

HANDLING GRIEVANCES: TYPES OF GRIEVANCES

1. WHERE DO GRIEVANCES COME FROM?

For a real grievance to have occurred there must have been a violation of an employee's rights on the job. Also, it must have been the employer or one of his/her agents -- like a supervisor or manager -- who has violated these rights, directly or indirectly. If an employee makes a complaint that doesn't involve the employer in some way, you may still have to deal with it, but it won't be a grievance.

Most grievances are "real" in the sense that we are sure the employer has violated someone's rights; but this doesn't mean we will always win the case. We are limited by the contract, by our skills, or by how much union power we have. So a grievance can turn out to be no more than an "alleged violation" or even just a complaint.

It's your job as a steward to decide which rights have been violated and so determine whether a grievance exists. Because most employees' rights are contained in the contract, this is the first place you look to see if there is a real grievance against the management. If the grievance is a clear-cut violation of the contract, it will be easy to prove provided you stick to your guns. If it involves an interpretation of the contract, it will not be so easy to prove.

The kinds of grievances that may occur under the contract are:

- a. **Wage Grievance** - failure to pay agreed rating including:
 - starting pay
 - automatic increase
 - merit increase
 - improper classification of job
 - employee wrongly classified
 - shift premium
 - vacation pay or bonus
 - call-in pay
 - improver incentive or piece rate

- b. **Wage Inequities** (usually handled through collective bargaining negotiations or through supplementary wage agreements)
- c. **Unreasonable Rate of Production or Workload (Speedup)** violation of time or production standard can be approached from the standpoint of a physical working condition or violation of principle of "fair day's work for fair day's pay."
- d. **Assignment and Placement of Workers**
 - improper transfer (violation of seniority clause)
 - improper promotion
 - improper allocation of work (as in overtime)
 - improper layoff or recall
- e. **Disciplinary Action because of:**
 - unreasonable rule
 - penalties without just cause
 - employees not properly notified of rule or penalties
 - reprimand (recording warning)
 - disciplinary layoffs
 - discharge
- f. **Physical Working Conditions** unsafe or unhealthy working conditions (could be a violation of provincial, state or federal safety laws or workplace rules).
- g. **Supervisory Practices**
 - abuse of authority
 - intimidation or coercion
 - over-supervision (snooping)
 - inadequate supervision (failure to instruct properly)
 - supervisor working on bargaining unit jobs
 - discrimination
 - favoritism
- h. **Personal Rights and Privileges**
 - leaves of absence
 - failure to accord equal treatment (discrimination)

- i. **Violation of Union Rights**
failure to give proper representation (no steward working overtime)
undermining the union
undermining grievance procedure
- j. **Other Contract Violations** some contracts may contain clauses not covered by the above lists

But, unless your contract limits grievances to items covered in the collective bargaining agreement, some grievances are outside the contract. These are:

- **Violation of federal or provincial or state law**
Here you might have the option of filing a grievance or going to the appropriate government agency to get redress. If advice from your chief steward or local union business representative is inconclusive, go ahead with both.
- **Past practice in the workplace**
This can be the basis for a grievance, particularly in areas where the contract is silent or unclear, where a past practice has been violated by the management, an employee may have a real grievance. But, to be considered a past practice, the circumstances must have been repeated over an extended period of time; accepted explicitly or implicitly by both workers and management, e.g., by verbal agreement or in writing, without either side formally objecting; or while violating the contract, neither side has demanded that this part of the contract be enforced.
- **Failure of management to live up to their responsibilities**, particularly over health and safety conditions
- **Employer's rules**
These can be made and changed as long as they are consistent with the contract. But, while they are in existence, they cannot be violated by either side and so they can be the basis for a grievance.

2. WHO IS AGGRIEVED?

Summary: we can classify grievances according to where they come from and how they arise, but we can also look at them according to who is affected.

- **Individual grievances**

Most grievance affect only a single individual. Even so, you as a steward should be filing the grievance, not the employee on her/his own (if the contract permits it). It is in the interests of everyone in the union that the grievance is handled properly, bearing in mind the interests of the union as well as the griever. And, when an individual's rights have been violated and he or she refuses to file a grievance, you should file the grievance on behalf of the union -- especially if the contract specifically permits it. In this way, you will defend the collective bargaining agreement and protect the rights of all employees covered by it. The management's argument that you cannot file an individual grievance on behalf of the union is invariably false.

- **Group grievances**

This is where several employees have the same complaint. Usually you file the grievance on behalf of the group (who must be clearly named or defined) though there is nothing wrong with filing a series of individual grievances dealing with the same issue.

