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AUTHOR Eisenhower, P. Warren
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ABSTRACT

Because grievances are unavoidable, it is essential for organizations, such as the schools, to utilize an efficient, effective procedure to handle friction between employers and employees. Through successive steps, representatives of labor and management attempt to resolve the grievance, first with meetings of lower level representatives (such as the building principal and the union building representative), then on up through top management and union officials. The final step in the grievance procedure is arbitration. Education administrative personnel should not pass the buck or waste time arguing with employees over the grievance. School administrators should make sure to gather the facts, to be careful to uncover the true source of irritation, to analyze the merit of possible solutions, and then to make sure that the selected solution is immediately and thoroughly implemented. A good grievance procedure can provide a better understanding of policies that affect employees, as well as provide a check on how policies are carried out. It can give credibility and legitimacy to the system and to those who govern it, since it assures employees a means of questioning policy. And it can give administrators a greater sense of responsibility to their employees. (DS)

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GRIEVANCE PROCEDURES

R. Warren Eisenhower
Negotiations Clinic
AASA Convention, 1976

Introduction

The twentieth century, particularly the second half, has been labeled in many different ways--"the age of progress," "the machine age," "the space age," "the age of computers," and more recently, "the age of the protest." Perhaps it is only fitting that in an age when protest has been rather commonplace, concern about grievances and their resolution has become increasingly important in educational circles.

In terms of language, "protest" and "grievance" may be used synonymously, and when implemented, both words signify the presentation by an individual or a group of some wrong with the notion of gaining redress. Whether the wrong is real or imagined, the desire for satisfaction persists.

Since the day when Cain filed the first grievance against Abel, conducted his own hearing, weighed the evidence, and decided upon his course of action, protests and grievances have become rather common occurrences. But today, when inhibitions which once restrained many forms of protest have been cast aside, the significance of a grievance in a work situation has come to be recognized.

Since workers are living in an atmosphere intensified by both violent and nonviolent protests, it would be naive to assume that this would not also affect the domain of school work. To the extent that it has and will continue to do so, it has strengthened the need for processes by which resolutions may be developed.

Grievance Administration

Grievances and the complaints of workers are as old as the employment relationship itself. Employees have always felt aggrieved. Before the advent of unions, most employees kept quiet because they were afraid of losing their jobs. Today employees in organized units have the right to discuss their grievances with management through the grievance procedure. Although grievance procedures were initiated in the late nineteenth century, most of them have evolved since the Wagner Act was passed in 1935. Today grievance procedures are found in almost all union contracts.

Definition of Grievance

Management frequently disparages the grievance procedure because many of the items which are processed are not grievances under the contract, but complaints. In other words, if an employee grieves about his or her work schedule (which is incorporated in the contract), it is a grievance. If the grievance is about the lack of sanitary conditions in the washroom (not covered by the contract), it is a complaint. In other words, all grievances are complaints, but not all complaints are grievances.

The open or unlimited approach to the handling of grievances attempts to bring all dissatisfactions of the worker to the surface and to solve them equitably. Thus, a grievance could be defined as any dissatisfaction arising out of the employee's relationships with the organization. Regardless of whether a grievance is related to wages, hours, or terms of employment, whether it is expressed, or whether it is valid, it must be resolved, or the dissatisfaction will ultimately become a grievance under the contract.

Assuming such an unlimited approach to the grievance procedure, grievances may arise: (1) through contract interpretation or through conflicts between two or more sections of the contract; and (2) through issues which arise outside the contract because the contract says nothing about the issue or the issues are so unique that the contract could not possibly cover them.

Nature of the Grievance Procedure

Many different types of grievance procedures are used today. These vary with the size of the organization, the character of the industry, and the types of labor-management representation. A typical grievance procedure would normally have from two to five steps. An example of a four-step grievance procedure normally would involve the following union and management representatives: Step One--the principal, the building representative, and the aggrieved employee; Step Two--the principal, the principal's supervisor, the building representative, a union representative, and the employee; Step Three--the superintendent, the principal, the building representative, and the union representative; and Step Four--arbitration.

As the grievance moves through the procedure, an attempt is made to submit it, through successive steps, to different representatives of union and management at increasingly higher levels of authority. By such a procedure, different views of the problem are elicited, and perhaps some mutual ground for solving the problem will be found. In most cases, the number of steps in the procedure is limited so that the grievances may be resolved quickly at the lowest possible level. In this way, the meaning and flavor of the grievances are not lost before they reach top management.

