

## Michigan Corrections Organization Steward Manual

The job of an MCO steward is not an easy one, but it is an important one and it can be rewarding. As an MCO Steward, you are a vital link in the communication system by passing on information from the MCO Central Office to the members, and channeling feedback and issues back to MCO Central Office. Without your help, the most crucial mechanism as far as our membership is concerned; the grievance procedure, would come to a screeching halt.

This booklet will provide you some of the tools necessary to help you do your job. If you have any questions, ask your chapter leadership, an MCO trustee or call MCO legal at MCO Central Office. We're here to help you.

[www.mco-seiu.org/](http://www.mco-seiu.org/)

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## **CHAPTER 1 – THE STEWARDS JOB**

### **DEFINITION OF AN IDEAL UNION STEWARD**

A union steward is a person of trust, representing their fellow officers in the workplace. Acting as an official representative of their shift, a person that provides democratic leadership in the promotion of member solidarity in the affairs of the international union, state union, local chapter, and union movement in general. They are dedicated to protecting and advancing the rights and dignity of all members in the work environment, the steward must also be a devout and constant advocate of the high ideals and principles of the labor movement within the greater community in which they live.

### **RESPONSIBILITIES OF THE STEWARD**

The job of the steward is a varied one. Some of the responsibilities are:

- Problem solver.
- Intermediary between shift command and members.
- Coordinates with the Chapter President, regarding concerns of their shift for labor/management meetings.
- Coordinates with Chief Steward regarding grievances involving members on shift.
- Investigates grievances on their shift.
- Initiates grievances for individual members.
- Follows up on grievances for members on the shift.
- Assures contract is being administered fairly and procedures are followed.
- Lends a friendly ear.
- Educates members regarding newest developments from Central Office in Lansing.
- Carries the Union message.
- Assists members with the understanding of the MCO contract, MDOC policy, and MDOC Director Office Memorandums (DOM's).
- Refers members to MCO Legal department for assistance with Civil Service grievances.

This list is not inclusive but is just some examples of the responsibilities.

## DEALING WITH PEOPLE

Be honest with yourself and maintain Union policy.

Educate yourself on Union matters.

Serve as an example to your members.

Get acquainted with new members.

Provide leadership.

Keep members informed on Union policies and activities.

Give members satisfaction by listening to all problems.

Have thorough discussions with members on complaints.

Have a sympathetic attitude.

Exercise patience and don't lose your temper.

Understand other causes for problems.

Keep personal feelings and Union politics out of grievances

Be tactful and frank.

Don't promise victories.

Be kind and empathetic.

Know how to handle disagreements.

Don't stall on grievances.

Don't discriminate in settling grievances.

Don't pass the buck.

Keep members informed on progress of grievances.

Know sources of information and don't fail to get it when the member seeks it.

Don't assume responsibilities of management.

Encourage members to attend Union meetings, Union affairs, and Union classes.

Encourage members to take advantage of Union privileges.

Fight propaganda.

Know how to refer to the Union contract and by-laws of the Local and the International Constitution.

Keep your sense of humor.

Be hopeful.

Don't be afraid to ask for help.

## A GOOD LISTENER

The most important and most basic skill a Steward needs is good listening ability. Without it, no other Steward's duties can be carried out. Here are some tips on good listening:

Silence is golden. You can't listen while you're talking.

Look the speaker straight in the eye. It shows that you are concerned. You are also less likely to be distracted by other things around you.

Try to find a quiet, private place to talk. It helps a person relax.

Don't interrupt - give the member a chance to say what's on their mind. This is especially important if the member is upset.

Don't second guess and assume you know what the member is going to say before it's said. If you put words in the member's mouth, you're likely to be wrong.

Ask clarifying questions which encourage the member to explain more. This will help you determine the validity of the member's complaint. It may be a valid grievance or a subject for labor/management. Sometimes the issue can be resolved by talking to shift command.

Avoid lecturing. Don't give advice or provide answers before the member has explained the entire situation.

Keep cool with the angry member -- two angry people make for big fireworks! Be patient and let the member blow off steam.

Repeat or rephrase what the member tells you every now and then. This confirms that you have been listening correctly and shows the member you are listening.

Practice good listening - not only with members, but at work and home. You'll be surprised what you can really hear.

Tell the truth and always encourage the grievant to tell the truth.

## **CHAPTER 2 – LEGAL ISSUES**

### **UNION STRUCTURE**

Michigan Corrections Organization's right to bargain is covered under the State of Michigan Civil Service. Non-dues paying employees are covered under the MCO contract and are entitled to the same representation as union members. They are covered by the contract and have a legal right to fair representation. You must give their concerns equal consideration.

Non-dues paying members are not entitled to vote on contracts, vote for, or be elected to Union office, and are not eligible for the MCO discount programs and SEIU discounts and benefits including the free college program.

### **DUTY OF FAIR REPRESENTATION**

The duty of fair representation (DFR) comes in two parts. The first is the obligation to represent all bargaining unit members fairly and in good faith. The second is to protect the bargaining unit from employer unfair labor practices, or, as it is called in Civil Service, prohibitive practices.

This section describes those duties. Read it carefully.

What is the Duty of Fair Representation?

MCO's right of exclusive representation carries with it a duty of fair representation: it must represent all employees covered by the MCO contract, fairly and in good faith. A breach of the DFR occurs when MCO's conduct is arbitrary, discriminatory, in bad faith, or grossly negligent. Furthermore, MCO's conduct cannot be perfunctory, that is, merely going through the motions of representing an employee and superficially handling a grievance.

### BREACH OF DUTY OF FAIR REPRESENTATION

Actions are attributable to improper motives or fraud: An employee is denied a grievance because of efforts to bring in another union, their intra-union political activities, non-membership in MCO, or based on sex, color, race, or personal animosity.

Conduct is wholly arbitrary; there is no basis upon which conduct can be explained: if MCO refused to process a grievance without any inquiry at all or if there is a contract or internal union policy which clearly and unambiguously supports the employee's position and MCO, without explanation, refused to support the employee.

Note: If MCO's investigation reaches a conclusion that is later found to be erroneous, so long as the MCO's contract interpretation has some basis in reason, their refusal to process the grievance will not be considered arbitrary.

Conduct is grossly negligent; there is a reckless disregard of the interests of the unit employees: MCO breaches DFR by failing to notify the employee their grievance will not be taken to arbitration, thereby leading them to reject a settlement offer they would have otherwise accepted.

Conduct improperly undercuts an employee's grievance: Gross negligence in meeting grievance time limits.

Note: Just because MCO invokes the grievance procedure does not mean we are precluded from settling the grievance or agreeing with the employer's position. Regarding settlements, MCO can consider the costs of further processing the grievance and decide to accept less than the employee seeks.

How to avoid charges of fair representation

The following guidelines are intended to assist stewards in handling grievances in a manner designed to avoid meritorious DFR lawsuits and ULP charges.

- All grievances should be carefully investigated to determine their merit.
- Records of such investigations should be recorded in writing and maintained.
- Maintain adequate communication with the grievant to assure them of the local's concern, efforts and good faith.
- Private Counsel for the grievant should be treated courteously.
- Process the grievance promptly. Contract time limits should be scrupulously observed, and any continuances confirmed in writing.



*BREACH OF DUTY OF FAIR REPRESENTATION – Continued.*

- Treat all members of the bargaining unit equally. Decisions to pursue grievances or arbitration must be made solely on the merits.
- The opinion of local union officials and sometimes MCO legal department, MCO President, or MCO Trustees should be obtained in borderline cases.
- Have a valid reason for any action taken on a grievance.
- The decision on whether to arbitrate should be made at the appropriate union level.
- A decision to discontinue a grievance and the reason (simply stated) must be communicated to the grievant.

Note: If a grievance lacks merit and cannot be won, drop it. Don't let an attorney or the threat of a lawsuit influence MCO's judgement. It is MCO's right and obligation to keep the grievance procedure free of non-meritorious grievances. However, the grievant must be informed and MCO should maintain a written record of the objective reasons why you failed to file or dropped the grievance.

### UNFAIR LABOR PRACTICES: RIGHTS OF EMPLOYEES

Although it has been heavily used as a guideline, the National Labor Relations Act does not provide any protection to employees in public service, including MCO members. Public service employees are covered by the Public Employees Relations Act. Civil Service employees in the State of Michigan are covered by the Rules of the Civil Service Commission of the State of Michigan. The Civil Service Commission has sole authority to promulgate the rules covering employment for the State and gets that authority from the State Constitution.

These rules are enforced for MCO members by the Michigan Civil Service Commission-appointed Employment Relations Board.

### UNFAIR LABOR PRACTICES BY THE EMPLOYER

These are actions the employer is prohibited from doing to bargaining unit members or MCO.

