

Stewards' Corner
by Robert Wechsler
TWU Education

What is a Grievance?

Too often, a shop steward does not know the answer to this basic question. A member comes to you with a problem. They spell out an incident, an event, or a problem and then tell you to file their grievance.

If you respond immediately, in the affirmative, better read further.

Shop stewards and local union officers are vested with the responsibility of enforcing the contract for everyone in the bargaining unit. That's a right we demand as a union when we organize workers. To enforce the contract, the union negotiates a grievance procedure that is the chief way, but not the only way, we can get justice for our members. According to one survey, some 91 percent of surveyed union contracts include a grievance procedure.

The first question we need to ask ourselves when a member comes to the steward with a problem "Is this issue a grievance?"

Strategically, we are asking is there any way we can deal with the issue through the grievance networks available to us?

The textbook definition of a grievance is a violation of the terms of the contract or interpretation or application of the contract. For many Railroad Division members, this does not seem unusual. Railroad grievances for years have been referred to as rule violations.

That's a pretty narrow definition of a grievance and one with which most union representatives might feel uncomfortable.

As we all know, textbooks are not the final word on anything. So let's develop this definition a bit further.

A grievance is more than likely a violation of an employee's rights on the job, a right that is usually, but not always defined by the contract. In seeing a grievance in this way, we can understand better that the best place to look for a way to defend the member is in the language of the contract.

If you have any doubts as to the contract's importance on this fundamental issue, think about how your employer tries to chip away at the contract-- not just at contract negotiations, but every day. The employer knows that if all else fails, it's the contract that protects our members.

So for all practical purposes, every union officer must go back to the contract first when a member comes in with a complaint or a problem. The contract provides us with the strongest ammunition in resolving the issue for our member.

That is why it is so critical to know your agreement and use it as creatively as possible to handle grievances. Many TWU local officers have surprised themselves by grieving issues on language in the agreement that is close enough to the problem to get a positive response from management.

Is the contract the only means to resolve member's grievances? Of course not! But it is probably the strongest leg you have to stand on.

A grievance may exist if the company or employer violates the law. In almost every case, contract language or employer practices cannot violate the law. Filing a grievance based on the law does not limit pursuing legal remedies, but the act of filing is sometimes enough to get the employer's attention. Additionally, if the law provides greater protection than the contract, it supersedes the contract in this issue. If the contract provides greater benefit or protection, the contract, not the law prevails. By law, the overtime rate is time and a half but some TWU contracts offer double the hourly rate. The contract prevails here.

There is also the issue of past practice. Most new shop stewards rely on the concept of past practice far too often.

Past practice is roughly defined as a practice that has been repeated over a period of time. It's not something that has happened once or twice or that has been in place for a week. It is a practice that has been going on for enough time and so frequently that it appears to a reasonable person that both sides have agreed informally to conduct their business in this manner. Really this is a case of lax enforcement of a rule. Be prepared that once a practice is challenged it will be ended.

These requirements show why it is so difficult to win a past practice grievance. Many if not all go to arbitration and arbitrators do not like to rewrite contracts.

The best advice is that stewards should not take it upon themselves to grieve on the basis of an employer violating past practice. Discuss the issue with other union officers.

Lastly, there are many grievances that fall into a large category that we say are discipline-related. The union can challenge certain rules or their application. We may argue that a member is being disciplined without "just cause" or he or she is suffering from disparate treatment. The two expressions are simply an arbitrator's or lawyer's way of saying the member is being disciplined unfairly.

So the best advice that can be offered in handling a member's problem is to check the contract first. If there is any reasonable way of dealing with the issue as a contract violation, you ought to use it.

You and your local union are only limited by the contract, the skills of the grievance representatives, and the power of the local union.

