

Grievance Handling Step-by-Step



Training Guide

UFCW3000



www.ufcw3000.org

206-436-0210 or toll free 1-800-732-1188

Member Resource Center: 866-210-3000



Office Locations

Seattle: 5030 First Ave S, Suite 200, Seattle, WA 98134-2438

Mt. Vernon: 1510 N 18th St, Mt Vernon, WA 98273-2604

Des Moines: 23040 Pacific Hwy S, Des Moines, WA 98198-7268

Silverdale: 3888 NW Randall Way, Suite 105, Silverdale, WA 98383-7847

Spokane: 2805 N Market St, Spokane, WA 99207-5553

Tri-Cities: 2505 Duportail St, Suite D, Richland, WA 99352-4079

Wenatchee: 330 King St, Suite 4, Wenatchee, WA 98801-2857

Yakima: 507 S 3rd St, Yakima, WA 98901-3219



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BUILDING A POWERFUL UNION THAT FIGHTS FOR ECONOMIC, POLITICAL AND SOCIAL JUSTICE IN OUR WORKPLACES AND IN OUR COMMUNITIES.

How do we protect our members' rights on the job?

Our goal is always to achieve a fair resolution of worksite problems at the lowest possible level – that often means, by resolving problems informally, before a grievance is filed.

The UFCW 3000 member representation system is based on a partnership between well-trained stewards in the worksite, and professional Union Representatives in the **Member Resource Center (MRC)**. From the first member question that arises– **“Can they do that?”** – all the way through potential arbitration, this partnership will ensure strong work on behalf of our members.

In the initial process, the Steward's role is to help members know and protect their rights; to report emerging worksite problems to the MRC; to investigate potential grievances; to seek informal solutions with guidance from the MRC. If necessary, a grievance will be filed. The MRC Rep will take the lead on contract and legal research, writing up the grievance, presenting the grievance in meetings with management, and help the member and steward prepare for the first step grievance meeting. We must thoroughly prepare every First Step Grievance so that it can hold strong in every step of the formal legal process. Only strong teamwork between stewards and the MRC can make that possible.

Because we have strict timelines for researching and filing a grievance, getting the MRC involved early, within 24 hours, when you first learn of a worksite problem is the best practice. The MRC Rep will bring in their knowledge and experience of contracts and the law and help assess next steps. The MRC Rep will work with you to triage the situation and make a plan.

This Grievance Handling Overview, and our training program, are broken into three sections:

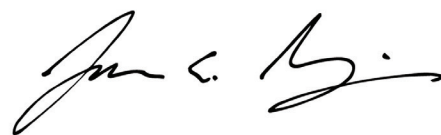
- 1. Grievance Investigation, 1-2-3**
- 2. Working with the MRC: Report, Triage, Make a Plan**
- 3. Preparing and presenting the Step 1 Grievance.**

Together, we will ensure members' rights are protected, the process is transparent, and management is held accountable to our members, our contract, and the law. Have fun as you learn and remember to celebrate the wins you help achieve in your worksite!

In Solidarity,



Faye Guenther, President



Joe Mizrahi, Secretary Treasurer

Grievance Investigation 1-2-3

Identify – Investigate – Document

STEP 1: Identify “Is it a grievance?”

Not all workplace problems can be addressed or resolved through the grievance procedure*. In order to know if a workplace problem is a potential grievance, we need to assess the situation carefully to see if it fits the definition of a violation of our contracts, employer policy, or law.

The following pages will help you with identification of grievances.

**And remember: Our grievance procedure is a powerful tool for justice – but not our only one! Even if we determine that the grievance procedure is not the best way to resolve your member’s issue, we have other ways to organize for justice. Other leader trainings will focus on issue organizing at work.*

What is a grievance?

Collective bargaining agreements, or contracts, may define a grievance in several ways. One agreement may state that a grievance is **“a dispute between the union and management over the application and/or interpretation of the agreement.”** Another contract may define a grievance more broadly as **“any dispute or difference arising between an employee and management or between the union and management.”** A contract may also exclude certain provisions from resolution through the grievance procedure.

Many contract grievance procedures make it possible to grieve violations of state, municipal and federal law, company rules or policies, unfair or disparate treatment of workers, and “past practice”.

