

PAY ME NOW, OR PAY ME LATER

Tips for Grievance Handling & Arbitration Preparation

Robert M. Weaver
CWA District 3 Counsel
Decatur, Georgia

Does this seem familiar?

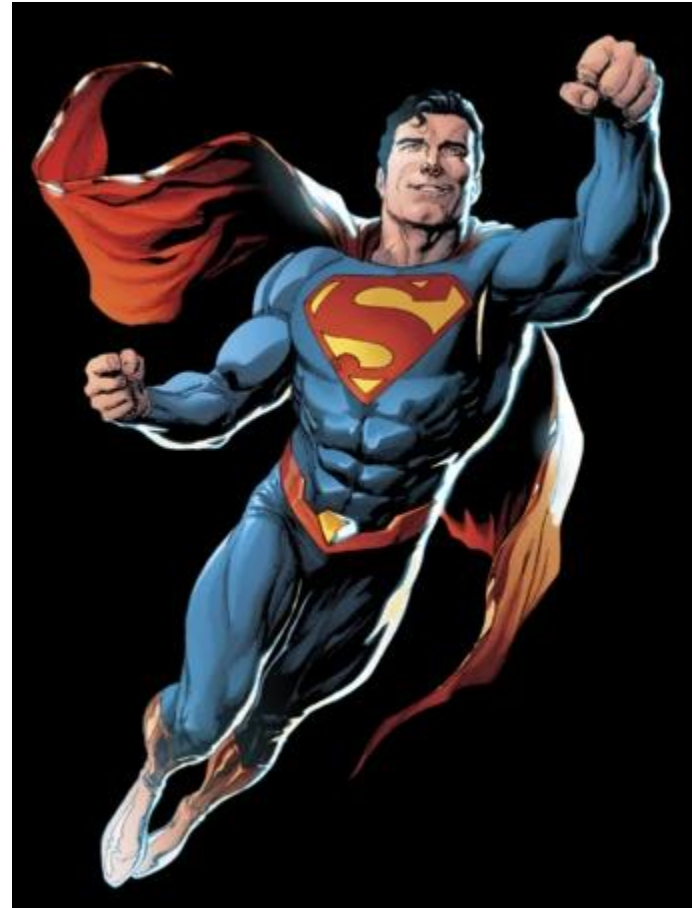


A Local Union Official is:

- Administrator
- Bookkeeper
- Organizer
- Lobbyist
- Go Between
- Referee
- Fixer
- Room Mother
- Chief Cook & Bottlewasher

And don't forget . . .

Handler of Grievances!



Two Main Roles in the Grievance & Arbitration Process

Advocate for Members



Defender of the CBA



Defender of the CBA (II)



“Successful” Grievance Handling?

“Pay me now, or pay me later”

Favorable Resolution

or

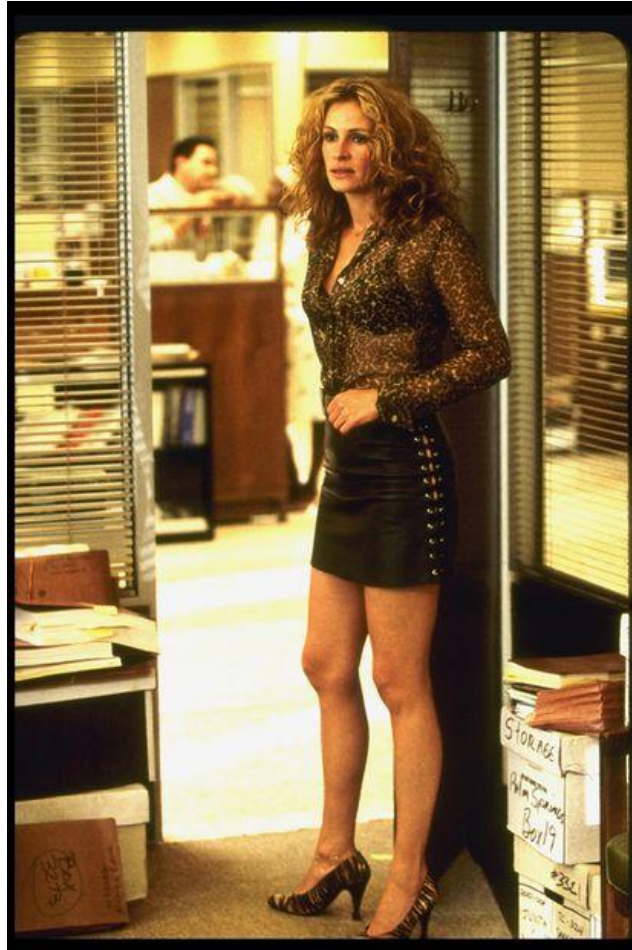
Preparing the Grievance for Arbitration

Another “Successful” Outcome

Satisfied Members

(win, lose or draw)

A Role Model?



The Real Role Model



Another “Successful” Outcome

(regrettable, but important)

Our ability to defend

Duty of Fair Representation
claims

Where to Start?

