

SAN ANTONIO ALAMO AREA LOCAL #195

CONTINUING STEWARD EDUCATION



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Developed July 2022
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GRIEVANCE PROCEDURE

USPS/APWU JOINT

CONTRACT APPLICATION

QUESTIONS & ANSWERS

SOUTHEAST/SOUTHWEST AREAS

OCTOBER 3, 2001

1. Can a supervisor refuse to discuss Step 1 grievances?

RESPONSE

No. However this does not preclude a supervisor from denying a grievance they believe to be non-grievable under the terms of the National Agreement.

SOURCE: Step 4 (A8-W-0538), February 28, 1980.

2. Who has authority to settle a grievance?

RESPONSE:

The parties' representatives at each step of the grievance procedure have full authority to settle or resolve grievances.

SOURCE: Article 15.

3. Whose responsibility is it to build a complete case file?

RESPONSE:

Both union and management have an affirmative responsibility to develop and share all pertinent facts and issues during the grievance procedure. There should not be any withholding of pertinent information by either party.

4. Can the union, when initiating a grievance on its own, be the only party required to meet with the supervisor at Step 1?

RESPONSE:

Yes.

SOURCE: Step 4 (NC-NAT-4702), June 13, 1977.

5. Should settlement offers be stated in appeals, decision letters, or letters of addition

RESPONSE:

No. Settlement offers should not become part of the official documents moving a grievance through the procedure or at arbitration.

SOURCE: Area level agreement between the parties.

6. Should an employee who wants to challenge being fired grieve the proposed removal or the decision letter?

RESPONSE:

Employees with veteran preference rights receive both a proposed removal notice and a letter of decision. For contractual purposes, the challenge should be made within fourteen (14) days of receipt of the proposed removal. It is not contractually necessary to refile upon receipt of the letter of decision.

SOURCE: National Memorandum of Understanding, July 31, 1991.

7. Is the immediate supervisor required to initial the standard grievance form that is used at Step 2?

RESPONSE:

Yes, at the request of the union representative provided the request is made within 5 days of the Step 1 decision. The supervisor's initial confirms and verifies the date upon which a decision is rendered. The Step 2 form will have sufficient information completed for the supervisor to determine that they are, in fact, verifying a decision date of the grievance that was heard.

SOURCE: National prearbitration settlement (H4C-3F-C 3994), August 30, 1985;
Article 15.2. Step 1 (c) of the National Agreement.

8. If an individual employee files a grievance and then leaves the Postal Service by either resignation, retirement or death, is the grievance then barred from further processing?

RESPONSE:

No. The parties have agreed that such a grievance is not barred.

SOURCE: National Memorandum of Understanding, October 16, 1981.

9. Who determines whether a grievance exists and whether to file a grievance?

RESPONSE:

The union.

SOURCE: National arbitration awards (H7N-5C-C 12397), July 29, 1991 and (H4T-2A-C 36687), November 16, 1990.

10. In the definition of a grievance, what is the meaning of "related to wages, hours and conditions of employment?"

RESPONSE:

This clause gives the very broadest parameters in determining what a grievance may encompass. All aspects of wages such as rates, levels, step increases, protected salary rates, etc.: all aspects bearing on work hours, overtime hours, out-of-schedule hours, etc.; and all situations bearing on conditions of employment such as, qualifications for promotion to bargaining unit duty assignments, environmental conditions, eligibility for overtime work, work rules, uniform dress, etc., just to name a few.

SOURCE: Area level agreement of the parties

11. Does the definition of a grievance encompass the evaluation of a probationary employee?

RESPONSE:

No. The evaluation of a probationary employee is considered to be part of the decision to retain or to separate that employee. As Article 12.1.A gives the Employer the unilateral right to make that determination, the evaluation of work performance itself must be held to be non-grievable.

SOURCE: Award of National Arbitrator Zumas in Case HI C-5L-C 25010

12. May a newly-hired career employee file a grievance during the 90 day probationary period?

RESPONSE:

Yes. The only prohibition against a probationary employee filing a grievance is when the Employer exercises its discretion to separate the employee during the probationary period.

SOURCE: Area level agreement between the parties.

13. Can a grievance on behalf of an employee be processed when it is filed after an employee's separation from the service?

