against management retaliation on union representation of employees.

Generally, every effort should be made to settle the grievance as close to the source of the dispute as possible. The representatives of both groups have to live with any settlement reached. If they can arrive at one, rather than having it imposed on them from above, the parties will be better off. In addition, the further the grievance travels up the procedure the more difficult it is to settle because it becomes a matter of pride or prestige. Therefore, both sides tend to back up their subordinates even when they feel they may have been wrong originally.

It is absolutely essential that the Steward talk to the supervisor after getting the employee's story. As the Steward, you can properly evaluate the complaint only after hearing, both sides. The supervisor may provide certain facts that were not available to the employee.

### *Supervisor's Authority*

The degree to which grievances are successfully handled at the first step is largely dependent on the authority granted the supervisor. In some cases the supervisor is only a messenger for the management representative in the next step of the grievance procedure. If this situation exists, few settlements will be reached at the first level.

It is important to observe the steps in the grievance procedure even if the supervisor has limited authority. "Leapfrogging" to a higher step may have several undesirable effects. The supervisor may resent this and may be more difficult to deal with the next time, or management may seek to get the grievance thrown out because the proper steps were not followed.

Even the best Steward will, from time-to-time, have trouble in settling grievances because of various tactics used by the supervisor. Here are a few examples:

**Stalling**--If the supervisor stalls in giving an answer on a grievance, the Steward should not hesitate to invoke the time limitations spelled out in the contract. If there are no time limitations, it may be necessary to systematically nag the supervisor until you get an answer. If there is still no response you may have to file a grievance charging the supervisor with "stalling," or otherwise move directly to the next step in the procedure.

**Horsetrading**--Sometimes the supervisor may offer to "split the grievances"--the union wins half and loses half. This may prove to be a temptation, but it is important to remember that each employee is entitled to fair treatment. If employees feel that their grievance has been traded off to benefit another worker, this destroys confidence in the union. Therefore, it is important to treat each grievance on its own merits.

**Losing Your Temper**-- Sometimes management will deliberately provoke you hoping that you will lose your temper and make rash promises or threats which cannot be carried out. Such actions result in the loss of respect by both management and the people whom the Steward represents. Most people do not think straight when they are angry.

**Discussing Side Issues**--Often management will try to sidetrack the Steward by discussing matters not related to the grievance under consideration. If it is of concern to the organization, the Steward should ask that it be discussed after the grievance is resolved. If the subject is completely irrelevant, the supervisor should be reminded of the

## DEALING WITH THE SUPERVISOR

purpose of the meeting. But supervisors should not be cut off sharply, therefore, causing them to take offense.

### *Know When To Stop Talking*

It is usually better to say too little than too much. A good rule of thumb is to talk 20% of the time and listen 80% of the time. By listening to the other side, it is often possible to get a better understanding of management's argument and, therefore, be in a better position to combat it. If management has conceded the grievance, the Steward should end the discussion and not rehash it further. Otherwise, supervisors may think of some additional reasons why their position is correct, and it may be necessary to reargue the entire case. If the employee is not present at the time of settlement, you should notify the grievant immediately on the outcome of the case.

### *Failure to Reach an Agreement*

If the Steward is unable to obtain a settlement, the supervisor should be informed that the Grievance will be taken to the next step in the grievance procedure. The Steward should inform the employee of what has happened. In addition, the Steward should brief the Chief Steward or the union representative who is involved in the next step of the grievance procedure, as to the main line of argument taken by the supervisor.

The way in which the Steward has handled and documented the grievance up to this point will have quite an impact on the way the union representative at the next step will proceed. The union representative has very little to go on other than the background information received from the first line union representative.

The Steward should be careful never to guarantee the employee a successful settlement of the problem. What appears to be an airtight case is sometimes completely destroyed upon further investigation. It may then be difficult to convince the employee why the case was lost.

The Steward should be prepared to vigorously process grievances of all bargaining unit members regardless of one's personal feelings. This should be done both as a matter of justice and as a method of ensuring that dangerous precedents involving contract violations are not established.

Since most employees want their respective grievance solved "today," or "tomorrow at the latest," it is important that they be kept informed on the progress of the case. Sometimes it may take months before a grievance is completely processed. Therefore, an employee should be informed of the various time limitations in the procedure which make a more rapid settlement possible.