- To interfere with, restrain, or coerce employees in the exercise of rights granted by this rule.
- To dominate, interfere, or assist in the formation, existence, or administration of any employee organization.
- To discriminate against an employee because that employee has filed any affidavit, petition or complaint, or given any information or testimony or because that employee has formed, joined or chosen to be represented by any employee organization.
- To refuse to bargain in good faith or meet and confer with recognized employee organizations as required by this rule.

Historically, MCO has used the filing of unfair labor practice charges as a last resort and only after all efforts to resolve our dispute with MDOC have failed. Charges against the employer can only be filed by MCO's Chief of Staff.

### RIGHT TO REPRESENTATION AND INFORMATION

MCO members have the right to representation at interviews or meetings where the employer is gathering information that could lead to their discipline. This right is guaranteed by our contract.

MCO members also have the right to access information necessary for bargaining and contract enforcement. Most information must be provided at our request if it is for one of these purposes. The FOIA requirements are also at our disposal but should only be used as a last resort because of the expense and paperwork involved. Any emails, pictures, or other evidence that MCO needs should be requested through the Warden or investigator. This should not be requested on state email or stationery.

### WHEN AND HOW THE EMPLOYER MUST FURNISH INFORMATION

In general, MCO is entitled to information controlled by the employer which MCO believes it needs in order to administer the contract and for use in the grievance and arbitration procedure.

MCO has the right to receive information to:

- Prepare a grievance case.
- Determine whether to arbitrate a case.
- Prepare for arbitration.

Types of Information to Which You Are Entitled:

- Job descriptions and job evaluation information
- Seniority lists
- Video, pictures, and log entries.

These are only examples. You may also have access to more. This information should be requested through the facility administration, investigator, or MCO legal department.

### RIGHT TO REPRESENTATION AND INFORMATION - (continued)

Note: The employer cannot refuse to supply information because it could be obtained from the members themselves. Although members might supply the information, the employer is still required to provide it to MCO.

When and how the employer must furnish information;

MCO must request the information under Article 9.

If information is complicated, the employer must provide it in written form. Sometimes they can just report orally without providing it in writing, or they can let a representative of MCO view and copy the information. Request information in written form on a blank piece of paper or MCO stationary (not on State of MI email or State of MI memo).

The employer is not required to provide information in the exact form requested by MCO, especially if it would be very expensive or burdensome to assemble the information as requested.

How long can the employer delay before providing the information? One decision held that a 15-day delay was not untimely. However, other decisions have ruled that a 45-day, 2 month and 5-month delays were unlawful.

Management must supply the information even if the contract is silent.

You have a right to access information by law. Under the National Labor Relations Act, Section 8(A) (3) (duty to bargain), an employer has an obligation to provide the union access to information. Additionally, MCO's Contract, Article 9, states the employer must provide information requested for the purpose of investigating possible contractual violations. MCO stewards or the members they represent should not take anything from the worksite without permission of the facility. A request can be made to the facility administration or investigator. Also, a FOIA request can be made through the facility on a blank piece of paper or through MCO Central Office.

Note: If the employer refuses to provide information or delays in the production, a grievance can be filed under Article 9. First, though, contact MCO Central Office for assistance.

## **CHAPTER 3 – INTERVIEWING SKILLS**

This section covers some of the skills used for communicating with our members and supervisors. These techniques can help you get the information you need from your discussions.

### **GRIEVANCE INTERVIEWING: WHAT NEEDS TO BE ACCOMPLISHED**

There are three main objectives of grievance interviewing: (A) getting the facts; (B) which article is violated and (C) what remedy is expected of the member.

- **Getting the Facts** - Facts are hard to get. Often you get only half the story, either because they think you know the background or because the members realize that some of the facts may be unfavorable to them. Often, they are too excited to tell the complete story. Sometimes they can't speak English well. This checklist is helpful to stewards in their interviews: Who is involved? What did they say or do? When did it happen? Where did it happen? Why did it happen - what was the underlying cause? What do you want from the Department in the way of a remedy? Which clauses or provisions of the contract have been violated? When you need facts that cannot be obtained from the aggrieved member or other member(s) be sure to exercise your right to obtain information from the employer under the contract.
- **Giving the Member Attention** - Research shows that the union is often judged by the fact that its stewards show in handling members when they have grievances. Many members want to use their stewards as a sounding board. If so, listen to them. Remember, if the member thinks they are not getting proper attention, they will be upset at both you and the union.
- **Getting Acceptance of Any Action Necessary** - In a democratic union, you should explain to the aggrieved member carefully what you can and cannot do for them in handling the grievance. Explain the steps you are going to take, so the officer grieving the issue has a better understanding of the process. For instance, you might tell the aggrieved member: "As far as I can see you have no case based on the contract, policy or DOM". "I think you have a strong case and I'm going to take it up with the supervisor". If the grievance is completely unjustified, be sure to explain why. Point out the reasons. Refer to the contract. However, if you agree to handle the case be sure to keep the member informed of the progress you make.

If you aren't successful with management, let the aggrieved member know at once and inform what further steps can be taken, if any.

## THE ART OF INTERVIEWING

In investigating problems or concerns brought to you by your members, a steward relies heavily on good interviewing skills. Here are a few suggestions on how to conduct a successful interview.

Find the right place and time for the interview;

A steward needs to know convenient places in or near their workplace where the steward and member can talk in private. Sometimes this means taking time at lunch to listen to a member's concern. Try to gauge how much time you will need to spend with the member. If you feel rushed because of time pressures, it is likely that you will not have a very productive interview.

Just the facts... Your primary objective is to get the Grievant to explain the facts of their case.

Listening is not easy; This is particularly true when we feel threatened by what is being said to us--for instance, when we are being criticized. Under these circumstances our normal impulse is to defend ourselves rather than to listen.

Listening requires an active effort to convey that you understand and are interested in what the other person is saying--almost like you are helping them say it. A friendly facial expression and an attentive but relaxed attitude are important. Be sure to restate to the Grievant what they said to you to make sure you have a clear understanding of what they conveyed to you about their case.

## THINGS TO AVOID IN INTERVIEWING

1. Judgment - Criticizing or moralizing puts the interviewee on the defensive. Even if they do not argue back, they will edit what they say in order to win the interviewers approval. The member will concentrate on proving that they are right rather than on giving an honest explanation. Putting a person on the defensive makes it harder to find out what they really think.
2. Arguing - Little is gained from argument, at least at the early stages of an interview. Yet, there is a strong human tendency to correct the other person when they say something that is obviously wrong. Moreover, if the interviewer is attacked personally, they must exercise tremendous restraint not to answer back.
3. Providing Advice - When you finally get the complete picture as the member sees it, you may be able to provide advice or information not previously been available. But again, it is often better to help the member work through their problems. In any event, you should hold off giving advice until after the interviewee has told their entire story and until you have all the facts.

## HOW TO DEAL WITH THE SUPERVISOR

Before You See the Supervisor - Prepare Your Case and Ask Yourself These Questions:

- Have I gotten all the facts from the member?
- Do I have all the other information I need?
- Have I checked the contract?
- Have I explained the case to the member?
- What questions do I want to ask the supervisor?
- What points do I want to get across to the supervisor? What should I expect the supervisor will argue?

REMEMBER: In the Grievance Procedure the Supervisor and Steward are Equals.

The supervisor and the steward share the responsibility for settling grievances. Try to establish a friendly but businesslike relationship. There is no reason to waiver or to have a chip on your shoulder. If the supervisor is unreasonable, you can always go to the next step. Ask him/her about the incident that gave rise to the grievance. They may have facts you don't.

State the Facts and Tell the Supervisor How the Union Wants the Grievance Settled.

IF they try to sidetrack you by discussing other issues . . . Let the supervisor talk, but don't be misled and lose sight of your position. Stick to your case and bring him or them back in a tactful but firm way.

IF they want to trade -- you win one grievance and the supervisor wins one . . . Insist on settling each grievance on its merits. This is the only just way to settle a grievance.

IF they make you angry -- Beware! Few people can think straight when they are angry, this is a victory for the supervisor if you lose your temper.

IF the supervisor stalls -- Try to push for an immediate answer. If you cannot get a decision, try to set a definite time, as early as possible, for the answer.

IF you and the aggrieved member disagree . . . Don't ever disagree in front of the supervisor. Determine the way you will present your case before you see the supervisor. If you hit a snag, adjourn. You have a right to do this.

IF you win your point . . . Once you've won, stop talking. Don't continue to hash it over. Be sure to inform the member about it if they weren't with you.

IF you can't settle the grievance . . . Take the case to the next step in grievance procedure right away. Let the supervisor know you are going to do this. Be sure to keep the member informed.

