



## ESC Local 20 PG&E Steward Training: Module 3 – Grievance Procedure

- A grievance is an allegation that the contract has been violated
- Not every issue in the workplace is a grievance

### The ESC-PG&E Grievance Procedure - Outline

<b>1</b>	<b>Discussion (1<sup>st</sup> Step)</b>	Initiated by Stewards.
<b>2</b>	<b>Filing</b>	If not resolved at 1 <sup>st</sup> Step, Union Representatives file the grievance with management.
<b>3</b>	<b>LIC (Local Investigating Committee)</b>	An LIC is a committee of Union and management formed for each grievance. The LIC is charged with investigating the grievance and attempting to resolve. Typically the LIC is constituted by: Union: Grievant, Steward, Union Rep Company: Supervisor and Labor Relations Specialist If no resolution, compile facts for referral to PRC "JSF" = Joint Statement of Facts. Facts can be joint or separate (or some of each) Prepare Evidence in Advance!
<b>4</b>	<b>PRC (Pre-Review Committee)</b>	A permanent committee of Union and management charged with attempting to resolve grievances. Usually "Quality Control" for Review Committee The PRC can send back to LIC if JSF not complete or with instructions for local settlement, or refer on to RC, or settle with local precedent.
<b>5</b>	<b>RC (Review Committee)</b>	A permanent committee of Union and management charged with attempting to resolve grievances. Union: President, Vice President, Sr. Rep Company: LR negotiator, various directors and managers Decisions are numbered "Statement of Disposition" – SOD's are binding and set precedent company wide. If no agreement, Union either withdraws or refers up to Arbitration
<b>6</b>	<b>Arbitration</b>	Neutral third party. Not a court but a legalistic setting Both sides can bring evidence and witnesses Arbitrator decides who is right and what remedy to apply. Arbitrator can "split the baby". Arbitrator's decision is final (no appeal) and binding and sets precedent company-wide.

### **Role of the Steward**

Advise members and help represent them during interviews or investigations, initiate grievances (1<sup>st</sup> Step), educate supervisors and co-workers on the contract and their rights, and investigate grievances (conduct your own interviews). Keep a paper (email) trail.

### **Investigate:**

Gather all the facts. Before initiating a grievance or calling your union rep make sure you know:

- Who
- What
- When
- Where
- Why
- Contract Section or LOA (for discipline 21.7) \*Gather facts in advance of the LIC.
- What REMEDY you want

Make sure you know your whole case and what facts you want to bring in BEFORE the 1<sup>st</sup> Step Grievance.

### **Potential Remedies:**

Always have a suggested remedy, often "Cease and Desist" is not enough, especially for discipline

Example: Reduce or Remove discipline

In discipline cases, get the supervisor to put in writing what the employee has to do in order to improve/get the discipline to go away.

The magic words: "**Make Whole**" that can mean:

- Overtime bypass: provide equal amount of POT.
- Work out of classification: (retroactive) upgrade pay.
- Bidding or promotion bypass: additional promotion or position, with retroactive pay increase. Or "next two in a row are ESC"
- Consider a written apology and "won't do it again" promise from manager, or getting them to do tailboards to work groups to explain the correct policy.

### **The 1<sup>st</sup> Step**

When a Steward has conducted an investigation and determined that a violation has occurred and that a Grievance should be initiated:

- Contact the supervisor (The Union grieves management not members)
- Identify that you speaking to them as a Steward and request a meeting
- If you need to, read the PG&E Bill of Rights to the supervisor (on the Steward database)

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- Identify the violation
- Ask for the remedy
- Discuss solutions with the supervisor
- Keep notes: date, time, witnesses, what was said
- Follow the verbal interchange with a **confirming email**. Unless you withdrew the grievance the Email should include: that you initiated a grievance, the violation, the requested (or granted) remedy, and a reminder that the supervisor should respond the next working day to the requested remedy.
- If you haven't already informed your Union Representative of the grievance, do so after receiving the supervisor's response, especially if the supervisor denies the requested remedy or a solution is not agreed to. You and your Union Representative may decide to file the grievance with Human Resources.
- Always attempt to resolve at the 1<sup>st</sup> step

### The 2<sup>nd</sup> Step

- An LIC can have two outcomes: resolve the grievance, or if not, then document the disagreement and refer it to a higher level.
- If resolved, make sure there is a written resolution – signed by the Union Rep and PG&E Labor Relations rep.
- If not, the committee produces a "Joint Statement of Facts"
- JSF helps to identify if the disagreement is over facts or over contract interpretation.
- Example of a fact disagreement: Supervisor gave a written warning for poor work performance. We agree that poor performance merits discipline, but we don't agree that the performance was poor.
- Example of a contract disagreement: Employee took two hours off, with advance notice. Supervisor ordered them to take it from UV bank, employee thinks it should be regular vacation. We agree on what happened, but not on what the contract says/means in this case.

### Other points

- Grievances settled at first step are "without prejudice." This means that if the violation occurs again you can seek a different remedy.
- Members cannot initiate grievances. Only a Steward can first step a local grievance (see 14.7 – members can present complaints, but a steward can still be present).
- Step 2 Grievances belong to the Union, not to the member or Steward. Stewards cannot file Step 2 themselves, and do not control the disposition of the grievance at Review Committee, etc.

## **ESC Local 20 PG&E Steward Training: Module 3 – Grievance Procedure**

- The grievance procedure is for disagreement over the contract, discharge, demotion or discipline of employees. If company refuses the grievance, ESC can grieve the “grievability.”
- A grievance is not an attack against the Supervisor and should not be treated like one.
- The Company has the burden of proof in discipline cases. The Union has the burden of proof in contract interpretation cases.
- Grievances 1<sup>st</sup> stepped by stewards are considered local grievances. If not resolved at the 1<sup>st</sup> step grievances are investigated by the Local Investigation Committee. Grievances settled at the LIC are binding on the Union, Company and the grievant.
- “Business Manager Grievances” (BMG’s) are for contractual interpretation matters which have system-wide or classification-wide implications. BMG’s are not for individual employee issues. BMG’s are investigated by the Business Manager Investigative Committee (BMIC) and if not resolved go directly to the Review Committee.

### **Time Limits**

The time limit to file a grievance at Step 2 is 30 days from the incident or from the Union’s knowledge of that incident, unless it is a termination, in which case the time limit is 14 days. As a steward, if you become aware of a contractual violation, contact your Union Rep right away so that you have time to consider the situation and gather evidence before filing.

The 30-day limit also means that if a grievance is filed regarding an ongoing violation, the remedy can go back 30 days from the date of filing.

### **Past Practice:**

Sometimes the violation is not a specific Contract Section, but of a “past practice”. Past Practice can be upheld by Arbitrators. A "past practice" is nothing more than the way things have been done. Such practice does not have to be written down in a collective bargaining agreement, but can arise on the basis of regular, repeated action, or inaction by management.

Generally, the existence of the following four factors will indicate that a "past practice" exists:

- The practice was clear and applied consistently.
- The practice was not a special, one-time benefit or meant at the time as an exception to a general rule.
- Both the union and management knew the practice existed and management agreed with the practice or, at least, allowed it to occur.
- The practice existed for a substantial period of time and occurred repeatedly.