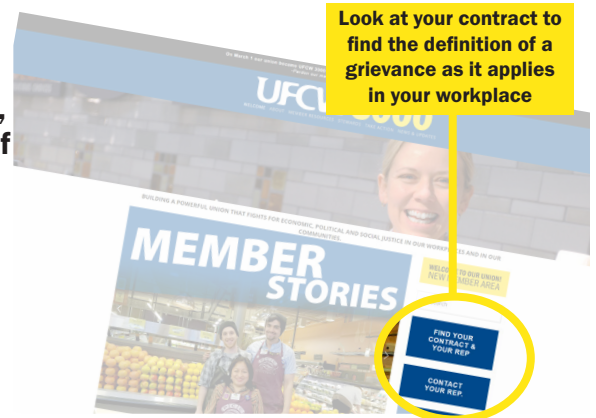
Look at your contract to find the definition of a grievance as it applies in your workplace.

To help you decide if an issue in your workplace is a grievance, look at each problem from different points of view with each of the following in mind:

Your Contract:

Contractual grievances include violations of the contract, memorandum of understanding, side letters, and previous arbitration awards that have interpreted the contract.


Look at your contract to find the definition of a grievance as it applies in your workplace



A grievance may be more difficult to resolve when the contract language in question is unclear or ambiguous, two or more contract clauses are in conflict, the facts surrounding the problem are not clear, or management is being stubborn. Even when the contract is silent on an issue, however, you may still be able to grieve a problem on one of the following grounds:

The Law:

Local, state or federal laws may provide a basis for you to file a grievance. For example: wage and hour laws require compensation for all hours worked and overtime for hours worked over forty.

 *You can find out about workplace rights under the law by checking the UFCW21 website, by visiting RightsAtWorkWA.org, and by visiting specific government websites.*

Employer Rules and Policies:

While employers are obligated to abide by the contract, they have the right to make and implement rules related to the orderly and efficient operation of the organization as long as:

- ***The employer provides notice to the employees and the union***
- ***The rules are reasonable “on their face”***
- ***The rules are reasonably and fairly applied***

Management’s uneven or unequal enforcement or disregard for its own rules are common grounds for a grievance. For example, the union may use the employer’s own attendance policy to defend a worker being disciplined.

 *If your employer has an Employee Handbook, keep it alongside your contract – it can create enforceable rights!*

Past Practice:

“Everyone knows we’ve always done it that way!” is not a full definition of a past practice. Generally, a past practice is any long-standing practice that:

- ***Occurs regularly***
- ***Both union and management have accepted, or not challenged***
- ***Does not violate the contract or any written rule***

Past practice grievances usually cover situations where the contract is silent or ambiguous. A past practice grievance usually arises when management unilaterally, and without notice to the union, changes an established procedure or disciplines a worker for following a past practice.

For example: “wash-up time” was once a common practice. A company allowed workers to leave their workstations fifteen minutes before the end of the shift to wash up before clocking out. In such a situation, a worker couldn’t be docked pay for leaving to wash up.

When the company changes the practice without notice to the employees or union, then disciplines an employee for continuing to follow the practice, the union can file a grievance based on a “violation of past practice”.

These guidelines will help you determine if a past practice violation has occurred:

- **Uniformity:** Was the policy consistently applied over a period of time? Did at least a majority of the employees have the opportunity to enjoy the practice?
- **Longevity:** the longer the period of time a policy has been in effect, the stronger the case for it being considered a past practice
- **Acceptance:** Both the union and the management know that the practice has been in effect, and neither party has objected
- **No Written Language:** There is nothing in writing in the contract or in company rules regarding the practice. Written language supersedes past practice.

Past practices can be hard to establish, and grievances based on them hard to win. Past practices can also arise when the union has not enforced the contract over a long period of time. Talk to other experienced stewards or to the MRC Representatives if you believe you have a past practice violation.

Types of Grievances:

- *Language Grievances*
- *Discipline Grievances*

Discrimination and Unequal Treatment

Our contract, and the laws we fight for, aim to create a just and equal workplace for all workers. As you have seen above, management is required to apply all rules and policies in an equal and non-discriminatory manner. After reviewing the above questions, ask yourself:

- *Did management engage in discrimination or harassment?*
- *Did management take unjust disciplinary action against an employee or group of employees?*

Our union is committed to protecting all our members from unequal treatment, especially when that treatment is based on race, creed, gender, sexual orientation, primary language, political belief, or union status. If you believe that discrimination has occurred, discuss the situation with other stewards and the MRC rep.

