

SHEET METAL | AIR | RAIL | TRANSPORTATION

SMAART
UNIVERSITY



GRIEVANCE 101

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WHO PROTECTS THE CONTRACT?

SHEET METAL | AIR | RAIL | TRANSPORTATION
SMART®



General Chairperson

Chairpersons

Vice Chairpersons

The Members



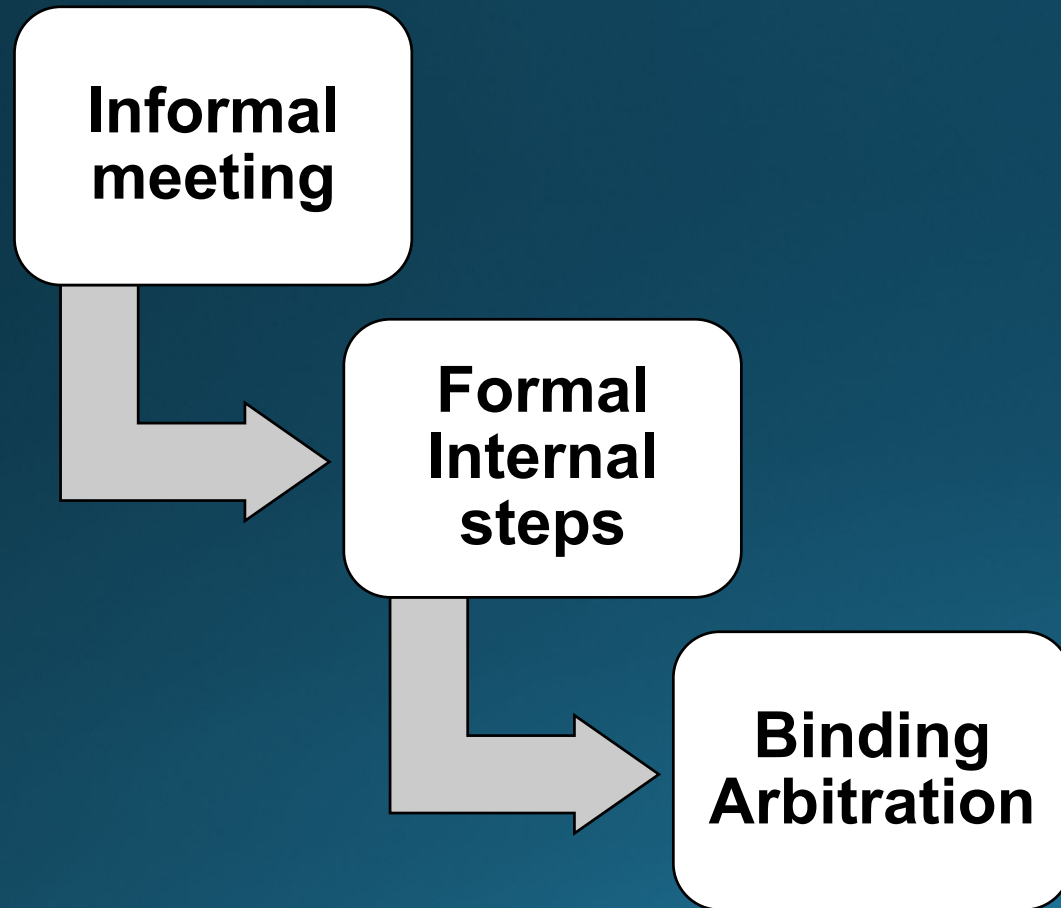
Who is in charge of processing grievances?

The Committee of Adjustment

Article 21B, Section 81



Grievance Procedure



WHAT IS A GRIEVANCE?

A grievance is a violation of:

Collective Bargaining Agreement

Past Practice

Federal or State Law

Alleged violation of a work rule or policy
(JUST CAUSE)



What is a violation of the Collective Bargaining Agreement?



Contract violations can include language regarding:

Wages

Working conditions

Vacations

Benefits

Disciplinary actions and procedures.

ANY violation of your collective bargaining agreement

What is a violation of Past Practice?

Three Categories:

Contract clarifying

Gives meaning to ambiguous or general contract language

Independent

There is no reference in the contract

Conflicting

The practice goes against the contract language.



