

## **HANDLING GRIEVANCES**

### **Part I**

This article is the first in a series about grievances. It is intended as a general guide only and is based upon the opinion of its author. Anyone seeking to file a grievance or with questions on their grievance process should contact Adams, Ferrone & Ferrone or their legal representative for the purpose of obtaining legal advice specific to their needs.

#### **What is a grievance?**

All associations operate under a memorandum of understanding (MOU) and various personnel policies and practices which govern the every day terms and conditions of employment. These terms and conditions of employment, policies and practices control the actions of both employer and employee. What happens when the employer fails to follow these terms, policies and practices? Typically, the mandatory avenue of seeking a remedy is to file a grievance.

Virtually all agencies have grievance procedures. They are usually contained in the MOU or in the personnel policies and procedures. On rare occasions they are contained in county ordinance, city charters or municipal codes.

Typically the grievance procedure starts with a paragraph setting forth the purpose of the grievance policy. Common language usually says something along the lines of “The purpose of this grievance procedure is to encourage resolution of employee complaints and/or disputes related to a term and condition of employment in an informal manner at the lowest level possible in the organization.”

Thereafter, the procedures usually define what constitutes a grievance. Some grievance procedures narrowly define a grievance limiting the definition to only violations, misinterpretations and/or misapplication of the terms of the MOU. An example of a limited definition would be: “A grievance is defined as a violation, misinterpretation or misapplication of the terms of this MOU.” These limited definition grievance procedures are the least desirable for the association and its members.

Other grievance procedures give a broader definition to the term grievance. The broadest definitions include language to the effect of: “A grievance is defined as a violation, misinterpretation, misapplication and/or claim of unfair treatment regarding the terms of the MOU, the Personnel policies, procedures or practices of the [City/County/ State] or any perceived claim by the Association/employee of a violation of any terms and conditions of employment.” These procedures with the broader definition of the term grievance are preferable.

#### **Who May File a Grievance?**

Grievances are usually allowed to be filed by the individual employee who feels that they have a claim for a violation of the MOU, personnel rules, practices, etc. Some procedures, however, limit the ability to file grievances to the recognized bargaining representative/association/union.

Certainly, those policies which allow the individual employee to file the grievance are the most liberal and least restrictive. Consideration, however, should be given to the practical ramifications of the filing of a grievance.

What if, for example, the MOU calls for the use of a specific turn-out or bullet proof vest? Then, a new turn-out or vest is created that is perceived to be better. The agency starts to issue the new turn-out or vest to new hires believing that they are providing a higher degree of protection. An employee sees that they are handing out a turn-out or vest different than that called for in the MOU and files a grievance.

Technically, the grievance is valid. But what is the practical effect on the employee's relationship with administration? More importantly, what is the impact on the association's relationship with administration? The answer is pretty clear.

That is why some procedures combine the ability for the individual employee to bring a grievance with the ability of only the association to bring a grievance. Those procedures usually allow the employee to start the grievance and take it through the first few informal steps (as will be discussed below). When the grievance reaches the more formal steps, usually involving some form of administrative hearing before various forms of tribunals (as will be discussed below), and those steps may only be carried forward on behalf of the association as a whole. The individual may not pursue the grievance on their own behalf.

Some procedures do allow the individual to move the grievance forward through all steps of the process without the need for formal association blessing. It is difficult to state which process is better. Each association must decide which process it desires taking into consideration such factors including, but not limited to, its membership, its relationship with administration, cost factors (usually associated with the costs surrounding the administrative hearings such as the costs of witnesses, arbitrators, court reporters, etc.).

### **How is a Grievance brought?**

Virtually all grievance procedures are broken into "steps." Step one usually requires that the employee commence the grievance with their immediate supervisor in the chain of command. The grievance must usually give a *brief* version of the facts giving rise to the grievance, the MOU provision, personnel policy and/or practice violated and the relief sought. You should check your own procedure to see how to initiate a grievance and follow it.

All grievance procedures come with deadlines dictating when the grievance *must* be commenced. The time usually commences upon such moment as the employee knows, or reasonably should be aware, of the facts giving rise to the grievance. The time deadline after this point varies from agency to agency. Some may be as long as 30 working days, some may be as short as three calendar days. ***You should immediately upon becoming aware of a possible grievance locate and read your grievance procedure to locate the deadlines as failure to meet the deadlines may result in your forever being precluded from bringing the grievance and obtaining relief.***

How step one is commenced also varies from agency to agency. Some agencies allow the individual to raise the grievance verbally at step one with their immediate supervisor. Some agencies require that they be in writing and sometimes require that the grievance be in writing on a specific form. Most allow for the employee to be represented by their association and or legal representative in bringing the grievance. ***The rules governing pursuing the grievance must be followed exactly or again, the grievance may be forever lost due to failure to follow the appropriate procedures.*** We have found that it is always better to put everything relating to the processing of the grievance in writing.

Once the step one process is initiated (e.g. through handing it in writing to the immediate supervisor), that person usually must respond within a certain time frame, for example ten days. (Again, this time frame differs from agency to agency check your procedure!).

Bear in mind, some procedures allow for some initial steps to be waived by mutual agreement between the employee and the administration to allow the grievance to be brought immediately to the highest ranking individual (e.g. a chief, deputy chief, sheriff, assistant sheriff, city manager, county personnel officer, etc.). This should be considered when the authority to grant relief rests only with that higher ranking individual as all you will get at the lower level as a response is “I do not have the authority to grant the relief.” This may be a waste of time especially in grievances that need an immediate remedy.

Do not assume that once you give the grievance to the step one person that your obligations are done and it is up to them to reply in a timely fashion. ***Many procedures place the burden back on the employee to take the grievance to the next step if the step one person does not respond in time.*** This is done by language to the effect that if the step one person does not respond by the deadline (e.g. within ten days of the employee filing the grievance), the grievance is deemed denied and the employee must file with the grievance at the next step, typically referred to as “step two.”

Typically, no hearing is required at this stage, or any step in the informal process, as this part of the process is considered informal. Usually all that is required is that the employee submit the grievance to step one and the step one person gives a response either verbally or in writing denying or approving the relief sought,. Remember, writing is always better.

Some procedures call for an informal meeting with the step one person to informally discuss the grievance. Again, the employee is usually entitled to representation in these meetings. Traditionally, no witnesses are called and evidence is usually limited.

If the employee receives a response that is unsatisfactory, or there is no response as set forth above and it is up to the employee to move the grievance forward, the employee must then proceed with step two. This usually is likewise an informal step and usually contains the same requirements and warnings (especially regarding deadlines) as step one. It is usually brought to the next person in the chain of command. Thereafter, the grievance is processed through however many steps there are in the informal process in a similar manner.

Ultimately, most informal portions of the grievance process end at the department head level (e.g. Chief, Sheriff, and City Manager). Once all of the steps of the informal process have been unsatisfactorily resolved, the employee/association must move the grievance into the more formal process of the procedure which usually involves some level of formal hearing before some tribunal. This more formal portion shall be discussed in the next article in this series. Again, each individual grievance process must be reviewed and followed by employees wishing to file a grievance. Questions may be directed to Adams, Ferrone & Ferrone or your labor representative.