### HANDLING THE SUPERVISOR

Many stewards, even those who recognize the importance of using tact in dealing with fellow members, yell and bluster at their supervisor. In doing so, they may make the job harder. It is much wiser to develop a relationship in which the supervisor is willing to cooperate with you and to handle grievances quickly and fairly. In some cases, this is hard to accomplish. Still, you may not get anywhere if you go out of your way to antagonize the supervisor. Have a strong, well-prepared case that is put together properly with accurate facts. However, grievances that are settled in a friendly manner usually stay settled longer. If possible, try to remain on friendly terms with supervisors. This will help you, especially when you have a weak, borderline case or MCO's policy is not well developed. A relationship where each side is trying to rub the other's nose in the dirt hurts both.

### HANDLING GRIEVANCES WITH SUPERVISORS

Start by telling the supervisor the problem as the aggrieved sees it. Imply that you have an open mind. After that, let them talk. Encourage them to state their position completely. If they want to use you as a sounding board, all the better. Every supervisor thinks they have the most difficult job in the world. They will feel better and more reasonable after they get their gripes off their chest. Show them that you understand their position, even if you don't agree with it. This shows that you are being reasonable. Stick to the point. Avoid raising questions of principle. If they say, "I don't want the union interfering in everything I do," don't argue back, but say, "I can understand how you feel. I certainly am going to try to keep the number of grievances to a minimum. I think we can eliminate them altogether if we try to find a constructive solution for each problem as it comes up. For instance, in the case we have here, I think it is just a question of the meaning of the contract. It is much easier to find solutions to specific problems than to settle the great issues that may have divided MCO and management at your facility for years. Do not discuss personalities. Don't make belittling remarks that have nothing to do with the case at hand. Unless you are anxious to take the case to a higher level at once, don't force the supervisor to say "no". If you are not getting anywhere, let him think it over for a while. He/her may mellow later. On the other hand, don't let him stall too long. Remember, there are time limits at each step. If you can't reach a satisfactory settlement, don't think the world will end. You can always appeal the case. That's what the other steps of the grievance procedure are for.

### SUMMARY

Interviewing is a form of communications and like all forms of communications it is most effective when it is two-way. A good interview is more than a one-way process in which the interviewee tells their story to the interviewer; the interviewer must in turn be constantly communicating their interest in the interviewee as a person and what they have to say. It is not enough for the steward to understand their members; the steward must also give their feeling that they are trying to help them. The steward must not only listen but must communicate the feeling to the members that they are being heard. A properly conducted interview is a critical element in building solidarity.



## **CHAPTER 4 – DISCIPLINE AND THE DISCIPLINARY CONFERENCE**

### **EMPLOYEE DISCIPLINE**

One of the most important responsibilities of a steward when representing a member at a disciplinary conference is to know the employee handbook and the MDOC employee disciplinary policy. Proper representation and documentation are crucial to preventing discipline from being assessed, and successfully grieving the action. You won't always win because employee misconduct does occur. Often it is frustrating because administrators may have their mind made up about what action they are going to take regardless of what you have to say. But you still have a crucial job to do. Your purpose is to ensure the contract is followed and to safeguard the due process rights of our members. Help the grievant tell their side of the story, keep records on their position and yours, and gather information to be used in the grievance process if necessary. This section contains information on how to defend a member in a discipline case, including what is required of the employer to uphold discipline. Become familiar with Article 10 of the contract as it outlines the procedures and rights of employees in disciplinary matters.

### **GENERAL GROUND RULES IN DISCIPLINARY CASES**

The employer is entitled to prescribe reasonable rules of conduct. The employer enjoys considerable discretion in making this determination. The member has a right to know what is expected of him. Therefore, the employer has an obligation to give adequate notice of the rules, unless they are so self-evident as not to require notice, i.e. Theft, possession/use of drugs, and assault.

The employer must avoid arbitrary, hasty, or capricious action when confronted with unsatisfactory conduct. The tendency for supervisors to overreact against what they regard as a challenge to their authority is one of the persistent problems of workplace discipline. To guard against this tendency, collective bargaining agreements frequently provide that an employee will not be discharged until after a preliminary suspension.

Disciplinary suspension policies should be consistent. It does not mean, however, that a mechanical uniformity of treatment must be achieved, regardless of differences in the background or circumstances of cases. What is important is consistent purposes rather than uniform penalties.

The punishment should fit the crime. There is a controversy among arbitrators as to whether they have authority to mitigate penalties where a member is guilty of the offense charged and the penalty is regarded as excessive. Proper discipline should be corrective rather than punitive. The purpose is to instill self-discipline in the working force. Both employer and our members lose when a member is terminated. The employer must recruit and train a replacement and must often reckon with ill will on the part of the discharged member's fellow workers, while the member loses their seniority and all the valuable rights associated with it. Therefore, discharge should normally be invoked only as a last resort, after it has become clear that corrective measures will fail.

## DUE PROCESS AND THE DISCIPLINARY PROCESS

Since the function of discipline is to promote efficient operation of the facilities, the employer must be concerned not only with the effect of a penalty on our members, but its effect on MCO as well.

Procedural requirements are essential safeguards in the due process system of protection for our members. They include:

Formal charges, which must include the nature of the misconduct, and be included with the notice of disciplinary conference.

Reasons (all of them) should be provided at the time the charges are made. All the employer's evidence for the case, including statements that are beneficial to the member, must be included in the disciplinary packet. Subsequent charges or documents are generally irrelevant.

The member must be given an opportunity to protest and defend their actions.

MCO must be given full opportunity to prepare their defense. At a minimum we are entitled to 30 minutes to consult before the conference.

The "burden of proof" rests on the employer in discipline cases.

Members, with very few exceptions, must demonstrate compliance with the rules and act in good faith. When MCO relies on the exception the "burden of proof" shifts to us.

Established time limits must be complied with. The employer has 21 calendar days to begin an investigation once they have reason to believe misconduct has occurred. They have a "reasonable" time to complete the investigation. Once the conference has been held, they must notify the member within 10 days of any recommendation for discipline this has been ruled by an arbitrator (case number 54 390 00852 02) as being a de minimis violation. The employer must execute the discipline within 45 calendar days from the day of the disciplinary conference or there will be NO disciplinary action taken.

Centralized exercise of judgment will replace supervisor's individual conception of what is fair and just.

## DEFENSES AGAINST GENERAL TYPES OF DISCIPLINE

### **#9 CLASS II INSUBORDINATION**

Defenses: The safety or health of the member or another law-abiding individual would have been jeopardized if they had complied with the order.

### **#10 CLASS I INSUBORDINATION**

Defenses: The order was not clear or was misunderstood by the member.

The member was not familiar with the work assigned.

### **#13 ENFORCING RULES, REGULATIONS, POLICIES**

Defenses: The employee was unaware of the rule.

The rule was unreasonable.

The rule was not clear.

The rule was not uniformly administered.

Impossible to comply with rule.

### **#1 HUMANE TREATMENT OF INDIVIDUALS**

Defenses: Denial of the use of alleged language.

Mitigating circumstances were involved.

Disciplinary Conferences

### **#53 Workplace Safety.**

Defenses; The member denies the assault occurred.

Self-defense.

NOTE; The examples are not inclusive and there could be numerous defenses and mitigating circumstances.

### PROPRIETY OF DISCIPLINE: TESTS FOR JUST CAUSE

In a case involving discharge, Arbitrator Carroll Daugherty (42 LA 555) outlined a series of questions to test whether "just cause" existed. They are not all inclusive or necessarily correct. However, their usage can be helpful in determining the worth of a grievance and affording clues as to the best way to win a grievance involving discipline. The very nature of the questions and the sequence in which they have been set forth invite usage. Here are the questions and the notes as determined by the Arbitrator: Did the employer give forewarning of the possible or probable disciplinary consequences of the member's conduct?

- ✓ There must have been actual oral or written communication of the rules and penalties to the member, i.e. Work rules, disciplinary grid.
- ✓ A finding of lack of such communication does not always require a "no" answer to question one. This is because certain offenses, such as insubordination, coming to work intoxicated, workplace safety, using drugs on the job, and theft of property are so serious that any member of society is expected to know such conduct is offensive and heavily punishable.
- ✓ Absent any contractual prohibition or restriction, the employer has the right to unilaterally promulgate reasonable rules and give reasonable orders. They need not have been negotiated with the union.
- ✓ Was the employer's rule or order reasonably related to the orderly, efficient, and safe operation of the company's business?

Note: If an employee believes the rule or order is unreasonable, they must nevertheless obey (in which case they may file a grievance) unless they sincerely feel that obeying the rule or order would seriously and immediately jeopardize their personal safety or that of another law-abiding individual. Given a firm finding to that effect, the member may properly be said to have had justification for his disobedience. Did the employer, before administering discipline to a member, try to discover whether the member did in fact violate or disobey a rule or order?

- ✓ This is the member's "day in court" principle. A member has the right to know with reasonable precision the offense with which they are being charged, and to defend their behavior.
- ✓ The employer's investigation must normally be conducted before its disciplinary decision is made.

