

GRIEVANCE HANDLING



International
Labour
Office

*Workers have rights and entitlements that are established in laws, employment contracts, collective agreements and workplace rules, as well as in custom and practice (the way things are normally done – and have been done for a long time – in a particular workplace, industry or occupation). We say that workers have a **grievance** when they believe that some aspect of these is not being respected by their employer. Grievances are usually described as ‘individual’ when only one worker is involved and ‘collective’ when a group of workers all believe they are suffering from the same breach of the rules. Grievances relate to addressing infringements of existing rights and entitlements, from bullying or harassment, to underpayment of wages, refusal to grant rest periods, weekly rest days or public holidays, discrimination or underpayment of bonuses or other entitlements.*

Basic principles

The Examination of Grievances Recommendation, 1967 (No. 130), among others, establishes the following general principles:

1. Every worker should have the right to submit a grievance without suffering any prejudice whatsoever as a result
2. Any grievances submitted should be examined via an effective procedure which is open to all workers.

These principles arise from the most basic rights of the worker as a member of society. However, enabling workers to ensure that their rights are respected – and related grievances effectively resolved – is also beneficial for employers and the economy. As a group of experts who contributed to the development of R130 argued, “Fair and effective procedures ... which provide for an orderly outlet for grievances constitute a safety-valve which helps to prevent the outburst of serious disputes. Moreover, such procedures can contribute to a climate of mutual confidence between management and workers which is so necessary in labour-management relations”.¹

Voluntary solutions are preferable

The ILO’s approach to grievance handling places a firm emphasis on finding solutions that are worked out in a dialogue between worker and employer within the enterprise.² This makes sense because in many cases grievances may be the result of honest mistakes or differences of interpretation that are relatively easy to

resolve without resort to more formal procedures. At the same time, given the imbalance of power between an individual worker and employer, a preference for voluntary solutions must be balanced against ensuring genuine efforts to provide a fair outcome.

¹ ILO, *Report of the Technical Meeting Concerning Certain Aspects of Labour-Management Relations Within Undertakings* (International Labour Office, 1964); para. 39.

² Minawa Ebisui, Sean Cooney, and Colin F. Fenwick, eds., *Resolving Individual Labour Disputes: A Comparative Overview* (Geneva: International Labour Office, 2016), 5.

Three basic parameters can be used to ensure this balance in the design of grievance procedures:

First, procedures within the enterprise should offer a **real possibility of arriving at a settlement** at every stage. Grievance procedures should be more than just a series of administrative steps that need to be taken within an enterprise before arriving at some external arbitration or conciliation process. For example, the employer representative should be someone who has the authority to actually resolve the grievance. Another condition might be that in cases where a grievance concerns the behaviour of an individual manager, it should not be required for the aggrieved worker to take their complaint to that manager in the first instance.

Second, if an acceptable solution cannot be found between workers and their first or second line supervisors, it should be possible **to take a grievance to a more senior level of management**.

Third, if workers remain unsatisfied after internal procedures have been exhausted, there should be the possibility of resolving unsettled grievances via conciliation, arbitration, recourse to court or other judicial authority, or another procedure agreed by the relevant workers' and employers' organisations, including through collective agreement. In some countries, the law recognizes the right of a worker to take a complaint directly to the competent authority for mediation, arbitration or adjudication, without first going through the internal grievance procedure. The existence of grievance procedures must not prejudice the possibility of workers making their complaint directly through an external dispute settlement process (such as a labour court or other judicial, or quasi-judicial authority) and procedures should allow for the final settlement of workers' complaints via some agreed external means like conciliation, arbitration, or a joint adjudication by the relevant workers' and employers' organisations.

Rights vs. interests

Grievance handling is a key element in ensuring sound collective labour relations in the workplace.

Grievance handling is about enforcing *existing rules and standards*, not about *changing these rules* or making new ones. Take the example of an employer who does not pay workers the proper rates as set out in a collective agreement applying to the enterprise. In this case, the workers involved will have a grievance. On the other hand, an employer may respect all the applicable rules about pay rates, but workers may nevertheless believe that these rates are too low. If the employer will not agree to increase wages, the workers do not have a grievance, but are involved in a different kind of disagreement called an interest dispute. Resolving this kind of dispute does not involve deciding whether an employer is respecting the applicable regulations, and a grievance procedure would therefore be inappropriate. Rather, it involves workers and employers (and their respective organizations) seeking agreement about whether the applicable regulation should change and if so how. These parties may also make use of mediation, conciliation or voluntary arbitration to resolve such disputes.

Developing grievance procedures

Grievance procedures can be put into practice via national laws and regulations, collective agreements or company rules developed with or without consultation of workers' representatives. The extent to which employers and workers have the scope to develop and agree procedures for themselves varies between countries.