HOW TO PROVE PAST PRACTICE



LONGEVITY



REPETITION

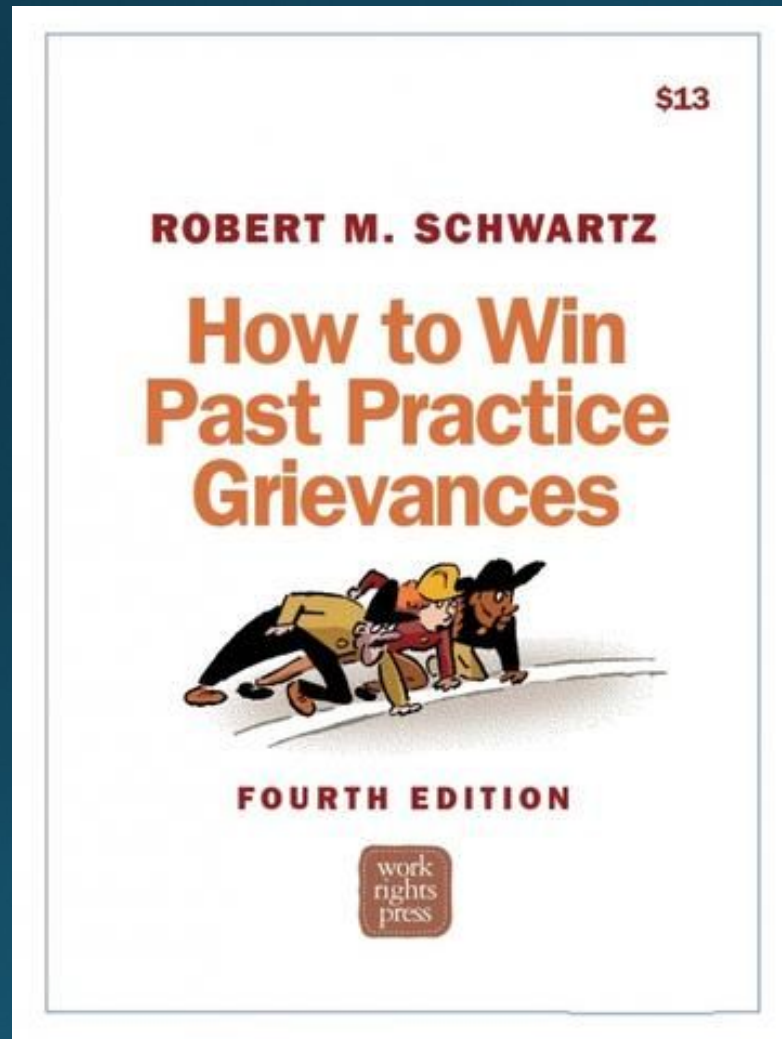


CONSISTENCY



KNOWLEDGE

Purchase this book to learn more about Past Practice Grievances



Book:

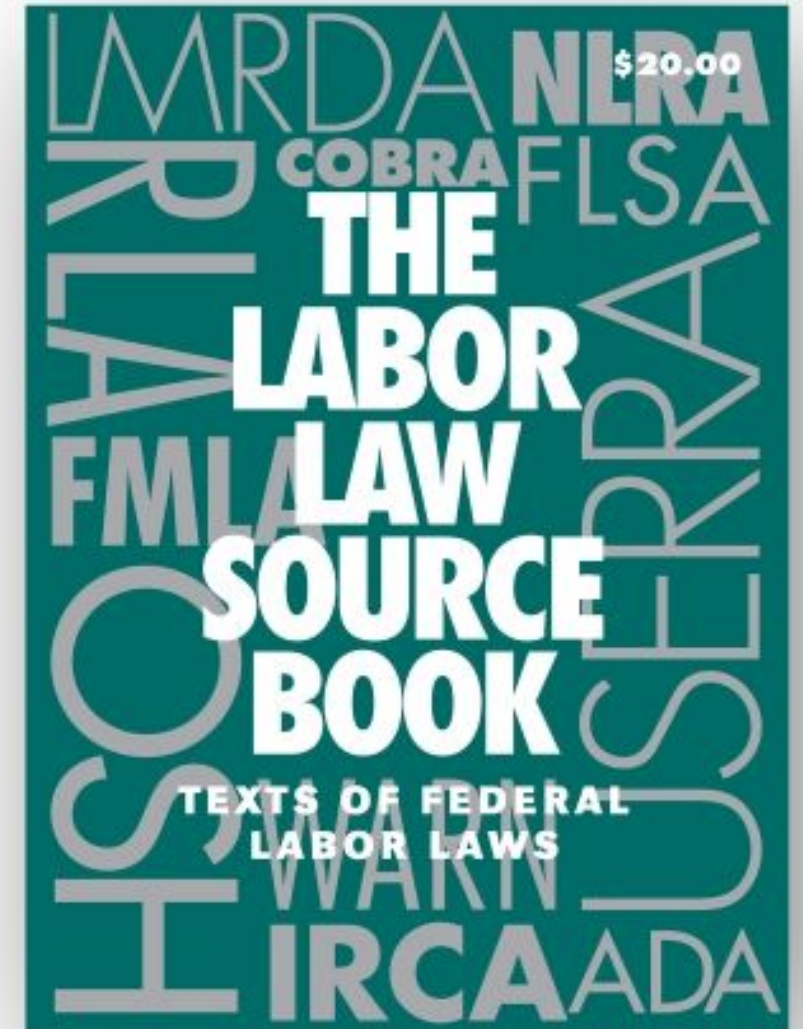
<https://labornotes.org/store/how-win-past-practice-grievances>