There may, of course, be circumstances under which the employer must react immediately to the member's behavior. In such cases, the normally proper action is to suspend the member pending investigation.

- ✓ Was the employer's investigation conducted fairly and objectively?
- During the investigation did the employer obtain substantial evidence or proof the employee is guilty as charged?

## THE DISCIPLINARY CONFERENCE

Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?

- A "no" answer to this question requires a finding of discrimination and warrants a modification of the discipline, usually because of disparate treatment.
- If the employer has been lax in enforcing its rules and orders, and decides thereafter to apply them rigorously, the employer may avoid a finding of discrimination by warning all employees beforehand of its intent to begin enforcing said rules.

Was the degree of discipline administered by the employer reasonably related to: (a) the seriousness of member's proven offense, and (b) the member's record during his service with the employer?

- A trivial proven offense does not merit harsh discipline unless the member has properly been found guilty of the same or other offenses a number of times in the past. There is no rule as to what number of previous offenses constitutes a "good," a "fair," or a "bad" record. Reasonable judgment must be used. Remember, MDOC's disciplinary grid states you may be discharged after your fourth or fifth offense, regardless of the severity.
- A member's record of previous offenses may never be used to discover whether he was guilty of the immediate or latest offense. The only proper use of their past record is in determining the severity of discipline after they have been found guilty of the immediate offense.
- Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for that offense. If employee A's record is significantly better than those of employees B, C and D, the employer may properly give a lighter punishment than it gives the others for the same offense. This does not constitute discrimination or disparate treatment.

A "no" answer to any one or more of the above questions normally signifies that just and proper cause did not exist. In other words, the employer's disciplinary decision contained elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent that the decision constituted an abuse of managerial discretion warranting the Arbitrator to substitute his judgment for that of the employer.

## POSITION STATEMENT

The union and/or the employee may or may not want to present a disciplinary statement explaining the defense as evidence. A statement can ensure that the information that is being presenting at the conference is passed on to the Discipline Coordinator. This can also help with a grievance and/or an arbitration. Note; there also might be times that you may waive the disciplinary conference and present only a disciplinary statement.

## **CHAPTER 5 - THE GRIEVANCE PROCEDURE**

Grievance handling is one of the most important responsibilities you will face as a steward. It is the one area where people are specifically affected by your action or inaction. The following pages describe what a grievance is, how to investigate one, how to write one, and how the procedure works. **READ IT CAREFULLY!!** It will make your job much easier if you know the details of how the process works.

This first section defines what a grievance is, and the categories under which they fall, as to impose unequal penalties for equal violations.

### **THE IMPORTANCE OF THE GRIEVANCE**

To most union members, their union's effectiveness is judged by its ability to settle grievances. Grievances and their handling are important not only because of the time they consume, but because they go to the very heart of unionism -- protecting the rights of the worker on the job, much the same way the American judicial system protects the rights of the citizen.

The steps of the grievance procedure give the member a chance to appeal his or her case through an organized channel of complaint, even up to the ranks of top management. The theory behind the grievance procedure is to resolve a dispute at the lowest level possible. If it cannot be resolved with those immediately involved, it is appealed to higher steps, removing the issue from those most closely involved in hopes that they can be objective in finding the fair solution.

Without the collective support of the union behind its members, the individual member would have little or no chance to force management to treat him or her fairly. With the joint support and resources of the union, a member can depend on the collective help of the union to see that each is given a fair shake.

### **TYPES OF GRIEVANCES**

A grievance is the violation of our member's rights on the job. Most often, grievances involve contract violations -- sometimes clear cut, sometimes hazy. For this reason, MCO representatives must be familiar with the wording of our contract. When a grievance is brought to a steward, they should first look to the contract for a violation. In some cases, vague wording in a contract will lead to a different interpretation by MCO and management

However, grievances do not necessarily involve contract violations. In some cases, the grievance will involve a new procedure or contract issue too new to be covered in our contract. Other regulations never fall within the contract bounds, yet their violation still constitutes a valid grievance. The responsibilities of management to its members exceed those outlined by the contract.

### TYPES OF GRIEVANCES - continued

When a steward is presented with a contractual grievance; they should, after checking for contract violation, ask themselves the following questions:

- ✓ Is it a violation of the contract?
- ✓ Is it a violation of federal or state law?
- ✓ Is it a violation of established past practice?
- ✓ Is it an area of management's responsibility to the member?
- ✓ Is it a violation of management's rules or procedures?

If the answer is yes to any of the above questions, a grievance probably exists.

\*If the grievance involves an issue not in the contract, for example a violation of a DOM; A Civil Service grievance may be appropriate. A Civil Service grievance is filled out by the employee and is signed by the employee. The employee owns the right to the grievance and not MCO. Please refer to MCO legal department for assistance when an employee is requesting help with a Civil Service grievance.

### GRIPES VS. GRIEVANCES

In distinguishing between gripes and grievances, stewards should remember that grievances usually involve contract violations, violations of law or agency regulations, unilateral changes in workplace conditions or violations of health and safety standards. At times, however, even the most valid complaint simply doesn't measure up to a legitimate grievance. Common sense and precedent may be the only methods for determining whether such a complaint amounts to a grievance. If the complaint is valid, it might be a proper issue to talk about at a labor management meeting. However, to keep their credibility and effectiveness with the membership as well as management, the steward should make every effort to assure that most of the grievances they handle are "legitimate."

### THE GRIEVANCE PROCESS

Article 9 of the Contract contains the current language regarding grievance procedure time limits. Grievances regarding any disciplinary action shall be filed directly to Step II. Grievances regarding contract violations should be filed at step I and forwarded to step II with the step I answer.

#### **Step I**

Non-disciplinary grievances are handled at the Facility through Step I. Discuss the grievance with the supervisor making a good faith effort to resolve the grievance within the scope of his/her authority. If the grievance is not resolved, file to the Step I official at the facility within 21 calendar days of becoming aware of the cause for complaint. The

### THE GRIEVANCE PROCESS - continued

Step I official has 21 calendar days to issue a written response to grievant/MCO. As soon as you get the Step I answer, send the Step I answer and the rest of the package to MCO Central Office. Include a recommendation on whether it should be appealed to Step II. If a step I -answer is not given to the member, make a notation on the grievance form so MCO Central Office does not send it back, requesting an answer.

### **Step II**

If satisfactory settlement is not reached at Step 1, to be considered further, within 45 calendar days from receipt of the Step 1 answer (or the date the answer was due if no answer was provided), the grievance shall be appealed to the Departmental Appointing Authority (or designee) by MCO Central Office.

The grievances will then be reviewed by the Grievance Committee. If the Grievance Committee withdraws the grievance, the grievant will be notified by mail and given a chance to appeal the grievance to the MCO Executive Board. If the grievance is appealed the grievant will be mailed a postcard and given an opportunity to appear in person before the MCO Executive Board, by telephone, or by providing a written argument. grievant will be notified by mail of the decision and the Executive Board's decision is final.

### GRIEVANCE LOG

A Grievance Log should be developed by your Chapter to keep track of your grievances. This helps you keep the grievant informed of the progress of their grievance and can aid you in determining how many grievances have been filed that year as well as the types of issues being grieved. It can also be a good defense against Duty of Fair Representation lawsuits if we can show through the logs that the case was handled in a timely manner.

### WHAT THE GRIEVANCE PROCEDURE DOES

It is important that members, as well as stewards, understand the importance and steps of the grievance procedure to MCO. Important grievances and arbitration decisions should be discussed at monthly membership meetings and members should be made aware of how the outcome will affect them, directly or indirectly.

The four major aims of the grievance procedure and their importance to the union structure can best be summed up as:

- It protects the members' democratic rights on the job and prevents discrimination or arbitrary action by management.
- It gives the member a voice involving a disagreement with management.



### WHAT THE GRIEVANCE PROCEDURE DOES - continued

- It gives the contract guts and ensures that the contract is properly applied.
- It gives one member the organized support of all members. Alone, no member has enough strength against the organized power of management. Acting through the grievance procedure, they have the collective support of all MCO members as represented by the full resources of MCO.

### STEPS IN THE GRIEVANCE PROCEDURE

The grievance procedure begins with those closest to the dispute -- both on the part of MCO and management. If they are unsuccessful in resolving the dispute, the grievance moves to continually higher representatives, much like the appeal system of the courts. The entire process takes four or five steps before it reaches the final stage of arbitration.

