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THE ROLE OF THE SUPERVISOR IN A UNION ENVIRONMENT

The most critical relationship in a working environment is the one between employees and their immediate supervisor. To the employee, the immediate supervisor becomes the "face" of that jurisdiction's management. The responsibility of being management's representative is critical to successful supervisory interaction with employees. In a union environment, a third party is inserted into this relationship. Members of a workforce represented by a union are called a bargaining unit. Employees can choose to join the union or refrain from joining; nevertheless, all are subject to the working conditions or agreement agreed to by the jurisdiction and the union.

Although negotiations of these agreements often take months to accomplish, the critical aspect of the process is in the administration of that contract. The supervisor is the key link in a relationship between labor and management. Each supervisor has a responsibility to ensure that the labor agreement is enforced. Many supervisors will likewise be involved in the mandated grievance process. Because of the supervisor's unique characteristic of knowing more about the employee than top management, there are additional burdens placed on supervisors. To the average employee, the supervisor is management. Because of this, a supervisor must understand his/her role and responsibilities in the organization that s/he represents.

Being a supervisor is not an easy task. The supervisor is entrusted with accomplishing the work of his or her unit through the efforts of his employees within that unit. Keeping the employees informed of what their jobs are and how they are to accomplish their tasks are but a small part of the supervisor's overall responsibilities.

The following is a list of typical duties and responsibilities common to many supervisors:

1. Scheduling and planning daily work assignments.
2. Use of materials and equipment related to the task to be accomplished.
3. Improving and maintaining morale.
5. Assisting workers in training programs.
6. Monitoring the work products of employees.
7. Developing a team approach.
8. Explaining the policies and procedures of the organization.
9. Accident prevention and safety awareness training.
10. Inter-departmental cooperation.
11. Disciplinary responsibilities.
12. Involvement in the hiring of employees.
13. Serving as a communications link.
15. Motivating employees.

16. Determining personnel needs.
17. Establishing internal procedure.
18. Budget responsibilities.
19. Counseling employees.
20. Assessment of promotional candidates

The list may seem expansive, but no one said the job and role of a supervisor is easy. Most important is the supervisor's ability to get along with employees. While close personal involvement with employees is frowned upon, the supervisor should be friendly and concerned about the welfare of those that s/he supervises.

When a person is appointed to a supervisory position, s/he must draw a fine line in relationships between himself/herself and their employees. If a supervisor assumes an overly-assertive manner or attempts to make a showing of authority, the employees will laugh at the supervisor. At the same time, the old "buddy-buddy" relationships or close familiarities with fellow workers that the supervisor may have formerly enjoyed are no longer appropriate. Drawing a fine line is one of the most difficult tasks of the supervisor who has come up from the ranks, but it must be done.

The advent of the labor agreement adds a new dimension to the multi-faceted role of the supervisor. The institution of a grievance procedure and the exposure to the union representative, steward, or union official, makes it even more critical for supervisors to understand that to accept the responsibility of a supervisory position means supporting and advocating management's position. The supervisor who cannot support supervisory and management staff in a policy does a disservice to everyone. This does not mean that supervisors do not have the right to their own opinions. In fact, it is the responsibility of the supervisor to pass opinions on to mid- and upper-management. Since the supervisor has the most contact with the employees, it is usually the supervisor who becomes the target of a "divide and conquer" philosophy expounded by some unions and their stewards. For this reason, good communication skills and understanding the importance of the supervisor's role in your organization is essential to the success of every supervisor.
Often supervisors are frustrated in believing that their actual influence over employees is relatively small in relation to actions of top management in their organization. As the management person most in contact with the employee, the supervisor has probably the greatest amount of influence over the employee's career with the jurisdiction as it relates to advancement, training, economics, communication, appreciation, etc.

If a supervisor looks at Maslow's Hierarchy of Needs from: (1) physiological needs (food, clothing shelter); (2) safety and security; (3) love and belonging; (4) self-esteem; (5) self-actualization; (6) knowing and understanding; (7) aesthetic needs, s/he should realize the parameters of impact that s/he has on an employee's life. Below is a chart that illustrates the supervisor's influence on an employee's needs.

Supervisor impacts an employee's needs by:

1. Evaluations
2. Promotions/Advancement
3. References
4. Training Opportunities
5. Awards
6. Verbal Recognition
7. Concern for Safety
8. Input Gathering Sessions
9. Work Site Concerns
10. Equipment
11. Assignments
12. Job Enhancement
# WHY DO EMPLOYEES JOIN UNIONS?