“Just Cause” for Discipline:

In nearly all contracts an employee can only be discharged (fired) or disciplined for what is termed “just cause”. Determining whether the employer has, in fact, established just cause for the discharge or discipline of an employee can be a complex process. Asking the following questions can help you decide whether or not a discipline or discharge is based on just cause.

1. **Was the employee adequately warned?** (Exceptions: insubordination, drinking on the job, stealing, etc.)
2. **Was the rule or order reasonable?**
3. **Was the investigation fair and objective?**
4. **Did the investigation produce substantial evidence or proof?**
5. **Were the rules, orders and penalties applied evenhandedly and without discrimination?**
6. **Was the penalty reasonably related to the seriousness of the offense, and the past record?**

Investigate

After identifying a potential grievance, we need to talk to people, gather information: **investigate**. The actual facts we turn up can make or break the case for our member and the Union. Use the following tools to gather information and put together a clear picture of what happened – and why.

STEP 2: A thorough investigation should include:

- **A detailed conversation with the affected employee that includes questions beginning with the 6Ws: Who – When- Where- Why- What- Witnesses**
- **Discussion with witnesses who might have seen or heard anything related to the event. If someone says, “Harry told me...”, go talk to Harry personally. Interview witnesses separately, and don’t “lead” them – this will help sort out inconsistencies.**
- **Conversation with the supervisor involved in the event. By meeting informally with the supervisor, you can sometimes learn helpful information and you may find a way to resolve the problem without having to file a grievance.**

(Always let the employee and the MRC Rep know you are going to talk to the supervisor before doing so and run any informal resolutions by the MRC.)

Investigate & Get the Facts:

The “Six W’s” – **Who, When, Where, Why, What** – and **Witnesses!**

Who is involved?

This includes the full name, and relevant information (department, job class, pay grade, shift, seniority date) of the worker with the complaint, relevant witnesses, and the supervisor involved.

When did the incident occur?

Be as accurate as possible about the time and date the grievance related events took place. This is important for many reasons: time limits in the contract for filing a grievance, the amount of back pay or benefits that can be recovered, evidence of unreasonable delay in disciplinary action.

Where did the incident occur?

The exact location where the grievance occurred, (for instance: at the sorting machine, near the walk-in refrigerator, the floor, patient room, aisle...) This can be critical in establishing whether this was in a public or non-public area; on duty or off duty conduct; area under video surveillance, ...

Why did the incident occur?

All the background facts surrounding and leading up to the incident.

What happened and what are the demands for a remedy?

What does the grievant want? Sometimes it's not as much as you thought; sometimes it is more.

What is needed to restore the worker to the same position they would be in if the situation had not occurred? For example, if an employee was discharged, the demand for settlement might be reinstatement with back pay and benefits.

Were there any Witnesses?

Some information will be available from the person with a possible grievance. But you need to hear more than just their side of the story. It is usually best to get management's side of the story before you begin to fight the case. Hearing all sides of the story gives you a better idea of the facts, lets you know management's reasoning, and will help you assess the strength or weakness of the grievance.

Other people who can help you build a complete picture:

- *The grievant*
- *Their coworkers*
- *Other witnesses*
- *Other union stewards*
- *Supervisors*
- *Customers*
- *Patients*

Do not just interview favorable witnesses or only the ones the grievant or management want you to interview. Do interview management witnesses. Do interview non-employee, non-management witnesses – for instance, customers or patients. If anyone you seek out refuses to be interviewed, document your attempts and the date and times.

STEP 3: Document – DIG DEEP!

Witness statements are very helpful, but we will need evidence to confirm statements, and prove facts. You have a right to access records that are relevant to representing your grievant. Among the records that might be helpful:

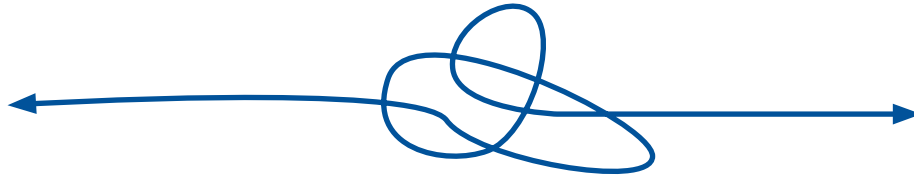
- *Personnel files (including absentee and medical records)*
- *Seniority, job classification and payroll lists*
- *Company rule books, work rules, and instructional emails*
- *Past grievance files, and arbitration decisions*
- *Posted shift assignment schedules, notices*
- *Contract, along with any supplementary agreements*

Your contract may specify rules for information requests, make sure to work with the MRC Rep on your plan.