## ARBITRATION

### *What is Arbitration?*

Arbitration is the referral of a dispute by either party to an impartial person for determination on the basis of evidence and arguments presented by the parties, who agree in advance to accept the decision of the arbitrator as final and binding. Arbitration, therefore, is a judicial type of proceeding and different in nature from mediation, conciliation, negotiation and fact-finding.

### *What can be arbitrated?*

In general, labor-management arbitration is divided into two fields: contract negotiation disputes, sometimes called arbitration of interests (the Federal Service Impasses Panel has determined how arbitration will be used in collective bargaining impasses); and contract interpretation disputes, sometimes called arbitration of rights (an arbitrator resolves disputes over arbitrability of grievances). The latter is much more prevalent and the issues which arise under it are called grievances. The balance of this section will deal with the arbitration of grievances.

### *How do you get to arbitration?*

Arbitration can be obtained only through a provision in your contract. The arbitration clause usually provides that the arbitrator is to be selected by mutual agreement. If the two parties cannot voluntarily reach agreement, usually a list of arbitrators is obtained from the Federal Mediation and Conciliation Service (FMCS), an independent agency of the United States Government, or the American Arbitration Association (AAA), a private body. The union and management try to select from the list a person who is agreeable to both. If they fail to agree, normally both parties will alternately strike names until one arbitrator is left. Decision by arbitrators are subject to review by the Federal Labor Relations Authority on limited grounds: 1) if the arbitrator exceeded the authority granted to him or her under the contract. 2) if the decision violates a law or regulation, or; 3) if the arbitrator engaged in unethical practices.

An arbitrator (or umpire) is most often an educator, practicing attorney, professional arbitrator, industrial engineer or labor consultant with some knowledge of labor law, labor economics, personnel problems, or industrial relations. Arbitrators are appointed on a case-by-case basis in federal arbitration matters.

### *Who presents the case first?*

The grievant's case is presented first, except in disciplinary and adverse action cases. In the latter, management is the moving party and must first show that an action has taken place against which a grievance can be filed. Section 7121 of the Civil Service Reform Act provides that all disciplinary and adverse actions in the federal sector can be arbitrated if the negotiated grievance procedure so provides.

### *The steward's role in arbitration cases*

A grievance advances from the first, informal step where the shop stewards are responsible, all the way to the final step--arbitration. Before we discuss the actual arbitration process, it is imperative that you understand the relationship that exists between the steward and arbitration. Beginning with the initial complaint by the employee and ending with the decision of the arbitrator, the knowledge and ability of the steward is the single most important factor in a successful case. Cases have been won or lost because of how they were handled at the first step.

The chief steward, local president, or field representative must depend largely on the steward's documentation of the case when they carry it through the following steps. The arbitrator will base the corrective action on what was originally requested by the employee, through the steward, and the employee will look to the steward as the vital link for achieving victory and justice. Therefore, a basic understanding of the entire process is necessary for you to perform your duties in the most effective manner possible.

### *Who has the "burden of proof"*

The burden of proof rests with the grievant. That is, the moving party must show by a "preponderance of the evidence" the validity of their position. This means the heaviest task falls to the union.

### *Do you need a lawyer at the arbitration hearing?*

## ARBITRATION

In the vast majority of cases, no. A few cases may involve issues where it is desirable to have an attorney present the case. What is required is that the representative investigate all of the facts, make a plan to show what will be proven, present the case in a business-like manner, and not become involved in a lot of technicalities. Before actually presenting the case, the representative should give an opening statement both orally and in writing. The opening statement will show the arbitrator what the representative plans to show in the case and the method by which the representative intends to do this. Preparing the opening statement will also enable the representative to marshal the information in a most effective manner.

### *How are arbitration hearings conducted?*

An arbitration hearing is not like a courtroom hearing with motions, objections, and so on. The arbitrator tries to conduct the hearing in a relaxed manner and in an informal atmosphere. At an arbitration hearing, provisions are made for presenting documents, examining witnesses, cross-examining witnesses, and summaries by the opposing sides. Although the arbitration hearing is relaxed, it is still a judicial hearing. The arbitrator will interject by asking questions only when more information is needed from a witness.