<table>
<thead>
<tr>
<th>EMPLOYER ACTIONS (Real or Perceived)</th>
<th>EMPLOYEE CONCERNS</th>
</tr>
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<tbody>
<tr>
<td>1. Failed to keep up with job rate and benefit package.</td>
<td>1. Desire to have needs met - Economic needs</td>
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<td>2. Rule by fear.</td>
<td>Person needs</td>
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<tr>
<td>3. Win/Lose Philosophy of labor relations.</td>
<td>Social needs</td>
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<tr>
<td>4. Favoritism.</td>
<td>2. Group/peer pressure.</td>
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<tr>
<td>5. Little, if any, personal recognition.</td>
<td>3. Group identity - Sense of belonging</td>
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<td>7. No input into any decision-making.</td>
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<td>8. No career advancement available.</td>
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<td>9. Little job security.</td>
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<td>10. No complaint procedure, no support by employees for complaint procedure.</td>
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<tr>
<td>11. Failure to have personnel policies and benefits in writing.</td>
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<tr>
<td>12. Lack of recognition for length of service.</td>
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</table>
WHAT IS A STEWARD?

The use of the term "union steward" is not universal. It is, however, the most common designation given to a representative of the union whose role is to represent employees in a certain work area.

Stewards or union representatives are selected by the union. Some unions elect their stewards while others are appointed by the union officers. No matter how they are selected, the union notifies the University of the employees who are stewards for specific work areas. Some departments, because of their size or geographical location, may have several stewards while other departments may have a steward who is responsible for several departments. Whatever the case, the union internally determines this and notifies the University. The supervisor does not have a role in the selection of the steward.

Stewards are persons who may be responsible to the union for performing many functions. The steward may represent employees in the bargaining unit, recruit new members, serve as a communication link between the union and management, interpret the contract to employees, and represent the union.

Supervisors should bear in mind the steward's role. If a supervisor thinks that a steward is not successfully doing his/her job as a steward, it is not the responsibility of the supervisor to teach the steward. However, if a steward is overstepping the guidelines and agreements stated in the contract, the supervisor is responsible for informing UMD Department of Human Resources.
THE SUPERVISOR AND STEWARD RELATIONSHIP

The supervisor must remember that the steward is a University employee. In theory, although not always in practice, the steward is chosen because he/she is the most competent to represent the employees. Whether or not the supervisor feels that the steward is the best qualified is of no importance whatsoever. It is important, however, that the supervisor accept the steward in good faith. The supervisor must assume that the steward is sincere. It is the University's obligation to give stewards the sincere and careful consideration to which they and the employees they represent are entitled. The supervisor and the steward can develop a good working relationship. If both individuals can recognize their respective roles, understanding can occur. In other words, the steward can be a friend or an enemy. As in any relationship, time and experience will define it. A supervisor who treats a steward fairly will most likely receive fair treatment and respect from the steward.

Union Business

Stewards are permitted to perform certain union activities under certain conditions specified in the collective bargaining agreement. Typically, they may talk to employees about grievances, union membership, or any other union matter as long as both the steward and the employee are on their breaks, or if it is before or after work, or during meal breaks. Additionally, these matters cannot be discussed in work areas where they may disrupt other employees who are at work.

The steward, as a University employee, has a University job to perform and complete. Thus, it is essential that the supervisor follow regulations concerning union business activities. It is appropriate that when any supervisor observes union business occurring, that s/he confirm that the employees are on their breaks, meal breaks, or that it is before or after work hours. If employees or stewards are violating these rules, the supervisor should contact UMD Department of Human Resources.

The Steward as an Employee

It cannot be overemphasized enough that stewards are employees too. Some supervisors may not supervise the steward assigned to their area. In those cases, the supervisor still must inform the UMD Department of Human Resources of any questionable actions. The steward's supervisor has to recognize that the steward and the supervisor have two relationships -- supervisor and employee; and supervisor and steward.
As supervisor and employee, the roles are as with any other supervisor and employee. The employee is a subordinate and although he is afforded all rights and benefits under the contract, he/she must also follow the supervisor's directions. In matters of discipline, performance evaluations, promotions, etc., the employee who is a steward must be treated as any other employee. There can be no favoritism nor punishment towards this individual because of his/her union activities.