Find the Proof!

Draw a line connecting the members statement with supporting documentation.

IF THE MEMBER SAYS:



I SHOULD LOOK HERE:

They told me I have been late 7 times in the last two months! I wasn't!

My manager knows that I have been missing a lot of time for PT appointments, for my back problem.

The floor was still wet from the leaking freezer...

I get passed over for overtime unfairly, over and over again... But then they make me cover 3rd shift sometimes on, like, no notice.

I got written up for doing personal stuff on the computer... But everyone does that on their break.

The last time someone did this, they didn't get in trouble. Why me?

I was talking to my co-worker about our assignment, and my boss assumed that because we were speaking Spanish, we were talking about him.

I did not see anything on attendance in our contract, do you know where I can find that?

There is no way I could get all the way to the supply room and back in the time they expected me to. It seemed like a set-up.

There were 3 other workers that saw it happen.

Wasn't that addressed in the last bargain?

I do not remember management reviewing or me signing that document

Management is wrong, that is not the way it happened.

Smartphone photo of the equipment

Time card

Departmental shift schedule

Posted on the wall

Member personnel records

Email exchange

Member's most recent evaluation

Company Safety Log

List of all employees in the department

Company employee handbook

Map/sketch of the facility

Co-workers

Former steward

HR department records

Security Video Cam recording

Partnership with the Member Resource Center: Report – Triage – Make a Plan

Contact the MRC

Contact the MRC within 24 hours of hearing about an incident, problem, or potential grievance. Collect basic information and your thoughts, but don't wait to "finish" your investigation.

Once your initial fact finding is done, summarize the situation, with the facts as you know them so far. Contact the MRC Rep, and together analyze your situation and map your specific next steps. For instance, collect the names of witnesses right away, but don't hold up talking to MRC while you are trying to contact them all.

In this way, you and the MRC Rep can continue to gather the full story and documents, while conducting legal research, reviewing bargaining history, and preparing grievance paperwork.

