

PERFECTING
THE
PROCESS

**A GRIEVANCE INVESTIGATION AND
PROCESSING
STRATEGY BOOK**

By

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Dear Sisters and Brothers

In our ongoing commitment to providing valuable educational tools for the Stewards and Officers, we have developed "Perfecting the Process".

This book is intended to assist those responsible for protection of workroom floor rights and enforcement of the Collective Bargaining Agreement in overcoming the particularly critical and difficult hurdles found in the grievance investigation and preparation process.

Only through emphasis on education will the best representation be achieved.

Yours in Unionism,

Jeff Kehlert

John Jackson

Bob Romanowski

PERFECTING THE PROCESS

1. What should you do when management fails to schedule/meet at Step 2 of the grievance process?

ANSWER: First, ensure that you have properly appealed the grievance to Step 2 with firsthand proof of appeal so that management will not be able to offer an argument that they have not received a properly appealed Step 2 grievance. Only a proper appeal will start the clock for the Step 2 meeting.

When you have properly appealed your grievance and are certain that you have the ability to prove it was properly appealed, the responsibility for the scheduling of all meetings at every step is that of the employer.

Management's failure to then schedule the meeting within the prescribed time limits represents a USPS failure to respond, violation of the JCIM and requires our movement of the grievance to the next step. The union must appeal the grievance to Step 3 or direct appeal to arbitration as soon as the USPS has missed its meeting time limit obligation but no later than fifteen (15) days (30 days for direct appeals) after the expiration of the seven (7) days. The grievance must not be appealed prematurely as this will afford management a strong argument that its procedural rights-and the CBA-were violated. The union should make every effort to appeal the grievance on the first day after the expiration of the seven (7) day meeting time limit as it will express the union's seriousness and not allow for some type of management reconsideration.

Citations: CBA; Article 15.4 C., 15.2.Step 2(c), (h), section 4 B. C.

JCIM;

1. Page 115 Article 15, page 4, ARTICLE 15.2. Step 2 (c)
2. Page 118 Article 15, page 7, ARTICLE 15.4.C

2. What should you do when management fails to issue a Step 2 written decision? What should you do when management issues a late Step 2 written decision?

ANSWER: When agreement is not reached, management has ten (10) days after the Step 2 meeting to render a decision. The failure of management to render a decision within this strict ten (10) day limit violates the JCIM and triggers your movement of the grievance to the next step. Although you have fifteen (15) days (30 days for direct appeal to arbitration) from the USPS failing to issue the required decision to appeal to Step 3, you must appeal your grievance immediately upon the expiration of the ten (10) days in order to exclude any late submission attempts made by management. It is better to appeal a grievance to the next step while arguing no response given by management than to make an argument to ignore a late response. It is best if our arguments and evidence presented at step 2 are not rebutted by a USPS step 2 denial.

Citations: CBA; Article 15.2.Step 2(f), (h), section 4 C.

JCIM;

1. Page 118 Article 15, page 7, ARTICLE 15.4.C

3. What methods should you use to prove you appealed your grievance to Step 2, Step 3 etc. or that your RFI was sent and received by management?

ANSWER: You must have a method to prove that your grievance was appealed to the next step of the grievance procedure in a timely manner. If you currently use inter-office mail or standard mail delivery for your grievances, in other words, *if you have no proof of appeal*, you are placing your grievances in jeopardy of timeliness and arbitrability challenges. You may accomplish this by one of the following methods:

- Certified mail, return receipt proof of delivery;
- Signature or initial of management representative with the date and time on a copy of the submitted appeal form;
- Receipt of proof of faxed appeal;
- Management representative bump (date stamp) the appeal at time of presentation to management representative.

4. If you appeal multiple grievances at one time under the same cover (in the same mailing), what method do you use to prove which grievances are in the package?

ANSWER: Each grievance should be identified with a number at the top when copied indicating the number of grievances in the package. An additional number should identify which number in the package identifies the grievance. For example, if you mail 5 grievances in one package. Place a number on the first grievance listing it as 1 of 5, the next would be 2 of 5, then 3 of 5, etc... Although it is far more costly, the only certain method to prove receipt is to mail them-certified, return receipt-individually.