What is a violation of Federal, State or Local Law?

- **Occupational Safety and Health Act (OSHA)**
- **Family Medical Leave Act (FMLA)**
- **Equal Employment Opportunity Commission (EEOC)**
- **Many more**

Book:

<https://labornotes.org/store/labor-law-source-book>



Work rule or policy grievance



- Alleged violation of a said rule or policy
- No progressive discipline
- Unfair discipline
- Violation of **JUST CAUSE**

Grievance Template

Filing a Grievance triggers formal steps

Make sure every grievance has:

Date of violation

Articles & Sections Violated

Statement of Facts

Remedy Sought



GRIEVANCE FORM

Date: _____

Date of violation: _____

Level of Hearing: _____

SMART-TD hereby files this grievance with _____

Rule or Article & Section Violated in the Collective Bargaining Agreement are the following, but not limited to:

Statement of Facts:

Remedy Sought:

Union Representative:

The Power of an Information Request

Unions have the right to request and receive information from employers to investigate grievances.

The right to information is essential for the union to effectively represent its members.

Employer must provide requested information or face unfair labor practice charge.



Information Request Template



INFORMATION REQUEST

Date:

Re:

Dear _____:

In connection with the above matter, and to assist the union in policing the collective bargaining agreement, the union requests that the employer provide the following information:

1.

2.

3.

4.

Please provide the information by _____. If any part of this request is denied or if any material is unavailable, please state so in writing and provide the remaining items by the above date, which the union will accept without prejudice to its position that it is entitled to all documents and information sought in this request. Failure to comply with this request in a timely manner will be viewed by the union as a refusal to comply with the unions right to information requests.

If this case goes to arbitration, the union will oppose the introduction of any non-disclosed information.

Regards,



INFORMATION YOU ARE ENTITLED TO REQUEST

Accident Reports	Manuals
Air quality studies	Material safety data sheets (MSDSs)
Annual reports	Memorandums prepared after meeting with employees
Attendance record	Merger agreements
Bargaining notes	OSHA logs
Benefit plans	Overtime records
Bonus records	Payroll records
Consultant's report	Pension contribution records
Contracts with customers, suppliers, and contractors	Personnel files
Correspondence (letters and email) between management and outside entities such as government agencies and workers compensation carriers.	Photographs
Correspondence (letters, email, and text messages) between management and supervisors	Piece-rate records
Customer complaints	Policies
Customer lists	Prior grievances and arbitration awards
	Prior discipline (say you are representing a member and you are making sure there is no disparate treatment, you should request all prior discipline for violating the same rule for the past 5 years.)
Disciplinary records of grievant or others	Private detective reports
Drug tests	Sale of enterprise documents
EEO reports	Schedules
Employee evaluations	Security logs and reports
Equipment specifications	Seniority lists
Handwriting analysis	Supervisors' notes and files
Injury reports	Telephone and cell phone records
Inspection records	Test results
Insurance policies	Timecards
Internal memos and policies	Time-study records
Interview notes	Training manuals
Investigative reports	Video surveillance tapes
Investigatory files	Wage and salary records
Job assignment records	Work rules
Job descriptions	
Leave requests	

Information Request

THE 6 W'S WHEN INVESTIGATING GRIEVANCE

1. Who?
2. What?
3. When?
4. Where?
5. Why?
6. What is the remedy?



The Three Rules of Evidence



- Opinions are not facts
- Hearsay evidence is not factual
- Facts must be relevant

JUST CAUSE

The JUST CAUSE standard protects union members from unfair discipline.