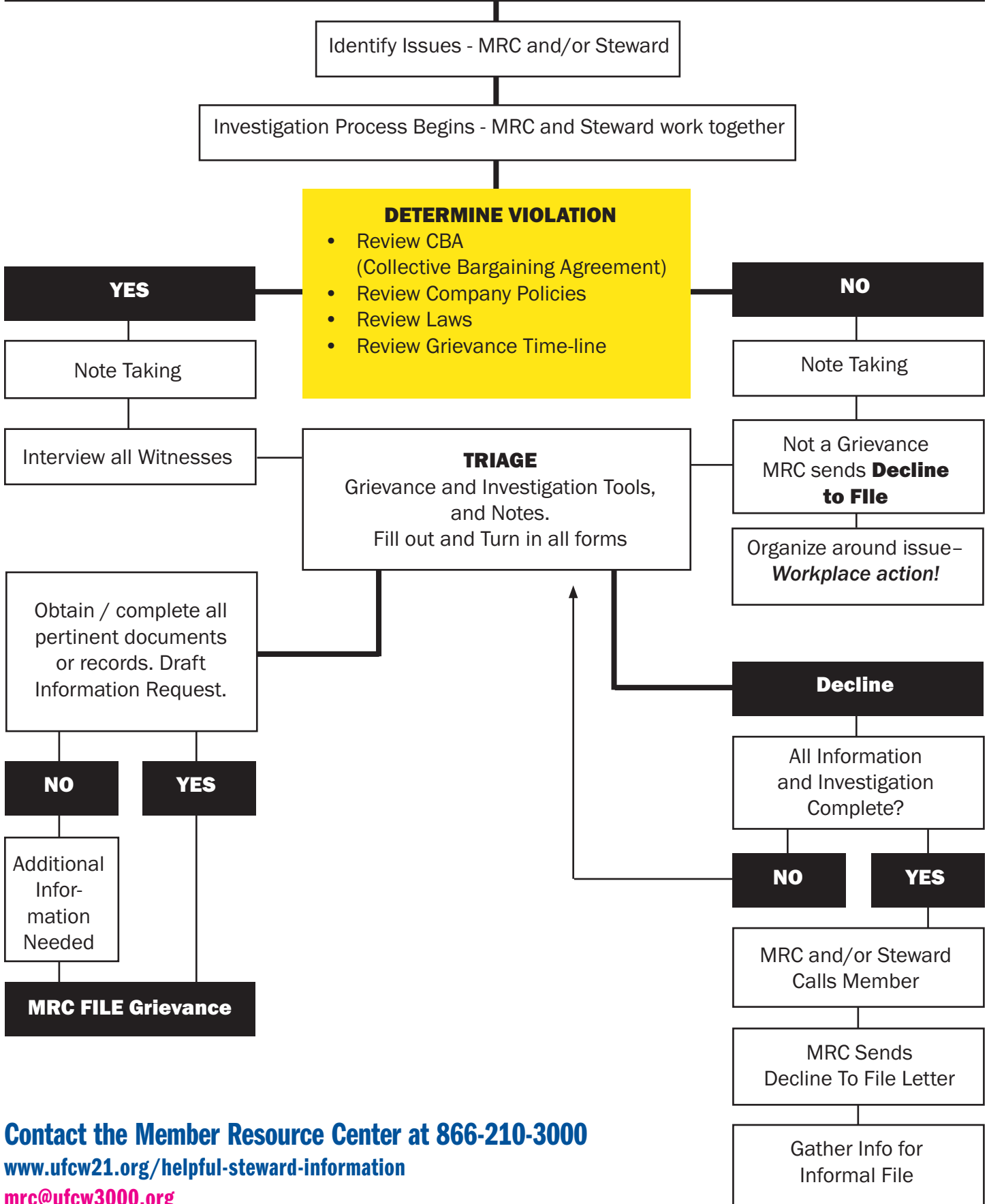
Following are UFCW 3000 Stewards' key tools for working with the MRC.

- **Discussion with witnesses who might have seen or heard anything related to the event.** If someone says, "Harry told me....", go talk to Harry personally. Interview witnesses separately, and don't "lead" them – this will help sort out inconsistencies.
- **Conversation with the supervisor involved in the event.** By meeting informally with the supervisor, you can sometimes learn helpful information and you may find a way to resolve the problem without having to file a grievance.

(Always let the employee and the MRC Rep know you are going to talk to the supervisor before doing so and run any informal resolutions by the MRC.)

Member resource center: Steward Flow Chart **UFCW3000**

MEMBER CALLS



Contact the Member Resource Center at 866-210-3000

www.ufcw21.org/helpful-steward-information

mrc@ufcw3000.org

Grievance Investigation Sheet

*This document is to be used as an investigatory tool and can be filled out by Reps. or Stewards.
This document is property of UFCW 3000 and should not be submitted to any employer.
Member Resource Center: **866-210-3000**

Name Of Grievant

Department

Title

Hire Date

Date Of Birth

Wage Rate

Member Number

Address

City

State

Zip

Home Phone

Mobile Phone

Name Of Immediate Supervisor

Name Of Unit Rep (Steward)

What happened? Also describe previous incidents that may be related.

Who was involved? Include names and titles: (include witnesses)

When did the incident occur? Include date and time:

Where did the incident occur? Include Specific location:

Why is this an issue? List alleged violation: contract, policy, unfair treatment, past practice, local, state, or federal law, and/or other:

Signature _____

Date _____

UFCW3000

Note: Please keep a copy of this form for your records.

Preparing & Presenting the Grievance

Preparation is the key to success in most things; grievance handling included. While our goal is to achieve a fair settlement at the lowest possible level, we always prepare carefully, professionally, thoroughly for the strongest case at the highest level. The MRC Rep will take the lead in many of the steps below. The Steward has a key role in preparing the grievant, attending the meeting, and witnessing managements' statements and actions. Work together and make a plan!

Good teamwork between MRC, Steward and grievant will hold management accountable and the membership unified.