RESPONSE:

No. A grievance must have been filed prior to the employee's separation.

SOURCE: Award of National Arbitrator Bernstein in case H1N-4E-C 9678.

SOURCE: National Level MOU dated October, 16, 1981.

14. Is the processing and/or arbitration of a non-disciplinary grievance barred in the event the grievant is discharged and the discharge is upheld?

RESPONSE:

The parties agree that the processing and/or arbitration is not barred unless the non-disciplinary grievance is related to the removal action.

SOURCE: MOU on page 334 of the '94-'98 CBA.

15. Who may file a grievance at Step 1?

RESPONSE:

An employee may file a grievance at Step 1. If an employee files a grievance at Step 1, the employee must be present at the Step 1 meeting with the immediate supervisor. In addition, the Union may file a grievance at Step 1, either on behalf of an employee, or on behalf of more than one employee or in its own right. If the union files a grievance on behalf of an employee, the Union determines if the employee's presence is necessary at the Step 1 meeting. If the Union files a grievance on behalf of more than one employee, or in its own right, the steward or Union representative will be the only person to meet with the supervisor at Step 1.

SOURCE: Area level agreement between the parties.

16. Must the Employer discuss a grievance at Step 1, even if a procedural question is present?

RESPONSE:

Yes. In a case involving a grievance filed over a discussion, the parties agreed that the Employer would discuss all alleged grievances at Step 1. The agreement did not limit the Employer's right to deny the grievance as non-grievable or procedurally defective.

SOURCE: Step 4 Agreement in Case H8C-3W-C 24461

19. Can an individual file a grievance seeking a remedy for another employee?

RESPONSE:

No.

SOURCE: Area level agreement between the parties.

21. Does an employee's request to discuss a problem with a supervisor constitute filing a grievance?

RESPONSE:

Not necessarily. Part of every supervisor's daily responsibilities is to respond to the needs of employees. The attentive supervisor who not only hears what is being said, but also listens to what is said, should be able to ascertain whether a grievance is being filed. If there is any doubt as to the employee's intent, the supervisor should inquire as to whether a grievance is being filed.

SOURCE: Area level agreement between the parties.

22. May the shop steward be required to present a grievance to a supervisor other than the immediate supervisor?

RESPONSE:

No. Article 15 requires discussion with the "employee's immediate supervisor."

SOURCE: Article 15, Area level agreement between the parties.

23. Why must an employee or the Union initiate a grievance with the immediate supervisor?

RESPONSE:

This is required by Article 15. Additionally, the intent of any worthwhile grievance procedure is to resolve problems at the lowest possible level in the work environment. This is not to say that the immediate supervisor will always have an answer or a resolution readily available when a grievance is filed; however, the procedures provide ample latitude for the supervisor to investigate the problem, determine the facts and provide a responsible answer to the complaint.

SOURCE: Article 15, Area level agreement between the parties.

24. Are Step 1 discussions over the telephone permissible?

RESPONSE:

The intent of the parties is to resolve cases at the lowest possible level whether it is done by telephone or in person. Normally, the parties will meet on Step 1 grievances in person; however, in unusual circumstances, to accommodate the process, a Step 1 grievance may be done via telephone.

SOURCE: National pre-arb of Case H4C-3W-C 27397.

25. How are time limits for filing and for application of remedy determined for grievances alleging continuing violations?

RESPONSE:

A grievance can be filed alleging a continuing violation at any time so long as it is initiated within 14 days of a date upon which the grievant or Union learns or could reasonably be expected to have learned of a specific violation; however, any Employer liability is limited to the 14 days prior to the filing of the grievance if the grievant or Union knew of or could have reasonably been expected to know of the violation.

SOURCE: Numerous National Awards, Area level agreement between the parties.

26. Do 204bs have the authority to handle grievances on behalf of management?

RESPONSE:

Yes.

SOURCE: Area level agreement between the parties.

27. May a Step 1 settlement negotiated by an individual employee be inconsistent with the terms of the National Agreement?

RESPONSE:

No.

SOURCE: Step 4 Settlement in Case H4C-3W-C 10344.

28. Does the steward have the right to be present when a grievance filed by an individual employee is adjusted?

RESPONSE:

Yes, unless the grievance is denied. The steward does not have to be present during the discussion phase of the grievance if that employee decides to exclude the steward; however, the steward must be given the opportunity to be present at the adjustment phase.