Here is the general procedure:

- ✓ Member and steward go to immediate supervisor with grievance discussing the contract violation.
- ✓ Steward or Chief Steward discusses with the Warden or Personnel Officer or other designee (disciplinary grievance).
- ✓ Chief Stewards or Chapter Presidents meet with Department Labor Relations Representative for second step conferences.
- ✓ If the grievance goes further, MCO Labor Relations Representatives meet with Department Labor Relations to resolve the grievance.
- ✓ Arbitration hearing is the final step in the process.
- ✓ As the grievance goes to higher levels, the original steward should make it their business to keep track of progress and to keep the grievant informed. The grievant will also receive a postcard from MCO Central Office when the grievance is appealed to Third Step or Pre-Arbitration, and they will receive a copy of the Request for Arbitration if the case cannot be resolved at an earlier step.

Our contract sets time limits for each step in the grievance procedure. It states that the grievance may be taken to the next step when the employer does not timely supply MCO with an answer at the lower level. MCO also has the responsibility of notifying the employer if it plans to take the grievance further. If not, the employer may assume MCO has dropped charges.

### GRIEVANCE PROCEDURE: POINTS TO REMEMBER

EXHAUST EACH STEP before advancing to the next.

KEEP TRACK OF TIME LIMITS -- Don't let one slip by. Ask for time extensions when in doubt, and, if necessary, remind MCO representatives at higher steps of impending limits. Time extensions by either party should be put in writing. Refer to article 9.

EDUCATE GRIEVANTS AND OTHERS you represent about the procedure. Encourage them to come to you first.

DON'T PROMISE WHAT YOU MIGHT NOT BE ABLE TO DELIVER by over assuring the grievant that their case will be won. You can't guarantee it and it might be setting up high expectations that will not be met.

KEEP THE GRIEVANT POSTED on the progress of the grievance. Don't always wait for the grievant to ask what's happening.

KEEP WRITTEN RECORDS, including notes on verbal settlements. Inform officers and other leaders of important settlements. Keep a grievance log.

PROBLEMS THAT ARE NOT GRIEVANCES CAN BE HANDLED OUTSIDE of the grievance procedure. You can refer them to the appropriate people or handle them yourself.

ACTIVELY ENFORCE THE CONTRACT. Don't always wait for someone to grieve a violation.

FAIR REPRESENTATION demands that every member have equal access to the grievance procedure. Don't dismiss any complaint out of hand.

AT THE SAME TIME, DEVELOP THE ABILITY TO SAY "NO" to non-meritorious grievances and explain to the member your reasoning.

ATTEMPT TO LEARN how arbitrators view grievances. This will help you prepare better grievances and avoid arbitration.

LOOK AT ALL THE IMPLICATIONS of a grievance. It may be that handling a problem though the grievance procedure may hurt more members than it helps.

REMEMBER THAT MCO's ABILITY TO SERVE all members is weakened when the various parts of the organization are not coordinated. Communications with others is essential to solidarity. Leaders and members should know their responsibilities, as well as their rights, in the grievance procedure.

## WRITING THE GRIEVANCE

The first rule is to be brief. Fill out the form completely and legibly, always include if possible, articles and sections that are applicable and include only the information necessary to explain the issue. Examples of different types of language are included, as are some general tips. There are also some notes on quality and measurability in information that may be helpful to you in writing the grievance.

A well written grievance can be much easier to win than one where the violation and expected solution are not clear. Choice of words in the remedy requested is especially important in order to gain the most possible in the case. Make every effort to avoid name calling and emotional phrases when filling out the grievance as it only detracts from the merit of the case.

Along with the sample language is a list of the information that will be needed to prove the case. Keep in mind that this is sample language only, and that your individual case may be different. If you have any questions, contact your chapter president or MCO Central Office.

## POINTS TO WRITING A GRIEVANCE

LIMIT DETAILS TO BASIC INFORMATION.

OMIT MCO's ARGUMENTS, EVIDENCE AND JUSTIFICATION FOR ITS POSITION. Many times, this information is used by the employer in preparing their case against MCO. Arguments, evidence and justification for the grievance should be used in oral arguments with management.

DON'T LIMIT CONTRACT VIOLATIONS. In stating why there is a grievance, you can use the phrase, "violates the spirit of the contract," and the words, "including Article. You can also use "violates Article and other relevant articles and sections of the contract." This may allow you to add additional violations of the agreement if they are found later.

DON'T LIMIT THE REMEDY. If a member has been discharged, ask for immediate reinstatement with full back pay and all rights, privileges and benefits restored, and the entire matter expunged from the member's record. This makes it possible for the member to receive his or her job back, plus back pay, seniority, vacation time, fringe benefits, etc. But you must ask for them.

AVOID PERSONAL REMARKS. The grievance states MCO's position, not the steward's or the grievant opinion. Avoid the use of phrases like "I think" or opinions about management officials.

### POINTS TO WRITING A GRIEVANCE – Continued

**CONSULT WITH THE GRIEVANT.** Go over the written grievance with the member, explaining what the requested remedy is, ensuring the grievant understands.

**HAVE THE GRIEVANT SIGN THE GRIEVANCE.** This guarantees that the member has seen and read the grievance and offers legal protection for MCO when determining the final settlement of the grievance.

**SOLIDARITY.** Explain the grievances to the members to make certain they understand and support your efforts.

**REPORT ACTIONS.** Keep the grievant up to date on each action.

**ARBITRATION.** Remember to prepare each case and each grievance on the assumption that this may be the case that goes to arbitration. Information not included during the grievance process normally cannot be introduced at the arbitration step.

### INVESTIGATING A GRIEVANCE

How the grievance is investigated and written often will determine whether a grievance is won or lost. In its "Manual for Shop Stewards", the AFL-CIO suggests the following steps in the initial investigation of a grievance:

Conduct an interview. Listen carefully to the worker's statement, writing down such things as dates, names, and places.

Ask questions for clarification or additional information.

- **WHO** was involved? This calls for identification items, such as names, clock number, department.
- **WHY** is there a grievance? Here lists the basic complaint, such as seniority bypass, past practice violation or safety problem.
- **WHEN** did it happen? Determine the date and time that the incident or violation occurred or began, not the date the grievance is filed.
- **WHERE** did it happen? Record the location of the facility, block, member parking lot, etc.

### INVESTIGATING A GRIEVANCE - continued

Examine employer records on similar issues.

Distinguish between a fact and an opinion.

Determine which facts are relevant to the matter under discussion. Two written records should be kept on each grievance, one for presentation to management and one for MCO only. The grievance to management should be brief and direct, including only an outline of the facts and the settlement desired. Unnecessary details will only detract from the main issue of the grievance and may give the employer an opportunity to sidetrack the issue. Other details relevant to the situation may be brought up during discussion of the grievance with management.

The written record for use by the steward and MCO should be more complete. It should be detailed and include all the background information the steward will need when presenting the case, and should include pros and cons of the grievance, in anticipation of management's stand on the issue. Also, these written records should be maintained for later use. The information may be useful for future grievances of a similar nature. It may also help the negotiating team at the time of contract renewal and will be valuable to convince the non-believers that MCO is acting on their behalf.

## STEWARDS CHECKLIST

There are several things you should check before filing a grievance, including:

- ✓ Was there enough proof or was management's action based on hearsay?
- ✓ Did management investigate and verify the charge before taking action or did they "shoot from the hip" first and investigate after the fact. Did grievant get his day in court?
- ✓ If so, did management selectively stack the deck by over--emphasizing certain facts or points (perhaps taken out of context), while down-playing those factors which would favor the grievant to belatedly "Justify" their premature charge?
- ✓ Did management overreact (emotionally rather than objectively)?
- ✓ If so, was the discipline punitive and vindictive rather than corrective and remedial?
- ✓ Did management apply its rules, orders and penalties even handedly?
- ✓ Did management punish everyone for the infractions and deficiencies of a few?
- ✓ Is the penalty too severe?
- ✓ Does the punishment fit the crime?
- ✓ Is it appropriate?
- ✓ Is it reasonably related to the seriousness of the offense, infraction, omission, or deficiency?
- ✓ Is it appropriate and reasonable in the light of grievant' s past record and years of service?
- ✓ Is the grievant (as well as management's representative's) story, attitude, demeanor and image creditable? (To an arbitrator?)
- ✓ Was the discipline timely?
- ✓ Was the penalty consistent with the principle of progressive discipline?

## GENERAL PRINCIPLES OF GRIEVANCE HANDLING

These observations on the handling of grievances in labor/management relations have been compiled as a set of general principles which union leaders will find useful in the process of grievance representation. They are sound and reasonable. Individual leaders may also know, and observe, additional principles that serve them best in each unique situation. A clear understanding of the concept embodied in these principles serves to assist the union leader toward achieving a more successful record in contract administration.

Investigate at the first step as though the grievance is a potential arbitration case. It is better to be prepared for arbitration and not go, than to go to arbitration unprepared.

A good investigation will expedite settlement. A good investigation tells you early what to do -- push on or drop. A good investigation helps the steward's confidence and the confidence of the members in the steward.

Most grievances are easiest to settle at the initial informal stages. Greater flexibility exists without formal written exchanges. "The facts are fresh," witnesses are available, and sometimes it's easier to keep a person on the job than to get their job back.