5. What is the method you should use to prove what has been shared and included in your grievance case file at Step 2? To

whom do you provide this proof? When do you provide this proof? Should you prepare a table of contents for your grievance and if so, why?

ANSWER: Stewards should use a “table of contents” or a “list of documents.” This should be a complete list of all documents and evidence and all items in this list or table must be numbered and discussed. The list or table should be identified as one of the numbered documents in the list of documents. This document becomes evidence/proof that information was identified and offered during the Step 2 appeal process. Additionally, the list or table should be included with the appeal to management as a part of the moving papers provided to management at Step 2 and 3. Grievance arguments, contentions or backgrounds must discuss all elements of these tables or lists of evidence/facts/documents submitted, utilized, exchanged and/or discussed at the Step 2 meeting and in the Step 2 appeal.

6. What method should you use to prove what was exchanged/argued at the Step 2 meeting?

ANSWER: (Refer to question #5) Step 2 representatives must take notes at Step 2 meetings and these notes must be included in the grievance package and discussed in the grievance package. These notes must discuss the arguments raised at the meeting, the evidence exchanged at the meeting and any other pertinent information offered, included or excluded during the grievance meeting.

7. What should you do to prove what evidence you provided to management at Step 2?

ANSWER: Refer to question #5 and #6 above.

8. When Article 17/31 requested information is not provided in a timely manner -what should you do?

ANSWER: All requests must be submitted in writing to the proper person depending upon the facility and the information needs. Be certain that you are requesting through the proper channels i.e., do all of your requests go through the Step 2 designee for management, your PM, or supervisor? Be aware of your locally agreed upon time limits for Management to respond to RFIs when submitting your information requests as there may be locally negotiated language that provides for specific timeframes afforded to management to respond to the union's requests. When all of these guidelines are met and management is delayed in their response, a second written request with the initial request attached should be re-sent to the original management representative source-and an additional request must be forwarded to their manager with the first two (2) requests attached. You must have some proof of receipt (see Question #3 and #9) for all RFI's. A grievance must be filed when management fails to respond to this second request. Locals may determine that labor charges are appropriate at this time also. These actions must be clearly described and detailed in the related grievance. When these procedures are followed, weight will be given to the union's article 15, 17 and 31 violation arguments in the related grievance. It is often stated that "the best information is information denied!" Denial of information is a critically important union argument.

9. What should you do to prove that you requested information for a grievance?

ANSWER: You must always make your request in writing to the party responsible to fulfill the request. You must have a method to certify that your request was presented to the responder for a response. You may accomplish this by one of the following methods:

- Certified mail;
- Signature or initial of responder or responder representative with the date and time on a copy of the submitted RFI;
- Receipt of proof of faxed RFI;
- Management representative bump (date stamp) on RFI at time of presentation to responder.

10. Should you incorporate your RFI's into your grievance, and if so, what method do you use to incorporate your requests for information into your grievance?

ANSWER: There are a number of methods you may use to incorporate your requests for information into your grievance. List the dated RFIs in the list of documents individually identifying them as elements of evidence. List them in the table of contents. Cite and refer to them in the body of the grievance. You must employ all of these methods to ensure that Management cannot claim ignorance or that they constitute new evidence/new argument.

11. Should a grievant write a statement?

ANSWER: The steward should always solicit a statement from a grievant. That statement should be used by the steward to begin his investigation. It should be written after the steward gets some initial information regarding the incident which provoked (prompted) the contact with the Union. The steward should give the grievant instructions on what information is needed in the statement. After the statement is written, the steward should decide if the statement should be shared with Management, kept and not used, or destroyed. The statement is always a good starting point and can many times be used- at the very least- to allow the grievant to blow off steam. The statement should also be used to give a starting point for the preparation of an interview of the grievant. Both tools - a statement and an interview, may be used in concert to support the facts of the case.

12. Should a steward write a statement?

ANSWER: Stewards should only write statements when they are a witness to an incident or when there is a need to document events at a meeting where the steward was present (this would include step 1 or Step 2 meetings, etc.). Stewards must always generate notes as to what transpired at grievance meetings. This includes notes of what was discussed or argued by the parties and what documents or evidence was exchanged. These notes become a very important part of the evidentiary record. If the steward's statement is going to be utilized as evidence it must be incorporated into the step 2 appeal as an evidence element.

