

Receiving Complaints – Chapter 8

Most of a Union's Steward's time is spent receiving, handling, investigating, researching, and addressing complaints received from employees. How do you do that? That is the subject of this chapter, which will cover:

- Important points
- Be Prepared
- Steps for handling complaints
 - Step 1: Receive the complaint
 - Step 2: Investigate the complaint
 - Step 3: Determine the validity of the complaint
 - Step 4: Getting help
 - Step 5: Take action
 - Step 6: Check the results
- Routes to Remedy problems
 - The Negotiated Grievance Procedure
 - Unfair Labor Practices
 - Merit System Protection Board Appeals Procedure
 - Office of Special Counsel Complaint Procedure
 - Equal Employment Opportunity Procedure
 - Health and Safety Problems
 - Union/Management Councils
- Complaint Form

Important Points

What are the most important points to keep in mind when handling a complaint?

Always keep these points in mind:

1. Friendly and informal:
 - Handle complaints at the lowest possible level, and in an informal fashion whenever possible.
2. Don't miss deadlines:
 - There are often strict deadlines when addressing a complaint in formal procedures, such as filing a grievance, an Unfair Labor Practice charge, or an EEO complaint.
 - Missing these deadlines could cause the employee to lose his/her case, even if it is meritorious.
3. Choose your path wisely:
 - Oftentimes choosing one formal procedure to resolve a complaint

means that all other procedures are off limits – this is referred to as “not getting more than one bite at the apple”.

4. Sharing information:
 - Keep records of complaints and inform the Local 1998 leadership (President, Vice President, Secretary-Treasurer, Recording Secretary, and Chief Steward) on a regular basis of the types and number of complaints received, and how you handled them.
5. Ask questions:
 - It is okay to not have all the answers – that’s why you have other officers and NFFE Business Representatives to help you. Contact the Local 1998 leadership early in the process.

Be Prepared

Before you begin handling complaints, you should be prepared. The following will help prepare you to handle complaints:

- Knowledge Required:
 - Acquire a working knowledge of:
 - 5 USC Chapter 71, (Federal Service Labor-Management relations (statute))
 - Collective Bargaining Agreement (CBA)
 - Pertinent Agency Regulations (FAM)
 - Local office policies (work schedules, dress code, food & drinks, headphones, etc.)
 - Steward Manual
 - Chapter 14 of Steward Manual
 - Acquire general knowledge of:
 - Title 5 United States Code (5 USC)
 - 5 Code of Federal Regulations (5 CFR)
 - Regulations of the MSPB, FLRA, EEOC
 - Important details:
 - Know which issues go through the Step 1/Step 2 grievance process, and which skip the Step 1 and go straight to Step 2
 - Understand how to deal with and respond to proposals to downgrade employees (Article 23 of the Master Agreement), remove employees (Article 23 and Article 24), and suspend employees (Article 24)
 - Be knowledgeable of the “Douglas Factors” (Article 24)
- Organizational Aids:
 - Have a locked cabinet system (required by the CBA) in which you can securely store your files. _____
 - Have complaint forms readily available. _____
 - Have a filing system ready to use, and make a separate file for each complaint. _____

- Obtain copies of the CBA and relevant portions of other authorities (5 USC Chapter 71, 3 FAM, 5 CFR) _____
- Save a link to the Local 1998 website on your computer. _____

Steps For Handling Complaints

Step 1: Receive the complaint

The union will receive a number of different complaints:

- From: “Why don’t we have a water cooler in our office?”
- To: “What right do they have to suspend me?”

How does the union decide which complaints are legitimate?

- Initially, you should consider any problem, trouble, or gripe of a member of the bargaining unit to be a legitimate complaint.
- Only after a thorough investigation of the matter can the union decide otherwise.

There are some complaints that are very real and important, but the union is not designed or equipped to handle them. Such complaints include:

- Personal differences between employees.
- Union problems which the union should solve internally, such as when an employee does not like the way the union is handling his/her grievance.
- Community problems which the union should refer to the appropriate agency, such as a member’s eviction from his/her home.

Step 2: Investigate the complaint

The investigation is the most important step towards resolving a complaint successfully.

As part of your investigation, you will want to do the following:

- Assemble a file of facts
- Have the employee complete the complaint form
- Interview the complainant and witnesses
- Distinguish between facts and assumptions
- Use good interview techniques

Assemble a file of facts

When you receive a complaint, you should begin to assemble a file of facts about the case.

