

HANDLING THE ADVANCED STEPS OF THE GRIEVANCE PROCEDURE

The role of the upper level managers in handling advanced steps of the grievance procedure are:

- Resolve without dilution of management's rights/authority
- Consider if there is any new information that was not known by the parties in earlier steps.
- Consider if there has been poor/incomplete investigation in earlier steps.
- Consider if there has been discrimination in earlier steps.
- Consider opportunity to settle and improve management's rights, flexibility, etc.
- Gain better understanding of union's position.
- Demonstrate solidarity if appropriate.

Some possible courses of action by the manager handling the advanced step grievance are:

- Resolve without conciliation.
- Support earlier step decision.
- Remand to earlier steps.
- Offer settlement in presence of or through lower level supervisors.
- Reverse faulty decision through or in presence of lower level supervisor.

The answer to an advanced step grievance is an offer of settlement and not an admission of guilt or liability. It is often an offer of compromise. The manager should present advanced step answers as offers or options not as positions or mandates.

In order to preserve and enhance the authority of the front level supervisor the manager should follow the basic guidelines of:

- 1) "never reverse or modify an earlier step decision of the grievance procedure until it has been discussed with supervisors who handled the earlier steps."
- 2) "if it is necessary to reverse or modify the earlier step decision of the grievance procedure, the manager should attempt to do so in the presence of the supervisor who handled the earlier step, or remand the grievance back to the earlier step supervisor" (in light of "new information" learned, etc.).

Top level managers should not be hasty to utilize "volume of grievances" as an indication of supervisory competency. Many factors, other than simply supervisory competency, influence or motivate grievance activity. Some of those factors include political considerations, duty of fair representation considerations, time proximity in relation to union elections or collective bargaining activity, etc., none of which are directly related to supervisory competency. Some realistic measures or indicators of supervisory competency, however, include whether or not the supervisor handled a grievance efficiently and professionally, and whether or not a supervisor continues to violate the Agreement or rules or policies, once such errors are pointed out through the grievance procedure or otherwise.

CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE**PREPARATION BEFORE THE PART 1 MEETING OF THE ADVANCED STEP**

- ___ REVIEW THE GRIEVANCE PROCEDURE IN ITS ENTIRETY TO ENSURE THOROUGHNESS.

- ___ REVIEW NOTES FROM PREVIOUS STEP(S) OF THE GRIEVANCE PROCEDURE BEFORE MEETING WITH THE GRIEVANT AND REPRESENTATIVE. BRIEFLY INFORM THE SUPERVISOR WHO CONDUCTED THE PREVIOUS STEP THAT YOU WILL BE MEETING WITH THE GRIEVANT AND REPRESENTATIVE. (IT MAY BE APPROPRIATE FOR THE SUPERVISOR TO BE THE SECOND MANAGEMENT REPRESENTATIVE IN THE ADVANCED STEP MEETING.)

- ___ ASSEMBLE AND REVIEW APPROPRIATE AGREEMENT CLAUSES, RULES, POLICIES, DOCUMENTS, LETTERS, PROCEDURES, ETC., WHICH ARE INVOLVED IN THE GRIEVANCE AND HAVE AT LEAST TWO COPIES AVAILABLE DURING THE MEETING FOR REFERENCE. BRING COPIES OF THE AGREEMENT TO THE MEETING.

- ___ ARRANGE FOR A SECOND SUPERVISORY/MANAGEMENT REPRESENTATIVE OR LABOR RELATIONS REPRESENTATIVE TO ASSIST YOU AND TO BE PRESENT DURING THE MEETING AS A WITNESS AND TO TAKE NOTES. REVIEW YOUR MEETING CHECKLIST/OUTLINE WITH THE SECOND SUPERVISORY/MANAGEMENT REPRESENTATIVE BEFORE THE GRIEVANT AND THE REPRESENTATIVE ARRIVE. NOTE: IF THE SUPERVISOR WHO CONDUCTED THE EARLIER GRIEVANCE STEP IS GOING TO BE PRESENT DURING THE ADVANCED STEP, DO NOT ALLOW THE UNION REPRESENTATIVE OR GRIEVANT TO UTILIZE THE MEETING AS A "WHIPPING POST" TO HARASS, INTIMIDATE, OR DISRESPECTFULLY CONFRONT THE SUPERVISOR.

- ___ INFORM THE LABOR RELATIONS DEPARTMENT THAT YOU WILL BE CONDUCTING THE MEETING AND BRIEFLY CONFER WITH THE LABOR RELATIONS DEPARTMENT BEFORE THE MEETING.