- **Union grievance or policy grievance**

Exactly what your rights are and exactly what these grievances are called depends on the language used in the contract. These two types of grievances usually mean the same thing.

The union grievance is one that is filed by the union on behalf of a group of individuals or the whole bargaining unit -- or on behalf of an individual who refuses to file it. Invariably, a union grievance is one in which the union considers its rights to have been violated, and not just the rights of individuals in the bargaining unit. Again, you might find the expression "general grievance" used and it might mean union grievance, policy grievance, or group grievance, depending once more on the language used in the contract.

3. GRIEVANCE AND ARBITRATION

Almost all OPEIU contracts contain a section which gives the union the right to process a grievance to final and binding arbitration. If the employer ignores the grievance by not giving an answer as required by the collective bargaining agreement, then the union may advance the grievance to the next stage, and the next, until the issue is either before an arbitration board (in Canada) or arbitration is invoked by a court (in the U.S.).

4. WHEN IS A COMPLAINT NOT A GRIEVANCE?

If the management has not violated anyone's rights, there is no grievance. But, there may be a real complaint, and if you are a good steward you will deal with complaints as seriously as you would a grievance. Here are some types of complains:

- **Personal troubles and requests for advice**
You will often find that people want to confide in you. Treat them sympathetically; try to help them and keep confidences *strictly* to yourself.
- **Complaints about fellow workers**
These need a lot of tact, diplomacy and moral authority on your part. This sort of complaint becomes a grievance if management gets involved when it shouldn't, according to the contract or past practice -- or it doesn't get involved when it should.
- **Complaints about government agencies and local bodies**
- **Complaints against management not covered by the contract**
There may be cases you have to face which do not involve an injustice, do not violate past practice and are not covered by the contract. It still may be possible to remedy these complaints by informal discussions between the union (you) and the employer.
- **Borderline cases**
You should seek advice from the chief steward or the grievance committee or your local business representative before taking these up as grievances. Report back to the person complaining as soon as possible, explaining what you are doing and why.
- **Complains against the union**
It is up to you to explain to the complainer what his or her rights are under the rules and constitution of the local and international union.

5. THE NEGOTIATED GRIEVANCE PROCEDURE

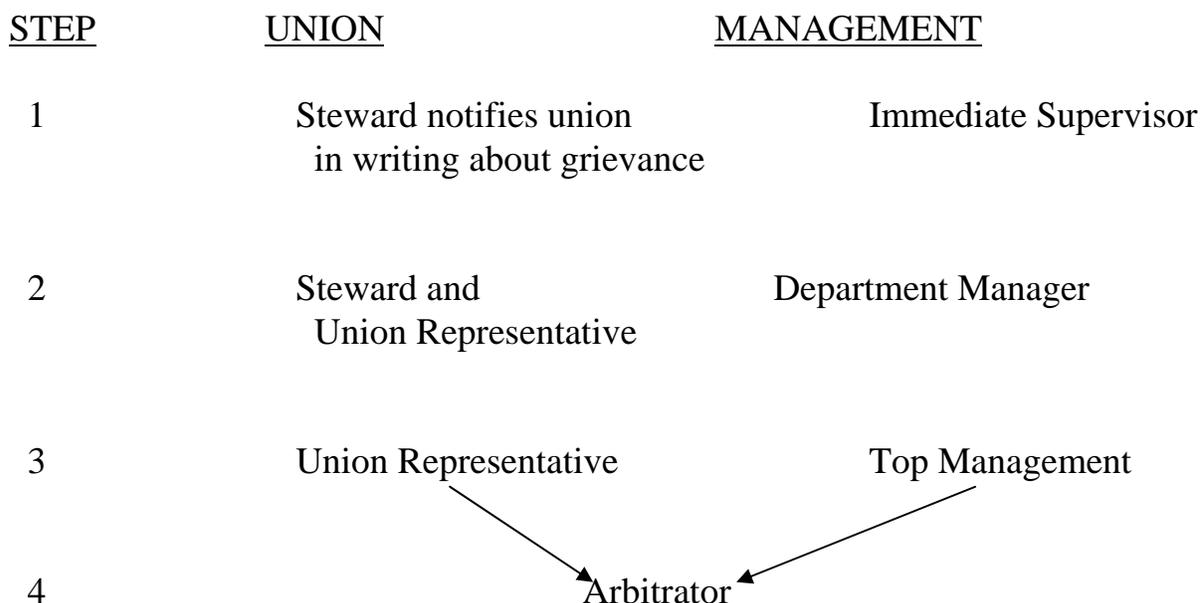
Every negotiated agreement (contract) has a negotiated grievance procedure. The grievance procedure can be set forth in the contract in many ways. However, most procedures

follow a basic course from information to formal presentation with arbitration being the last recourse in most agreements.