29. Can the Employer require employees with the same complaint to solicit the Union to file a grievance on behalf of the group?

RESPONSE:

No. Each employee is entitled by contract, to file a grievance individually. The Union should; however, make use of available avenues in the Agreement, i.e., representative cases or class action grievances, providing for the expeditious handling of multiple grievances.

SOURCE: Article 15, Area level agreement between the parties.

30. Can the Employer deny a Union request to file multiple grievances on behalf of individual employees when the situation involves the same complaint?

RESPONSE:

No. There are, however, many advantages for the Union in filing a single class action grievance where the situation involves the same complaint or action.

SOURCE: Article 15, Area level agreement between the parties.

31. Can a Step 1 resolution of a grievance be used by anyone at any time or at any point in the grievance procedure as precedent?

RESPONSE:

No.

SOURCE: Article 15, Area level agreement between the parties.

32. In what manner are Step 1 decisions rendered?

RESPONSE:

Where a grievance is denied at Step 1, that decision is oral. However, Step 1 settlements should be reduced to writing and jointly signed to avoid confusion.

SOURCE: Article 15.

33. Are Step 2 decisions citable and precedent setting?

RESPONSE:

No, unless it was specifically agreed that a given decision will cover other grievances of a similar nature within the parties' area of authority.

SOURCE: Article 15.

34. How extensive should the "reasons" be for the Step 1 decision?

RESPONSE:

When verbally expressing the basis for a Step 1 decision, the Supervisor should set forth the reasons in sufficient detail to assure that the grievant and/or Steward are aware of the supervisor's understanding of the complaint and clearly comprehend the meaning of the stated conclusion.

SOURCE: Area level agreement between the parties

35. Does the steward have a right to a copy of the supervisor's Step 1 Grievance Summary, Form 2608?

RESPONSE:

Given the verbal nature of Step 1 discussions, the Form 2608 is not available at the time of discussions at that step. Furthermore, there is no requirement that the Form 2608 be utilized. However, in cases where the Form 2608 is completed, the parties agreed that the Union could request to review Form 2608 at Step 2 or any subsequent step of the Grievance-Arbitration procedure and that the Form 2608 would thereupon be made available. Additionally, Form 2609, Step 2 Grievance Summary, if completed, will be made available at Step 3 or thereafter.

SOURCES: Pre-arbitration settlement in Case H8T-4E C 23719, date September 15, 1982; Step 4 settlement in Case H4V-3S-C 56545, dated January 6, 1988; Management directive, dated March 25, 1993.

36. What happens to the grievance if the supervisor fails to render a decision within 5 days?

RESPONSE:

If there is no extension of time limits mutually agreed to, the grievance may be moved to the next step by the Union, if the Union so desires. Except in rare instances, there should be no excuse for failing to issue the Step 1 decision in a timely fashion, or seeking agreement to extend time limits, when necessary.

SOURCE: Area level agreement between the parties

37. What does the supervisor's initials confirm on the standard grievance form?

RESPONSE:

The date of the Step 1 decision. The initials do not acknowledge the accuracy of any alleged facts or conclusions regarding the grievance.

Source: Area level agreement between the parties.

38. Can the Step 1 supervisor refuse to initial a standard grievance form which identifies the grievance and includes the proper Step 1 decision date?

RESPONSE:

No.

SOURCE: Article 15, Area level agreement between the parties.

39. Is the shop steward allowed reasonable time on the clock to complete the standard grievance form?

RESPONSE:

Yes.

SOURCE: Article 17, Area level agreement between the parties.

40. In post offices of 20 or less employees,
who is the Step 2 official?

RESPONSE:

*A management official from outside the
installation is designated by the Employer.*

SOURCE: Article 15.

41. When is the Union notified of the identity of the Step 2 official for post offices of 20 or less employees?

RESPONSE:

If there is an adverse decision at Step 1, the steward will be notified at that time. The Step 2 official may also be designated for all future grievances, with proper notice to the union in accordance with Article 15.2., Step 2 (a).

SOURCE: Area level agreement between the parties, Article 15.2., Step 2 (a).