13. Why are specific CBA, JCIM and H&M references within your grievance critical for success?

ANSWER: Very simply the contract calls for specificity. Both parties require it of each other in arbitration and arbitrators have upheld this philosophy in arbitration. The CBA article 15 step 1(d) requires the union to provide a "detailed statement of facts," "Contentions of the grievant" "Particular contractual provisions involved" and "remedy sought". The Step 2 obligations placed upon both the union and management require that the representatives "shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought." Finally, the CBA requires that:

"the parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end."

Citations: CBA; Article 15.2. Step 1.(d), Article 15.2.Step 2.(d)(f), Article 15.4 A.

14. Why is the "all-inclusive" or "shotgun" CBA, JCIM, H&M reference inclusion not the method for success?

ANSWER: Arbitrators have held that the language of Article 15.2. Step 1.(d), Article 15.2.Step 2.(d)(f), as explained above, (refer to question #13) requires:

- “Detailed statement of facts and contentions”
- “Particular contractual provisions involved; and remedy sought.”

This language does not allow the parties to unload a barrel full of articles, unrelated to the grievance or unexplained within the body of your case, with the hopes that something may meet your needs to prove and win your case. There remains a burden to write “specific”, “detailed”, “particular” facts and contentions in order to prove and win your case.

15. Why are very detailed grievance contentions/arguments critical for success?

ANSWER: (refer to questions #13 and #14)

16. Why are non-specific, “all-inclusive” and “shotgun” grievance contentions/arguments not the method for success?

ANSWER: (refer to question #14 above)

17. Why is contact information for the grievant critical in its inclusion within the grievance?

ANSWER: This information is utilized to settle grievances and for arbitration preparation. Specific grievant information is required when a settlement is made and the parties are in agreement to pay the grievant. This would include having all information for all grievants in class action grievances so as to have it available when management has agreed to the remedy. Taking time to investigate and acquire this information delays payment and may allow time for the management representative to reconsider resolution. When arbitration advocates need to contact grievants, problems arise when the contact information is missing. Delays are experienced when parties have to search for employees, on days off, annual leave, have changed tours, are retired, etc.

18. Why is compartmentalization inclusion of utilized interview Q's & A's within your grievance critical for success?

ANSWER: Compartmentalization allows the steward to include in the body of the grievance; specific references, explanations and/or cites from interviews in order to achieve/establish a number of important obligations/needs. Compartmentalization incorporates the interview into the body of the grievance. The physical or literal interview becomes more than a piece of evidence as it is brought to life in the grievance as a living, breathing fact of the grievance. Now if the interview is ignored by management, they risk the testimony in the interview in becoming facts-without Management rebuttal. Further, the interview cannot be excluded by Management as it has become part of the grievance as an element of bonafide evidence.

19. Why are stated specific remedies within your grievance critical for achieving requested remedies? (What are the ramifications for not being specific)?

ANSWER: Arbitrators have held that specific remedies are required under the Article 15. Section 2 Step 2.d language of full disclosure. There is a school of arbitral thought that what you request in your remedy at Step 2, however general or lacking may bind you to such a request. In addition, a general remedy which fails to show true due consideration to the violation (the grievant's loss) and does not give a clear picture of the realistic ramifications, may undercut the full disclosure obligation of the Union when presented to the arbitrator. A general remedy such as the "make whole" remedy, without specifics, may leave the Union without the opportunity to get the most out of the remedy. Indeed it may act contrary to its intent and allow Management to intimidate an arbitrator into a weakened remedy. Whereas a well reasoned and detailed remedy will at the very least explain what is needed to "place the aggrieved party back to where they would have been (made whole) had the service not violated the rights of the grievant". It is generally agreed that proper remedies return the grievant to the status quo which existed prior to the violation. When possible, state the names and pay information of specific individuals harmed and specific amounts owed to these individuals. When possible, stay away from "to be determined by the local union".