- ___ IF THE GRIEVANCE INVOLVES A POSSIBLE AFFIRMATIVE ACTION ISSUE, CONFER WITH THE COMPANY'S AFFIRMATIVE ACTION REPRESENTATIVE BEFORE CONDUCTING THE MEETING.

- ___ IF IT BECOMES NECESSARY TO CHANGE THE MEETING DATE OR TIME, ATTEMPT TO ESTABLISH AN EARLIER DATE RATHER THAN TO DELAY THE MEETING.

**CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE
DURING THE PART 1 MEETING OF THE ADVANCED STEP GRIEVANCE**

- ___ DO NOT TAPE RECORD THE MEETING. TAKE CHRONOLOGICAL TIME SEQUENCE NOTES.

- ___ IF THE TIME LIMITS HAVE BEEN EXCEEDED, ASK THE GRIEVANT AND THE REPRESENTATIVE TO DESCRIBE A REASON FOR THE LATENESS. INFORM THEM THAT FAILURE TO SATISFY THE TIME LIMITS MAY PREVENT THE GRIEVANCE FROM BEING ANSWERED OR FROM BEING ARBITRABLE, BUT LISTEN TO THE BASICS OF THE GRIEVANCE IN PART ONE OF THIS IMMEDIATE STEP. CONSIDER IF MODIFICATION OF THE TIME LIMIT IS APPROPRIATE OR IF THE GRIEVANCE WILL BE DENIED ON THE BASIS OF "UNTIMELINESS." STATE YOU WILL HEAR THE GRIEVANCE AT THIS TIME AS A COURTESY, BUT THAT YOU RESERVE YOUR RIGHT TO CHALLENGE ARBITRABILITY BASED ON LACK OF TIMELINESS.

- ___ STATE A DESIRE TO RESOLVE THE GRIEVANCE.

- ___ ASK THE GRIEVANT AND REPRESENTATIVE TO IDENTIFY THE AGREEMENT PORTIONS THEY ARE ALLEGING TO HAVE BEEN VIOLATED. PROVIDE THEM COPIES OF THE AGREEMENT AND ASK THEM TO READ AND DISCUSS THE PORTIONS CITED.

- ___ ASK THE GRIEVANT AND THE REPRESENTATIVE TO SPECIFICALLY EXPLAIN THEIR ALLEGATIONS AND ADJUSTMENTS OR REMEDIES DESIRED. OPEN THE AGREEMENT AND READ THE CITED PROVISIONS TOGETHER AND ASK, "HOW ARE YOU ALLEGING THESE PROVISIONS WERE VIOLATED?"

- ___ REVIEW TOGETHER ANY APPROPRIATE RULES, POLICIES, PROCEDURES, LAWS, ETC., CITED AS BEING VIOLATED BY MANAGEMENT AND ASK THEM TO SPECIFICALLY EXPLAIN HOW THEY BELIEVE THE RULES, ETC., WERE VIOLATED.

- ___ DO NOT DISCUSS HYPOTHETICALS DURING THE MEETING. DEAL WITH WHAT ACTUALLY HAPPENED. IF ASKED, "WHAT WOULD YOU DO IF ...?" OR "WHAT WOULD HAVE BEEN DONE IF...?" OR "WHAT WILL YOU DO IN THE FUTURE IF ...?", THEN ASK THE GRIEVANT OR THE REPRESENTATIVE IF THEY KNOW WHETHER OR NOT THE "IF ..." ACTUALLY OCCURRED. IF SO, DEAL WITH IT. IF NOT, INFORM THEM YOU WILL DEAL IN YOUR DISCUSSION OF THIS GRIEVANCE ONLY WITH WHAT ACTUALLY HAPPENED.

- ___ ASK IF THERE IS ANY NEW INFORMATION WHICH HAS NOT BEEN BROUGHT FORTH EARLIER. ASK FOR EXPLANATIONS, WHERE DIFFERENCES EXIST BETWEEN THE PRESENT ALLEGATIONS, ADJUSTMENTS REQUESTED, OR FACTS AS COMPARED TO WHAT WAS PRESENTED IN THE INITIAL STEP(S).

(Continued)

DURING THE PART 1 MEETING OF THE ADVANCED STEP GRIEVANCE

(CONTINUED)

___ NEVER REFUSE TO LISTEN TO ANY NEW INFORMATION PRESENTED. HEAR IT AT THE TIME IT IS BROUGHT FORWARD BUT STATE AT THAT TIME IT MAY NOT BE ARBITRABLE AS IT IS UNTIMELY; BUT THAT YOU WILL LISTEN.