Serious discussion can occur in an informal setting at the initial stage; Stewards usually maintain an effective working relationship with the supervisor.

MCO members should be constantly encouraged to notify their steward immediately following an incident, or when they feel they have a grievance.

Who is the grievant? The grievant may be any of the following:

- a. The person (or member).
- b. A group of persons (or members).
- c. Grievance Procedure
- d. MCO

Many labor leaders hold that the Union cannot fail to process a grievance that violates the contract even though an aggrieved member is not willing to proceed.

Who is affected by a grievance?

Individual: The grievance may affect only one person.

Group: This type of grievance would affect individuals in a group.

### GENERAL PRINCIPLES OF GRIEVANCE HANDLING - continued

As the representative organization, MCO owns the non-Civil Service grievance. Some factors we consider when deciding on a course of action are:

Are all MCO members affected?

How will MCO be affected if the grievance is (or is not) processed? How will the collective bargaining agreement be affected if contract violations go unchallenged?

Will MCO's equity be maintained by the final decision of whether to process or not?

Members are entitled to good representation. Duty of fair representation requires good and effective representation. The representative must be:

- Competent (meet time limits)
- Non-discriminatory
- Not Arbitrary
- Not Capricious
- Conduct a full and fair investigation.
- Representation and the presentation of the grievance must be impersonal.
- It is better to say, "The Union's contention is," rather than "I contend," "the Union's position," instead of "my position."
- Personal likes (or dislikes) or friendships must not enter the process.
- Pressure is what settles grievances. Though skill and tactics are important factors in successful grievance handling, pressure enters the process at almost every stage.
- Sometimes pressure is generated by the members on the steward.
- Pressure on management's chain of command is often needed, and stewards usually exert this pressure. (Regarding this point, stewards should be guided more by "what is right and necessary" than on trying to be a "good guy/gal.")
- Taking the grievant (member) along. In terms of principles, policies vary on whether the grievant should "go along" through the steps. Some factors to consider:



### GENERAL PRINCIPLES OF GRIEVANCE HANDLING - continued

- Will the member injure the case?
- Does the steward want witnesses other than grievant?
- Is MCO's policy known to both steward and grievant?
- No member should be denied the right to be a part of the process. A decision on whether the grievant goes along is easier to make when the grievant is continually counseled and apprised of the progress of the grievance.
- A successful grievance procedure is one that settles grievances.
- It requires commitment and compromises from both sides.
- Management has the power to establish the tone or atmosphere in which grievances are processed.
- MCO can respond to change the attitude of management. Many times the procedure will generally be somewhere between a very formal "legalistic" approach and an informal, "problem solving" method.
- Maintain a record of grievances. Even when grievances are settled before the "written step," a record should be kept. The record should reflect both MCO's gains and losses. Other hints:
- Local chapters should have a filing system.
- Records are needed for guidance on future grievances, establishing precedents, for negotiations, and in formulating demands.
- Any written presentation to management should be brief, concise state grievance and remedy desired, avoid writing down your argument.

## GATHERING INFORMATION

### The Quality of Information;

When collecting information for handling grievances, a steward must constantly search for useful facts. What information is useful in this grievance? Training and practice with specific grievances will teach stewards to answer that question, but some general guidelines might help.

Elements make information useful in grievances. They are:

- The information can be measured accurately.
- The meaning of the information is clear.
- Can Information Be Measured?

There are many ways of measuring information. Distance can be measured in inches, feet, yards, miles, etc. Time is measured in seconds, minutes, hours, days, years, etc. These measures are used in many grievances. Some others include:

### Information - Method of Measurement;

- Seniority - Years, months, and days.
- Absenteeism - Number of days used, Tardiness, Number of days tardy.
- Other Jobs Held - Job titles, period on each Job, Job specifications.
- Performance Counseling - Type of counseling
- Discipline - Number, Kind of violation(s).

In each type of information, the investigator can produce a number or a measurement that can be compared with other cases. For example, a member who has been absent five days in the past six months has fewer absences than someone with seven absences. Every reasonable person who looked at that record will agree that five absences are less than seven absences in a six-month period. The same can be said for each of the kinds of information shown above.

"Wait!!!" an experienced steward says. "You may have a number of some kind, but that does not tell you the reasons for absence. Some reasons are better than others. A member with seven absences may have legitimate reasons than someone with five absences does not have. With each kind of information listed above, you have to know the reasons for each record." Absolutely right! You have to know the meaning of most kinds of information. Also, how many days absent constitutes "absenteeism?" This bears more investigation.

### GATHERING INFORMATION - continued

Avoid Using Vague Words: Challenge the Meaning. Some words, frequently used to describe a person or a type of behavior, have little or no use in processing grievances. They include the following:

- Personality, Responsibility, Dependability, Morale, Ability, Character and Attitude.
- Whenever one of those words is used to the detriment of your grievant, insist on more precise, measurable words.

Sources of information;

- People who can supply information:
- The member who is filing the grievance.
- The member's fellow co-workers.
- Other witnesses to the grievance.

Fellow stewards, -- they can supply ideas about similar grievances in the past. The member's personnel file.

Persons in supervisory positions -- it is usually best to speak to management about a grievance before you fight the case. Learn management's views so that you will have a better idea of its reasoning. You also can get a clearer idea of the facts after hearing them from both the member and the supervisor. This should be achieved at the first step.

Departmental records, pictures, videos, or other evidence should be requested through the investigator or the Wardens office in a timely manner prior to the disciplinary conference.

## CONTRACT ENFORCEMENT AND GRIEVANCE HANDLING

Keeping the records that you need.

Each Chapter needs detailed grievance records that make sense in order to function properly. You need complete information on each current grievance filed so it's easy to find. You also need good files on past grievances and contract problems. Don't trust your memory when there's a question on what happened months or years ago.

Grievance records are the property of MCO. Keep them in the union filing system. When an officer or chief steward goes out of office, they must turn all the files over to their successor. A few basic suggestions are given below...

Good grievance files provide:

Records and data for possible use in arbitration.

Records of what was settled and done in the past.

Background for negotiation problems or contract language that causes trouble can be brought up at negotiations.

Useful records if the question of the duty of fair representation is raised.

What KIND of files do you need to process grievances?

- Files on current unsettled grievances
- File by date or number.
- Flag for time limits.
- File supporting documents or records with the grievance form.
- Minutes or notes on grievance meetings -- particularly third step.
- Files on all settled grievances, with notes -- (include those dropped).
- Files for arbitration cases for future reference.
- Tickler -- a system to remind you when time limits are approaching.

## HOW TO PRESENT GRIEVANCES EFFECTIVELY

When the steward meets with the supervisor to discuss grievances, he is acting in his official capacity as an MCO representative and therefore has equal status with the supervisor. After getting the member's version, the steward must go to the supervisor to get the other side. How many grievances will be settled at this level depends upon the authority vested in the supervisor by management. However, despite the supervisor's limitation, each grievance should first be taken to him before going to the higher levels of management, unless the grievance is the result of higher management decisions or involves a discharge (discharge grievances go directly to the third step). Depending on the relationship the steward develops with the supervisor, many grievances can be resolved at the early stages of the process. It is always best if the steward, grievant and supervisor can adjust a grievance in the early stages of the grievance procedure.

During the presentation of the grievance, at any level, MCO representatives must be careful to remain on the subject, keep from losing tempers and avoid personality clashes. Other points to remember are:

- ✓ Follow the grievance procedure and observe the time limits. Don't try to "skip" steps or go over the head of the immediate supervisor. Start with them as provided in the procedure.
- ✓ Stick to the facts. Argue the case intelligently. Don't get excited! Don't start a fight!
- ✓ Don't show less respect for the supervisor than you want shown to you. And don't let the supervisor show less respect to you than you give to the supervisor.
- ✓ Listen to the employer's side carefully. Don't talk yourself out of the case.
- ✓ Don't bluff, don't threaten. You might get called on it.
- ✓ Don't permit delays. If the contract says you must get an answer on step two within fifteen days, get it, or proceed to the next step. If the employer asks for a "reasonable" extension of the time limits and is willing to grant extensions to MCO when requested, grant them, but follow up promptly on them when the extension expires.
- ✓ Don't barter. Settle each grievance on its merits. If you can, take up only one grievance at a time to eliminate this possibility.
- ✓ Stick to the fight. Don't lose heart. You haven't "lost" until the final step of the grievance procedure has been completed, and even then, the fact of processing the grievance may deter management from doing the same thing again. Or they may even, after the grievance has been adjudicated, grant the relief requested.