The grievance procedure provides for judicial review of any action taken by management that has impact on the employees covered by the negotiated agreement. Without a grievance procedure employees would have no internal process available for ensuring their right to justice on the job. The alternative to this procedure, group action or courts of law, is often costly, time consuming and insensitive to unique problems within an industry. Therefore, the grievance procedure provides a more effective means of redressing employee problems.

6. THE STEWARD'S ROLE IN GRIEVANCE HANDLING

The role the steward plays in the grievance procedure is a vital one. As the grievance moves up the ladder of the negotiated procedure it moves higher up the chain of command both in the industry and the union. For example, it usually goes from:



At first glance, one may think that the steward holds the least significant position in the grievance process. However, consider the origin of the grievance. The employee comes to the steward first! Therefore, the records, decisions and insights at this first step set the stage for any successful resolution that may come later. The burden is placed on the steward to accurately record all information necessary to provide those involved in the "grievance ladder" a clear picture of what actually took place. In other words, the employee and the steward have a better understanding of the grievance than anyone else. Winning or

losing a legitimate grievance ultimately depends on the steward's ability to investigate and judge the information and evidence at the first step, and pass this information on as clearly and accurately as possible. Settling grievances at the first step, the most desired course of action, is also heavily dependent on the steward. However, if for various reasons the grievance is carried forth, the union representative must use the steward's records as the basis for the case.

7. RECORDING THE GRIEVANCE

When an employee comes to you with a complaint you should always make a note for your files listing the person, problem, date, supervisor and workplace. Also you should request the employee to write down the facts and keep an ongoing log of events that take place pertaining to the complaint. This is a safeguard in the event the complaint becomes a legitimate grievance and proceeds through the various steps of the grievance procedure. Trying to recall times, places and actions from memory is highly ineffective in grievance handling. Should you fail to settle the grievance at the first, informal step, the union will need these records in drafting the formal grievance statement. It is important for the union to keep records of grievances handled at the informal step, so send your documentation to your union representative if it is resolved.

A complaint formally enters the grievance procedure when it is presented in writing. The steward, who normally has the responsibility for submitting the grievance for writing to the union, should do so only after completing Step I of the grievance procedure. When submitting the grievance to the union the steward should check carefully to make sure the Six W's - WHO, WHEN, WHERE, WHY WHAT and WITNESSES of the grievance form are covered.

WHO: Refers to the employee filing the grievance and the supervisor (if any) involved.

WHEN: Refers to the time element. Often information regarding more than one date is needed to complete the form properly: (1) the date on which the grievance is officially written; (2) the time and date on which the grievance actually happened; (3) the date on which the grievance was submitted to the immediate supervisor (first or informal step of the grievance procedure); and, (4) the date on which the immediate supervisor gave a decision.

WHERE: Refers to the exact place where the grievance took place - the department, aisle, office, terminal or plant.

WHY: Refers to the reason the complaint is considered a grievance. The WHERE and WHY are described under the section "Statement of Grievance" and must be clearly stated to obtain a clear picture of the facts. It is important to remember that it is possible to have a legitimate grievance without being able to point to a violation of a specific clause of the contract.

WHAT: Refers to what should be done about the grievance - the corrective action desired and what adjustment is expected.

WITNESSES: If a particular incident took place which gave rise to the grievance, the names of any witnesses who say what occurred should be listed on the grievance form. This should include the address and phone number of all witnesses.

Both the employee and the steward should sign the grievance form. The employee's signature verifies the facts of the grievance.

8. UNDERSTANDING THE QUALITY OF INFORMATION

As you begin to investigate a grievance you will realize that the information you gather usually falls into two categories:

- a. specific measurable information; and,
- b. non-specific or unmeasurable information.

Both types of information will surface; however, non-specific information has little use in grievance handling. The following is a list of various types of "specific" information that frequently have impact on grievances. Also given is the method of measuring this information.

