

# NEPBA STEWARD'S TRAINING

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# OVERVIEW

- ESTABLISH FORMAL INTERNAL ADMINISTRATIVE PROCESS
- BASICS OF GRIEVANCE PROCESS
- UNFAIR LABOR PRACTICES
- RIGHTS IN THE DISCIPLINARY PROCESS

# WHAT IS YOUR PROCESS?

- Clock is ticking – need to have process in place to determine what actions need to be taken
- Need to decide – is there anything here?
- Who makes this decision?
- If there is action required – what are the timelines?
- What is the role of your members in the process?

# Internal Process

- Handle all matters the same way
- Establish Grievance Committee to vote – should matter go forward.
- Don't leave decision to one person
- Must have system in place to act quickly – CBA may require grievance to be filed quickly
- May need to file grievance or get extension



# Internal Process - Forms

- Use forms in every request for services – even if you know everything about the matter
- Use forms even if you know case is not going forward (just as important here)
- Forms provide info needed to decide if there is a case? If so, what type of case? What timeline? Info for grievance committee to act?
- Weed out cases without legal basis (gripes)

# Member investment in Process

- Require all members to fill out Form 1
- Sending president a text complaint on Friday night not enough – triggers timeline issues, etc.
- Have process – tell member fill out Form 1 and submit – then union acts (unless emergency)
- Make all your members aware of the process
- Let's review Forms

# FORM 1 – MEMBER REQUEST

- First form in every case
- Make it mandatory for all members – it stays internal with local (not given to employer)
- Must treat as formal process – too many outside agencies, media, adverse parties involved these days – need to follow same process each time and document.
- Review Form 1

# Form 2 – Tracking the Case

- This form is for Local Unions to track case
- Staple to front of every file
- Should identify all timelines and mark on your calendar (filing deadlines)
- Any union official can pick up file and know what's been done, what needs to be done, handle meetings
- Review Form 2

# Form 3 – Legal Services

- When Local and Rep want to pursue case – this form is sent to lawyers
- Litigation of any case is big deal – even if small case – if union cannot fill out Form 3 – then probably not ready to litigate case
- Local and NEPBA Rep work together to fill out the form and provide all documents
- Preparation is most important factor in success
- Review Form 3 - extremely important

# Final Note on Process

- Not every complaint will move forward
- Established process lets members know obligations
- Gives union time to make smart decisions
- Gives members time to appeal (NEPBA grievance process)
- Avoids claims against union for representation issues – allows members to get explanation



# Forms are in – what's next

- Union has two main roles when it comes to members' terms of employment:
- One – Enforce the CBA
- Two – Enforce collective bargaining law
- So – based on investigation into complaint – is there a violation of the CBA? If so grievance.
- If no CBA violation – is there a violation of the CB law? If so, ULP charge with DLR

# What is a Grievance

- Your CBA defines what a grievance is – read your grievance procedure (might be limited)
- Generally – it is a violation of terms of the contract – so, if issue is not addressed in CBA, might not be grievable
- Analysis – did we agree to it in the contract, and if so, does contract allow us to grieve it?
- Basically – breach of contract litigation



# 1. BASIS FOR GRIEVANCE

## 1. GRIEVANCE OR GRIPE

- VIOLATE CONTRACT
- VIOLATE “PAST PRACTICE”
- VIOLATE WORK RULE OR STATUTE
- DISCRIMINATION

IDENTIFY THE PROVISION OR PRACTICE SPECIFICALLY

# 1. WHAT IS THE BASIS?

- PLAIN LANGUAGE OF THE CBA
- DOES THE CONTRACT SPEAK DIRECTLY TO THE ISSUE ?
- AMBIGUITY?

## PAST PRACTICE

- CLEAR CONSISTENT PRACTICE
- PERIOD OF TIME
- BOTH PARTIES KNOW OF PRACTICE
- CONTRACT IS SILENT ON ISSUE OR AMBIGUOUS ON THE ISSUE

## 2. INVESTIGATE

- Who, what, where, why and when.
- Take good notes - who you spoke with - what they said.
- Speak to the witnesses – do not rely on he said/she said.
- Gather Documents – Everything that is germane to the claim.
- Request information – may say no but request it anyway.
- May speak informally with supervisor.
- Develop Timeline – Witness List – Evidence List.
- Link required proof with evidence.

