

Knowing the Basics of the Grievance Process

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The objectives provide an overview of the entire course and identify what information will be focused on. Objectives are stated in terms of what you, the learner, will know or be able to do upon successful completion of the course. They let you know what you should expect to learn by taking a particular course and can help focus your study.

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Course Objectives

At the completion of this learning activity the learner will:

- Define the term grievance.
- Discuss the reasons for using the grievance procedure.
- Describe the steps in filing a grievance.

Introduction

The Grievance Procedure

The grievance procedure is a major provision in almost all collective bargaining agreements (contracts) that resolve breach of contract claims. While a contract establishes the terms and conditions of employment, the grievance procedure provides the mechanism for addressing a violation of a worker's rights under a contract. In most contracts, the claim of contract violations, misinterpretations or unfairness is handled through the formal grievance contract provision. This course will provide important information to help nurses understand the basic grievance process under their union contract.

Note: The information provided in this course is for educational purposes only, and should not be considered legal advice. This online course is based on the copyrighted Grievance Workshop Manual (Private and Public Sector of the New York State Nurses Association).

About the Author

Diane K. Salerno, MA, RN is a Labor Educator for the New York State Nurses Association. In this role, she is responsible for designing, implementing, coordinating, and evaluating educational labor programs. Ms. Salerno's extensive labor experience includes member servicing, grievance handling, and contract negotiations.

What is a Grievance?

In broad terms, a grievance is a violation of workers rights.

Adjustment or Resolution of Grievances

The grievance procedure outlines a series of steps designed to resolve a dispute. The grievance procedure is a device for adjusting complaints and problems. It assures the establishment of a formal procedure under a contract to ensure the resolution of a worker's complaint. Methods of adjusting grievances vary from one contract to another.

A collective bargaining agreement is only print and paper unless it is enforced by the adherence of the parties to a contract. The contract really comes alive when the meaning of its words, phrases, sentences, and paragraphs are probed by questioning employees and answers are found through the use of the grievance procedure.

How Do You Know if Your Issue Is Grievable?

The following case study illustrates an incidence that might arise in a healthcare setting. It involves the discipline of a nurse.

Nurse Harris returned home after her night shift and was awakened by the telephone. It was her unit supervisor calling to determine if she had given a 6 a.m. dose of Dilantin to one of her patients. It seems that the patient reported to the assigned day nurse that she did not remember receiving the 6 a.m. dose of medication. This patient was an oriented 42 year old woman who was in the hospital for one week and never made a complaint of this nature.

Nurse Harris advised the supervisor that she had given the medication and “must have forgotten” to sign the medication record. The supervisor stated she would further investigate the complaint and get back to Nurse Harris.

Upon returning to work the supervisor informed Nurse Harris that an investigatory meeting was to take place about the medication error. Nurse Harris stated that she wanted to have a delegate present. Including a union representative at this meeting would protect Nurse Harris under her **Weingarten Rights** (definition will be explained later).

During the meeting Nurse Harris did acknowledge the omission on the medication sheet but insisted that she gave the medication. Following the hospital’s investigation it was concluded that Nurse Harris would receive a final written warning for this “serious” infraction.

Nurse Harris thought that this discipline was harsh considering her excellent performance as a registered nurse. Nurse Harris had an exemplary employment record; no warnings were in her personal file. Nurse Harris felt her rights under her contract were violated and that her punishment did not fit the crime.

What Recourse Does Nurse Harris Have?

The union has the responsibility of initially determining whether an employee’s complaint is or is not a grievance. Nurse Harris should contact her union representative to explore her rights under the grievance procedure of her contract. Conversations between an employee and a delegate are confidential. Once a determination is made that there is a grievance and the grievance is filed, the grievance is “owned” by the union not the employee.

Union Nurses Need to Know Two Important Rights

1. Duty of Fair Representation (DFR)

When a labor organization, or union, represents a group of employees, the union is given the right to exclusive representation of those employees with their employer regarding the terms and conditions of employment. The union's right to exclusive representation carries with it the right to negotiate collective bargaining agreements on behalf of its members, along with the right to process grievances arising under the contract and represent its members in disciplinary matters.