<u>Information</u>	<u>Methods of Measure</u>
Years of Service	Years, months and days
Medical Records	Number of reported injuries in past period, hours lost from work, kinds of injuries
Absenteeism.	Number of days lost

Tardiness	Number of days tardy, number of hours lost from work
Production	Amount produced
Other Jobs Held	Job titles, period of time on each job
Education and Training	Years in school, training programs attended, courses taken
Written Reprimands	Number, kind of violation
Quality of Work	Accuracy and quality

Although "specific" information seems to be fairly cut and dry on the surface, it can be very misleading. For example, take the area of absenteeism. If the grievance involves employee absenteeism, check for reasons, don't rely on the numbers alone. A person out for three weeks due to hospitalization would show 15 days absent from work. Whereas an employee who is down and out about one day a month for general illness might not show but 8-10 days absent. If reasons are not examined, the person with the most days absent could be wrongly labeled as "excessively absent."

The steward must also make sure that the information is clear. While people can measure the information listed above, a skilled steward will ask the question: "Why did it happen?" or "Does that information apply to this particular grievance?"

A worker has had production problems on his/her record which look pretty bad. A steward may find that the supervisor ordered him/her to do non-productive work during his/her regular operation. Additional investigation must take place to determine the importance of this information.

A frequently used piece of information is years of education. Some questions that might be raised include: How good was the education or training? Does his/her education help a worker to do a better job? Will any subject taken in school help a worker to do the job that is now open? After answering these kinds of questions, a steward can, then, determine the value of education in a union member's record. Years of education alone do not help very much.

The same can be said for absenteeism, tardiness and medical records. A steward must find out how long ago they happened, reasons for the occurrences, whether the reasons apply to present situations, whether the record looks poor in comparison to records of other workers.

This type of information is very important in many grievances and will be used by stewards frequently. Stewards only have to be certain that management understands the meaning. Much of grievance negotiation concerns the difference between steward and supervisor about the meaning of measurable information.

Information that is non-specific and cannot be measured -- some words frequently used to describe a person or his/her behavior have little or no use in processing grievances. They include the following:

Ability
Attitude
Personality
Character
Disability

The word "ability" can be defined in terms of production, quality of work, and possibly attendance and medical records. But the word "ability" alone has very little meaning. Supervisors have said, "I can tell that one worker has more ability than another." If it cannot be measured and has no clear meaning, this statement is nothing more than a supervisor's opinion -- may be accurate, may be inaccurate. The skilled steward must require proof for the statement, proof that is measurable and has clear meaning.

"Attitude," "personality," "character," "dependability" -- these are words that never have been defined in away that produces agreement. One person's opinion about another person's attitude may be very different from other peoples' opinions. There is no way to specifically compare people's personalities and character.

How do you know that one worker is more pleasant than another or one worker is more honest than another? And, even if we did, what does that have to do with a worker's ability to produce for his/her employer? Should a person be punished because he/she does not smile as frequently as another, or disagrees with his supervisor? A steward must know the circumstances surrounding the sour disposition or disagreement.

A series of disagreements may involve the worker's rights under their union contract or refusal to accept the improper procedure demanded by their supervisor.

The emphasis on proof helps cut through the main accusations made against workers that are accepted without challenge. Probably one of the greatest contributions that a union makes to a worker's life is comparative freedom from punishment based on a supervisor's unproven opinion.

9. PRESENTING THE GRIEVANCE

Whether you are at the informal or formal stage of the grievance procedure, the way in which you present the grievance can have significant effect on the outcome. Keep the following points in mind when you present the grievance.

a. Know Your Facts -- Be Confident

When you are ready to go into a conference with the supervisor try to outsmart them. Don't carry a chip on your shoulder, and don't anticipate being outsmarted or outwitted. Know your contract -- your rights under it -- and stick to them. State the facts plainly. Avoid opinions or hearsay evidence. Too many grievances are lost because the steward did not have the facts.

b. Stick To The Point -- Be Business Like

As discussion progresses on a grievance, the supervisor may try to sidetrack the real issue and lead you into a discussion of irrelevant issues or inject additional complaints against the employee. Insist on discussing the issue raised by the grievance only, nothing else.

c. Settle The Grievance At The First Step

The most desirable aspect is to have the grievance settled at the first step. This prevents the bogging down of grievance machinery and permits the union to devote more time and effort to problems of general concern to all members.

d. Take A Positive Position -- Not Defensive

Don't be timid or convey the feeling to the supervisor that you are presenting the grievance because it is an obligation on your part. Avoid being apologetic; impress the supervisor that there is no possible doubt in your mind that the grievance has merit and should receive equitable settlement.

e. Disagree With Dignity

Disagree with the supervisor in a calm, firm, positive manner. Avoid pounding the table, blowing up or making empty threats. Declare your intentions of taking the grievance to the next step. As a rule, supervisors prefer to settle complaints before the complaint is carried to a higher management level.

f. Maintain A United Position

Take the aggrieved along with you. This is necessary and prevents mistrust and establishes confidence in the steward. But, make sure you are both in accord on the facts and issues!

g. Be Prompt -- Follow The Grievance Through

Refer the grievance to the chief steward or next step when not settled. Give him/her all the facts. Give him/her the argument used in your discussion with the supervisor. Don't allow the grievance to lay around. Keep a constant check on the progress of the grievance at what step it is in. Report back to the aggrieved.

