



GRIEVANCE GUIDE

**MID-AMERICA REGIONAL
BARGAINING ASSOCIATION**

This Grievance Guide is a general reference guide for contractors. Each case must be evaluated and presented on its own facts. MARBA assumes no responsibility or liability in connection with any grievance or arbitration.

INTRODUCTION

Grievances are filed for a variety of reasons, most of which are valid concerns for at least one of the parties involved (the employer, the union, individual employees). In using this guide, be aware that the grievance you are handling for your company could have serious ramifications to other parties, including other contractors/association members. What may not seem all that serious to you may, on an industrywide basis, have much greater significance. If that is or even could be the case please contact your association.

Only a comparatively small number of violations involve alleged willful disregard of the terms of the agreement. More frequently, employers or unions pursue a course of conduct that the party honestly believes conforms with the terms of the agreement and/or industry practice. It is in the latter circumstances where grievances over such issues as manning requirements, premium pay or other work rules can have an industry-wide impact.

THE UNION'S RESPONSIBILITY

To understand the procedure, it is important to initially note that the union has a responsibility to its members. The "duty of fair representation" imposes an obligation on the union to represent its members. This duty requires a union representative, when approached by a member with a complaint, to conduct an objective investigation to determine whether the grievance has any merit. Depending on the outcome of the investigation, a grievance may be filed or, better yet, the matter may be informally resolved by the parties.

A grievance may be pursued even if the union representative's investigation does not disclose a clear violation of the contract, because of the insistence of the union member. This is particularly true in discharge cases. Thus, the mere filing of a grievance does not have any bearing upon the employer's "guilt" or "innocence."

If the contractor is a member of an Association, the staff of the Association can be of great assistance to the employer in getting the grievance resolved. If there is a clear violation of the agreement by the employer, it may be in the employer's best interest to reach a settlement with the union before the grievance reaches a hearing before the joint grievance committee. This is especially true if back pay is involved. Most settlements of this type are "non-precedent" in nature.

If the employer has not violated the agreement, there is no incentive for a quick settlement. In these situations the grievance procedure, and particularly the joint committee hearing, provides the mechanism whereby the truth of the matter will be revealed. The grievance committee's purpose is to bring out the facts of a complaint.

Prior to the joint committee hearing, the Association should be consulted as to all issues raised by the grievance. The Association may be aware of similar cases and decisions that can enhance the contractor's presentation or provide a basis for the grievance to be favorably settled.

The Association may be in a position to offer other types of assistance as well. At a minimum, if the Association belongs to MARBA, accurate contract interpretations and area practices applicable to the particular labor agreement are available. Since MARBA administers the grievance hearings, the management committee representatives are made up of MARBA Association contractors. The grievance committee is always willing to advise contractors, but cannot settle a grievance without the consent of the union.

As big an inconvenience as a grievance may be for contractors, especially during busy summer months, attendance at the pre-grievance meeting and the hearing itself is an absolute necessity if the contractor expects to prevail. The joint committee can make a determination only on the facts presented to it, and if the contractor is absent, the "facts" will be one-sided.

PROCEDURES FOR PROTECTION

To enable you, a contractor, to protect yourself from unjust grievances you must understand how the grievance procedure works. Throughout the entire process, but particularly at the joint committee hearing and/or arbitration levels, the union is represented by highly skilled and experienced representatives. It typically documents all cases and prepares a strong case in favor of finding a violation. Contractors must recognize that they will have to present an equally well documented case that no violation exists. The place to start is your own records. The single most important factor in winning a grievance is the extent to which the employer has investigated and documented its case. An employer must keep consistent, accurate records on each employee. These records will enable the employer to document important information that is required in discharge, suspension, and back pay cases. An employer who fails to keep records may also find a discrimination case on the heels of a grievance.

During a busy season, employers can be tempted to put off discharging an employee when the employee has violated company rules or exhibited unsafe behavior. This is a mistake. Even if employees are scarce, or the contractor and the employee are longtime friends, or the employee is the only worker who is competent at a particular task – whatever the reason, a guilty employee should be fired when there is just cause. If you are inconsistent in enforcing your rules, the union will be able to argue unequal treatment in future cases, even though the particular employee is in fact guilty as charged.

