

What's a Grievance?

As a steward, you are likely to get complaints on every aspect of working conditions in your workplace. But they may be just that – complaints. Simply because a worker has a gripe or a problem, it doesn't mean she/he has a grievance. Many workers have so much faith in their steward that they bring all their problems to her/him. The steward might be able to do something about their complaints but, for a legitimate grievance to have occurred, there must have been a violation of the employee's rights on the job. It's your job as a steward to tell the difference between a complaint and a legitimate grievance.

The steward must learn and apply criteria to determine whether or not a complaint received from a worker is a grievance.

- a. Because most employees' rights are contained in the contract, this is the first place you look to see if there is a real grievance against the employer. If the grievance is a clear-cut **violation of the contract**, it will be easy to prove, provided you stick to your guns. If it involves an interpretation of the contract, it will be a little harder to prove.

Thus, a complaint involving a dispute or difference of opinion or interpretation between the company and the union, involving the collective agreement, is a grievance. Unless the contract limits grievances only to items covered in the collective agreement, some grievances are outside the contract.

- b. **Violation of a Federal or Provincial Law.** Here you will have the option of filing a grievance or going to the appropriate government agency to get redress. Indeed, you may do both. For example, a decision by a worker or workers to refuse work they consider unsafe is supported in some provinces by health and safety laws. Similarly, a complaint of racial or sexual harassment by management may be covered in some jurisdictions by a Human Rights Commission. In such cases, the steward should go through internal union channels, and a decision may be made to lodge a complaint with the appropriate government agency at the same time.

Most unions get around this by duplicating the provincial law in their collective agreement – using the language as the minimum base and expanding and strengthening it in negotiations. Some unions specify and define the violation of provincial laws as grievances in their collective agreement.

- c. **Violation of a Past Practice in the Workplace.** This can be the basis for a grievance, particularly in areas where the contract is silent or unclear, where a past practice has been violated by the management, an employee may have a real grievance. But to be considered as a past practice, the circumstances must have been:
 - i. Repeated over an extended period of time.
 - ii. Accepted explicitly or implicitly by both workers and management, (i.e. verbal agreement in writing, without either side formally objecting), or
 - iii. While violating the contract, neither side has demanded that this part of the contract be enforced.

A claim of past practice cannot be relied upon unless the collective agreement contains a specific provision to that effect. The only relevance of past practice is to clarify (but not alter) the collective agreement where it is ambiguous or unclear. In short, common practices in the workplace should be documented and agreed to in the contract so that there is no confusion

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over particular practices when grievances arise and so that we have a mechanism in place to fight any disputes arising out of past practice.

- d. **Violation of Employees' Rights.** As in the case of past practice, the union must have a clear-cut, well-documented case. These kinds of grievances arise when management treats workers unfairly or unequally. These grievances are hard to fight and win so the local union should try to ensure that any problems concerning employees' rights are safeguarded in writing in the collective agreement.

When a worker comes to you with a complaint, the first thing you do is get the facts. Listen to the story. Think about the criteria. Ask yourself:

Does It Violate:

- **The Contract?**
- **A federal or provincial law?**
- **A past practice?**
- **The employees' rights?**

If the answer is "yes" to the above criteria, chances are the complaint you have is a legitimate grievance.

Whether the complaint is a legitimate grievance or not, the employee is concerned enough to come to you with a problem. This concern demands action on your part to clarify or correct the situation. If you answered "no" to whether the problem violated the collective agreement, past practice, a law or the employees' rights, then you have a complaint.

Complaints must be dealt with. If an employee alleges there has been a violation of the collective agreement, explain why it is not. A worker may think she/he has a grievance because she/he doesn't understand the contract. She/he may claim that she/he is entitled to vacation pay, for example, when a careful reading of the contract shows that she/he hasn't enough service to qualify. Remember that a grievance is a complaint against management. So, it's not a grievance if two workers have a purely personal disagreement. If Jane and Bob can't agree whether the window should be open or shut – that's not a grievance.

If the complaint is an issue causing a lot of distress to the employee, it may be possible to solve it through informal discussion with the union and the company, even though it is not a violation of the agreement.

This is a time for tact and diplomacy. The employees are concerned and, if you tell them there is nothing to be done, they are bound to be disappointed and frustrated. If you give people the brush-off, they will lose faith in the union. These are the people who will be saying that the union is no good.

If you have a borderline case between complaint and grievance, give the employee the benefit of the doubt. Say you are not sure about it and then ask for help from the chief steward or the grievance committee. When you have discussed the matter with them, go back to the member and report on your discussion. It is important to keep the member informed at all times. Don't go out on a limb promising action when you are not sure. Rush promises often boomerang, labeling the steward unreliable.