Arising out of these rights is a union's duty to represent its membership and insure an employer's contractual compliance in good faith. This duty, known as the Duty of Fair Representation (DFR), protects the union members' contractual rights by requiring that all reported breaches under the contract be reviewed and dealt with fairly and without bias. This duty serves as an essential foundation of a labor union's obligation to its individual members.

2. Weingarten Rights

(This section is copyright from the Texas AFL-CIO and used with permission.) One very important right that workers have is the right to union representation during an investigatory interview. This right was established by the Supreme Court in 1975 and provides that a worker who is being interrogated by management may request that a union steward be present during the interrogation. The right belongs to the worker, not the union, and can be invoked only by the worker. Management is not obligated to inform a worker that he or she has a right to a union steward, so it is critical that the union educate workers to the existence of this Supreme Court ruling.

For Weingarten to apply, several conditions or tests must be met. First, the employer must be conducting an investigatory interview (or questioning a worker) to obtain information that could lead to discipline. Second, if such an interview takes place, the following rules apply:

- The worker must make a clear request for union representation.
- Management then has the following options:
 1. Grant the request and delay questioning until a steward arrives and has an opportunity to talk privately with the worker,
 2. Deny the request and end the interview, or
 3. Give the worker the choice of having the interview without a steward present or ending the interview.

Third, if a steward is called into an interview, he or she has the right to advise and counsel the worker. Case law has established the following rights for the union steward:

- The supervisor must inform the steward of the reason for the interrogation.
- The steward has the right to take the worker aside for a private meeting before questioning begins.
- The steward has the right to speak during the interview.
- The steward can ask for clarification of questions so that the worker can understand what he or she is being asked.
- The steward can give advice on how to answer a question.
- When the questioning is over, the steward can provide additional information to management.

Finally, stewards have no right to tell workers not to answer questions or to give false answers. Workers can be disciplined for not answering management's questions.

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In spite of these restrictions, stewards can be helpful to workers in a number of ways in an investigatory interview. As outlined in the Texas AFL-CIO *Labor Education Leadership Workbook*, besides being a witness for the worker, stewards can:

- Help the worker explain what happened.
- Raise extenuating circumstances.
- Help prevent a worker from making a fatal admission.
- Help prevent the worker from denying everything, thereby giving the appearance of dishonesty.
- Assist the worker in remaining calm and avoid getting fired for insubordination.

What to Do if You Think You Have a Grievance

Contact your local delegate immediately to ensure the grievance is filed under the contract time limits. If a grievance is filed after the contractual time limits it most likely will be time barred under the contract's grievance language.

When local bargaining unit (LBU) members have reason to believe that they have a grievance, they should contact the union representative at their facility. A union contact may be the local grievance chairperson or the union delegate at the facility. The grievance chair/delegate (steward) should make arrangements to meet with the member or, if unable to do so, make arrangements for the member to talk to another committee person or the local bargaining unit chairperson at the earliest possible hour.

Types of Grievances

The determination of whether to file a grievance should be made objectively on the basis of an analysis of all the grievance facts. As Prosten (1997) outlines, if the analysis of the facts obtained indicates that the employer's action being challenged is in violation of one of the following, there is proper basis for a grievance:

- **Violation of the Contract**

Contract violations involve such matters as wages, hours, working conditions, vacations, holidays and benefits. The contract also usually systematically describes disciplinary actions and procedures. If the employer has violated something specified in the contract, the union can file a grievance.

For example, suppose the contract specifies that an employee should receive time and half for more than eight hours work in a day. If the employee is denied that overtime pay, the employee has grounds for a grievance.

- **Violation of Past Practice**

A past practice is one in which a "practice" has been in place for an extended period of time (usually six months) and is accepted by both the union and the employer. No contract enumerates every practice on the job. A past practice becomes a violation when one of the parties wants to unilaterally end the practice. The past practice can be either explicit (verbal or in writing) or implicit (neither side has ever objected) for a period of time.

