

How Can I Get a Member's Record?

Let's set the scene. You are investigating a possible grievance. You spoke to all concerned and collected a lot of information. The one missing document is the member's record. How do you get it?

You need the record to make a proper presentation at the grievance hearing. The employer is the gatekeeper to this information and may try to withhold it. The company may argue that it is their record and that you have no right to see it. Or they may want to keep you in the dark as long as possible. This strategy shows poor judgment on their part and may be illegal.

Your best approach to acquiring personnel information is a direct one. Make a formal request orally or in writing. You may need a release from the grievant as well. This procedure works best when you have the force of law or the contract behind you.

Private sector locals that are covered by the National Labor Relations Act (NLRA) have the greatest protection. Your rights to information are enforceable through the Act. Refusal to share information is a violation of the NLRA and an unfair labor practice.

You should make a specific request for the relevant records required. The request may be broad but the company can question whether it is relevant. For example, you can request the personnel record of a member along with records of other employees who have been disciplined for the same offense. You are not, however, entitled to go on what may be termed a "fishing expedition" for information.

Be prepared for the employer to withhold records of other employees by claiming those records contain confidential information. Often, the inclusion of sickness or injury reports in the personnel folder may be the reason for the employer to hide behind the excuse of confidentiality. To counter this, in your request for information, you can allow the company to block out medical references in the record.

Public employers may be under similar requirements for information release, and stewards enforcing such contracts may be entitled to view employee records for grievance purposes. Some state laws guarantee the right of workers to see their records. You need to know your contract, local law, and any applicable state statutes. Consult your local union for further information.

Some TWU collective bargaining agreements also have language covering access to personnel records so read your agreement carefully.

Airline and Railroad Stewards

For locals under the Railway Labor Act (RLA), the force of law is not so strong. First, check your agreement or the practice to see if this is an issue. A denial to the steward of a request for information is a grievable issue under the RLA. So you end up filing another grievance because the employer denies you access to records. Although this sounds like you might be chasing your tail, this is not hopeless.

The company has to share the record with the union at some point, usually once the grievance gets off the property. Higher ups in Labor Relations may not want the appearance of impropriety over record sharing reaching their desks. And they don't want to go before an arbitrator when the union complains that the company has been withholding vital information that it needs to process the grievance.

Of course, this does not help the step one grievance. If you are denied access to important information at this level, go on record that it was withheld from your investigation, inform local union leadership, and then do your best to reconstruct the missing information.

For stewards under the RLA, the bottom line is to convince your first

and second level company counterparts that it is in their interest to share information now before their higher ups and an arbitrator hear that you have been denied access to the records. Once they have agreed to this process, use it so that it becomes a regular part of grievance handling, creating a past practice.

Lastly, there may be relevant contract language and/or state law that gives the member the right to view his/her personnel file. California, Illinois, and Pennsylvania are just a few of the many states that require employers to show personnel records to their employees. Go with the grievant so you can view the record with them. Or have the member photocopy or take a picture of the record.

The bottom line is to break the employer mentality that they control the grievance process by acting as gatekeeper to basic information.

TWU History

New York's First Stay-in at B.M.T. Power House



TWU's defining moment came in January 1937 when powerhouse workers in New York refused to leave the facility and threatened to cut off power to much of the transit system unless two fired TWU organizers were returned to work. Nine months later, nearly 30,000 New York City transit workers were organized under TWU's banner with contracts.