

# ACTIVIST

NALC

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## *The successful grievance file:* **From Formal Step A to Step B**

**Y**ou have just been appointed the union's Formal Step A designee. What now? This article will show both new and veteran stewards what goes in a successful grievance file at Formal A and if need be, what should be in a file when it is appealed to Step B. You will learn how to build a case file and negotiate from strength in your grievance meetings.

### **Preparing for Formal A**

As soon as a grievance is appealed to Formal A, the union's Formal A representative needs to begin preparations for the meeting. The Formal A representative needs to review the file for completeness, then request any additional information that is needed and time to prepare for the Formal A meeting. This preparation should include a conversation with the steward who filed the grievance at Informal A. The union's designee should become familiar with the issues and why the grievance was not resolved at the lower step. Further investigation of the issues involved in the grievance may be undertaken if needed.

It is management's responsibility to meet with the union at Formal A within seven days of receipt of the Formal A appeal. As at the informal level, extensions are possible but should be the exception to the rule. Requests should always be in writing.

### **The Formal A meeting**

At the Formal Step A meeting, the union must be prepared to describe their understanding of the facts of the case, to list the relevant contractual provisions involved, and to provide a detailed explanation of their position. As at the informal level, the Formal A parties have a responsibility to resolve the grievance if possible. The Formal A representatives are also required to jointly review the JCAM in attempting to settle the grievance. The parties must exchange all information and documentation during the meeting. This is a joint case file and the file should be complete at Formal A. If the file is not complete, the Formal A representatives should consider remanding the grievance to the Informal A step for

completion of the file and further discussion. In such cases, the Formal A parties should provide written instruction to the Informal Step A's explaining why the case was remanded.

Article 15 Section 2 Formal Step A (e) states that the parties

*(Continued on page 6)*

## **INSIDE**

<b>TE Removals.....</b>	<b>2</b>
<b>OWCP Appeal Rights..</b>	<b>4</b>
<b>New FMLA Requirements .....</b>	<b>9</b>
<b>What's Your Duty? ..</b>	<b>10</b>
<b>How to use the Materials Reference System (MRS) .....</b>	<b>12</b>
<b>NALC: Strength in Diversity .....</b>	<b>14</b>

## From Formal Step A to Step B

(Continued from page 1)

must make the Formal Step A decision and complete the Joint Step A Grievance Form **on the day of the meeting**, unless they agree to extend the time limit. This should be relatively simple if the parties agree to



**It is in the local parties' best interests to fully develop the case before deciding it can't be resolved at the Formal Step A level.**



dispute. If the grievance is resolved, copies of the completed form must be sent to the steward and supervisor who failed to resolve the dispute at Informal Step A. The designees are also encouraged to explain the settlement to the steward and supervisor who discussed the grievance at Informal Step A to guide them in future cases.

If after fully discussing the case the parties are unable to reach common ground and resolve the dispute, they must complete the grievance form on the day of the meeting, although in much greater detail than if the case were resolved. If necessary, the parties may mutually agree to extend the meeting for a day or two to accomplish this task.

Under the Dispute Resolution Process, the Joint Step A Griev-

ance Form (PS 8190) is the official record of the grievance. The same form that was used at the Informal A level is completed at Formal A. The Joint Step A Form should be completed in its entirety with each box filled in and appropriate signatures and telephone numbers provided. It is suggested that, rather than attempting to write in the limited spaces provided on the form, boxes #16 (undisputed facts) and #17 (union's disputed facts and contentions) should be completed on separate sheets of paper. These additional sheets should be attached to the 8190 rather than scattered throughout the file.

### Undisputed facts

Undisputed facts are statistics, information, data, events or experiences that the parties agree are true or did occur. No case should be appealed without undisputed facts. It probably doesn't seem like it at times, but in most grievances the parties have more in common than it might appear at first. Even in the most contentious of cases, there are many facts that the parties should be able to agree are not in dispute. The local union and management designees can go a long way toward resolving those areas in which there is conflict if they will first try to identify those relevant facts that are not in dispute.