A classic example is the giving away of a turkey to employees at Thanksgiving time. Nothing in the contract specified the turkey distribution but it was a long standing practice that both parties were aware of and it was an accepted practice. Therefore when the employer wanted to stop the turkey give away, the union could file a grievance as a past practice violation or the employer would have to bargain with the union concerning the issue.

- **Violation of Fair Treatment**

If an employer discriminates on the basis of race, sex, nationality, religion or union activity, the union can file a grievance based on unfair treatment. Grievances of this nature can be difficult to prove but important to pursue. A union delegate should ask a victimized employee to keep a journal/notebook available and write down what was done and said, complete with dates, places and witnesses.

- **Violation of Federal, State or Local Law**

Laws that are written to protect workers are deemed part of the contract and a violation of such a law can constitute a grievance. These laws include the Fair Labor Standards Act (FLSA) and the Occupational Safety and Health Act (OSHA).

- **Violation of Management's Rules or Responsibilities**

Employers have certain responsibilities it must carry out. Most employers also set additional policies that must be consistent with the terms of the contract. If an employer fails to fulfill its responsibilities or breaches its own policies, it may be a basis for a grievance.

Purpose of the Grievance Procedure

1. To provide a systematic way to settle problems.

The grievance procedure establishes a step by step system for settling problems that come up on the job.

2. To provide a method for interpreting the contract.

Almost every part of the contract can be interpreted in more than one way. The procedure provides an orderly way for negotiating differences in interpretations.

3. To provide an employee with the opportunity to tell his/her side of the story.

The union defends nurses/professionals by presenting the individual or group's dispute to the employer as an equal party in a contractual relationship. Without the union and the grievance procedure, there is no one to represent an aggrieved employee; he/she has no rights to explain his/her side of the story. The grievance procedure requires that the employer prove its accusations against the employee.

4. To help establish employee rights.

The union wins improved employment conditions which are established in a contract. The grievance procedure is a method to protect these rights.

5. To bring support of all behind the employee with the grievance.

The strength of any local bargaining unit depends on its unity. It is the union representative's responsibility to impress on its members that what happened to one local bargaining unit member happens to all. If the members' rights are easily violated, everyone's rights are in jeopardy.

6. To provide the employer with a channel for employee's complaints.

This channel maintains communications between employer and employees. Grievances may be "class actions" on behalf of several local bargaining unit members or the entire local membership, as well as expressions of concerns by one individual employee.

According to Prosten (1997):

Stewards generally agree that the term grievance is the most misunderstood word in the workplace. Some workers believe that anything they don't like about work is a grievance. Other workers endure flagrant violations of their legal rights by management but shy away from the word. (p.27)

Steps in the Grievance Procedure

1. Investigate the issue
2. Gather facts by asking the questions
3. Review the facts
4. File a grievance
5. Grievance write-up
6. Case preparation
7. Grievance checklist
8. Prepare the grievant
9. Grievance hearing
10. Employer response
11. Grievance resolution

The Investigation and Interviewing Process

The first step in the grievance procedure is to get the facts rather than relying on assumptions or speculations. These investigations can uncover hidden problems and serve as a decision-making tool on whether to file a grievance or not.

Step 1. Investigate the Issue

Effective interviewing and investigation gathers the information and facts needed to totally understand and work out a solution to a problem. The interview with a member is in a quiet place to allow for minimal disturbance. The objective of meeting with the employee is to obtain as complete an account of the circumstances surrounding the issue as possible. This can be done by (a) asking questions, (b) listening, and (c) recording information.

Step 2. Gather Facts by Asking the Questions

Questions should focus on the following (New York, 2004):

- | | |
|---------|---|
| WHO? | Name(s), position title(s), length of service with employer, work location, home address and telephone number, past positions held, educational preparation and a detailed history of the employment record which affects the current issue. |
| WHAT? | What does the employee claim the employer has done or failed to do? Is the claim covered by a provision of the agreement? What article(s) of the agreement has/have been violated? If the agreement is silent on the claim, has there been a violation of (a) the facility's policies and procedures, (b) past practice or (c) the law? |
| WHEN? | When did the violation occur? Identify exactly when (date and time) and how it occurred. The contractual time limits in the contract's grievance procedure are reviewed for a timely filing of the grievance. |
| WHERE? | Where did the incident occur? Identify the names of all witnesses to the incident. |
| WHY? | Why is this issue a grievance and why did it occur? Are there any agency policies which affect the occurrence? Was there a misunderstanding? Was this the first time this incident occurred? Is there any history of the occurrence at the facility and, if so, how was it handled? |
| DEMAND? | What resolution is the employee seeking? |