___ IF NEW INFORMATION IS PRESENTED, ASK WHY IT WAS NOT BROUGHT FORTH EARLIER OR IF IT WAS KNOWN EARLIER. ASK WHEN DID THE GRIEVANT OR REPRESENTATIVE FIRST LEARN OF THE NEW INFORMATION.

___ ASK "SPECIFICALLY WHY WAS IT NOT PRESENTED EARLIER?" STATE TO UNION YOUR DISAPPOINTMENT THAT THEY DID NOT BRING IT FORWARD EARLIER. INFORM UNION THAT IT IS YOUR DESIRE TO ALWAYS SETTLE GRIEVANCES AT EARLIER STEPS AND THAT WITHHOLDING INFORMATION FRUSTRATES THE PURPOSE OF THE GRIEVANCE PROCEDURE, AND IF NOT "POOR FAITH," IT IS CERTAINLY "POOR PRACTICE" TO WITHHOLD INFORMATION.

___ ATTEMPT TO DETERMINE:

___ WAS THE NEW INFORMATION KNOWN OR SHOULD IT HAVE BEEN KNOWN BY EITHER PARTY AT THE EARLIER STEP?

___ WAS INFORMATION PURPOSEFULLY WITHHELD?

___ DOES NEW INFORMATION AFFECT/CHANGE EARLIER DECISION?

___ DOES NEW INFORMATION BROUGHT FORTH VIOLATE ANY AGREEMENT PROVISIONS? (TIMELINESS, ARBITRABILITY, OTHER)

___ MANAGEMENT SHOULD STATE THE FOLLOWING WHEN "NEW INFORMATION" IS BROUGHT FORTH BY THE UNION IN THE ADVANCED STEPS:

"WE BELIEVE THAT PART OF YOUR RESPONSIBILITY IN BRINGING FORTH A GRIEVANCE IS TO INVESTIGATE AND TO INTELLIGENTLY PREPARE AND PRESENT FACTS WHICH COULD OR SHOULD HAVE BEEN KNOWN BY THE UNION AND UPON WHICH YOUR GRIEVANCE IS JUSTIFIED. TO FILE A GRIEVANCE UPON A SPECIFIC SET OF FACTS AND THEN TO SEEK OUT SUPPORTING FACTS LATER TO JUSTIFY THE INITIAL CLAIM OR ALLEGATION IS COUNTER TO THE INTENT OF THE GRIEVANCE PROCEDURE AS STATED IN THE AGREEMENT."

AND...REFERENCE SHOULD BE MADE TO THOSE PROVISIONS IN THE AGREEMENT WHICH ENCOURAGE OR BIND THE PARTIES TO PROMOTE HARMONY AND COOPERATION, TO ACT IN GOOD FAITH, TO SOLVE PROBLEMS IN THE SIMPLEST AND MOST DIRECT MANNER, TO SETTLE GRIEVANCES TO THE GREATEST EXTENT AT EARLIER STEPS.

(Continued)

DURING THE PART 1 MEETING OF THE ADVANCED STEP GRIEVANCE

(CONTINUED)

IF AGREEING TO ACCEPT NEW INFORMATION, MANAGEMENT SHOULD STATE:

"WE ARE BOTH CONCERNED AND DISAPPOINTED THAT THIS NEW INFORMATION WASN'T BROUGHT FORTH WHEN WE REQUESTED IT IN THE EARLIER STEPS. YOUR FAILURE TO DO SO, WHILE IT MAY NOT BE POOR FAITH AT THIS POINT, CAN CERTAINLY BE CONSTRUED AS POOR PRACTICE AND WE BELIEVE IT FRUSTRATES THE INTENT OF THE GRIEVANCE PROCEDURE AS WELL AS REPRESENTATIONS MADE BY THE UNION DURING BARGAINING. WE ENCOURAGE THE UNION TO PROVIDE INFORMATION IN A TIMELY MANNER IN THE FUTURE WHICH IS ESSENTIAL TO PERMIT THE COMPANY TO INTELLIGENTLY PREPARE FOR THE RESOLUTION OF GRIEVANCES."

AGREEMENT TO ALLOW INTRODUCTION OF "NEW INFORMATION" SHOULD BE CONSIDERED....

IF THE INFORMATION WAS NOT PURPOSEFULLY WITHHELD IN ORDER TO PLACE THE EMPLOYER IN AN EMBARRASSING OR A COMPROMISING POSITION.