Pressure Tactics

During the term of the contract, union members may use different types of pressure tactics to achieve their objectives outside the grievance procedure. The simplest tactic is the wildcat strike, which deliberately violates the contract and, if located strategically, can shut down an entire school. Another tactic is the threat of a strike or wildcat strike if a particular issue in the grievance procedure has not been settled satisfactorily. Slowdowns have been particularly effective as a pressure tactic. Sometimes the contract itself is used (e.g., refusal to be transferred temporarily to another school or refusal to work overtime). In still other ways, the union may employ working practices to achieve its objectives. Lastly, the grievance procedure may be flooded with grievances so that it breaks down and the administration of the contract stops.

Frequently these pressure tactics have been used by the union to gain more favorable contract terms through revision, amendment, and alteration of the original agreement. In organizations where management has attempted to counteract these tactics by adopting firm policies on discipline and discharge for deliberate contract violations, the pressure tactics often are discarded and excellent labor-management relations are established. In many areas where management has been unable or unwilling to take any action against these pressure tactics, the organizations have been faced with increasingly higher costs of operation.

The use of pressure tactics by unions is usually related to the majority and stability of the labor-management relationship. In the initial stages of a relationship, the union tends to use more of these tactics. If, as time passes, management feels that it must improve its competitive position by the elimination of these tactics, it can do so by firmly insisting that the union live up to the contract; and, in addition, it can usually win union support for the elimination of such tactics through a minority group of union members.

Processing Grievances

Handling employee grievances is a major responsibility of all school administrators. When this responsibility is met effectively, school systems benefit through higher morale and greater productivity. When handled incompetently, employee grievances can lead to serious problems: chronic employee dissatisfaction; an increase in absenteeism; and loss of efficiency. To prevent such problems, administrators must understand and be able to define clearly the nature of the grievances and to develop clear-cut guidelines for dealing with them in an equitable manner.

A grievance, of course, means different things to different people. Labor-management contracts often refer to grievances as controversies or disputes arising from the application or interpretation of clauses in the collective agreement. In its more general use, the word is used to denote a specific gripe or complaint.

There are various stages of worker dissatisfaction that culminate in the official expression of a grievance. The first stage begins when an individual is irritated or unhappy about something in the organization. Perhaps he or she had to wait in line to get something he or she needed; or he or she could not get his or her personal leave scheduled after a holiday; or he or she was late to work because of a traffic jam; perhaps the principal yelled at him or her unjustly yesterday. The possibilities are infinite. The important thing to remember, however, is that something in the work situation has upset the employee, though he or she may say nothing about it at first.

The next stage of dissatisfaction is reached when an employee begins to complain openly about the irritation, either to his or her principal or to fellow employees. At this stage, complaints are usually not put into writing. They may merely represent verbal attempts to "clear the air."

The final stage of dissatisfaction is reached when the employee is so disturbed by a situation that he or she seeks definite action. At this point, a written complaint is usually prepared for presentation to union or management representatives. However, the principal should not assume that all is well just because there are no written grievances presented to him or her. Needless to say, employees can be quite irritated without putting their complaints in writing. It is the job of the principal to develop a special sensitivity for picking up unarticulated grievances.

Constructive Grievance Handling

When handling employee grievances, a principal has the choice either of adding to the problem or of attempting to solve it. By shirking his or her responsibilities in this area, he or she will definitely add to the problem. For example, he or she may pass the buck, argue with employees who present grievances, or look for an easy way out. On the other hand, principals who follow proven guidelines can become problem solvers rather than problem makers.

Some grievances are never settled because the source of irritation is not uncovered. Thus the principal discovers that the same grievance is often presented time after time. For example, one employee frequently complained to his principal that his pay was not in line with others with the same experience and training. His complaints continued even after the principal had explained the pay system. Finally, during a long discussion, the truth came out: The employee was not really concerned about his pay; he was worried about keeping his job since he had heard rumors concerning a tight financial picture and the possibility of layoff. After being told that he would not be affected, the employee stopped complaining.

This example is not an isolated case. Many stated grievances are often merely cover-ups for other things that are bothering employees. In this respect, a grievance is like an iceberg--that is to say, the causes of grievances often lie far below the surface, and it is the job of the effective administrator to uncover them.

Get the Facts

Without having the facts surrounding a grievance, administrators cannot hope to deal with employee problems effectively. To gather such facts, the administrator must begin by asking questions such as: What is the problem? Where did it occur? Who was involved? When did it start? Why is it a problem? Were there any observers? Has the problem ever occurred before? Have other administrators confronted similar grievances? How did they deal with them? Are there any records that can shed light on the matter?