It is also a mistake to use "lack of work" as an excuse to get rid of incompetent employees, only to bring on a replacement for the laid-off employee the next day or week. Contractors often take this route because they want to be "nice" and allow the employee to easily receive unemployment benefits. The fact is, however, that the employee will get those benefits even if terminated for poor performance. Giving a false reason for terminating an employee, no matter how well intentioned, can only open the door to other problems down the road, including discrimination charges.

DISCHARGE

Although it can be a tough decision, it is in the contractor's best interest to discharge for just cause. If company procedures are followed, and appropriate warnings (as per company rules) have already been issued then discharge is the next logical step.

A company that retains an employee after that employee commits an offense that should have resulted in his discharge is asking for trouble. If the company does not consistently follow its own rules it will be argued that other employees are not required to observe these rules.

If the company keeps a "guilty" employee on its payroll, it will be viewed as having condoned the employee's misconduct and, as noted, may have waived its right to fire an employee in the future for similar violations. To effectively discharge an employee, use the following checklist:

1. Keep records of warnings for violations not serious enough for discharge (absenteeism, tardiness, etc.).
2. Send copies of warning letters to the union.
3. Thoroughly investigate the facts of each situation. Interview witnesses and write down what they say. Ask the employee to give "his side of the story." After you have all the facts then make the appropriate decision. Employees should be discharged immediately for serious violations of company rules (destruction of property, intoxication, theft, etc.).
4. Do not retain a bad employee even if the employee is a friend. If there is probable evidence that the employee has committed a serious offense, he or she should be terminated.
5. DOCUMENT, DOCUMENT, DOCUMENT!

UNION BUSINESS REPRESENTATIVE

Maintaining a good working relationship with the business agent on the project or in the area is a step

in the right direction for avoiding grievances. But remember that the business agent has a responsibility to the members. The business agent will conduct an objective investigation into any complaint and make a judgement on whether it merits a formal grievance.

The business agent should be kept informed of any warnings or potential problems. Let the business agent know if a problem is developing with an employee. Notify the business agent of any personality conflicts between employees and company representatives.

If the business agent has the employers' cooperation, it will go a long way toward resolving grievances expeditiously.

THE PRE-GRIEVANCE MEETING

Grievance procedures normally require that a meeting be held between union officials and company representatives, and that both parties be represented by individuals who are authorized to settle the grievance. Even if a resolution is not imminent, this meeting is important for the contractor to attend and present the facts. At this meeting you will be made aware of the facts that the union contends constitute a violation of the agreement.

ATTENDING THE GRIEVANCE HEARING

If the pre-grievance meeting does not resolve the grievance, a hearing will be scheduled before the joint grievance committee. The committee is composed of an equal number of union and management members. The committee secretary takes notes, counts ballots and reads the grievance into the record.

Under committee rules, a case may be decided even if one party fails to attend. If timely notice was received by the employer and the employer does not attend, the union's grievance probably will be upheld. Without the employer being present and prepared, the committee cannot consider his set of

facts. Failing to attend the hearing, therefore, is the first step toward disaster.

The contractor members of the committee are understanding of contractors interests and will interpret the contract from a management perspective. Obviously, a different approach can be expected of the union members of the committee. However, the committee as a whole has no power to change the meaning or intent of the contract and will vote according to the facts.

Prior to the hearing, the Association can assist with suggestions for what documentation will benefit the contractor most, preparing remarks, and even the actual presentation of the case. The Association may step in early when personality conflicts seem to be hindering any progress toward resolution of the grievance. Attendance at the hearing without proper advance preparation is the second step to disaster.

Following the "checklist" below may be of some assistance in the preparation of a case before the committee:

1. Describe the project and location.
2. Describe what was unique about the project that caused the incident.
3. Define efforts that were made to resolve the situation.
4. Was the labor contract or area practice on this matter reviewed?
5. What relevant documents or witnesses exist that may be important for the joint committee to consider?