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Step 3. Review the Facts

Identify what investigation is needed and if witnesses need to be contacted. Proceed with the investigation. The notes of the meeting should be periodically reviewed to assure they are as complete as possible (New York, 2004).

Step 4. File a Grievance

If the union determines that a legitimate grievance exists, the violation will be cited on an official grievance form by the union representative. In the case of Nurse Harris, it was determined by the union that Nurse Harris was treated with harsh discipline and a grievance was filed on her behalf.

The grievance must be filed in accordance with the contract's grievance procedure. The time limits of the contract must be strictly adhered to in order to avoid the time barring of a grievance. If it is filed after the time limits, management has the right to bar the grievance from a hearing. Be aware that often the "time-limit" clock starts ticking from the time the incident or situation occurred that sparked the grievance.

As in the case of Nurse Harris, benefits occur when a grievance is filed with the employer. Some benefits of having a grievance procedure include (New York, 2004):

- Nurses are assured of an equal voice in the resolution of problems.
- Nurses' rights and interests are protected.
- Nurses and the employer are provided with a channel for addressing complaints.
- The employer is required to justify action against any nurse, thus protecting the nurse from unreasonable action.
- The individual nurse can utilize the services of the union to resolve a grievance, including having representation at grievance hearings.

Step 5. Grievance Write-Up

THE SIMPLE GRIEVANCE WRITE-UP

Let's take Nurse Harris' case:

What Happened?

Violation: Nurse Harris was unjustly disciplined and received a final written warning.

Why is the issue a grievance?

The contract was violated including but **not limited to** the post probationary disciplinary section of the contract (section is cited on grievance form). The "not limited to" is a catch all that can be used later if other violations of the contract were discovered in the course of the grievance process.

What shall be the remedy?

Remedy: "Make Nurse Harris whole and reduce the final written warning to a verbal warning and expunge in one year from all personal files if no further actions of this nature occur."

If this remedy is not taken, a grievance hearing will be scheduled.

Preparation for the Grievance Hearing

Step 6. Case Preparation

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Preparing the case is done by reviewing the contract language to note the specific grievance provisions. It also may include a review of the grievant's personal file and the interviewing of staff.

A union response is prepared for the grievance meeting. In the case of Nurse Harris the issue is the **severity** of the discipline for a first offense. Indeed, Nurse Harris did not document the medication administration. However she had no history of any other disciplinary incidences.

Step 7. Grievance Checklist

The utilization of this checklist (Texas AFL-CIO, n.d.) reviews general questions of discipline.

1. Was there sufficient proof or was management's action based on hearsay?
2. Did management investigate and verify the charge before taking action or did it "shoot from the hip" first and investigate after the fact?
3. Did management selectively "stack the deck" by overemphasizing certain facts and points while playing down those factors that would favor the grievant?
4. Did management overreact, that is react drastically and emotionally rather than objectively?
5. Was the discipline punitive and vindictive rather than corrective and remedial?
6. Was the discipline timely?
 - a. Did it follow the alleged commission or omission within a logical and reasonable time?
 - b. Did management wait until an incident occurred before suddenly clamping down?
7. Was the penalty consistent with the principle of progressive discipline?
8. Was the grievant adequately informed as to what level of performance or compliance would be expected of him or her?
9. Did the penalty violate any applicable and relevant provision of:
 - The contract
 - An addendum to the agreement
 - A side letter
 - A policy
 - An administrative directive
 - A past practice
 - An applicable and relevant arbitration award
 - An applicable law?

Step 8. Prepare the Grievant

The employee (grievant) needs to know what to expect at the grievance meeting and be prepared for his/her role at the hearing. The grievant will be reminded to make sure he/she understands the question being asked of him/her by the employer before he/she truthfully answers the question. The grievant should answer the questions in a concise manner. At the meeting the union representative will be the spokesperson for the union.