### *How to prepare for the arbitration hearing*

1. Study the original statement of the grievance and review its history through every step of the grievance machinery.
2. Carefully examine the original written grievance to help determine the arbitrator's role. (The clear and proper writing and filing of the original grievance is an extremely important responsibility of the steward.)
3. Review the collective bargaining agreement from the beginning to end. Often, clauses which at first glance seem unrelated to the grievance will be found to have some bearing on the case.
4. Assemble all documents and papers needed at the hearing. When feasible, make photostatic copies for the arbitrator and the other party. If some documents are in possession of the other party, ask in advance that they be brought to the arbitration hearing.
5. If you think it will be necessary for the arbitrator to visit the job site for an on-the-spot investigation, make plans in advance. The arbitrator should be accompanied by representatives of both parties.
6. Interview all witnesses: make certain they understand the whole case and particularly the importance of their own testimony within it.
7. Make a written summary of what each witness will testify to. This will be useful as a check-list at the hearing to make certain nothing is overlooked.
8. Study the case from the other side's point of view in order to best answer the opposing evidence and arguments.
9. Discuss your outline of the case with others in your Local. A fresh viewpoint will often disclose weak spots or previously overlooked details.
10. Read articles and published awards on the general subject matter in dispute.

While awards by other arbitrators for other parties have no binding precedent value, they may help clarify the thinking of parties and arbitrators alike. Cases relating to the federal, state and local sectors are found in the Government Employee Relations Report which is published by the Bureau of National Affairs, Inc.

### *How long until the arbitrator's decision?*

Unless the collective bargaining agreement specifies otherwise, the arbitrator usually renders an award 30 days after the close of the hearing. In a 1974 FMCS study of arbitration, however, it was found that it took about 52 days, on the average, for arbitrators to issue a decision.

### *Should you get a transcript of the hearing?*

Only if the case is very technical, otherwise it will hold up a decision, sometimes two or three months. Arbitrators feel that when there is a transcript they must thoroughly read it even though they make little or no use of it in coming to a decision.

## ARBITRATION

### *What happens after the hearing?*

Provision is made in cases and some agreements for the filing of posthearing briefs although most arbitrators try to discourage this. Only after those have been submitted is the hearing declared closed. The arbitrator will then review all of the facts and the negotiated agreement and issue an award.

### *Can arbitrators be overruled?*

Yes, most arbitration awards are reviewable by the FLRA; however, cases involving adverse actions or discrimination are subject to judicial review. Arbitration awards can only be overturned if arbitrators exceed their authority or were found guilty of fraud or corruption, or were acting under duress.

### *Mistakes in arbitration cases*

1. Using arbitration and arbitration costs as a harassing technique.
2. Over-emphasis of the grievance by the union or exaggeration of an employee's fault by management.
3. Reliance on a minimum of facts and a maximum of arguments.
4. Concealing essential facts; distorting the truth.
5. Holding back books, records and other supporting documents.
6. Tying up proceedings with legal technicalities.
7. Introducing witnesses who have not been properly instructed on their conduct during the hearing and on the place of their testimony in the case.
8. Withholding full cooperation from the arbitrator.
9. Disregarding the ordinary rules of courtesy and decorum.
10. Becoming involved in arguments with the other side. The time to try to convince the other party is before arbitration - during the grievance process, especially when the Steward is involved. At the arbitration hearing all efforts should be concentrated on convincing the arbitrator.

### *How are arbitrators selected?*

The FMCS procedure for selecting arbitrators involves the submission of an odd numbered list of arbitrators to the parties who then alternately strike names until one remains. This person becomes the arbitrator. The party which strikes the second name from the list ultimately selects the arbitrator.

#### FMCS LIST OF ARBITRATORS

1. ~~C. Jones~~ Mgt
2. J. Smith
3. H. Walker
4. ~~U. Blake~~ Union
5. R. Moore
6. ~~B. Peters~~ Mgt
7. E. Ross

In preparing arbitration panels (several arbitrators), the FMCS considers a number of factors. These include - not in order of significance - importance of the case, geographical locale of the dispute, type(s) of issue(s) involved, experience of the available arbitrators, and the party wishes.