KEEP IN MIND:

The Facts

NEVER

Speak for Themselves

The Grievance Handler's Job

1. Document

2. Document

3. Document

SO YOU CAN TELL THE
STORY FOR THE FACTS

Types of Grievances

Discipline & Discharge

Contract Interpretation

Past Practice

Discipline & Discharge

- Company has the burden of proof
- The “Seven Tests of Just Cause”
 - Notice of the “rule”?
 - Reasonable rule & consistent with CBA?
 - Investigation?
 - Fair & objective investigation?
 - Proof of the conduct?
 - Disparate treatment?
 - Appropriate penalty?

Are the “Seven Tests” Gospel?

- Maybe; Maybe Not
- Criticism of the Seven Tests by Arbitrators
 - Whether “Gospel” or not, good lens through which to view discharge cases

Weaver's Three Tests

1. Can the Company prove that the Grievant “did it”?
2. Even if the Grievant “did it”, does the penalty fit the crime (“firing offense”)?
3. Can the Arbitrator sleep at night if the Grievant is reinstated?

Contract Interpretation

We have the burden of proof

1. What provision(s) of the CBA are implicated?
*use “all that apply” wiggle room
2. Is the contract language clear, or is it ambiguous/subject to interpretation?
3. If the language is ambiguous, what evidence supports our interpretation?

Evidence of Intent or Meaning

- Bargaining History
 - *Notes & proposals
 - *If you participated, you are a witness
- Communications with Management
- Application in the Past
- Prior Disputes or Grievances
- Same Language in Other Parts of the CBA
 - *e.g., “needs of the business” or “service requirements”

Example

The Company will not be required to reassign a work assignment in progress at the end of the employee's tour because of his/her position on the overtime report.

Example (II)

All work from and including the
Serving Terminal (including fiber
drop) up to and including the
customer's premise for IP-enabled
services

Example (III)

When sufficient volunteers for overtime have not been obtained to meet the Company's service requirements, an employee may be required to work up to two (2) hours per day **in addition to the regularly scheduled tour**

Past Practice

Past practices can support a grievance if:

1. Practice repeated over extended period
2. Both parties aware and acknowledge
3. Does not conflict with the CBA
4. Relates to a “pocketbook” issue

Documenting Grievances

The key to “pay now or pay later”:

1. Document what happened

and

2. Explain why the facts support the grievance

The Five W's

WHO?

WHEN?

WHERE?

WHAT?

WHY?

- The basics in any grievance file
- A start, but maybe not the end of the task

Who?

- *Names of the Grievant(s), including contact information
- *Co-workers involved or with information, including contact information
- *Management personnel involved or with information

When?

- When did the triggering event occur?
- When did the Grievant learn of the event?
- When did the Local learn of the event?
- Is the triggering event or problem on-going?

Where?

- Where did the triggering event or incident occur?

Seems obvious, but remember that others may not have the same information as you

What?

- Describe the triggering event or problem in detail
- What was said or done at the time?
- How has same or similar event been dealt with in the past?

Why?

The heart of the matter:

Why is the underlying event or issue a problem?

Describe it in a way that makes sense to a third party, or a third grader

Attendance Issues

- Progressive discipline followed? Track it
- Clear notice to improve attendance?
- Employee given time to improve?
- Employee updated on status?
- EAP?
- What has employee done to improve?
- Disparate treatment?
- FMLA time involved?

Job Performance Issues

- Performance standard/rule established? How?
- Standard/rule communicated? How?
- What evidence of performance failure?
- How was failure communicated? When?
- Progressive discipline followed? Track it
- How does Grievant compare to others?
- Exceptions applied? Get details
- Disparate treatment?

Misconduct Issues

- What policy, standard or rule was violated?
- Rule communicated to employees? How?
- Employees aware of consequences?
- Grievant able to explain? Details?
- Disparate treatment?
- Progressive discipline followed?
- Punishment fit the crime?

Defending DFR Claims

Among the NLRB's attacks on organized labor and working people are changes to the standard applied to DFR claims

When it comes to processing grievances

NEGLIGENCE

is no longer a defense

NLRB Focus on Communication

COMMUNICATION WITH THE GRIEVANT

1. About the status of the grievance at every step of the process
and
2. Before making any decision on the merit of a grievance, especially about any decision not to pursue further or arbitrate, especially in discharge cases

Practices to Implement

- Grievance tracking system
- Respond to the Grievant promptly
- Cover for anyone absent for extended period
- Promptly update Grievant on status
- Contact grievant before closing out grievance
- Document all contacts with Grievant

Served with NLRB Charge?

Contact Counsel
before responding to the NLRB

The Two C's

Every Grievance Presentation

and

Every Grievance Write-up

should be

COMPREHENSIVE

&

COMPELLING

“Pay me now, or pay me later”

Start with your best closing argument to

- *Management

- *Staff

- *Arbitrator

and work backwards

Questions?

Comments?

Suggestions?

War Stories?