IF THE INFORMATION WAS ONLY RECENTLY DISCOVERED AND IF IT IS SIGNIFICANT IN RESOLVING THE GRIEVANCE EITHER WAY.

IF IT IS OBVIOUS THAT THE NEW INFORMATION HAS NO EFFECT UPON/DOESN'T ALTER EARLIER CONSIDERATIONS OR IF IT IS A VERY MINOR CONSIDERATION.

IF THE INFORMATION WAS NOT SOUGHT BY THE MANAGEMENT REPRESENTATIVE AT EARLIER STEP.

NOTE: IT MAY BE ADVANTAGEOUS TO ALLOW THE NEW INFORMATION; THEN IN RESPONDING TO THE GRIEVANCE, MENTION THAT IT WAS ALLOWED BUT THAT IT MADE NO DIFFERENCE IN THE DECISION.

NOTE: IF IT IS AGREED TO ACCEPT THE INFORMATION AT THE PRESENT STEP, ALWAYS IN WRITING INFORM THE UNION OF YOUR DISAPPOINTMENT THAT IT WAS NOT BROUGHT FORTH IN A TIMELY MANNER AND DISCOURAGE FUTURE WITHHOLDING.

THE MANAGER MAY WANT TO CONSIDER REMANDING THE GRIEVANCE TO EARLIER STEP AS A RESULT OF "NEW INFORMATION."

CONSIDER THE POSSIBILITY OF EXTENDING TIME LIMITS BY MUTUAL CONSENT AND IN WRITING AND ALLOWING THE UNION TO FILE A NEW INITIAL STEP GRIEVANCE, BUT IF SO, IN THE MUTUAL CONSENT LETTER STATE MANAGEMENT'S CONCERN/DISAPPOINTMENT THAT SUCH INFORMATION WAS NOT BROUGHT FORTH IN TIMELY FASHION IN THE EARLIER GRIEVANCE. (MILD FORM OF PROTEST)

REMAND THE PROCESS BACK TO EARLIER STEP SIMPLY BY MODIFYING/CHANGING TIME LIMITS IN WRITING TO PERMIT REMANDING, ACCORDING TO THE AGREEMENT.

IN EITHER CASE THE UNION SHOULD REQUEST IN WRITING THAT THE GRIEVANCE BE REMANDED TO EARLIER STEPS IN ORDER TO ALLOW CONSIDERATION OF THE NEW INFORMATION.

(Continued)

DURING THE PART 1 MEETING OF THE ADVANCED STEP GRIEVANCE

(CONTINUED)

___ IN SOME CASES THE MANAGER MAY DECIDE TO REFUSE TO ALLOW "NEW INFORMATION."

___ IN ALL CASES WHERE IT CAN BE SHOWN THAT THE UNION PURPOSEFULLY WITHHELD THE INFORMATION, MANAGEMENT SHOULD REFUSE TO ALLOW THE INTRODUCTION OF THE NEW INFORMATION WITH A STRONG STATEMENT TO THE UNION IN WRITING, QUOTING THE CONTENTS OF THE PARAGRAPH AT THE TOP OF THE PRECEDING PAGE.

___ MANAGEMENT CAN TAKE THE POSITION THAT THE INFORMATION IS "UNTIMELY." THEREFORE "NON-ARBITRABLE" AND GO TO ARBITRATION SEPARATELY ON ISSUE OF ARBITRABILITY.

___ NOTE: IF RULED ARBITRABLE, THEN REQUEST THE GRIEVANCE BE REMANDED TO EARLIEST STEP OF GRIEVANCE PROCEDURE.

___ UNDER THE "DOCTRINE OF LACHES" MANAGEMENT SHOULD CLAIM THAT BY ATTEMPTING TO UNJUSTLY ENRICH ITSELF THE UNION HAS WAIVED ITS RIGHTS TO GRIEVE IN THE MATTER, USING THE NEW INFORMATION.