At the present, the FMCS arbitration roster contains the names of approximately 1350 arbitrators of whom 208 have had experience in the federal sector. Since arbitration obtains its authority from the consent of the parties, it is crucial that only individuals acceptable to significant numbers of labor and management representatives are placed on the roster. Actual arbitration experience is one indication of acceptability. However, an individual with a thorough background in labor-management relations and a suitable number of references will also qualify for inclusion on the roster. In any event, each applicant's background is reviewed with representatives of labor and management in the community in which the applicant resides before a decision is made regarding their placement on the roster.

## ARBITRATION

### *Who pays for arbitration?*

Traditionally arbitration costs are borne jointly. The parties must pay all expenses including stenographic transcripts should they be necessary. The FMCS has found that the average arbitration case in private industry took up to three days of the arbitrator's time. This includes hearing, travel and study time.

### *Arbitration and Collective Bargaining*

Arbitration is an extension of the collective bargaining process. Without arbitration, disagreements between employees and employers are usually settled by strikes. Arbitration makes the parties discuss their cases in a reasonable atmosphere and gives maturity to the collective bargaining relationship.

### *Acceptance of Arbitration*

Arbitration has developed into something universally accepted as a method of settling disputes. A measure of this acceptance is the fact that about 95 percent of all private industry collective bargaining agreements provide for arbitration as the last step of the negotiated grievance procedure.

### *A History of Arbitration*

Arbitration comes to us through English Common Law. In 1697, Parliament, knowing that merchants, traders and others were accustomed to using arbitration for quick settlement of their differences, passed a statute to facilitate its use, making the awards of arbitrators binding arbitration readily enforceable. The statute provided punishment for nonperformance, unless it was shown that the arbitrator or umpire misbehaved, or unless the award was procured by corruption or undue means.

Labor arbitration was developed as a by-product of unionization and collective bargaining. The War Labor Board of World War II gave it great impetus. When the Board, exercising its war powers, found itself unable to handle its case load, it referred many disputes back to the parties with the direction to settle them by arbitration and to incorporate arbitration agreements into their contracts.

## Building a Good Steward System

The Local Steward cannot do it all alone. The Local must help by building a good Steward System. Here are some suggestions.

### *Steward training*

New Stewards cannot be expected to know the finer points of the Local's contract with the agency or installation. Often they are uncertain about how to go about handling grievances. The Local can get the Steward off to a good start by setting up special training classes, or by planning education sessions during Steward's meetings.

### *Steward Kits*

Stewards should be given a copy of the Local's contract with the agency, and the Local's by-laws, the AFGE Constitution, and written grievance forms and materials that will aid them in interpreting the contract.

### *Steward meetings*

Holding regular Stewards' meetings is one of the best ways a Local can help keep their stewards up to date on on-the-job problems and union affairs.

### *On-the-job training*

Like everyone else, Stewards learn through experience. If the Local wants the Steward to handle grievances effectively, it must give the Steward an opportunity to learn through watching the Local's experienced representatives in action while they handle grievances. When possible the new Steward should be brought in at higher steps of the grievance procedure. The Local can also help to assist by providing the Steward with advice from the Local's experienced grievance handlers. On routine grievances the Steward should be encouraged to seek advice and then go, back and handle the first-step grievance alone. This is one way a Local can build confidence in its new Steward. And last, Stewards deserve and appreciate a word of thanks for a job well done.

### *Educating the Local*

The Steward's and the Local's job could be made much easier if the Local's members knew their contract. Members also are better protected when they know their rights under the contract. When they are better informed about their rights, the grievance procedure functions more smoothly. When they are informed properly, members are less likely to bring up complaints which are not grievances.

There are several ways the Local can better educate its members on the contract:

- . Provide a copy of the contract to each member;
- . Hold times aside during regular membership meetings of the Local to explain important sections of the contract;
- . Explain new clauses or benefits of a recently signed contract to members in detail. This can be accomplished at the regular membership meeting, or through handouts. If the Local has a newsletter, feature a series of articles on the new contract;
- . Put a booklet out which explains the contract provisions in detail.

Building a good Steward's system depends on a well informed Local. By explaining the contract to members, the Local goes a long way towards making the Steward's job a lot easier.