### HOW TO PRESENT GRIEVANCES EFFECTIVELY- continued

- ✓ Try to settle grievances at the lowest possible level, involving the fewest number of people. The aggrieved would like a decision as soon as possible. And the higher the case goes, the tougher it becomes to get a favorable decision.
- ✓ When you go in with a committee, don't argue among yourselves. If a point of difference arises, take a recess (don't ask if you can) and resolve the difference.
- ✓ Get the decision in writing, whatever it is. Be certain to report back to the aggrieved on any meeting which the member may not have attended, or on any developments which may occur with the grievance.

### TIPS FOR GRIEVANCE HEARINGS

Dealing with the Grievant:

Your main job is getting all the facts and deciding on the remedy to be requested. But you also need to do some things for the grievant.

Be sympathetic and understanding. This grievance may be a very serious thing for the grievant. Also, they may be very nervous about talking to management.

Do not try to predict a result. Tell them we will do the best we can. Then explain what must happen for us to win.

Explain the steps in the grievance procedure. Explain who will be at the meetings and how the meeting will be conducted.

The grievant must be kept informed about their grievance. Members should know everything you are doing about the grievance.

Be prepared to do more talking than the grievant at the grievance meeting because the grievant may be afraid, too emotional, or to upset too express themselves well.

## DEALING WITH SUPERVISORS

Should you be "tough," or a "nice guy (gal)?" There is no right way that works for everyone in every situation. Some experienced representatives normally take a firm, tough approach. Others take a friendly approach that tends to relax the supervisor. Either approach can get similar results. However, sometimes being too tough or insistent will get a supervisor defensive and afraid to agree to anything or get them mad and just start an argument. On the other hand, being a "nice guy" with a supervisor that bulldozes over a member's rights and tries to dictate everything--even control the whole grievance meeting--is a waste of time.

You must use a style that you are comfortable with. You won't convince anyone how tough you are if you fake it, especially if normally you are easygoing and friendly. Also, if you feel very strongly about a grievance and are a direct "no-nonsense" person, you shouldn't try to fake being nice. It won't work very well for you.

See what style is most needed in each situation. On a simple item that doesn't seem to be the supervisor's fault, and should be easy to settle, you can be easy going. But on a serious grievance, like harassment, you may have to be firm and willing to ask tough questions and defend the grievant from a hostile supervisor.

Let the supervisor know that if the grievance isn't settled at the first step, you'll probably go to the next step, but that you'd rather resolve it. Ask the supervisor what he thinks would be a good remedy if he disagrees with yours.

Ask them why they can't agree to your remedy. Maybe one part of it is not agreeable or maybe they need something in return for giving the remedy.

- Summary (Checklist)

- ✓ Use a style with which you are comfortable.
- ✓ Use a style that fits the situation.
- ✓ Conduct the meeting in a businesslike manner.
- ✓ Adjust your style if necessary, to how the supervisor reacts. Make sure the supervisor knows what you want.
- ✓ Don't box yourself into only one solution.
- ✓ Don't make it unnecessarily hard for the supervisor to agree with you.
- ✓ Don't be afraid to switch tactics.
- ✓ If a supervisor is trying hard to resolve things, tell them you appreciate it.
- ✓ Let the supervisor know you are willing to go further with the grievance if necessary. Sell your remedy.
- ✓ Ask the supervisor why they can't agree to your remedy.

### DEALING WITH SUPERVISORS - continued

- ✓ Ask the supervisor for their remedy to the grievance.
- ✓ Everything can't be resolved at the first step, don't be discouraged.

### STEWARDS CHECKLIST FOR HANDLING GRIEVANCES

#### ▪ GET THE FACTS

Listen carefully to the grievant. Take good notes.

Get the 4 w's (who, what, where, when) by asking specific questions of the grievant.

Find out why the grievance occurred.

Determine the remedy desired.

#### ▪ PREPARE THE GRIEVANCE

Check rules and policies (contract, seniority agreements, department policies, DOM's and other laws appropriate to your unit).

Check grievance legitimacy.

Check policy and practices.

Check previous grievance settlements for precedent. Check the experiences of others in similar cases.

Seek advice if necessary, from other stewards, chief steward, or MCO Labor Reps.

Explain the case to the grievant.

#### ▪ PRESENTING THE GRIEVANCE

Outline what you will present, and practice what you will say. Remember, the supervisor and steward are equals.

Don't get sidetracked or angry.

Get the supervisor to answer why. Anticipate supervisor's arguments. Set a definite time for an answer from the supervisor.

Make sure everyone understands the desired remedy.

#### ▪ FOLLOW UP

Review supervisor's answer.

Make decisions to appeal to the next step within time limits.

Get the decision in writing, whatever it is. Be certain to report back to the aggrieved on any meeting which they may not have attended, or on any developments which may occur with the grievance.



**GRIEVANCE LOG** - The chief steward is responsible to keep a grievance log. All other MCO Stewards can assist the Chief Steward with the log.

**EXAMPLE;  
GRIEVANCE LOG**

*FACILITY:* \_\_\_\_\_



Date	Action/Notes

Grievance Name / Grievant Employee #: \_\_\_\_\_

Grievance #: \_\_\_\_\_ Step: \_\_\_\_\_ Date Filed: \_\_\_\_\_

File Date: \_\_\_\_\_ Description: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Final

Disposition:

Date	Action/Notes

## **Chapter 6 - GUIDES TO THE USE OF PAST PRACTICE**

### **PAST PRACTICE**

Past practice grievances can be difficult to handle because there is no express contract or policy language to support your case. It is, however, an important consideration because of the many practices and procedures that exist outside the contract -- everything our members do in a day cannot possibly be written in contract form.

This section describes what a past practice is, and what it takes to win a grievance on a past practice violation.

When interpreting the working, intent, and application of contractual provisions, arbitrators may be guided by past practice under the contract.

What is the definition of Past Practice?

One definition is that "A practice is a reasonable uniform response to a recurring situation over a substantial period of time, which has been recognized by the parties implicitly or explicitly, as the proper response."

The term, practices, usually refers to local practices and working conditions which can vary considerable at different facilities within the same Department. They are often a customary way, not necessarily the best way, of handling a given problem. A method of handling a problem cannot be considered a practice if it is only one of several ways of doing it.

The practices must be recurring and deal with the same type of situation. It must have existed over a substantial period. The lax enforcement of a rule may not constitute a valid practice since there may not be acceptance, either implicit or explicit. Lax enforcement might, nonetheless, be used in some cases to build proof of discriminatory or inequitable treatment.

Generally, the burden of proof is on MCO to show that the practice in fact does exist. This is frequently difficult to do since MCO may not have very complete records, and the employer is able to provide evidence of different practices.

If the practice is unclear or conflicting, the arbitrator is not likely to place weight on it either way.

What is the importance of Past Practices in Collective Bargaining?

Past practices have made the following contributions to the development of industrial self-government. It can be an aid to the interpretation of ambiguous contract language.

### PAST PRACTICE- continued

Even where contract language is clear and agreed upon, past practice may modify it.

Past practice is important in defining jobs and classification lines that may affect layoffs, wages, and promotions.

Under some circumstances, a long history of past practice indicates a mutual agreement even though the contract is silent.

Past practice is not binding and cannot be enforced when it is clearly contrary to the contract.

The validity of a past practice argument can only be determined by complete knowledge of the details of the individual agreement in effect at the facility, camp, or center.

### Other Possible Limitations on the Use of Past Practices

If MCO has raised the issue of a past practice at contract negotiations and made it one of its demands, it is possible for the Department to eliminate the practice if MCO does not win its demand and have the practice placed in the contract. Arbitrators usually cannot "give the Union what it could not win at the bargaining table." If the Department continues the practice well beyond negotiations, it may be possible to show the arbitrator that the practice has remained in effect and should be upheld.

### Zipper Clauses:

Management often relies on the management's rights clause in the contract to show that it has the right to make changes in working conditions not set forth in the contract. Because arbitrators have ruled in the Union's favor on some past practice, management now is attempting to zip up the contract by having language in the contract which states that both sides agree that all working conditions and agreements between the parties are in the contract. This type of language makes it more difficult for MCO to win past practice grievances.

### Example of Zipper Clause:

The parties acknowledge that during negotiations which resulted in this agreement, each had the unlimited right and opportunity to make decisions and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the right and opportunity are set forth and solely embodied in this agreement.

Therefore, the Department and the Union, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agree that the other shall not be obligated to bargain collectively with respect to any subject matter referred to, or covered in this

### PAST PRACTICE - continued

agreement, or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement.

### HANDLING PAST PRACTICES DISPUTES

Unilateral management policy changes about past practices can be successfully resolved in the grievance procedure. There are interesting cases published in the Bureau of National Affairs' Labor Arbitration Reports involving past practice arbitration disputes in which the arbitrator ruled to continue a past practice even where existing contract language was to the contrary. However, they are exceptions rather than the rule, and usually involved extenuating circumstances that had weakened the contract. There are some questions to answer in past practice disputes;

Does the agreement contain a clause recognizing that existing customs, precedents, conditions, practices and unwritten agreements not affected by the agreement shall continue for the life of the contract?