The file should include documentation of any facts that are relevant to the problem, including:

- Statements from the witnesses (signed if possible).
- Any notes taken during interviews.
- Signed complaint form.
- Documents and evidence.



Have the employee complete the complaint form

The employee should fill out the Local's complaint form before you proceed to investigate the complaint:

- Have the employee sign the complaint form.
- The complaint form is for internal use only and is not submitted with any complaint action.

Interview the complainant and witnesses

Locate and interview all witnesses and persons, including management officials who may have knowledge of the circumstances giving rise to the grievance.

Ask the following questions:

- **Who?**
 - Who was involved in the incident?
 - Who does the complaint affect?
 - Who witnessed the event?
 - Get each name, that person's job, section or office, and any other information necessary to identify him or her.
- **What?**
 - What are the facts and circumstances surrounding the complaint?
 - The answer to this question should describe the act (or failure to act), incident, or condition leading to the complaint.
 - What is the remedy sought by the complainant?
- **When?**
 - When did it happen?
 - Note both date and time.

- **Where?**
 - Where did it happen?
 - Note the location.
- **Why?**
 - Why did it happen?
 - Possible reasons:
 - Personal bias
 - Participation in union activity
 - Alleged poor performance or conduct
 - Discrimination
 - Race
 - Color
 - Creed
 - Religion
 - Sex
 - National origin
 - Political affiliation
 - Marital status

Distinguish between facts and assumptions

Just the facts!

- The investigator's task is to investigate, not to be judge and jury.
- Get all the facts.
- Make notes.
- Ask questions for:
 - clarification
 - additional information
- Distinguish between fact and opinion.
- Determine which facts are relevant.
- Keep an open mind.
- Avoid personalizing the investigation.
- It is not who, but what is right that counts.

The goal of the investigation is evaluate facts and evidence and to be objective:

- A fact is something which exists as true and cannot be denied
- An opinion is a belief or conclusion which may be questioned
- An allegation is a claim or charge made against someone. It is an unsupported assertion. Person making allegation has burden of proof
- An assumption is taking something as true without proof

Use good interview techniques

Consider the following interview techniques:

- Have the employee complete the complaint form
- Put employee at ease
 - Encourage discussion about issues giving rise to the complaint.
 - Let the employee tell his/her own story.
 - Do not create a negative atmosphere.
- Listen attentively
 - Give full attention.
 - Stop talking.
 - You cannot listen while you are talking.
- Empathize with the complainant
 - Try to put yourself in their place to be better able to understand their concern.
- Ask Questions
 - Ask questions when you do not understand, when you need further clarification, or when you want the complainant to feel comfortable with you.
 - Do not ask embarrassing or aggravating questions.
- Don't give up too soon
 - Do not interrupt the complainant.
 - Give them a chance to say what they have to say.
- Concentrate on what the other person is saying
 - Actively focus your attention on the complainant's words, ideas, and feelings regarding the issues of concern.
- Look at the other person
 - Facial expressions, movement of eyes and hands are all part of communicating. Pay attention to these, as they convey your attentiveness and the sincerity of the complainant.
- Be objective
 - Leave your emotions, personal or otherwise, outside
 - Personal emotions, beliefs, bias, etc., will interfere with your objectivity. Try to leave them outside.
 - Avoid being baited by the employee or becoming irritated.
 - Avoid questions which would reveal some predisposed decision on how the complaint will be handled.
- Listen for what is not said
 - Sometimes you can learn just as much by what is left out of the discussion versus what is said.
- Sometimes it helps to have the employee repeat the story
- Ascertain the remedy being sought
- When the employee has finished, recap your understanding of the complaint



- Ask any questions to clarify an issue

Step 3: Determine the validity of the complaint

The next step is to decide whether the complaint is valid based on the available facts.

- Does sufficient evidence to support an action exist?
- To form the basis for a legitimate complaint, the facts must support a claim of injustice for which management may be responsible and evidence must exist to support those facts.

Management actions that constitute an injustice:

- Put an employee's health or safety in jeopardy.
- Unfair.
- Violate:
 - The negotiated agreement.
 - OPM regulations or standard agency regulations.
 - Agency policy or past practice.
 - 5 USC Section 7116(a) or other laws.

Sufficient evidence to support such a claim may include:

- Two or more witnesses.
- Documents which show a violation and/or injustice.
- Conditions that can be observed or verified.