42. Must a Step 2 meeting be held at the installation where the grievance was initiated?

RESPONSE:

Normally, unless the local parties agree otherwise.

SOURCE: Area level agreement between the parties.

43. Who determines whether the grievant is necessary at the Step 2 meeting?

RESPONSE:

The Union.

SOURCE: Step 4 Settlement of Case H4C-5K-C 33325.

44. Are the grievant and steward on the clock for the Step 2 meeting?

RESPONSE:

Attendance is on a “no-loss, no-gain” basis under these circumstances. Management will not manipulate such meetings solely to prevent payment of the grievant and/or steward.

SOURCE: Area level agreement between the parties.

45. Are the grievant and steward paid for travel time to attend a Step 2 meeting?

RESPONSE:

No.

SOURCE: Mittenthal H8N-1A-C 7812; Case No. N8-N-0221, January 8, 1982.

46. Are witnesses paid for travel time to attend the Step 2 meeting?

RESPONSE:

Yes, on a no-loss, no-gain basis.

SOURCE: Area level agreement between the parties.

47. Does the grievant count as a witness at the Step 2 meeting?

RESPONSE:

No.

SOURCE: Area level agreement between the parties.

48. Can a witness remain at the Step 2 meeting for the entire meeting?

RESPONSE:

A witness will remain at the Step 2 meeting only for the time necessary to provide information and answer questions. Once both parties are finished with the witness, he/she will be dismissed and returned to the work location.

SOURCE: Area level agreement between the parties.

49. Is there a contractual remand function from Step 2 to Step 1 for grievances requiring further investigation?

RESPONSE:

No. However, the parties may mutually agree to do so.

SOURCE: Area level agreement between the parties.

50. How extensive must the Step 2 written decision be?

RESPONSE:

It must contain management's full statement of the facts, the contractual provisions involved and detailed reasons for the denial.

SOURCE: Area level agreement between the parties.

51. Should settlement offers be included in union appeals or management decision letters or other documents?

RESPONSE:

No. Where PS Forms 2608 or 2609 are used as the Step 1 or Step 2 denial, any notations of settlement offers may be obliterated before submission into the record in an arbitration hearing.

SOURCE: Article 15, Step 2F and Area level agreement between the parties.

52. Are additions and corrections to Step 2
written on the clock?

RESPONSE:

Yes.

SOURCE: Area level agreement between the parties

53. Can a steward file “additions and corrections” when there was no Step 2 decision rendered?

RESPONSE:

No. Such information would be addressed in the Step 3 appeal.

SOURCE: Area level agreement between the parties.

54. Are Step 3 appeals done on the clock?

RESPONSE:

Yes.

SOURCE: Step 4 Decision in Case S8C-3W-C 14854

55. Can a Step 3 decision be used as a precedent for resolving other grievances?

RESPONSE:

Yes, unless language is included which indicates that the settlement is non-precedent setting and/or non-citable. Unlike the restrictions in Steps 1 and 2, there is no contractual prohibition against using the Step 3 decision as precedent. However, only national level decisions are considered precedent setting, and must be followed.

SOURCE: Area level agreement between the parties.

56. Is the grievant allowed to attend a Step 3 meeting?

RESPONSE:

No.

SOURCE: Area level agreement between the parties.

57. Are employees compensated for time spent waiting to testify and testifying at an arbitration hearing?

RESPONSE:

Article 15, Section 3 of the National Agreement requires that employee witnesses shall be on the employer's time when appearing at the arbitration hearing, provided the time is during the employee's regular working hours. When arbitration hearings are held at the site where the grievance arose, it is Postal Service policy to stagger the appearance of employee witnesses in order to avoid the need for any waiting time. The consistent practice has been to require employee witnesses to perform work at a location from which they can be readily called when needed to testify. If a hearing is scheduled at an off-site location and reasonable waiting time is necessary, the consistent practice has been that the employee remains on employer time while waiting to testify.

SOURCE: Step 4 (H1C-1N-C 24361), February 7, 1984; Step 4 (NC-N-2064), September 20, 1976.

59. Is an employee or grievant who is scheduled to testify at an arbitration permitted to have a change of schedule?

RESPONSE & SOURCE:

Yes, in accordance with Article 15, Section 5.A.5.

THE END