

INVESTIGATING GRIEVANCES

When filing a grievance, the most eloquent arguments advancing the union's position will be wasted without facts to back up those arguments. In contractual grievances the burden is on the union to prove management's actions were outside the limitations of the National Agreement. Even in a disciplinary case the union may raise an affirmative defense that won't succeed without documentation to prove it. So how do we meet our burden of proof? The answer is simple: through plain **hard work!**

Stewards should prepare every grievance as though it will be decided by an arbitrator. Therefore, the steward's efforts at Informal Step A and Formal Step A will determine whether the arbitrator agrees with the union's position on a grievance.

There is no such thing as "surprise last-minute evidence" that will sway the arbitrator. In almost all cases the arbitrator won't even consider evidence the parties didn't discuss at earlier steps of the grievance procedure. Therefore the quality of the union's arguments and evidence presented at Informal Step A and Formal Step A will determine the outcome of the grievance.

Stewards have broad powers to investigate grievances, as well as problems that *may* become grievances. These powers are set out in Articles 17 and 31 of the contract, and they include:

1. ***The right to interview people to get the facts.*** You may interview the grievant (or potential grievant), supervisors and witnesses - including witnesses who are not postal employees.

2. ***The right to review and obtain Postal Service documents, files, or other records.***

It is your right under the contract and under the labor laws to get the information you need to investigate and process grievances and potential grievances. You also have the right to obtain copies of written information at no or a nominal cost. This cost is based on the number of documents needed.

3. ***The right to investigate on the clock.*** Management may not unreasonably deny your requests to investigate and adjust grievances or possible grievances on the clock. These are your basic powers set out in the contract and backed up by the labor laws. They are yours to use. But how you use them is up to you.

As you know, effective grievance handling is an art, and a profession, all to itself. There are no magic formulas telling you how to investigate each grievance. Every grievance is different, so the best way to learn grievance investigation is through experience.

Note that if you're going to investigate properly, you'll need to request information early enough to get it in time to review it. In San Antonio, management has 72 hours to provide you requested documentation. Don't delay submitting your request for information. Do it as early as possible and be prepared to file another grievance if relevant information is not provided.

There are a few basic things the steward can do to improve grievance investigation and thereby improve the quality and strength of our grievances.

First: A grievance should be investigated *before it is filed*. The facts should be “fathered” first, and then the decision whether to file a grievance should be made. If a grievance is filed first and questions are asked later, the system gets clogged up with grievances that the union knows very little about, that may be frivolous, and that will probably be denied. Then if the grievance is appealed, it will have to be investigated anyway before the issues can be discussed and resolved. However, this is not how the system should work. The full set of facts should be found out, presented and discussed at Informal Step A.

Second: You should *interview any supervisors* connected in any way with the potential grievance before the grievance is initiated. Your right to interview supervisors is established in Article 17, Section 3.

The investigation interview is conducted *to learn management’s version of the facts*. Therefore, the interview is **not** a grievance meeting and it is not the place to argue about the merits of the case. Instead, the interview should be restricted to questions by the union representative and answers by the supervisor.

By learning management's version of the facts before the Informal Step A meeting you can determine where disputes about the facts exist, and where both sides agree about the facts.

By determining where disputes over the facts exist, you can determine where you need to investigate further. If, for example, the grievant told you that he arrived at a restaurant at 12:00 sharp, but the supervisor says the grievant arrived at the restaurant at 11:00, a factual dispute exists. To resolve that dispute you will have to investigate further to try to determine whether additional evidence – something other than the word of the supervisor or the grievant – is available to indicate which side is correct.

Finding out where factual disputes exist is an important reason for interviewing supervisors before a grievance is initiated, but there is *another reason* why this practice *should always* be followed: By interviewing the supervisor early, and making a written record of the supervisor's version of the facts, management's position is effectively frozen at that level. Once you document management's story, it is difficult for management at later steps of the procedure to invent new facts, or to discover new facts not revealed by the supervisor during the pre- Informal Step A interview. Often management's position at the supervisory level is easy to attack – but once management's labor relations specialists and attorneys get involved, our job becomes more difficult.

A **third** point, involves the question: How do we know what to investigate? The answer is: Investigate until every possible question is answered and every imaginable bit of documentation is obtained.

When a problem is brought to you, think of *every* possible angle, and ask yourself every question about the problem you can come up with. *Start with the basics*.

- **Who is involved – which letter carrier, which supervisor?**

- **What happened – what specific events are you interested in?**
- **Where exactly did it happen?**
- **When did it happen – what day, what time of day?**
- **Why would it be a grievance? Is there a violation of the contract? Which Article and section?**

When you have covered these basic questions, try to imagine what management will say about the case, and formulate an argument in response. Look for weak areas that may trip you up, and note the strong points on your own side.

Then *go get the answers*. Every question must be answered, and every argument you have must be backed up with the facts. Document *every point* in the union's position and get statements for all relevant witnesses, from the grievant and from management.

When you have *finished* your investigation, ask your questions again. For example, “How do I know the supervisor poked the carrier with a floor mop?” **Answer:** I have written statements from 19 people.

When you have all the answers and you have documented all your facts, then you are ready to evaluate the problem and decide whether to file a grievance. If you file, you'll have everything you need. Grievances are won and lost on the basis of your investigation.

Finally, you cannot over-emphasize the importance of thorough grievance investigation. One of the hardest parts of a union officer's job at Step 3 and arbitration is try to handle grievances without all the facts. The union depends on the steward for this information. Stewards are closest to the situation, they know the grievant, the supervisor, the station, and they have the best grasp of the problem.

If you really want to win a grievance, you have to conduct a complete investigation. And if you want to help other union reps to win your grievance when you appeal to a higher step of the procedure, then get the Step 2 or Step 3 union people what they need more than anything else – a thorough investigation and a *complete file* with all the details, all the statements, and all the documents that prove your case. The union's success in the grievance procedure rides on you and the effort you to put into your investigation.

Remember, the more facts you have, the stronger your position. When you've done all your homework on a case you can go into a grievance meeting and face management sure of the facts and sure of the strength of your case.

Even if the grievance is denied at **Informal Step A**, or **Step 2**, your investigation will make or break the case at **Step 3**, or at arbitration. When your representative in your National Business Agents' office discusses a grievance at **Step 3**, or takes the case to **arbitration**, the facts that you have collected make all the difference. No Postal Service official, or arbitrator, is going to give us what we want when we don't have the facts. In fact more and more arbitrators are ruling that facts or evidence not submitted at **Step 2** are not admissible at arbitration.

Obviously, it takes a lot of work to investigate a grievance properly. You almost have to be a lawyer in looking up and analyzing technical rules and regulations, and you almost have to be a full-time detective to find all the facts and put them together. But, all that work is **worth the trouble**. When the union wins a grievance, we win because we have all the facts to back up our case.

Many thousands of grievances have been filed, and many of them have involved the same grievances you'll be filing. Seek out advice of other stewards to see what arguments and evidence have proven helpful in similar cases. Then go get that evidence and make those arguments.

Remember that when you investigate your (our) grievances – that **you make or break the case** in your investigation.