20. Why is relevant grievant information critical for achieving requested remedies?

ANSWER: Grievant information is crucial in order to settle grievances. When the EIN, name, station, seniority info etc... is present, a manager, open for settlement, will sign settlements without the opportunity to second guess while awaiting necessary information. Too often, at levels other than the local level, the parties must search for this information thereby delaying settlement and or payment of settlements by the parties. Time set aside for research of an EIN is better spent at the local level when the grievance is first investigated. Even when class actions are filed, if a specific group of individuals can be identified, early in the process, it should be done at the lowest possible step. Those most aware of the violated party and able to quickly and accurately acquire the information should ensure that this is done. Conversely, information such as not identifying the specific violated party, if not collected early in the process may be attacked by management as a failure to present "detailed facts" as per Article 15, Section 2, Step 1 and Step 2. Over time the violated parties may not be able to be identified due to changes taking place in the local, the membership or the officers involved.

21. Can you wait to surprise management with your evidence and/or arguments in the C&A's? What should be included in C&A's?

ANSWER: (Answer pre 2010-2014 contract) (Refer to question #13) The article 15.2 Step 1(d) and Step 2(d) language specifically requires that full disclosure takes place at the Step 2 meeting. This "full

disclosure" is a requirement of both the union and management. Management must be held to this obligation and any attempt by management to step beyond these bounds in a step 2 denial chock full of new evidence and arguments must be addressed in your A's and C's. With both parties held to these strict disclosure rules, we have now defined the bounds of the grievance and the evidentiary record. The Corrections and/or Additions are intended to address those erroneous conclusions presented in the management Step 2 decision. When you wait to make disclosures of arguments or evidence after the step 2 meeting, you take a serious risk at having your disclosures excluded from the grievance record and the lowest possible grievance step resolution commitment of Article 15.4.A is lost.

Article 15.2. Step 2.(g) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance records in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3 or arbitration.

This language allows you to address that which is presented in the Step 2 denial. If there is no denial, there are no C's and A's.

Cite: Article 15.2. Step 2 (g)

22. What is a continuing/ongoing violation?

ANSWER: (incorporate JCIM page 113 Article 15, page 2 "A continuing violation)

23. Why is it important to track continuing/ongoing violations? How should continuing/ongoing violations be tracked? (Make agreement to collect information and only file 1 grievance).

ANSWER: One day your grievance may be settled by the parties at some level or arbitrated and sustained by an arbitrator. When this occurs, imagine how cumbersome -and in some cases impossible -it may be to collect 5 years of time records, 5 years of daily on again, off again, bargaining unit work infractions. In some cases the information is non-existent by the time there is a need for it. After many years or sometimes even months, memories lapse and significant witness testimony erodes so that the only evidence is that which can be currently documented.

With these problematic events, the liability evaporates and management has benefited by violating as the cost of violating the agreement is discounted in comparison to the cost of not violating.

Management has argued-sometimes successfully- that after the initial documented violation, there is no evidence in a file for months or years and that the union should be held to the liability it is able to prove in those documents properly collected and presented for the arbitrators consideration.

When a grievance gets to step 3 and 6 months have passed since the initial action, it is important to be able to show the liability and have

the ability to credibly present evidence supporting the union's contentions that "there is work that is available on a daily basis for an employee being denied light duty." "When did the employee get back to work from the denied light duty" "Is this a case for a single day of denied wages or a month?"

You can file a single grievance that is appealed through the steps of the grievance procedure and agree to continually send up documentation on a regular basis (per pay period or per month). You can file grievances every pay period collecting the information for that pay period and holding those grievances at step 2 while a lead grievance is pushed to arbitration. The local parties are best to determine the method utilized in these situations as you know your grievances, the operations and whether an issue is continuing, when, and if, the violation has ended and the liability determined.

It is great to establish a log or some notification process by which your stewards and officers can find readily available information on these ongoing/continuing violations, who is handling them and where they are in the process.

24. What is the Evidence and Arguments Form?

ANSWER: The Evidence and Arguments Form is not an official USPS or APWU form (please see the attached form). It is only for internal use within the APWU and was created to assist grievance officers as cases move up the grievance stairs. When completed and properly utilized it clearly enumerates for the steward, designee or officer those arguments which are contained in the grievance package and the supporting contractual/handbook or manual cites and evidence in support of that argument.

This tool should be used to show that violations are articulated, documented and supported by the evidentiary record.