In Germany, for example, private sector employees have a specific statutory right to raise grievances

about their employment and to be protected from prejudice as a consequence of having done so. The basic outline of the procedure to be followed is also established in law. Separate procedures exist for use in cases involving discrimination against a worker and in the case of health and safety violations.³ In India, all businesses employing more than twenty workers are required to establish a 'Grievance Redressal Committee' with equal representation from the employer and worker sides and equal

numbers of male and female workers where this is practicable. The committee must rule on worker complaints within forty-five days. Workers have the right to appeal the ruling of the committee to the employer and the law specifically states that the right of workers to use the legal machinery for dispute resolution is wholly unaffected by their submitting a complaint to the committee.⁴

It is important to remember that none of these statutory rules prevent employers and trade unions working together to develop more detailed procedures for the handling of individual grievances where these are not regulated by the law. Grievance procedures are a common feature of most collective bargaining agreements. Examples of collectively agreed procedures are reproduced below.

Procedural fairness is essential

Beyond the need for a procedure that is widely communicated within the enterprise to ensure that worker complaints are dealt with consistently and transparently, additional criteria may be considered to ensure due process or procedural fairness:

- Procedures should be as **uncomplicated and rapid** as possible, and time limits may be placed on each stage. Grievances should not 'disappear' into a complex institutional machine with little or no indication of when a resolution will be offered.
- Workers should have the **right to be present** and to **participate directly** in the procedure. The decision-making process should not take place 'behind closed doors'.
- Workers should have the **right to be assisted or represented** by a trade union representative, or any other person of the workers' choosing. Even

the most informal workplace procedures can be intimidating and workers must be allowed to ask a trusted representative to help them make their case or speak on their behalf. Employers may also be assisted or represented by an employers' organization.

- Workers **should not suffer any loss of earnings** as a result of the time taken to participate in the procedure, up to and including participation in any external conciliation or arbitration. As well as suffering no direct prejudice, there must also be no hidden or indirect cost to the worker (or their chosen representative if employed at the same undertaking) from attempting to ensure respect for what they understand to be their rights.

Workers who file grievances **should not suffer any prejudice whatsoever** (discipline, transfer, demotion, etc.) for having, in good faith, brought forward a grievance.

Canada: Collective Agreement of Professional Staff, Between the Government of Quebec and the Union of Public Service Workers (2010-15)

Handling of individual grievances.

Individual employees should submit any grievances to their immediate supervisors within 30 days of the dispute. The parties encourage each employee to seek assistance from a union representative during the process, and the supervisors to obtain sufficient information to resolve the dispute. The union and employer representatives should meet to discuss the grievance within 180 days, and exchange all the pertinent information and documentation that may lead to a mutual understanding of the parties' positions and enable them to seek possible solutions.

The union can request arbitration within seven days if not satisfied with a decision of the employer's representative or if 180 days have passed without a meeting or a decision, by notifying the employer's representative and the clerk of the arbitration tribunal. The grievant must present a summary of the facts, any preliminary objections and any other issues of rights that should be discussed, and attach copies of any evidence that the grievant intends to introduce.⁵

³ Bernd Waas, "Germany," in *Resolving Individual Labour Disputes: A Comparative Overview*, ed. Minawa Ebisui, Sean Cooney, and Colin F. Fenwick (Geneva: International Labour Office, 2016).

⁴ The Industrial Disputes (Amendment) Act, 2010, article 6. This act amends the 1947 Industrial Disputes Act, with the grievance redressal machinery now forming Chapter IIB of the act as amended.

⁵ ILO, *Promoting Constructive Approaches to Labour Relations in the Public Service: Examples from Collective Agreements: A Supplement to the Manual on Collective Bargaining and Dispute Resolution in the Public Service* (Geneva: ILO, 2015), 75.

Collective Agreement Between Polytex Industries Limited and The Industrial And Commercial Workers Union (Ghana)

GRIEVANCE PROCEDURE

Step 1: In the event of any complaint of grievances, the employee will take the matter up with his supervisors with or without the shop steward.

Step 2: If the matter remains unresolved, the Local Union Executives will take the matter up with the Departmental Head and his/her designated representative.

Step 3: If the matter still remains unresolved, the Local Union Secretary or Chairman shall take up the matter with the Personnel Manager who will arrange and chair a meeting between the Local Union and Sectional/Department Manager involved.

Step 4: If the matter is still unresolved, the Local Union shall report to the Regional Industrial Relations Officer who will in turn file a written grievance with the Personnel Manager of the Company.

Step 5: If after step 4 the matter still remains unresolved, the Union will summon the Standing Joint Negotiating Committee to meet and endeavour to reach agreement.

Step 6: If the parties fail to reach agreement after step 5, the dispute will be referred to the National Labour Commission in accordance with the Labour Act 2003 (Act 651).

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