Seven Principles of JUST CAUSE



1. Fair Notice
2. Prior enforcement
3. Due process
4. Substantial proof
5. Equal treatment
6. Progressive discipline
7. Mitigating and extenuating circumstances

1) Fair Notice

An employee may not be punished for violating a rule or standard whose nature and penalties have not been made known.



Employers must publicize standards and identify potential penalties

Unilaterally Imposed Rule:

Employers must give unions notice and opportunity to bargain before adopting new rules.

2) Prior Enforcement

Punishment may not be imposed for violating a rule or standard that the employer has not enforced for a prolonged period.



Employees are encouraged to believe that a policy or rule is no longer in effect when management fails to take action on a rule

Three ways of proving lax enforcement:

1. Widespread violations
2. Employer was aware of violations
3. Employer did not take action

Resetting: Employers can reset a rule by notifying workers that they will enforce it and punish violators.

3) Due Process

Employers must conduct interviews, take action, and list charges before issuing discipline. Once assessed, discipline may not be increased.



Employers must give workers a chance to tell their side of the story before imposing discipline.

Double Jeopardy:

Increasing a punishment already imposed for the same conduct – violates due process.

4) Substantial Proof

Charges must be proven by substantial and credible evidence.



Disciplinary action must be based on reliable evidence, not hearsay

5) Equal Treatment

Employers may not punish one employee more harshly than another for the same offense.



Favoritism and discrimination are incompatible with just cause

Making the case: The union must identify at least one other employee who violated the same rule as the grievant to prove unequal treatment.

Valid Distinctions: Valid distinctions allow employers to issue different discipline to different workers.

How far back can you go to prove unequal treatment? Union can prove unequal treatment beyond 5 years, but evidence more than 10 years old could be rejected.

6) Progressive Discipline

Employers must issue discipline to give employees an opportunity to improve when responding to misconduct.

Employers should use workplace penalties to correct misconduct, not punish or humiliate, and should apply the lowest punishment to achieve desired results.

Note:

- 1) Prior discipline must be in record.
- 2) The prior infraction must have resulted in discipline.
- 3) The current infraction should relate to the prior infraction.
- 4) Final penalty



7) Mitigating and extenuating circumstances

Discipline must be proportional to gravity of offense, taking into account mitigating or extenuating circumstances.



Employers must consider mitigating circumstances to reduce the likelihood of repeat offenses.

Mitigating circumstances: Are facts that suggest that an offending employee is likely to correct their behavior.

Extenuating Circumstances: Reduce employees' responsibility and reduce the likelihood of repetition.

Eight Tests of JUST CAUSE

1. Is there a rule?
2. Did the grievant violate it?
3. Was there a notice of the rule?
4. Is the rule reasonable?
5. Was the rule applied unreasonably?
6. Was there a fair investigation?
7. Equal treatment with others?
8. Is the discipline unreasonable?



\$20

ROBERT M. SCHWARTZ

Just Cause

A UNION GUIDE TO
WINNING DISCIPLINE CASES



Second Edition



AN IMPRINT OF LABOR NOTES

Books & Videos to learn more



Bob Schwartz: An Introduction to Just Cause

<https://www.youtube.com/watch?v=dSMFcJ5db30>

Book:

<https://labornotes.org/store/just-cause>

Work now, Grieve later

Here is how management describes insubordination:

Insubordination is a deliberate refusal to obey a reasonable order related to an employee's job function.