25. How do I ensure that a grievance is not jeopardized based upon the certification of a steward?

ANSWER: Stewards **must** be properly certified in order to handle grievances. It is better to be overly cautious with this obligation rather than jeopardize an otherwise justified, substantiated grievance. Remember that stewards must be certified by the following: craft, installation, tour and work location. Article 17 Section 2. defines the appointment or certification of stewards.

“Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s).

Stewards should be certified with the following questions in mind:

- When filing a grievance for an individual grievant, who are the individuals this steward will be representing, by craft, installation, tour and work location?
- Have we identified a certified steward for every individual we represent?
- When filing a class action grievance, what is the definition of the class to be represented in the class action; by craft, installation, tour and work location? (This is particularly important when filing act of god, administrative leave grievances where you may cover more than one work location or craft).

- Is the certified steward employed in the office of representation?
- Has management been notified in writing of all certified stewards and the locations, tours etc... they are authorized to represent?

26. How should you utilize an ROI or IM once it is received? (When and how do you analyze the information)? What should be done upon receipt of an ROI or IM?

ANSWER: First read these documents thoroughly. Know the circumstances of the incident being investigated and be ready to compare the facts as described by all parties involved in order to compare and contrast all known facts of the case.

In order to make a competent comparison you should have; a detailed statement of facts from the grievant and any union witness (through statements and interviews), an interview with the management representative who issued the discipline (additionally any document or information that may indicate some relevant knowledge or fact known by the manager), The written 'Request for Discipline', interviews of any management witnesses and finally the IM or ROI- and any other investigatory document used to establish the facts of the incident.

Have a clear understanding of what the issuing supervisor knew and understood in order to make the decision. This is best determined by a complete and thorough interview.

Now you are prepared to compare and contrast these 'supervisory' facts with those collected and related by the Postal Inspector or the OIG within the IM or ROI.

Lastly, you are in great position to now read the IM or ROI and determine if the PI or agent simply collected the facts of the incident or as is so often the case if they; made conclusions, injected opinion, attempted to sway or influence the management official(s) involved in the investigation/disciplinary investigation/issuance or made any determination as to whether discipline should be issued.

As is the "must" requirement to interview all grievants, witnesses and management officials involved in a violation or disciplinary action, you must also interview the PI or OIG. At the very least, your interview will reveal that everything was done correctly, although, that is not normally the case. These officials often refuse to be interviewed. This refusal or denial of an interview becomes great evidence of a violation of articles 15, 17, 31 and our right to necessary information. A well orchestrated interview will also supplement and even highlight the facts as you have determined through your contrast and comparison of the evidence of the case.

27. How should a "Request for Discipline" be used in your investigation?

ANSWER: You should always request this document or any similar type document as evidence of the supervisors discipline investigation and determination with regards to: level of discipline requested, substantiated and determined; evidence relied upon and proof of investigation or any lack thereof. Any contrary information should be investigated and cited.

28. How do you combat boiler plate language on settlements?

Examples of boiler plate language:

"This settlement may only be cited in the future for the purpose of its enforcement of its terms in the instant case. It is not intended that it serves as a precedent for any purpose.

and

The above constitutes a complete and final settlement of the above referenced matter and resolves all issues associated with this case. The parties agree that this settlement is not precedent setting and will not be cited by either party in any subsequent grievance or arbitration hearing or any other appeal forum, unless specifically agreed to in writing or where appropriate to establish prior disciplinary history."

(Incorporate article 15 Section 2. Step 1 (b))

(Incorporate article 15 Section 2. Step 2 (e))

(Incorporate step 4 regarding step 1's as precedent setting)

ANSWER: When your intent is to have citable and/or precedent setting, enforceable language for the future, the first rule is clear: **Do not sign an agreement with boiler plate language which indicates that the settlement under consideration intends to settle this specific violation only and may not be cited or referred to in the future.** Refuse to sign such a document if your grievance is intended to deal with an issue and close the door on that issue from this day forward. Do not hesitate to **write enforceable, futuristic language** for specific future incidents if that is the intent of

your grievance. Finally, at the very least, ensure that the language of the settlement has futuristic intent which may act to combat the boiler plate language. These methods will help to combat boiler plate language which will render a bonafide settlement non-citable and useless. (cite arbitration language).