Step 9. Grievance Hearing

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The grievance meeting most likely will take place at the place of employment. The employee and union representative will balance the meeting with the employer's representatives. The union representative will be wearing two hats—that of an employee and that of a local bargaining unit member. A caucus (break) may be called by either side during the hearing.

The union representative is the employer's equal while representing the employee at a grievance hearing.

Step 10. Employer Response

Most contracts state the amount of time the employer has to respond to a grievance. The union representative will receive the response in writing.

The response from the employer may or may not be favorable. The grievance can either be advanced to the next step of the grievance procedure or a "compromise" remedy can be reached with the employer. The union representative will discuss options with the employee. It may be determined that the union member will have more to lose by going to the next step. Perhaps a settlement is the best solution.

In our case study, the remedy requested by the union for Nurse Harris was partially acceptable to the employer. In light of her record the discipline would be reduced to a verbal warning; however, the employer would not agree to expunge the discipline from any/all files in case future incidences of this nature occurred involving medication administration.

The employer's response will be discussed with Nurse Harris and a decision will be made whether to proceed to the next grievance step or resolving the matter from this step's "employer response."

Step 11. Grievance Resolution

The resolution requested is prepared by the union representative in consultation with the employee.

In the case of Nurse Harris the union's requested resolution involves trying to protect her exemplary personal file taking into consideration her long service to the employer. There was an omission of documentation that could not be explained by Nurse Harris. The union's investigation did not reveal any reason on the unit like short staffing that could have caused the error on the part of Nurse Harris.

Nevertheless the union's position is that the hospital overreacted that the punishment was too severe for the infraction, and that the penalty was not consistent with the principles of progressive discipline. Progressive discipline is the gradual disciplinary process utilized to assist an employee with corrective action.

Notwithstanding the above, and upon review of the case with Nurse Harris, a "compromise" was reached with the employer. The final determination was that the discipline be reduced to a verbal warning (written) and would remain in the personal file.

Useful Delegate Tools for the Grievance Process

According to the Texas AFL-CIO *Labor Education Leadership Workbook* (n.d.), the following are useful tools for union representatives (stewards) for grievance resolution.

Baker's Dozen: Rules for Handling Grievances

1. Like contract negotiations, contract administration is an extension of the right to bargain. And like bargaining, the ability to successfully handle grievances develops with practice and experience. Also just like in bargaining there are no rules to which there are no exceptions, this rule being the exception.
2. Every grievance that a steward receives has the potential to go to arbitration. Arbitration is a method of settling grievances in which the union and the employer agree to have a neutral third party resolve the conflict. The arbitrator's decision is binding in most contracts. It is usually the last step of the grievance procedure in most contracts. Therefore performing a complete and thorough investigation is crucial. This includes, but is not limited to interviewing the grievant and witnesses, acquiring all relevant records from management, and examining past arbitration decisions and other information that may be relevant to the case. Make sure you are able to answer the key questions about Who, What, Where, When, and Why. In addition, document your case! You must keep good records of your investigation of the grievance. This includes keeping notes of the interviews and/or meetings with the grievant, witnesses, and management.
3. As a steward, you should be familiar with the contents of the contract. When you are approached by a potential grievant, review the contract to determine if a provision was violated by management. If not, consider whether there was a violation of the law or a violation of an existing past practice. If none of these forms of violations occurred, what you have is a gripe and not a grievance. It is important that you are understanding of a member's situation when discussing a grievance with him or her whether you believe that it is a good grievance or not. You also must be careful not to promise to the grievant what you can't deliver. It is always better to say, "It looks like you have a legitimate grievance. I will look into it," rather than "You have a sure winner here. I guarantee that management will have to pay this time."
4. Two easy ways that management uses to discipline and/or discharge employees is through insubordination or admission of guilt. As a steward, it is easier to prevent these problems by making sure that your members don't make these two mistakes. To address the risk of insubordination charges, you can use your rights as a steward to intervene for the worker. To keep someone from making an admission, you can educate members about their "Weingarten Rights" and their rights under the contract.
5. You should treat the grievant as you would like to be treated if it were your grievance. This means that you should frequently inform the grievant on the progress of the grievance, since grievances often take a long time to be processed.
6. Before meeting with management on a grievance, you should be thoroughly prepared with the evidence to back up your argument. In addition, you need to anticipate what management's position will likely be so that you can have counterpoints to its argument. In a grievance meeting, your objective is to obtain a settlement that is favorable to the grievant. You should know what it will take to resolve the grievance and be prepared to make arguments that support your position. If you are unable to reach a satisfactory settlement, there is no reason to panic or get angry with management. You can always appeal the decision at higher levels of the grievance procedures.
7. In discipline cases, management is required to have cause and also have the burden of proof. You should understand what constitutes 'cause' for discipline and use that knowledge to help