As a Local AFGE Steward, therefore, you are an integral part of the complete system of representation that the Federation provides. While AFGE provides its members representation with the President, Congress, the Office of Personnel Management, and the many executive branch agency headquarters, it is the Steward who provides AFGE representation to each and every member where they work.

Stewards are more than grievance handlers. They are organizers.

## Building a Good Steward System

Organizing is the Steward's most important function. It is a never-ending job which provides the life's blood to the union. "Shot-in-the-arm," or "quick fix" organizing campaigns do not lead to membership growth. A Local's growth and strength depend upon a full-time commitment to organizing.

As the Local's number one organizer, the Steward should”

- . greet new employees, introduce them to their co-workers, and show them around the workplace;
- . inform them about AFGE's efforts on their behalf;
- . tell them about improvements that were made at the worksite as a result of the Local;
- . tell them that improvements in their benefits come through the strength of their AFGE contract, NOT through the kindness of their employer;
- . explain to them the SF 1187 and ask them to sign up as dues'-paying members of AFGE.

For more information about internal organizing, ask your Local President to get you a copy of the [AFGE Internal Organizing Manual](#).

MLA Article 13, Section 8 - Employee Grievance Process

STEP 1 State: a This is a grievance being presented  
 Include b. 1. Summary of relevant facts  
 2. Relief being sought  
 3. the grievant will be represented by the Union.

Trigger	File with	Time Limit	How	Management Response
Event causing complaint	Immediate Supervisor	15 Calendar Days of event	Orally or in Writing	Within 7 Days Management Official shall respond to the grievance in the same manner as it was presented

STEP 2 State: 1. Summary of relevant facts  
 2. Relief being sought  
 3. the grievant will be represented by the Union.  
 Include a copy of the Step 1 reply

Trigger	File with	Time Limit	How	Management Response
Step 1 management answer	The Department Head	7 Calendar Days of receipt of answer	In Writing	Within 10 days after submittal Department head or designee will investigate, meet with the grievant and/or representative and give written answer

STEP 3 State: 1. Summary of relevant facts  
 2. Relief being sought  
 3. the grievant will be represented by the Union.  
 Include a copy of the Step 2 reply

Trigger	File with	Time Limit	How	Management Response
Step 2 management answer	The Activity Head	10 Calendar Days of receipt of answer	In Writing	Within 15 days after submittal Activity head or designee will investigate, meet with the grievant and/or representative and give written answer

Grievance Representative's Investigation Checklist

DATE: \_\_\_\_\_

Employee's Name: \_\_\_\_\_

Supervisor's Name: \_\_\_\_\_

Summary of Complaint:

When did it occur? \_\_\_\_\_

Where did it happen? \_\_\_\_\_

Why did it happen? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What happened? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Who else was Involved? Witnesses?

(Include full name and work area, if possible.)

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

What adjustment is expected?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Steward's Record Sheet of Grievance Process: Step One

Date: \_\_\_\_\_ Union Representative: \_\_\_\_\_

Employee Filing this grievance: \_\_\_\_\_

Job Title: \_\_\_\_\_ Dept: \_\_\_\_\_

Statement Of Grievance: \_\_\_\_\_

\_\_\_\_\_

Grievance was presented to supervisor:  Orally  In Writing: Date Presented: \_\_\_\_\_

Grievance was presented to: \_\_\_\_\_

Meeting Held?  yes  no Date: \_\_\_\_\_

If a meeting was held, Who was Present?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

What was supervisor's answer or offer of resolution?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Was the grievance resolved?  yes Date Of Resolution: \_\_\_\_\_

no Further Action: \_\_\_\_\_

Steward Record Sheet of Grievance Process: \_\_Step Two or \_\_Step Three (Must Be Presented in Writing.)

Employee Filing Grievance: \_\_\_\_\_

Statement of Grievance: \_\_\_\_\_

Grievance was Presented to: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Place of meeting: \_\_\_\_\_ Date: \_\_\_\_\_

Who was Present at Meeting?

Name:	Title:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

What was Management's answer or offer of resolution?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Was the grievance resolved? \_\_yes Date Of Resolution: \_\_\_\_\_

\_\_no Further Action: \_\_\_\_\_