The parties should at a minimum try to provide a narrative or a list of the events leading to the dispute and describe what happened. Surely, there are facts upon which the parties can agree. For example, you can agree that John Smith worked overtime on the 15<sup>th</sup> and that John Smith is not on the ODL list. The parties can confirm agreement by providing their signatures at the bottom of the list of undisputed facts.

In Box #17, the union's disputed facts and contentions, the union's Formal A representative must list the facts that are in dispute and reference the documents in the file that support this version of the facts. The union should also explain in detail its position on the case by listing its contentions in the grievance. Be specific and remember that you are writing to someone who doesn't know the carriers in your office. **Don't use nicknames or slang.** Someone outside of your office doesn't know that Bubba is John Smith. Are there two carriers named John? What is called a swing or a pivot in one office may be called a bump or a ditch in another. You must make sure your arguments and contentions are clear in order to get the resolution you want.

The Formal A representative should begin this section by providing a narrative or explanation of the union's understanding of the facts. In other words, the union should describe from its perspective exactly what happened, making note of any evidence in the file that supports these facts.

After describing what happened, the representative should then explain why the union believes there was a violation of the contract. Each reason should be listed and explained in detail. The union should also note the specific contractual provisions that are involved and may refer to prior grievance decisions and arbitration awards which support its positions in the case.

### Completing form 8190

In some cases, completion of the form may take a considerable amount of time. The parties are encouraged to schedule enough time to do so on the day of the

meeting. The parties may also wish to complete their respective portions of the form after the meeting and then re-meet to exchange them. However, as noted above, the Joint Step A Grievance Form is to be completed on the day of the meeting, unless the parties mutually agree to an extension. The designees must legibly print their names, sign and date the form, and provide a telephone number where they each can be reached during normal business hours.

## Additions and corrections

The union may submit written additions and corrections to the Formal Step A record **along with the Step B appeal within the time limit for filing an appeal to Step B. The filing of any corrections or additions does not extend the time limits for filing the appeal to Step B.** A copy of the additions and corrections must be sent to the management Formal Step A official.

Management may respond by sending additional information to the Step B team which is directly related to the union's additions and corrections provided that it is received prior to the Step B decision. A copy must be sent to the union Formal Step A representative. Any statement of additions and corrections must be included in the file as part of the grievance record in the case. A steward is entitled to time on-the-clock to write the union's statement of corrections and additions.

Normally, if the parties have fully developed the case at the Formal Step A meeting, additions and corrections from the union and a response from management should not be necessary. The presence of these documents in the file usually

## Complete Grievance File

### Table of Contents

### Joint Step A Grievance Form (8190)

### Triggering Document(s)

### Documentary Evidence

### Investigatory Notes

### Contractual Cites and Prior Cases

### Miscellaneous Items

suggests to the Step B Team that the file was not properly developed or the Step A meeting was deficient in some way. In such cases, the Team may give consideration to remanding the case to Step A for further development. Therefore, it is in the local parties' best interests to fully develop the case and discuss all aspects of it prior to deciding it can't be resolved at that level.

If the grievance is not resolved at Formal Step A, the union may appeal the grievance to Step B within seven calendar days of the Step A decision date (unless the parties agree to an extension of time for appeal). Again, the appeal of the grievance is the responsibility of the union and the steward should not rely on management to mail the joint grievance file.

## The appeal to Step B

In order to get the result you want from a grievance appealed to Step B of the grievance procedure, it is very important that the file is complete and easy to understand.

Stewards must clearly tell the story of what happened and why they believe there was a violation of the National Agreement. The file should be in a logical order that is easily read and understood.

A complete grievance file would contain each item described below in the following order:

### Table of Contents

The grievance file should contain a table of contents listing the documents contained in the appeal. Each document should be identified. For example, if the table of contents lists the Joint Step A Grievance Form as exhibit "A," the letter "A" could be placed on the form.