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guide your investigation and representation of workers.

8. When in a grievance meeting, listen carefully to what management is saying. Management may be telling you something that can help you settle the grievance either during that meeting or later on in the procedure. Remember to remain calm and reasonable. You are there to win a grievance, not to score debating points with the supervisor.
9. Missing a time limit is one of the easiest ways to lose a grievance. You must keep track of all of your grievances and see to it that they are submitted within the time frame allowed by the contract. Exhaust each step of the grievance procedure before you advance the grievance to the next level.
10. Most unions have a grievance form that is used to file grievances. When writing a grievance, you should not only cite the article of the contract that was violated but also include the phrase "and all others" so that if your investigation uncovers additional violations, they will be encompassed within the grievance.
11. When writing the description of the incident that caused the grievance, keep the description as brief as possible. You do not argue or present your case in the grievance. The more you write, the more you reveal to management about your case and the more you tie your hands at later stages of the grievance procedure.
12. All workers covered under the contract (members and non-members alike) is entitled to be fairly represented by the union. Even workers who refuse to pay union dues are entitled to receive the same representation as the most loyal member.
13. Being a good steward entails that you actively enforce the contract. You should remain vigilant to see that management is not taking action that might weaken the union at some future time. You also need to be prepared to file grievances on behalf of the union if you see that management is violating the contract and no one wants to take action.

Conclusion

Effective unions have one characteristic in common and that is that they communicate with the members. The grievance process is a vital mechanism that tries, tests, and enforces a contract. Within the context of the grievance procedure, the union is permitted to exercise its collective judgment and wisdom in connection with its representation.

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Knowing the Basics of the Grievance Process Course Exam

After studying the downloaded course and completing the course exam, you need to enter your answers online. **Answers cannot be graded from this downloadable version of the course.** To enter your answers online, go to e-leaRN's Web site, www.elearnonline.net and click on the Login/My Account button. As a returning student, login using the username and password you created, click on the "Go to Course" link, and proceed to the course exam.

1. The grievance procedure provides a mechanism for formally addressing a violation of worker's rights.
 - a. True
 - b. False

2. A delegate is needed for all meetings with the employer.
 - a. True
 - b. False

3. An investigatory meeting always leads to discipline.
 - a. True
 - b. False

4. A delegate can advise a member at an investigatory meeting to make a false statement to the employer.
 - a. True
 - b. False

5. Every complaint made by an employee is a grievance.
 - a. True
 - b. False

6. A grievance is owned by the union.
 - a. True
 - b. False

7. OSHA violations cannot be grieved by the union.
 - a. True
 - b. False

8. A union is an equal party when dealing with the employer.
 - a. True
 - b. False

9. A grievance can be time barred if not filed under the contract time limits.
 - a. True
 - b. False

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10. A caucus is allowed during a grievance meeting.
- a. True
 - b. False
11. A grievance settlement may be the best solution to remedy an issue.
- a. True
 - b. False
12. Arbitration is a neutral forum.
- a. True
 - b. False
13. The arbitrator's decision is binding in most cases.
- a. True
 - b. False
14. A union representative should share with a grievant that the case is a "winner."
- a. True
 - b. False
15. The employer has the "burden of proof" in disciplinary cases.
- a. True
 - b. False