As might be expected, obtaining needed information requires much time and effort. However, the time is clearly well spent if it leads to solutions that will prevent similar grievances at a later date.

Identify and Evaluate Possible Solutions

After the real cause of a grievance has been determined and all facts pertaining to the situation have been obtained, administrators can begin to develop possible solutions for handling the grievance. In so doing, he or she should carefully reexamine the nature of the grievance and reconsider all available information. He or she may discuss the matter with his or her superior, or with other administrators, and investigate how similar cases were handled in the past.

By carefully considering possible solutions, the administrator can avoid making snap judgments. Needless to say, spur-of-the-moment decisions often make the employee feel that the administrator is callously indifferent to his or her grievance. In short, the employee assumes that the boss is not interested enough to get the whole story.

While the administrator can avoid some trial and error by considering measures that have worked in the past, he or she cannot determine whether he or she has selected the appropriate solution until it has been put into practice. Thus, in the final analysis, all solutions can be evaluated only in terms of how well they account for all the facts surrounding a particular grievance.

Applying the Solution

Once a solution is chosen, it must be put into action. While this may seem quite obvious, it is usually at this point that effective problem solving breaks down. An employee naturally expects some sort of action when he or she files a grievance. Therefore, why postpone action when the facts show what needs to be done? If you go to a doctor with an ailment, you don't expect to wait six weeks before he or she prescribes medicine for you.

Once a solution is put into action, the administrator should follow up to see if the employee is satisfied. What is his or her response to the solution? By following up on his or her solution to the problem, the administrator can see if any additional action is required.

Be Accessible and Open-Minded

All administrators must indicate a continued willingness to hear employee complaints. In general, this means that each administrator should maintain a known open-door policy. However, words alone are not enough. The good administrator also makes it known through his or her actions that employees are welcome to discuss their grievances with him or her. If employees feel that they cannot speak freely with their administrator, minor complaints will grow rapidly out of proportion.

Above all, an administrator must be willing to let the employee tell the whole story as he or she sees it. Do not interrupt him or her unless it is absolutely necessary to clarify a point. Do not try to finish off some paperwork while the employee talks. Instead, make him or her feel he or she is the center of your interest by giving him or her your full attention.

Frequently, we see things only from our own point of view. To prevent charges of unfairness, the worker's viewpoint should be given careful consideration. In other words, the administrator should make an honest attempt to consider impartially all points of view that are conceivably related to a particular grievance.

Records can be extremely valuable when grievances first come up, because they enable the administrator to consult precedents for help in solving his or her particular problem. Although maintaining careful records on grievances takes time, the time is well spent. The few minutes devoted to making notes on an employee's grievance may save many hours in dealing with similar complaints in the future.

Purposes of a Grievance Procedure

An effective grievance procedure may serve several purposes:

1. To assure employees a way in which they can get their complaints considered rapidly, fairly, and without reprisal. Another way to put this is that grievance procedures are set up to give an employee a chance to get his or her complaint to the top boss or to get satisfaction along the way without losing his or her job. An employee may never have occasion to use a grievance procedure. There is, though, a measure of security in knowing that if he or she does have a complaint, there is a way to make his or her complaint known and to get something done about it. As long as people work together, however harmoniously, frictions will at times arise. Unless there is a way to express, examine, and adjust or resolve the cause of the friction, the work situation is bound to deteriorate. Nothing is more frustrating than a complaint about which nothing is done.
2. To encourage the employee to express himself or herself about how the conditions of work affect him or her as an employee. A grievance, whether it is expressed or remains unexpressed, is still a grievance. Complaints which are expressed to administrators can be handled. Something can be done about them. School management has the initiative to apply policies to employees and, in most cases, decide the conditions under which they work. The employee is in the position of being told how a policy works or what his or her conditions of work shall be. The question is how to get a proper balance. An effective grievance procedure is one way in which an employee may express himself or herself about complaints he or she has on how policies, practices, and procedures apply to him or her. It lets him or her make known to management his or her views on the application of the policy to him or her, or on how the conditions under which he or she works affect him or her. Unless an opportunity is given to employees to express themselves about their complaints, feelings become bottled up. They will find expression somehow in some form of silent resistance.