If there is any ambiguous portion to your presentation or factors that are not understood, it is recommended that you get in contact with the people knowledgeable about the contract and area practice. Remember the joint committee can consider only the evidence that is before it. The contractor must be prepared to present his arguments, witnesses and supporting documents in order for the committee to rule favorably for the employer.

WHAT HAPPENS AFTER THE COMMITTEE HAS HELD A HEARING

After hearing all of the evidence, the committee retires to executive session and decides the case.

The committee's decision is final and binding upon all parties. If the union's grievance is upheld, both parties must abide by the decision and, if appropriate, the contractor must pay backpay to or reinstate the grievant. If the union's grievance is denied, no backpay is awarded and the discharge stands.

When the committee is unable to reach a majority decision and a deadlock occurs, the parties are so notified. Either the union (or employer) has the option of pursuing the matter to binding arbitration before an impartial arbitrator. In some important cases that impact the entire industry, both parties will want an arbitration decision. Arbitration hearings are more formal than proceedings before the joint grievance committee. Contractors who are parties to cases which advance to the arbitration level should retain an attorney who is experienced in such matters. Contact your Association for assistance if necessary.

MARBA administers the grievance procedures for Operating Engineers Local 150, Teamsters Joint Council 25, Auto Mechanics Local 701 and Laborers District Council.

Other agreements containing the joint committee approach to grievance resolution: Bricklayers, Cement Masons Local 502 and Local 11 areas 161, 362 and 638.

Other agreements proceed directly to arbitration if the grievance is not resolved between the employer and the union (e.g., Chicago Regional Council of Carpenters).

AVAILABLE RESOURCES

The following is a list of resources available to assist the contractor in presentation and preparation of the hearing. If you are a member of an Association, you may call:

MID-AMERICA REGIONAL BARGAINING ASSOCIATION

2720 River Road, Suite 222
Des Plaines, Illinois 60018
(847) 699-1283
Fax (847) 699-9947
www.marba.org

CHICAGO OUTER BELT CONTRACTORS ASSOCIATION

CHICAGOLAND ASSOCIATED GENERAL CONTRACTORS

CHICAGOLAND CRANE ASSOCIATION

GREAT LAKES CONSTRUCTION ASSOCIATION

ILLINOIS ROAD AND TRANSPORTATION BUILDERS ASSOCIATION

MASON CONTRACTORS ASSOCIATION OF GREATER CHICAGO

UNDERGROUND CONTRACTORS ASSOCIATION

GRIEVANCE GUIDE SUMMARY POINTS

1. A grievance is only a claim that the Company has violated a provision of the labor agreement. Investigate each grievance to determine the actual facts. If the contract provision is not clear, contact your association for an interpretation.
2. If there has been a violation committed by the Company, try to reach a settlement with the Union.
3. Advise your Association of the grievance to obtain help and advice in presenting your case.
4. The Grievance Committee is willing to advise contractors regarding the grievance.
5. You **MUST** attend the grievance hearing, otherwise a decision will be reached without your input.
6. Keep good records regarding discharges, suspensions and layoffs including payments. Bring all relevant records to the grievance hearing.
7. You must fire a bad employee at the time there is just cause, not later when it is convenient or to your benefit.
8. Make sure you give the real reason for any termination. If an employee's work is unsatisfactory do not simply layoff the employee for lack of work and then hire a new employee for the job.
9. Keep good records of warnings for violations and send copies of the warning letters to the Union.
10. Keep the business agent informed on warnings, employee qualifications and any personality conflicts between employees and company management.
11. Each company should issue Company rules which specify company policies on the job site. All employees should get a copy of the Company rules and sign an acknowledgement that they have read and understand the rules.
12. Be sure to attend pre-grievance meetings and make sure you understand exactly the basis and facts of the claimed violation.
13. Use the resources of MARBA and your Association.



**MID-AMERICA REGIONAL
BARGAINING ASSOCIATION**
Aaron Janik, Executive Director
2720 River Road, Suite 222
Des Plaines, Illinois 60018
(847) 699-1283
Fax (847) 699-9947
www.marba.org