ANALYZE THE CASE

- Review all the evidence; fill in any gaps
- Distinguish between allegations and facts. For instance, ***“Sarah gets most of the overtime”*** versus ***“Sarah worked overtime on the 7th, 14th, 21st, and 28th of last month, for a total of 16 hours. No other employee worked that many overtime hours.”***
- Consider: is this an opportunity to file a group grievance, a policy grievance, or a union grievance? Is it an unfair labor practice (ULP)?
- Work with the MRC to research the local's grievance file for past grievances or similar situations. Discuss the grievance with other stewards and staff (maintaining confidentiality) to get their insights.
- What resolution do you seek? What does the grievant want out of this situation? What management actions, or pay or benefits, would make the grievant whole?
- Anticipate management's arguments, questions and point of view; know how you will respond to each.

WRITE THE GRIEVANCE

- Write a clear, simple, brief description of what happened that caused a grievance to be filed
- Cite contract articles violated, and add, ***“and all other relevant contract articles and rules.”***
- Double check the language in the contract regarding grievance forms
- Ask for a remedy and include, ***“and all other benefits to which the grievant is entitled.”***

PREPARE THE MEMBER

- Prepare the grievant for the First Step meeting with management. They may never have filed a grievance before and may not know what to expect.
- Reassure them: They are not alone; we are in this together. We will be there to fight for them and their rights. At the same time, be direct with them about the strengths and weaknesses of the case. We cannot predict the outcome in advance.
- Describe the setting: who will be there from management, how long the meeting will last, how the grievance will be presented, the respective roles of MRC, steward, and member.
- Help anticipate how the conversation will go.

- Review with the grievant what they will say or not say during the meeting. Prepare the grievant for what you believe management will say and do.
- Make a plan for how you will call a caucus, if necessary, to communicate privately.
- Reiterate the importance of sticking to the subject; avoid being provoked; avoid becoming hostile or belligerent.

PRESENT THE GRIEVANCE

Remember the Equality Rule: when representing a member, you are management's equal. Treat yourself, your grievant and the supervisor with respect; expect and insist on respect in return

BEFORE THE MEETING

- Know what you want to accomplish in the meeting. Know the right tone to take with the Employer to accomplish your goals.
- Write an outline of your presentation. Practice the presentation aloud.
- Make sure your team knows what you plan to say, and what you hope to hear from management

YOUR PRESENTATION

- Remain cool, calm and collected. Be positive. Use a friendly down-to-business approach, without making threats. Avoid bluffing your way through the meeting.
- Describe the problem, the violation(s), and the resolution you seek.

BURDEN OF PROOF

1. In the case of discipline/discharge, the burden of proof is on the employer to prove their case.
2. The burden of proof on contract language is on the union. It is the union's responsibility to prove our position in the grievance meeting.

MANAGEMENT RESPONSE

- Listen for management's main point, and for possible openings to resolve the grievance.
- Your goal is fair resolution at the lowest possible step. If you come to agreement, get it in writing. If management is unwilling to settle, be prepared to appeal to the next step.
- Don't argue among your team about what management says, alleges, or offers. If necessary, call a caucus to step outside and to discuss.

THROUGHOUT

- Stay focused on the issues, not the persons or personalities
- Take detailed notes of what is said during the meeting.
- Make notes of documents you need to request from management

CLOSING

- State your understanding of what, if any, resolution was reached.
- If there is no resolution, state what will happen next after the conclusion of the meeting. This will help avoid misunderstandings later.

DEBRIEF

After the meeting, gather your team to debrief. Did you accomplish your goals? What are the next steps?

Resources for Leaders

UFCW 3000 Web site: www.ufcw3000.org

UFCW 3000 Member Resource Center: **866-210-3000**

Washington State Labor Council: www.wslc.org

The Stand- news about working people standing together in Washington State! www.thestand.org/

U.S. Equal Employment Opportunity Commission: www.eeoc.gov/

Washington State Human Rights Commission: www.hum.wa.gov/

Unemployment Law Project: unemploymentlawprojec.org

Project Help: www.projecthelpwa.com

Office of the Ombuds: ombuds.selfinsured.wa.gov/

Job Accommodation Network (JAN): askjan.org/index.cfm

Northwest Immigrant Rights Project: www.nwirp.org

Washington Paid Family Medical Leave: paidleave.wa.gov/

Washington State Workers' Rights Manual On-line: www.RightsAtWorkWA.org

Find Out If I Am Registered to Vote: voter.votewa.gov/WhereToVote.aspx

My Union Rep is:

Their phone number is:

WWW.UFCW3000.ORG

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