The obey-now rule applies even when an order:

1. Unreasonable or unfair
2. Conflicts with contract
3. Requires duties outside classification
4. Violates past practice

Work now, Grieve later (cont'd)

An employer must establish six elements to justify an insubordination charge:

- 1) The supervisor's directive was clear
- 2) The order served the needs of the business
- 3) The employee knew that the person giving the order had authority to issue directions
- 4) The supervisor gave the employee a warning of consequences
- 5) The employee's refusal was knowing, willful, and deliberate.
- 6) The employee was given an opportunity to correct.

EXCEPTIONS

- 1) Employee believes order will put them at risk of bodily injury.
- 2) Illegal or unethical
- 3) Order that invades employee privacy

Off-Duty Conduct



Arbitrators often vacate penalties based on off-duty conduct, even when it is illegal.

NEXUS EXCEPTION:

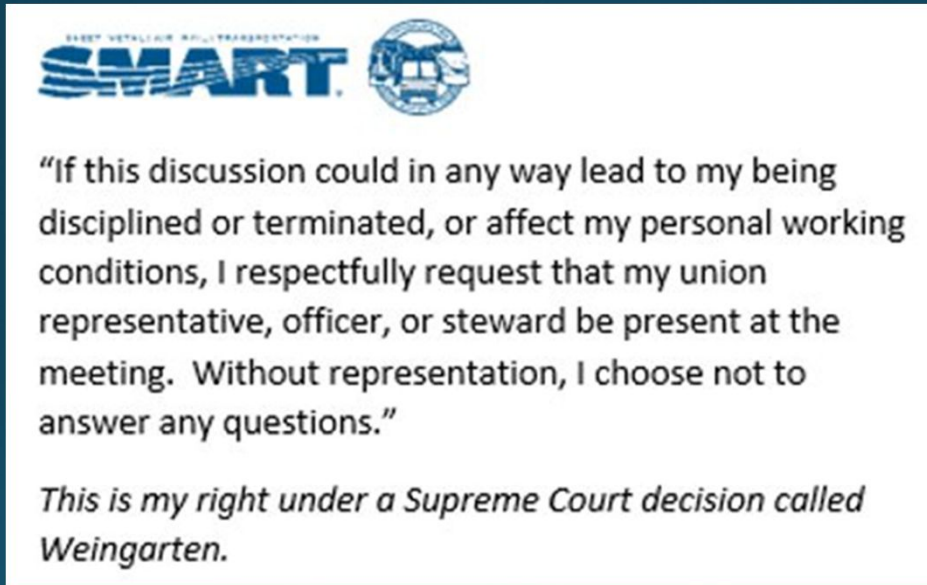
An exception to the general rule arises when off-duty conduct has a harmful impact on employers' operations. Arbitrators call this "NEXUS"

For example, an employer may impose discipline if an employee's words or actions:

1. Harm the employer's business or public image
2. Cause fellow employees to fear working with the employee
3. Affect the ability of the employee to carry out their duties or to show up for work
4. Irreparably damage the employer-employee relationship
5. Reveal a serious emotional instability that is likely to manifest itself on the job

Weingarten Rights

The Right to Union Representation During an Investigation Hearing



Weingarten rights are sometimes confused with Miranda rights

Important Factors of Weingarten Rights



Union representative can:

- Caucus with member before or during questioning.
- Ask for the specific charges being investigated.
- Advise employees on how to answer specific questions.
- Take notes.
- Object to harassing or confusing questions.

TIPS



- **Know your contract**
- **Know the timelines in your contract**
- **Treat each grievance as it is going to arbitration**
- **Keep a paper trail such as emails**
- **Communicate with member**
- **Try to resolve grievance informally first**
- **Check for prior settlements**
- **Do not promise members anything or give them false hope**
- **Go through old records to find intention of language if there is an interpretation issue**
- **Present all information during grievance process. Avoid 'Gotcha' moments**

Discussion

- What is the Duty of Fair Representation?
- What are resources for more knowledge?
- What is one of the biggest mistakes a Chairperson can make?
- What do you do if you have a personal conflict with a person you are supposed to represent?
- What are some violations that result in a Grievance?

Any Questions?

- *All SMART University modules or for training and guidance purposes only. While all locals, committees and boards must operate within the SMART Constitution and follow applicable State and Federal Laws, they may function in a manner that is slightly different. Therefore, if questions arise, please contact your Local officers, General Chairmen or State Director of jurisdiction if clarity is needed.*