REMEMBER, the only time you present a grievance is after you have gathered all the facts!

10. AUTHORITY OF SUPERVISOR

The degree to which grievances are successfully handled at the first step is largely dependent on the authority granted the supervisor. In some cases the supervisor is only the "messenger" for the management representative in the next step of the grievance procedure. If this situation exists, few settlements will take place at the first level.

It is important to observe the steps in the grievance procedure even if the supervisor has limited authority. "Leapfrogging" to a higher step may have several undesirable effects. The supervisor may resent this and may be more difficult to deal with the next time, or management may seek to get the grievance thrown out because the proper steps were not followed.

Even the best steward will, from time to time, have trouble in settling grievances because of various tactics used by the supervisor.

Here a few examples:

- o Delays - If the supervisor stalls in giving an answer on a grievance, the steward should not hesitate to invoke the time limitations spelled out in the contract. If there are no time limitations, it may be necessary to systematically nag the supervisor until you get an answer. If there is still no response you may have to file a grievance charging the supervisor with "stalling," or otherwise move directly to the next step in the procedure.
- o Compromising - Sometimes the supervisor may offer to "split the grievances" - the union wins half and loses half. This may prove to be a temptation, but it is important to remember that each employee is entitled to fair treatment.

If the employee feels that his/her grievance has been traded off to benefit another worker this destroys his/her confidence in the union. Therefore, it is important to treat each grievance on its own merits.

- o Losing Your Temper -- Sometimes management will deliberately provoke you hoping that you will lose your temper and make rash promises or threats which cannot be carried out. Such actions result in the stewards losing the respect of both management and the people he/she represents. Most people do not think straight when they are angry.
- o Discussing Side Issues -- Often management will try to sidetrack the steward by discussing matters not related to the grievance under consideration. If it is of concern to the organization, the steward should ask that it be discussed after the grievance is resolved. If the subject is completely irrelevant, the supervisor should be reminded of the purpose of the meeting. But the supervisor should not be cut off so sharply that he/she takes offense.

- o Know When To Stop Talking -- It is usually better to say too little than too much. A good rule of thumb is to talk 20% of the time and listen 80% of the time. By listening to the other side, it is often possible to get a better understanding to management's argument and, therefore, be in a better position to combat it. If management has conceded the grievance, the steward should end the discussion and not rehash it further. Otherwise, the supervisor may think of some additional reasons why their position is correct, and it may be necessary to reargue the entire case. If the employee is not present at the time of settlement, he/she should be notified immediately of the outcome of the case.

11. FAILURE TO REACH AGREEMENT

If the steward is unable to obtain a settlement, he/she should tell the supervisor that the grievance will be taken to the next step in the grievance procedure.

The steward should inform the employee of what has happened. In addition, the steward should brief the chief steward or the union representative who is involved in the next step of the grievance procedure, as to the main line of argument taken by the supervisor.

The way in which the steward has handled and documented the grievance up to this point will have quite an impact on the way the union representative at the next step will proceed. The union representative has very little to go on other than the background information received from you - the first line representative.

The steward should be careful never to guarantee the employee a successful settlement of the problem. What appears to be an airtight case is sometimes completely destroyed upon further investigation. It may be difficult to convince the employee why the case was lost.

The steward should be prepared to process vigorously the grievances of all the employees he/she represented regardless of their personal feelings about them. This should be done both as a matter of justice and as a method of ensuring that dangerous precedents involving contract violations are not established.

Since the employee wants their grievance settled "today," or "tomorrow at the latest," it is important that he/she be kept informed on the progress of the case. Sometimes it may take months before a grievance is completely processed. Therefore, an employee should be informed of the various time limitations in the procedure which make a more rapid settlement impossible.