___ IF THE INFORMATION WAS PURPOSEFULLY WITHHELD IN ORDER TO OBTAIN A LARGER OR MORE FAVORABLE SETTLEMENT FOR THE EMPLOYEE OR THE UNION, THE DOCTRINE OF LACHES MAY APPLY, WHICH IS DEFINED AS NEGLIGENCE TO ASSERT RIGHT OR CLAIM WHICH, TAKEN TOGETHER WITH LAPSE OF TIME AND OTHER CIRCUMSTANCES CAUSING PREJUDICE TO ADVERSE PARTY; NEGLIGENCE OR OMISSION TO ASSERT RIGHT AS, TAKEN IN CONJUNCTION WITH LAPSE OF TIME AND OTHER CIRCUMSTANCES, CAUSES PREJUDICE TO ADVERSE PARTY; UNREASONABLE OR UNEXPLAINED DELAY IN ASSERTING RIGHT WHICH WORKS DISADVANTAGE TO ANOTHER. (SEE PAGE 787, *BLACK'S LAW DICTIONARY*, FIFTH EDITION 1979. WEST PUBLISHING COMPANY.)

___ NOTE: BOTH PARTIES HAVE THE DUTY TO MITIGATE DAMAGES TO THE OTHER PARTY, AND THE PRACTICE OF "WAITING AND WATCHING" OR "WAITING IN THE WOODS" TO GET WHAT THE OTHER PARTY'S REACTION MIGHT BE IS IMPROPER.

___ IF THE GRIEVANT OR REPRESENTATIVE CLAIM DISPARATE TREATMENT ("YOU TREATED ME DIFFERENTLY") ASK FOR HIM/HER TO BE SPECIFIC IN IDENTIFYING:

- 1) WHO WAS TREATED DIFFERENTLY UNDER SIMILAR CIRCUMSTANCES?
- 2) WHEN DID THE OTHER INSTANCE(S) OR TREATMENT(S) OCCUR?
- 3) WHO IN MANAGEMENT IS OR SHOULD BE AWARE OF THOSE EARLIER INSTANCES? (FOLLOW UP AFTER THE MEETING AND ASK FOR THE SAME INFORMATION ABOVE IN WRITING, OR ASK IF THERE IS ANY OTHER INFORMATION TO SUPPORT SUCH ALLEGATION.)

___ ATTEMPT TO RECAP VERBALLY (WITHOUT PROVIDING ANSWERS) THE "ISSUES" OR CLAIMS RAISED BY THE GRIEVANT AND THE REPRESENTATIVE. (LIST THE "ISSUES" ON PAGE ASG-2A.)

REMEMBER: THERE IS NO NEED TO ANSWER ANY OF THOSE ISSUES IN THE PART 1 MEETING OF THE PRESENT STEP.

(Continued)

DURING THE PART 1 MEETING OF THE ADVANCED STEP GRIEVANCE

(CONTINUED)

- ___ ASK THE GRIEVANT, "IS THERE ANYTHING ELSE BOTHERING YOU?"

- ___ ASK BOTH THE GRIEVANT AND THE REPRESENTATIVE, "IS THERE ANY OTHER INFORMATION OF WHICH YOU ARE AWARE WHICH MIGHT ASSIST ME IN REACHING MY DECISION IN THIS MATTER?"

- ___ REPEAT WHAT YOU UNDERSTAND THE GRIEVANCE TO BE.

- ___ REPEAT BACK WHAT YOU UNDERSTAND THE ADJUSTMENT REQUESTED TO BE.

- ___ ASK THE GRIEVANT, "WHAT WILL SATISFY YOU IN ORDER TO RESOLVE THIS GRIEVANCE?"

- ___ BEFORE ENDING THE MEETING PERFORM THE "AROUND-THE-HORN" EXERCISE OF ASKING ALL OF THE PARTIES IN THE MEETING IF THEY HAVE ANYTHING ELSE THEY WOULD LIKE TO DISCUSS OR BRING FORTH IN REGARDS TO THIS GRIEVANCE.

- ___ INFORM THE GRIEVANT AND THE REPRESENTATIVE, "THANK YOU FOR BRINGING THIS MATTER TO MY ATTENTION. THIS IS THE WAY WE PREFER TO SOLVE PROBLEMS. I WILL GET AN ANSWER BACK TO YOU ACCORDING TO THE TERMS OF THE GRIEVANCE PROCEDURE."

REMEMBER: NO ANSWER IS YET NEEDED.

CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE

FINALIZING INFORMATION NEEDED FOR DECISION MAKING AFTER THE PART 1 MEETING / BEFORE THE PART 2 MEETING

- ___ REVIEW THE INFORMATION AND DETERMINE IF THERE IS A NEED TO INVESTIGATE FURTHER, IN ORDER TO DETERMINE:
- 1) DID THE FACTS PRESENTED ACCURATELY REFLECT OR DEPICT WHAT ACTUALLY OCCURRED?
 - 2) WAS THERE INAPPROPRIATE ACTION OR A VIOLATION OF THE AGREEMENT THAT REQUIRES ADJUSTMENT?
- ___ TALK TO OTHERS WHO MAY HAVE ADDITIONAL INFORMATION THAT PERTAINS TO THE GRIEVANCE.
- ___ REVIEW THE FACTS TO DETERMINE:
WHO - WHAT - WHEN - WHERE - WHY - HOW.
- ___ LIST THE "ISSUES"/"INTERESTS" PRESENTED BY THE GRIEVANT AND THE REPRESENTATIVE AND COMPARE THEM TO THE ISSUES IDENTIFIED IN EARLIER STEPS OF THE GRIEVANCE. (ASG-2A)
- ___ REVIEW THE APPROPRIATE AGREEMENT CLAUSES, RULES, POLICIES, PROCEDURES, ETC., AND OTHER LETTERS AND DOCUMENTS INVOLVED.
- ___ CONSIDER "IF," IN MAKING THE DECISION OR IN THE ACTION WHICH LED TO THE GRIEVANCE THE SUPERVISOR OR MANAGER INVOLVED:
- 1) FAILED TO FOLLOW COMPANY RULES, POLICIES, PROCEDURES.
 - 2) ACTED IN A DISCRIMINATORY FASHION.
 - 3) ACTED IN AN ARBITRARY OR CAPRICIOUS FASHION.
- ___ DETERMINE RESPONSE OR "ANSWERS" TO THE "ISSUES" PRESENTED BY THE GRIEVANT AND THE REPRESENTATIVE DURING THE PART 1 MEETING. (UTILIZE PAGE ASG-2A TO LIST THE ANSWERS YOU WILL DISCUSS.)
- ___ DISCUSS FINDINGS WITH THE SUPERVISOR WHO HANDLED THE PREVIOUS STEP(S) OF THE GRIEVANCE PROCEDURE BEFORE FORMALIZING YOUR DECISION.
- ___ UTILIZE THE CONSENSUS DECISION-MAKING PROCESS INVOLVING, IN ADDITION TO YOURSELF:
- 1) THE LABOR RELATIONS REPRESENTATIVE OR THE MANAGER OF LABOR RELATIONS.
 - 2) YOUR IMMEDIATE SUPERVISOR OR MANAGER.
- ___ IF APPROPRIATE, CONSIDER REMAND OF THE MATTER BACK TO AN EARLIER STEP OF THE GRIEVANCE PROCEDURE FOR RESOLUTION. DO NOT REVERSE OR MODIFY A SUPERVISOR'S/MANAGER'S DECISION UNLESS IT IS DONE THROUGH OR IN THE PRESENCE OF (IN CONJUNCTION WITH) THAT SUPERVISOR OR MANAGER.

AFTER THE PART 1 MEETING / BEFORE THE PART 2 MEETING

____ Following the initial step grievance meeting during which "you treated me differently" was alleged, the company should send the union a letter (return receipt requested) stating, in part:

During the initial step grievance meeting on (DATE) it was alleged by the union that earlier similar incidents were handled differently. If you intend to utilize a discrimination or disparate treatment theory or defense theory, we respectfully request according to the provisions of the NLRA for each instance alleged:

- 1) The employee's name
- 2) Date of occurrence, and
- 3) Name of the management representative who is knowledgeable of the situation.

Such relevant information should be presented before or during the next grievance meeting in order to allow management to intelligently investigate and verify your claims within the spirit of the grievance procedure.

Under the "good faith" obligation, if either party makes a claim in dealing with the other party, the other party has the right to request information which may be "necessary and relevant" in order to verify that claim. Following a request for information such as outlined above, if no information is brought forth, but if "new information" or "surprise information" is presented at arbitration the company can object. In such a case, AAA 5230 30 0604-87, Arbitrator George Jacobs upheld the company's objection when new information was presented during an arbitration hearing:

"... the company made a specific request to the union....the union made no positive response, and gave every indication that there would be no such defense." "On that basis, the claim of new or surprise evidence could not be honored, and the evidence was excluded."

A similar written request should be made whenever, at any step, the union alleges a law has been violated. Such a request might be:

During the initial step grievance meeting on (DATE) it was alleged by the union that management's action violated a law. Because it is management's sincere desire and intent to abide by all applicable laws binding upon management, and because we are aware of no such alleged violation, we respectfully request, according to the provisions of the NLRA, that you identify specifically which law or laws are allegedly violated, when the alleged violations occurred, and who in management may be aware of the situations. Such relevant information is necessary to allow management to intelligently investigate and verify your claims in the spirit of the law.

CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE

COORDINATING THE FORMAL ANSWER FOR THE ADVANCED STEP PART TWO MEETING

DO THE ITEMS ON THIS PAGE TO COORDINATE WITH OTHER SUPERVISORS AND MANAGERS AND LABOR RELATIONS REPRESENTATIVES TO OBTAIN CONSENSUS.

REMEMBER, THERE IS STRENGTH IN THOROUGHNESS - IT TAKES TIME.

- ___ Don't get side tracked with irrelevant issues and rumors.
- ___ Remember the time limits which apply for your decision.
- ___ Know when to stop talking; don't just look for facts you want to hear. Learn "harmful" facts now, not later.
- ___ Discuss the complaint with other managers/supervisors and the Labor Relations Representative. Obtain a consensus decision.
- ___ Asking questions is a sign of strength, not weakness. Know when to ask for advice.
- ___ Discuss any possible consensus conflicts and resolve them. This is the prudent step before making a decision. Keep upper- and lower-level supervisors and managers abreast of grievance decisions (professional courtesy.)
- ___ Evaluate the facts, opinions, hearsay, and all notes. Consider possible alternate courses of action/decisions. Make the decision based on facts, not opinions/feelings.
- ___ Make notes. Follow up on areas that are still unclear. The supervisor's recommendation is of prime importance, but it should be based on facts and thoroughness.
- ___ Separate and list all issues and claims raised by the employees with corresponding responses for each (use page ASG-2A).
- ___ Compare issues with issues raised in earlier grievance steps.
- ___ Re-read rules, policies, Agreement clauses.
- ___ Read and consider the items on Page ASG-5A&B of this Checklist.
- ___ Consider possible repercussions or potential problems.
- ___ Consider effects of decision on the other supervisors/managers.
- ___ Consider if other employees are "waiting in the woods" to file a similar complaint after decision is announced."

CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE

COORDINATING THE FORMAL ANSWER

BEFORE MAKING A DECISION THE MANAGER AND THE LABOR RELATIONS REPRESENTATIVE SHOULD CONSIDER THESE POINTS.

___ YOUR DECISION ON A COMPLAINT SHOULD SATISFY THE FOLLOWING POINTS. REMEMBER, YOU ARE ANSWERING FOR EVERY OTHER SUPERVISOR AND MANAGER.

___ Your settlement should not weaken, give up, or limit your management's rights to initiate action in the future, or to discipline in the future. It should strengthen your right to do so.

___ Your settlement should not weaken your management's rights to change the means, methods, processes, materials or schedules of production for the future. Do not allow your settlement to give any employee or the union power to veto your right to manage in the future.

___ Your settlement should not guarantee abuse of the rules, policies, or working conditions in the future especially in the areas of abuse of benefits, pay for time not worked, "fair day's work/fair day's wage" principle.

___ Do not let the settlement limit or hamper your flexibility in assigning work, requiring overtime, or in administering any of the rules or policies of the company. Avoid rigidity and maintain flexibility in applying rules and policies during settlement.

___ Do not allow your settlement to start a past practice. Remember your settlement influences other supervisors in other departments. Do not say in the answer, "We won't do this in the future" or "In the future we will..." Do not use words: "promise," "always," "in the future," "never again."

___ CONSIDER THE IMPACT OF YOUR DECISION IN THE LIGHT OF THE ABOVE FIVE AREAS. OTHERWISE, YOU MIGHT CREATE MORE PROBLEMS WITH YOUR DECISION THAN THE INITIAL PROBLEM YOU WERE TRYING TO SOLVE.

___ YOUR DECISION WILL "INFLUENCE" FUTURE SIMILAR SITUATIONS, ESPECIALLY IF THE FORMAT FOR THE ADVANCED STEP ANSWER IS WRITTEN.

CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE

PREPARING THE FORMAL ANSWER FOR THE PART TWO ADVANCED STEP MEETING

NEVER USE COMBINATIONS OF THESE WORDS IN ANNOUNCING YOUR DECISION

OR IN SETTLING A GRIEVANCE

PPROMISE

THESE WORDS WILL ONLY LIMIT YOUR FUTURE FLEXIBILITY OR WATER DOWN MANAGEMENT'S RIGHT TO MAKE CHANGES NECESSITATED BY CHANGING CONDITIONS IN THE FUTURE.

AALWAYS

IIN THE FUTURE

NEVER AGAIN

THESE WORDS MAY START A PAST PRACTICE THAT MODIFIES THE INTENT OF THE AGREEMENT.

