

Is it a Grievance?

A grievance is a complaint. But not all complaints are grievances. Simply because an employee has a gripe or a problem, it doesn't mean that she/he has a grievance.

How do you tell the difference between a legitimate grievance and one that is not?

How do you tell the difference? Just ask yourself two questions:

1. Did management violate the Collective Agreement? If the answer is "yes" you have a grievance for sure. Any violation of the Agreement is a grievance. It's a good idea, even if you think you don't have a violation, to read over the Agreement carefully. You can usually find some section that deals with the kind of problem involved in your grievance.
2. Has the employee been treated unfairly by management? This isn't so simple because there may not be any clear-cut violation of the Agreement. But again, if the answer is "yes" you probably have a grievance even though it may be a "borderline" case. By all means, process it, if you feel management acted unfairly.

Borderline cases may be harder to win because the contract language may be vague – or there may not be any language at all – or maybe, there's a loophole. For example, an Agreement might say that the employees must work a "reasonable" amount of overtime, and the employees in your department don't want to work, the settlement of the grievance depends on just what the word "reasonable" means in this situation. This is a grievance. The employees think they are being treated unfairly, and their opinion is as good as the management's.

Real Grievances

Real grievances usually deal with three (3) types of problems:

1. Unjust discipline or discharge;
2. A violation of working conditions set out in a collective agreement; and,
3. Improper classification.

Non-Grievances

A grievance is a complaint against management. So it's not a grievance if two workers have a purely personal disagreement. If Jim and Mary can't agree whether the window should be open or shut – that's not a grievance. Be sure that management is responsible for the complaint before you put forth any grievance.

An employee may think she/he has a grievance because she/he does not understand the Agreement. Perhaps she/he is entitled to vacation pay, for example, but a careful reading of the Agreement may show that she/he hasn't worked long enough.

Personal disagreements (and mistakes in reading or interpreting the Agreement) are not legitimate grievances.

A few examples of non-grievances are:

1. Close, but not unreasonable supervision;
2. Problems where management is exercising its right to manage that are not dealt with by the Collective Agreement. (For example, contracting out.)
3. Management rule making – except where the Union can prove the rule is unreasonable.
4. Personality clashes between two employees in the bargaining unit.
5. Personality clash between an employee and her/his boss, except where this leads to unwarranted discipline.

Borderline Cases

Whenever you run into borderline cases and find:

- Contract language is vague;
- Contract language is missing;
- Contract loopholes or,

Whenever you lose a grievance that you feel you should have won – make a note of it, and bring it up when the next Agreement is negotiated.

Types of Grievances

(A) Disciplinary Grievances

The first and perhaps the most common type of grievance are those alleging unjust discipline or dismissal. These are perhaps the most serious of all grievances because of their very direction and immediate effect on an employee's means of earning a livelihood. Discipline cases usually arise from alleged instances of insubordination, i.e., the refusal to obey orders or the breaking of office or departmental rules. In dealing with these situations, always have two questions in front of his/her mind:

1. Was there just cause for any disciplinary action?
2. Was the disciplinary action taken as a reasonable one, that is, "did the punishment fit the crime?"

In answering these two questions, one will be primarily concerned with investigating the facts – finding out what happened and then comparing the action taken with management and arbitrators' treatment of similar cases in the past.

In doing so, pay particular attention to any evidence which suggests that management has treated the employee more severely than other employees in comparable circumstances.

(B) Working Conditions Grievances

The second major type of grievance involves working conditions. These grievances usually arise from disputes over the meaning of some provision within a collective agreement.

Interpreting the Agreement

When faced with a dispute over the meaning of an agreement, the best rule is to look for the most reasonable interpretation. An argument which stretches the meaning of words beyond that, which they will reasonably bear, is not likely to find favour with the majority of arbitrators. Sometimes, however, genuine ambiguity will actually exist. In other words, the agreement will contain a provision that can be given two or more different interpretations that are equally reasonable. In dealing with this situation, the first rule is to make sure that you are reading the disputed provision within its proper context. Remember that relevant sections may not always occur exactly where you expect them. It is therefore necessary to read the agreement from cover to cover before deciding whether or not the disputed provision actually applies.

Past Practice

If after careful consideration you decide that a provision is ambiguous, the next step is to consider the past practice under which the provision has been administered. If the past practice is clear and consistent, this may influence the interpretation accepted by the arbitrator if the case cannot be resolved at the local level.

Perhaps the best way to discover the true meaning of a confusing provision is to look for decisions on related precedents. If you don't know the precedent in your own office, ask your local OPSEU Steward. OPSEU maintains detailed topical indexes of many precedents reported by arbitrators in the private sector as well as by the PSGB. Frequently, a careful study of these precedents will give a clear idea of how the matter would be resolved at arbitration, in the event, that the parties were unable to reach an agreement.

(C) Classification Grievances

The third and final type of grievance involves improper classification.

Classification grievances are generally difficult to evaluate since the boundaries between similar classifications are poorly defined.

Where the boundaries of a classification are clearly defined, it is generally easier to tell whether or not a problem has a valid grievance, but even here, questions of judgment often come into play. In most cases, the best advice is to refer these grievances to the Staff Representative, since the guidelines used in evaluating these matters are quite complex.

** Information supplied by Josephine Clark, Steward, Local 524.*