3. To provide better understanding of policies, practices, and procedures which affect employees. The great majority of complaints and grievances probably arise out of a misunderstanding of the meaning of policies, practices, and procedures which affect employees. Of course, the policies, practices, and procedures should be clearly set forth and made known to employees and administrators. Administrators should be informed about the application and meaning of policies and procedures. The very act of calling a grievance to an administrator's attention gives an excellent opportunity for both employee and administrator to understand better the policies and procedures complained about. For example, an employee has a question or a complaint about a promotion policy. He or she tells his or her administrator about it. His or her administrator explains to the employee the policy itself, some of the background which went into forming the policy, and what it is about. He or she explains to him or her the purpose of the policy and how it has been applied in other cases. For administrators, the value of the grievance adjustment procedure at this point is that if the administrator does not know these things, he or she will try to find out. He or she needs to do this so he or she can discuss intelligently with the employee the basis of the complaint.
4. To instill in employees a measure of confidence that actions are taken in accord with policies. An administrator is accountable for the decisions he or she makes that affect employees. If his or her decisions are subject to some review under certain conditions, the chances are he or she will take special pains to assure himself or herself that they are fair and in accord with policies and procedures. The employee knows that an administrator is accountable in many ways for any decisions he or she makes. One of the ways is through the grievance adjustment procedure. This procedure helps instill employee confidence in administrators' decisions. It is, however, only one of the many measures which, when added together, result in an employee's assurance that he or she will be treated justly and fairly.
5. To provide a check on how policies are carried out. The grievance adjustment procedure is a rather painful way to get a check on how policies are carried out. However, in a big organization where there cannot be day-to-day observation, the grievance machinery can help upper management judge how well policies are being carried out. Further, a study of grievance cases can point to the need to change policy. If, for example, many grievances arise out of the interpretation of a policy, it is wise to take a look at the policy itself, to determine, first, whether it is sound, and second, whether it is possible to carry it out. Again, grievance procedures are not the only way to determine the need for change in policies, or to find out how well policies are being carried out; but they can help show the need to reexamine policies or procedures.

6. To give administrators a greater sense of responsibility in their dealings with employees. An effective grievance procedure assures that decisions made by an administrator which affect employees aren't reviewed or modified until he or she has had a chance to review his or her decisions and modify them if the facts warrant. An effective procedure leaves the complaint in the administrator's hands until he or she has had a chance to reconsider his or her actions.

Arbitration in the Grievance Procedure

Arbitration is third-party settlement of disputes between individuals or parties outside a court of law. Labor arbitration most commonly is used to settle disputes between parties of a labor agreement as to its application or interpretation. Since such arbitration consists of determining the rights of a party to an agreement, it is referred to as a "rights" dispute or commonly as "grievance arbitration." Further, it determines what is right, not who is right.

A second type of arbitration is called an "interest" dispute. It involves the determination of the interests of the parties, as distinct from their rights under an existing agreement. It applies to a determination by an arbitrator or arbitration board of the terms and conditions of a new or renegotiated labor agreement.

The way an arbitrator views a case depends in part on his or her personal philosophy of arbitration and in part on his or her relationship to the parties. The arbitrator who is called for a single case (ad hoc arbitrator) is inclined to be a judge in most cases. The permanent umpire who handles most or all of the cases for an agency and union is inclined to be more than a judge. But these generalizations have their exceptions and should not be taken literally.

1. Purposes of arbitration

- A resolution of a dispute short of a strike or lockout.
- A safety valve, beyond the regular grievance procedure.
- A resolution of a situation that needs a decision.
- A test of the meaning of the contract.
- Face-saving.

2. The basis of the arbitrator's decision

- Not what he or she thinks is fair, or right, or wrong; rather what he or she thinks the contract says in relation to the circumstances presented to him or her in the hearing; past practice may also be important.
- The jurisdiction of the arbitrator, usually defined in the contract; the matters on which he or she may rule; and the nature of his or her ruling--meaning or intent of parties, application, interpretation. Usually excluded are changes in, additions to, deletions from, or modifications of the contract.

3. Types of arbitrators

- Ad hoc, single: one impartial individual, hired by the parties for a particular case or series of cases.
- Permanent, single: one impartial individual selected by the parties and usually named in the contract who will hear all cases for the duration of the agreement.
- Arbitration board, ad hoc or permanent: board comprised of one or two representatives appointed by each party; board in turn selects impartial chairman; decision is made by majority vote of board.

4. Selection of arbitrator

- Named in contract.
- Selected by agreement between parties.
- Failing agreement, or by agreement on application to the Federal Mediation and Conciliation Service, the American Arbitration Association, or some professional individual, usually a lawyer, professor, or judge.