12. DO'S AND DON'TS

The following document is actually a leaf out of the employer's book. It is given to you to show the union steward that many of the skills and techniques used in grievance handling are also used by supervisors; only the perspective (management instead of union) is different. Read and study the document. From it you can learn to recognize what techniques a supervisor is using and respond in the appropriate way. Note down those techniques which you think are *different* from your own. *Why* do you think they differ?

Examples of Guidance Provided to Supervisors:

Grievance - Do's and Don'ts

Usually, the supervisor had no hand in negotiating the contract or in drafting its provisions. Nevertheless, he/she is the one who deals most frequently with employees with the union -- and he/she must be quipped to represent management's interests and preserve management's rights. If he/she isn't, they will quickly go down the drain.

The following checklist provides supervisor with a practical guide: what to do and what not to do in handling the grievance machinery. Naturally, all these points are not applicable to every case. But if you are familiar with all of them, you will be prepared for almost any kind of case that may arise.

Do's

1. Require the steward to identify the specific contractual provision allegedly violated. Determine whether the matter can properly be constituted a grievance, as defined by the agreement.
2. Determine whether the grievance was filed, appealed, and processed from step to step within the contractual time limits and whether the grievance meets all other procedural requirements dictated by the agreement.
3. Examine the agreement carefully. Is it silent on the matter in dispute? If so, is there a past practice covering it? Is it known to both parties? Was it instituted unilaterally or bilaterally? Has it been relied upon before? How long has the practice existed?

4. Examine the relevant contract provision. Is it ambiguous or unclear. If so, how has the provision generally been interpreted by the parties? Has there been consistent administration?
5. Determine whether you have treated employees differently under similar circumstances. If so, why? Has the prior relationship with the grievant been good or poor? If poor, why? Has the grievant been disciplined on a prior occasion? Why, and what was the outcome?
6. Investigate or seek advice on past grievances for any similar issues that have been resolved in prior cases, for repeated grievances on the same issue, and for arbitration awards on the same issue.
7. Record all results of your investigation.
8. Gather for possible future use any records that bear on the case, such as time cards, production records, absenteeism reports, payroll records, etc.
9. Remember that the union is the moving party on all but discipline cases. Require the steward to present his argument, his positions, his case.
10. Permit a full hearing of the issues. Be sure the steward has presented his whole case; be sure you have everything on the record that is pertinent.
11. Give the steward reasonable latitude in the way he presents his case, but don't permit him to taken an excessive amount of time to demean management personnel.
12. Make a full record of both the steward's and your positions, arguments, witnesses, evidence, and participants in discussions.
13. Treat the steward with the respect due his office, and demand the respect due your office from him.
14. Control you emotions, your remarks, your behavior.
15. Pass along to your personnel officer your experience with any troublesome contract clauses.

16. Remember that your case may result in an arbitration hearing. Fully inform your personnel officer of all discussions about the grievance.

Don'ts

1. Don't discuss the case with the union steward alone if the grievant is at work and can be present during the discussion.
2. Don't argue with the steward in the presence of employees.
3. Hold your discussions privately.
4. Don't admit to the binding effect of a past practice for settlement of the grievance until you have first discussed it with your personnel officer.
5. Don't assume a judicial role. Hear the union's case, then be an advocate. Represent management's interests.
6. Don't argue the merits of the grievance first, if the raising or filing of the grievance was untimely. If untimely:
 - o Present your arguments on the issue first -- giving reasons for considering it untimely.
 - o Be very clear that you are denying it first on that basis.
7. Don't withhold any relevant facts -- if they reveal weaknesses in your case, prepare logical and persuasive defenses.
8. Don't make settlements that obligate the employer to prior approval, mutual consent, or joint consultation with the union before management can act.
9. Don't ask favors of the union. It will expect a reciprocal concession from you some day.
10. Don't give lengthy written answers on grievance forms when denying a grievance. If the grievance should be legitimately denied -- after all persuasive efforts to resolve it have failed -- give the simple written answer, "No contract violation. Grievance denied."

11. Don't make any settlements "outside" the terms of the agreement.
12. Don't hold back a remedy if the employer is clearly wrong.
13. Don't count on the union to assume authority for resolving your problems, exercise your authority and dispose of issues.
14. Don't interrupt or stop operations to accommodate a union steward demanding instant handling of a grievance. However, don't postpone or delay grievance handling beyond the time when it will no longer interfere with production operations.
15. Don't cause the employee or union to default on their compliance with any time limits by your action or inaction. If you do, don't later deny the grievance for reasons of their noncompliance with such time limits.
16. Don't settle the grievance if you have any doubts. Discuss the case with your personnel officer.