### Joint Step A Grievance Form (8190)

The completed 8190 and attachments must be included with the appeal and they should be easily found near the front of the file. It is very important that all relevant sections of the 8190 are complete. You need to make it clear right up front what the grievance is about. If your undisputed facts and both the union's and management's contentions are not written on the 8190, they are attachments and should be clearly identified.

Note: If your entire argument and contentions can be written on form 8190 you probably have more work to do in order to win your case.

### Triggering Document(s)

The next item in the file should be the triggering document(s) in the case, if any. This might be a letter of warning, a suspension, or a removal notice in a disciplinary case. It could be an administrative action such as a letter placing an employee on restricted sick leave,

(Continued on page 8)

**From Formal Step A to Step B**

*(Continued from page 7)*

a letter of demand or an improper Form 50. The triggering document could also be a policy notice, a denied leave slip or some other method of written communication in which the form or content is in dispute. This is the reason for the grievance. Of course, some cases will not have triggering documents, such as a grievance challenging a request for medical certification.

**Documentary Evidence**

This is "where the rubber meets the road" because the documentary evidence contained in a file usually determines the outcome of the grievance. It does not matter how articulate or persuasive the arguments of a case if the documentary evidence is not there to support them. Thus the saying: "It's not what you say happened that counts, but what you can prove happened."

Documentary evidence includes forms, documents, records, photographs, written statements or other tangible items that prove or are purported to prove a fact. For example, the document used to establish whether someone is on the overtime desired list would be a copy of the ODL itself.

In preparing the documentary evidence for an appeal, the steward should review each fact that needs to be established in the grievance and make every effort to ensure that there is some piece of written or printed evidence to prove it. Care should be taken to avoid writing on, marking, or in any way permanently altering or adding to an original piece of documentary evidence. If it is necessary to draw attention to something on a document, do so on a second copy

which is attached to the original, or use post-it type notes. Never deface, alter or mark an original document.

**Investigatory Notes**

During the course of investigating a grievance, the shop steward or manager normally takes notes of conversations and interviews. These may be interviews held at the request of management, such as an investigatory interview, or interviews that the steward has initiated while investigating the grievance. Such notes are important as they record answers to pertinent questions relevant to the

rized, the original notes should be attached and included in the file.

**Contractual Cites and Prior Cases**

Copies of contractual language or any handbook, manual, external law or other provisions cited as a basis for the action or the grievance should be included in the file. Prior arbitration or grievance decisions that are being cited for precedential or persuasive value should be included as well. As these are normally not considered as "evidence," they may be marked to highlight pertinent parts. There is no need to reprint the JCAM. If you need to highlight a particular provision, that's fine, but a reprint of article 8, for example, is not necessary.

**Miscellaneous Items**

This is kind of a catch-all category for those items generated by the processing of the grievance itself. This includes items such as information and steward time request forms, extension letters, and mailing receipts. These also should not be marked upon or altered. In certain cases, such as a grievance regarding denial of steward time, such items may not be miscellaneous items but be the triggering document.

The Union should retain a copy of the entire file for their records. These files may be needed for future reference should the case be remanded by the Step B Team or impasse to arbitration.

If you have done your research and followed the suggestions above you have a much better chance of being successful with your grievance. You will have given the union at the higher levels of the grievance procedure a greater opportunity to settle the grievance in the union's favor.

**Documentary evidence:  
It's not what you say happened that counts, but what you can PROVE happened.**

grievance while the events are still fresh in the witness' minds.

Investigatory notes should be identified as to time, date, location, interviewee, others present and authorship. Remember, if the Step B Team, the advocate or an arbitrator cannot read your writing, your notes won't help your case. If this is the case your notes should be rewritten or typed. As with other evidence, original contemporaneous notes should remain unaltered. If rewritten, typed, clarified or summa-