5. Procedures and methods

- Formal and informal systems.
- Stipulation: May their preparation help to clarify the issue, perhaps produce a solution short of arbitration, assure a ruling on a particular dispute? Or will it tend to freeze the case, reduce flexibility?
- Briefs: Read at beginning of hearing, used as basis for presenting case even when not submitted; a matter of practice and choice.
- Opening statement: What it's all about, what you're going to show.
- Who goes first: Not necessarily the party requesting arbitration--rather, the prosecution, the party which took the initiative in the dispute; as in a discharge, the management; in a request for a personal leave day, the union.
- Direct presentation: By the spokesperson(s); telling things to the arbitrator, possibly introducing some exhibits--the testimony of an able witness with expert or first-hand information, will usually be more effective.
- The use of exhibits: Copies of contract, grievance, transcripts of earlier meetings, pictures of the job, production records, check stubs, etc.
- Witnesses: Examined (questioned) by their side, then subject to cross-examination by the other side, with the arbitrator often asking questions. May also involve reexamination. Exhibits are often introduced through witnesses and explained by them.
- Summation: Summary of major points in direct presentation, through witnesses and exhibits, with counter arguments to what other side has presented; should be relatively brief, should include specific reference to decision wanted from arbitrator.

- Post-hearing briefs: One side or the other may request permission to file post-hearing briefs; should not include new material unless by mutual agreement as regards facts which were not available at hearing. May be used to stall--delaying a decision--as deadlines for filing are extended.
6. Follow-up, after receipt of award
- See that terms of award are carried out, and that situation does not arise again. Union may be resentful, attempt retaliation in same or other area.
 - Enforcement: If arbitrator did not exceed jurisdiction, did not engage in fraud, corruption, or other misconduct, decision is enforceable in court. Will not be set aside for errors in judgment as to law and fact.
 - Award should be considered in relation to application to their grievances, future changes in the contract.
7. Arbitration clauses
- Wording of clause most important: What may be arbitrated, jurisdiction of arbitrator, limitations on his or her power of decision, question of whether decision is final and binding, questions of time limits on getting case to arbitration and on arbitrator in rendering award, and importance of consistency in contract are factors which must be considered.

Give the Arbitrator Needed Information

Thought must be given to the method of presenting cases to ensure that the arbitrator is thoroughly informed as to what he or she should know and of the significance of what is placed before him or her. Do the parties present him or her with adequate opening statements? Are the grievances and the answers thereto written in a meaningful and understandable manner? Are the parties successful in presenting the arbitrator with a lucid statement of the question to be decided and the limits of his or her jurisdiction? Would it help to have some less formal and technical method of conducting the hearing? How well do the parties do in presenting exhibits which set forth the detail of the data on which they rely? Perhaps there are occasions when the orderly presentation of a case would be served best with the school system proceeding first, with basic noncontroversial material being introduced by its better informed witnesses who would be testifying from school system records as to dates, background data, events, etc. Perhaps the representatives of the parties should make a greater effort to stipulate as to basic facts which are not in controversy, thus avoiding the confusion frequently introduced into the record of the case by union witnesses whose memories are inaccurate. These and other ways of speeding up the hearing and assuring the arbitrator a record which will enable him or her to perform responsibly and knowledgeably should be canvassed.

Arbitrator Needs Guidance

Finally, with respect to the avoidance of bad mistakes in the award and opinion, the parties might give thought to the best way of affording the advantages of consultation and guidance to the arbitrator. It is not suggested that the case be decided on any basis other than evidence adduced at the hearing. It is helpful to remember, however, that arbitrators, typically, work in solitude and have no opportunity to test the validity of their conclusions in discussion with others. They do not have law clerks with whom to talk out their problems as do judges. They have little opportunity to meet with other arbitrators. In some situations, the parties might consider the advisability of using a three-man panel in lieu of a single arbitrator. If they should decide to provide for a board of arbitration, they might consider it wise to provide that the two members of the board designated by each of the parties should act as advisors, without vote. Or, if they regard a board as an unwieldy device, they might invite the single arbitrator to feel free to call upon the two individuals who presented the case to discuss with him or her, informally, and when he or she is ready to write his or her decision, any of its aspects on which he or she needs further enlightenment.

The quasi-judicial system under which the parties operate belongs to them. It is theirs and they can make of it what they will. If it operates badly they have nobody to blame but themselves. Any breakdown in the system leads to consequences far beyond the values of the system itself.

So, to representatives of school management and of school employees: Take a good hard look at your grievance and arbitration systems. If they are deficient in any regard, improve them! Experiment with new procedures! Learn from past mistakes!

The maintenance of effective grievance and arbitration systems is a challenge which no administrator of a labor agreement is in a position to ignore.

R. Warren Eisenhower
Director of Employee Relations
Fairfax County Public Schools
10700 Page Avenue
Fairfax, Virginia 22030