Is the past practice something that is of considerable benefit to employees?

Are existing conditions of such a nature that continuation of the past practice is reasonable and logical? Or, alternatively, have conditions changed to render the old practice or system inadequate?

Have previous grievances been filed and satisfactorily settled relative to the past practice?

Is there evidence that the past practice has been discussed and orally agreed to by the parties?

Has the past practice been consistently applied over a long period of time to an identifiable group of workers, or to all members within the bargaining unit?

Does the past practice represent a violation of a work rule or policy which has not been enforced by management over a long period of time?

Did management give written notice to employees, or discuss a change in policy with MCO before making the change in past practices?

Does the past practice contribute to inefficient or uneconomical operation of the organization? Or, alternatively, is the practice one which does not harm the employer?

PAST PRACTICE - continued

Is the past practice one of which management was fully aware and made no previous attempt to limit or prevent?

Does the past practice represent a mutually accepted waiver or abandonment of a written agreement between the parties of demonstrable long standing?

Does the past practice violate a local, state or federal statute?

Is management misinterpreting the agreement to eradicate or change a past practice?

Is the past practice or benefit an inconsequential matter of little importance to employees?

Is the past practice or policy one which benefits the employer and to which the Union has clearly agreed to for a considerable period of time?

Does change to past practice impose a serious burden upon members' working conditions? Or, alternatively, on the employer?

Has the changed practice involved insertion of changed contract language, the intent of which was not clear to the Union at the time of negotiation?

Does the past practice involve misuse or abuse of original agreement made orally between workers and Union and management?

Did the Union propose and fail to secure a contract clause relative to the past practice in negotiations?

Is there a contract clause that specifically allows the employer to change past practices or precedents?

Is the past practice one which creates unsafe or dangerous conditions? The preceding general considerations were gleaned from the RCA series referred to in the opening paragraph. An almost identical series of reports (they may report different cases, however) is published by the Commerce Clearing House, Washington, D.C. 20004, titled Labor Arbitration Awards. Both have good indices for hunting up cases of almost every specific type a Union officer is likely to become involved in.

### CHECKLIST FOR PAST PRACTICE

- ✓ Is the language of the contract plain and clear?
- ✓ Is the contract silent? If so, is this because MCO has agreed the matter has been reserved for management's decision, or right?
- ✓ Does the contract, though not expressly embody the practice, refer to it and contemplate its continuance?
- ✓ Has the practice been consistently followed in the past?
- ✓ How often has the practice been used?
- ✓ How did it originate?
- ✓ Has a contract been negotiated since the practice began without repudiating or limiting it?
- ✓ Has it been clearly enunciated and is it fully understood by both parties?
- ✓ Was there any intention of giving new meaning to the contract through establishing the practice?
- ✓ Does the practice deny either party of its rights under the law?
- ✓ If there has been a consistent past practice which is at variance with "plain and clear" contract language, some arbitrators will take the view that the contract is law and must be the guiding principle. A few will look at the contract as a living document and will rule that the parties must have meant to modify the contract to adjust to existing conditions.
- ✓ If there has been a consistent past practice where the contract language is silent or unclear, arbitrators as a rule take the view that past practice in this case is the ruling factor.
- ✓ Inconsistent past practice has no weight where the contract language is clear. When the language is silent or unclear and the inconsistent practice has been clearly preponderant in respect to the total practices, then made the past practice should be given much weight in the decision.

## **APPENDIX**

### **FILLING OUT THE GRIEVANCE FORM**

It is extremely important that the grievance form be filled out accurately and completely. Here are some pointers:

- Name: The grievant full name, or yours for a group grievance, followed by "et al.", which means "and all others".
- Address: The grievant home address. NOT THE FACILITY ADDRESS.
- Employee ID number. Either the grievant or union official for et al grievances.
- Date: The date the grievance is filed.
- Grievance number: Obtained from personnel.
- Statement of grievance: Never leave this blank with the simple statement "see attached". A good statement of grievance will not take more space than that provided on the form. The statement itself should be short and to the point. State what is wrong, and leave the why statements, or arguments to attached pages. At least that way if the grievance gets separated from the other documentation, we know what the grievance is about.
- Just and fair solution: What will resolve the issue? Keep in mind that contractually, we do not have the right to request an apology from a supervisor, nor demand that one be disciplined. Always add the statement "to be made whole" to anything else you ask for, so you don't eliminate possible solutions.

### **SAMPLE GRIEVANCE LANGUAGE**

Here are examples of wording you might use when writing some of the more common grievances. THESE ARE GENERAL EXAMPLES ONLY, AND THE FACTS IN YOUR CASE MAY REQUIRE SOME VARIATION. Contact your Chapter President or MCO Central Office for assistance.

The form also lists the information that will be necessary to defend your case at the higher levels of the procedure. Enclose the documents with the grievance chain when you send it to Central Office after you receive your Step 2 answer.

As you write grievances on other issues, it might save you some trouble on future cases if you include a copy of the grievance at the back of this section. That way you won't have to recreate ISSUE: Disciplinary suspension CONTRACT ARTICLE(S) AND SECTION(S): 10, and all other relevant.

SAMPLE GRIEVANCE LANGUAGE-continued

NOTE: remember to research the article and the section

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was unjustly issued a    day  
suspension on  
(date) for an alleged violation of work rule #    .

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Remove all record of this  
action from my files, pay all back wages and benefits lost because of this action, and to  
be made whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1) Copy of original grievance and answers obtained so far. 2) Disciplinary packet.
- 3) CS 301 Departure report.
- 4) CAJ 231.
- 5) Summary of Disciplinary Conference.
- 6) Seniority and Sick Leave hours.
- 7) Any case(s) you may have showing disparate treatment for similar violation.
- 8) If the employee has chosen one of the new disciplinary options.  
the language each time.

SAMPLE GRIEVANCES

ISSUE: Dismissal

CONTRACT ARTICLE(S) AND SECTION(S): Article 10, and all other relevant.

NOTE: remember to research the article and the section

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was unjustly dismissed for allegedly  
violating work rule number \_\_\_\_\_.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Immediate reinstatement with  
full back pay and benefits, including interest, removal of all reference to this issue from  
my file and employee history, and to be made whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1) Copy of original grievance and answers obtained so far. 2) Disciplinary packet.
- 3) CS 301 Departure Report.
- 4) CAJ 231.
- 5) Summary of Disciplinary Conference
- 6) Seniority and Sick Leave hours
- 7) Any case(s) you may have showing disparate treatment for similar violations



SAMPLE GRIEVANCES - continued

- ✓ ISSUE:
- ✓ CONTRACT ARTICLE(S) AND SECTION(S):
- ✓ NOTE: remember to research the article and the section
- ✓ EMPLOYEE'S STATEMENT OF GRIEVANCE:
- ✓ A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS:

ISSUE: Sick leave

CONTRACT ARTICLE(S) AND SECTION(S): Art. 29, and all other relevant.

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was denied sick leave for (date) even though (I had proper documentation, I called in prior to shift, etc.)

OR

I was required to bring in documentation for my sick day of (date) unfairly and unjustly.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Grant me sick leave for the day in question, bringing me to full pay status,

OR

cease requiring me to provide medical proof for routine absences

...and make me whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1) Copy of original grievance and answers obtained so far.
- 2) T & A record.
- 3) Any Doctor's excuses.
- 4) Individual who denied the sick leave.

### MCO GRIEVANCES VS. CIVIL SERVICE GRIEVANCES

Issues that include a violation of a MDOC - DOM (Michigan Department of Corrections – Director Office Memorandum) are grieved with a Civil Service Grievance. This would include; Overtime, Annual Leave and other issues that Civil Service rules declare are not contractual or not allowed to be bargained. The Civil Service grievance is written and the rights to the grievance owned by the employee. If the member wants help with a Civil Service grievance refer them to the MCO legal department for assistance.

### LABOR MANAGMENT

Labor Management issues are usually compiled by the local MCO president. issues that affect the officers at your facility or the running of your facility. You should make every step to take care of the issues with shift command, and management below the Warden. For the major issues that cannot be settled, a list should be given to the Warden in agenda form. There should be a formal meeting where the issues are discussed, and answers documented. Review managements meeting minutes for accuracy before signing them.

### DISCRIMINATION

Some point during your tenure as a steward you will come across a discrimination allegation involving one or more of our members. When a discrimination complaint is made, a steward should direct the member to a facility harassment coordinator to file the proper paperwork. The employer will investigate the complaint; however, a member does have the right to file a grievance on their behalf.

### IN CLOSING

Thank you for reading the MCO Stewards Manual. Remember many things will be learned with experience. You are taking on a very tough job and it is appreciated. Please reach out to MCO experienced leadership if you need help.