___ DO NOT "SWAP" OR "TRADE" GRIEVANCES IN ORDER TO SETTLE THEM, OR YOU WILL BE ENCOURAGING MULTIPLE COMPLAINTS IN THE FUTURE.

___ REMEMBER: THIS SETTLEMENT APPLIES ONLY TO THE PARTICULAR SET OF CIRCUMSTANCES WHICH PREVAILED AT THE TIME OF THE ACTION BEING DISCUSSED. THIS SETTLEMENT MAY INFLUENCE YOU IN FUTURE SIMILAR INSTANCES UNDER SIMILAR CONDITIONS.

NOTE: THE LABOR RELATIONS MANAGER MAY FIND IT APPROPRIATE TO "BARGAIN" WITH THE UNION DURING THE ADVANCED STEPS OF THE GRIEVANCE, BUT THAT IS THE PREROGATIVE OF AND THE "TERRITORY" RESERVED FOR THE LABOR RELATIONS MANAGER AS THE COMPANY'S CHIEF NEGOTIATOR.

CHECKLIST FOR HANDLING THE ADVANCED STEP GRIEVANCE

CONDUCTING THE "PART 2" ADVANCED STEP GRIEVANCE MEETING COMMUNICATING THE ANSWER

- ___ ANNOUNCE YOUR DECISION AT THE START OF THE MEETING AND ANNOUNCE THAT YOU WILL NOW EXPLAIN HOW YOU REACHED THE DECISION.

TO AWARD A GRIEVANCE: USE THE FORMAL ANSWER, "YOUR GRIEVANCE HAS MERIT, IT WILL BE ADJUSTED ACCORDING TO THE AGREEMENT (EXPLAIN BRIEFLY WITHOUT DETAIL) AND THIS SETTLEMENT APPLIES ONLY TO THIS GRIEVANCE AT THIS TIME (STATE DATE)."

TO DENY A GRIEVANCE: USE THE FORMAL ANSWER, "AFTER CAREFUL EXAMINATION OF THE FACTS YOU PRESENTED, AND AFTER THOROUGH INVESTIGATION, YOUR GRIEVANCE IS DENIED. THERE WAS NO VIOLATION OF THE AGREEMENT." (EXPLAIN THE ANSWER BRIEFLY, BUT DO NOT RAMBLE AND DO NOT USE HYPOTHETICALS.)

- ___ ADDRESS THE "ISSUES" OR CLAIMS MADE DURING THE PART 1 MEETING OF THE PRESENT STEP. BRIEFLY EXPLAIN HOW EACH ISSUE AFFECTED YOUR DECISION, IN BOTH DENYING AND AWARDING THE GRIEVANCE. BRIEFLY EXPLAIN ALL DECISIONS VERBALLY IN DETAIL, WITH FACTS NOT OPINIONS. LIST ANSWERS ON PAGE ASG-2A FOR ALL ISSUES LISTED ON PAGE ASG-2A, AND USE ASG-2A AS A PART 2 MEETING OUTLINE.
- ___ IF A WRITTEN RESPONSE IS REQUIRED, KEEP THE WRITTEN RESPONSE BRIEF AND ALSO USE THE APPROPRIATE LANGUAGE FROM THE ABOVE BOX, BUT STILL EXPLAIN EACH ISSUE VERBALLY.
- ___ DO NOT TRADE GRIEVANCES IN ORDER TO SETTLE THEM.
- ___ HANDLE ONE GRIEVANCE AT A TIME AND RESIST THE URGE TO "COMBINE" OR ASSOCIATE GRIEVANCES, UNLESS WITH THE APPROVAL OF THE LABOR RELATIONS DEPARTMENT.
- ___ ASK THE GRIEVANT AND THE REPRESENTATIVE IF THEY HAVE ANY QUESTIONS REGARDING THE DECISION/THE PROPOSAL.
- ___ CLOSE THE MEETING BY RE-STATING THE DECISION/THE PROPOSAL.

NOTE: PLACE NOTES, MINUTES, ETC., FROM THE MEETING IN THE GRIEVANCE FILE WITH NOTES FROM THE PREVIOUS STEP(S) FOR THIS GRIEVANCE. DO NOT KEEP GRIEVANCE RECORDS IN EMPLOYEE FILES.

NOTE: SEE PAGE 64 FOR GUIDELINES FOR SUBMITTING MEETING NOTES AS EXHIBITS IN ARBITRATION.