Step 4: Getting Help

It is not expected that you will know everything about representing employees and handling complaints. Asking for help and guidance from the Local 1998 leadership or NFFE or IAMAW Business Representatives is more than acceptable – it is encouraged! In fact, that is what your local leadership and your Business Representatives are there for: to help you in helping employees. Here are some key things to remember about getting help:

- Ask for help early in the process.
- Make it clear that you are asking for assistance and that there is a problem that you need to deal with: "I need your assistance in addressing a problem". Merely informing someone of an unfortunate situation could be interpreted as an "FYI" to be filed away for future reference and not a request for guidance/advice.
- If you plan to seek assistance from the Local 1998 leadership or a NFFE or IAMAW Business Representative, make a file of the complaint for them.
- Remember that those giving guidance have inquiries from many sources, so

- be patient on a reply.
- Make it clear what were the dates of any events related to the problem, and what is the deadline for your response.
- Be responsible for deadlines – do not assume that the person from whom you are seeking guidance will know or remember that a deadline is fast approaching.
- When seeking advice or assistance, the quality and usefulness of the advice or assistance will depend on the information you provide. Detailed, accurate information will result in good advice. Inaccurate, incomplete data will result in poor advice and could cause the loss of the grievance or considerable unnecessary work.
- Do not assume that the person advising you understands how your office functions, even if they have the same position as you in another Passport Agency.

Step 5: Take action

It is now “Decision Time”:

- Check for any applicable time limits
- Examine all records and documents
- Determine if you need to file an information request with management
- Review all the facts of the case
- Check appropriate contract provisions, regulations, laws and policies
- Check to see if matter is grievable
- Consider the case’s strengths and weaknesses
- Check past practices and similar cases and their disposition.
- Consider the proper forum (grievance, MSPB, EEOC, OWCP, Other)
- Consider possible solutions
- Reach a preliminary decision on the merits of the case
- Seek advice and assistance if necessary
- Meet with employee to advise him/her of the results of your investigation

If the complaint is not legitimate:

- Explain to the employee the reasons why.
- If possible, the employee should be satisfied with those reasons.
- Some reasons for not taking any action:
 - Matter not grievable or arbitrable
 - No violation of law, rule, regulation or contract
 - Facts and evidence do not support allegation
 - Matter may be best pursued in another forum
 - In the case of disciplinary/adverse action, the action taken is supported by the evidence. However, in such cases, mitigating factors need to be explored to determine if the penalty is too harsh and may be reduced (Note: When an employee is the recipient of a

disciplinary/adverse action the burden of proof rests with the employer, but when the employee is making the allegation the burden of proof rests with the employee).

If the complaint is legitimate:

- Verify the remedy sought.
- Do not raise expectations or promise/guarantee the complainant that any action taken will necessarily achieve the desired result.
- Do not promise to refer the matter to arbitration if a grievance is filed and if it is unsuccessful.
- Prepare and present the complaint in accordance with proper procedure.
- Take the appropriate action: the proper procedure depends on the appropriate action (see Routes to Remedy Problems).

Paperwork:

- Make a file for your use which contains all documents evidence notes, etc.
- Make a file for the grievant less any of your notes and opinions of the case.
- Make a file for the Union filing cabinet.

Step 6: Check the results

Follow-up on the results:

- The union must determine whether the agency has successfully resolved the complaint and whether the complainant is satisfied.

What should the union accomplish when checking results:

- Insure that both the agency and the complainant are carrying out their settlement.
- Insure that the settlement makes the Local stronger in the eyes of the group.
- Consider and suggest including clauses dealing with common subjects of complaints for the next contract – forward these suggestions to the Local President and Secretary-Treasurer.



Routes to Remedy Problems

Once you have gathered the facts and determined that the complaint is legitimate, you must determine what route to take to remedy the problem. The following are some of the most common routes for resolution (the specific procedures for each option are discussed in other chapters of this Steward Manual):

- Union/Management Committees (Chapter 12)
- The Negotiated Grievance Procedure (Chapter 9)
- Unfair Labor Practices (Chapter 10)
- Merit System Protection Board Appeals Procedure (Chapter 11)
- Office of Special Counsel Complaint Procedure (Chapter 11)
- Equal Employment Opportunity Complaint Procedure (Chapter 11)
- Negotiating (Chapter 13)
- Health & Safety Problems (Chapter 11)
- Legislative Action (Chapter 14)
- Office of Inspector General (Chapter 11)

For more information, consult the chapters listed above.

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