# 3. Prepare the Grievance

## POINTS ON WRITING A GRIEVANCE

### 1. Limit details to basic information-

Don't state union's case.

Avoid personal remarks and attacks.

Omit union's argument, evidence and justification for position.

"Suspension was without just cause in violation of ..."

### 2. Don't limit contract violations.

#### Example

- Instead of writing, "Management's action violates Article VIII, Section 4 and 5 of the contract.
- It would be better to write, "in violation of the contract, including Article VIII, Sections 4 and 5 and all other applicable provisions."

### 3. Don't limit the remedy.

"The union requests that Billy Brown be made whole in every way, including recall to her job classification and full back pay for all wages and benefits lost."

### 4. Consult with the grievant – have him/her sign and keep them informed.

### 5. Keep All Members Informed

### 6. Assume it is Going to Arbitration

# 4. PREPARE FOR MEETING

Need to Prepare

Outline the Argument – Practice

Stick to Facts

Leave the Personalities Out Of It

Avoid Threats

Concede Weak Points – Credibility

# 5. PACKAGE FOR NEPBA REP. OR ATTORNEY

- DECIDE GOING TO ARBITRATION
- KNOWLEDGE OF APPEAL PROCEDURE
- PROTECT TIMELINES
- TIMELINE/GRIEVANCE DOCUMENTS
- LIST OF WITNESSES – CONTACT INFO
- WRITE-UP AND ANY RELEVANT INFORMATION
- NEPBA LEGAL REQUEST FORM



# FOLLOW 5-MINUTE RULE

- Law Enforcement people well trained to observe and record, document and create reports – particularly to present legal cases
- For some reason – skills not used for their own cases
- After every meeting – take 5 minutes and type up what happened – who said what – any agreements – witness intv, grvc meetings, barg.
- Guarantee there will be "misremembering" – important to be able to recall info – credibility

# Post Submission to Attorney

- With complete package – lawyers work with local to determine next steps – if contract violation established – then arbitration
- Info Request – Employer must provide relevant info – if Local wants certain items – prepare list for lawyer and we will request
- If case doesn't show CBA violation – then analyze if ULP appropriate



# A NOTE ON THE DUTY OF FAIR REPRESENTATION

- The duty requires that the Union represent the interests of all employees in the bargaining unit fairly and impartially.
- The Union may refuse to file for any number of reasons so long as they are valid; it may not arbitrarily refuse to process a meritorious grievance or decline to proceed to arbitration because of hostility to the grievant or irrelevant and invidious considerations.
- No employee has a right to have his taken to arbitration if the Union determines, in its discretion, that it lacks merit, still the union may not refuse to process or go to arbitration on a meritorious claim simply because the grievant is widely disliked (or is a non-member).
- Fair representation applies to negotiations, the decision to process or not process a grievance and the way in which a grievance is in fact processed, through arbitration.

# DUTY OF FAIR REPRESENTATION

## Few Golden Rules

- 1) Consider all grievances solely on the merits;
- 2) Investigate each grievance promptly and vigorously;
- 3) Do not miss time limits;
- 4) Keep a record – document your activities;
- 5) Keep the grievant informed;
- 6) Have a valid reason for any action;
- 7) If the grievance lacks merit, drop it – document why in report.

# What is a ULP?

- Unfair Labor Practice – or – Prohibited Practice Charge
- Filed with Dept. of Labor Relations in Mass.
- 6 mos statute of limitations – knew or should have known
- Common basis – Employer changes terms of employment without bargaining
- Key – must be mandatory subject of bargaining under the law

# What is Mand. Subj. Bargaining?

- Some examples o MSB – Review NP List
- Basic Premise – if employer seeks to change working condition that impacts mandatory subject – it must first give union (1) notice and (2) opportunity to bargain over the change.
- If they just say effective X date, the following change takes place – it is a ULP if it impacts a MSB.

# Follow Same Process

- If not CBA violation, but maybe ULP – follow same process.
- Can request that Employer rescind change until bargaining takes place
- Letter to employer – request return to status quo and demand bargaining. Document.
- If no good faith bargaining takes place – ULP
- Make sure you involve your NEPBA Rep.

# ULP Process

- Like court litigation
- Getting more efficient – quicker investigation conferences and quicker hearings (like trials)
- Can take longer for decisions
- ULP – like contract violations – Burden of Proof on the union – we go first.
- So – important to have witnesses and evidence squared away before we even file.