As supervisor and steward, the roles dramatically change. The steward is on equal standing with the supervisor and should be treated accordingly. The steward can be an effective link between employees and the supervisor. To repeat again -- whether the steward becomes a link or a barrier is dependent to a large degree on the manner in which the supervisor handles the multitude of situations which do arise. This does not mean that a supervisor must accept as true everything a steward has to say! It does mean, however, that the supervisor must avoid discrediting the steward by letting him/her know that s/he does not believe what the steward has to say. The supervisor's attitude, basically, should be this: "My orders are to see that the union contract is lived up to fairly, honestly, and impartially. You have a grievance -- let's look into it carefully to see what should be done about it." Remember that the steward might come to the supervisor on matters other than grievances or before a grievance is filed. It is always best for the supervisor to try to solve the problem as early as possible.
COMMON PROBLEMS WITH UNION STEWARDS AND OFFICIALS

1. Poor training and selection of stewards and/or local union officials.

2. Local officials' clique have personal gripes against jurisdiction and use the "face" of the union to pursue their dissatisfaction.

3. A small select group of insiders are the grievants in an organization. These individuals perpetually attempt to grieve anything they are unhappy about.

4. Union business becomes the primary job and their paid responsibilities become secondary.

5. Because recruitment is such a major concern of the union, grievance filing and processing becomes a way to show dissatisfaction with a jurisdiction and provides a springboard for a recruitment push.

6. Often an approach in protecting employees' rights is the philosophy of "the more grievances processed, the more the chance of finding a 'win'."

7. Union stewards and officials often feel they are special cases above and beyond jurisdiction's rules and regulations.

8. Many local unions feel inadequate to make compromises through the grievance process. Often settlement chances are lost as the union files grievances up through arbitration. If national or international representatives make the determination on going to arbitration, often the local will throw the entire responsibility to them. This is concurrent with some unions' concept that they do not want to tell a member his/her grievance is not worthy of pursuing or is not a grievance for fear of losing a member. Consequently, that union's credibility with management in grievance filing is lost.
UNWRITTEN ASPECTS OF COLLECTIVE BARGAINING AGREEMENTS

! Bargaining History

Refers to the bargaining proposals made by either party; or,

The actual language changes that result from bargaining.

! Table Talk

Refers to discussions that occur during bargaining that clarify the meaning of a provision of the contract.

Such discussions do not become formal contract language but they are indicative of the actual agreement struck between the parties.

! Past Practice

Refers to an unwritten but customary practice that is observed in the workplace.

These customs can become "attached" to the labor agreement and create continuing obligations for both parties. (Please see the next pages for detailed explanation.)

! Arbitration Awards and Grievance Settlements

Some settlements and arbitration awards can be construed to create a precedent.
**Past Practice**

The term "past practice" refers to a specific practice or custom that, over time, can become part of the labor agreement. Such practices can be used (1) as the basis of rules that govern subjects which are not specifically addressed by the collective bargaining agreement; or (2) to indicate the proper interpretation of ambiguous contract language.

These practices can create obligations on the part of either union or management to behave in a certain way, regardless of the fact that there is no contract provision which addresses the subject.

Generally, such workplace customs do not become enforceable past practices unless they meet the following conditions:

1. The contract must be silent on the subject in question or the language of the contract must be sufficiently ambiguous, so that no clear meaning can be ascertained.

2. The alleged practice must be a fairly uniform response; consistency is vital because a "mixed" practice is not indicative of a true past practice.

3. The alleged practice must be in response to a recurring situation.

4. The situation in question must recur over a reasonably long period of time. Once or twice is certainly not enough to create a past practice.

5. The alleged practice must be implicitly or explicitly recognized by both parties (union and management) as the proper response to the situation.

The way in which managers and supervisors respond to allegations of past practice can have a tremendous impact on whether or not such claims are considered valid.

It is never safe to simply concede that the situation is indeed a past practice. This can erode important management rights and create obligations where none need exist.

If you are faced with a claim of past practice, you may wish to consider the following methods as potential responses. (Please see next pages.)
\textbf{Deny Everything, Even if it is an Obvious Fact.}

(Well OK, maybe this is a \textit{bit} extreme)

-- It is important, however, to register a clear objection to the past practice claim.

-- Openly question whether the situation you have encountered is actually a past practice.

\textbf{Treat History as the Enemy.}

(Insist that you have been, at best, an \textit{unwilling} participant in this custom!)

-- The best (serious) response is to inform the union representative: "I do not believe we have a past practice here, but I'll check on the history and let you know what I find."

\textbf{Get Professional Help.}

(Enlist the Human Resources office in your denials!)

-- Human Resources (HR) is the best place to get advice on how to respond.

-- Your Human Resource person will:

* be able to advise you on whether there is any bargaining history that limits (or confirms) the claim of past practice.

* advise you on whether the custom or practice is sufficiently pervasive to constitute a legitimate past practice.

* help you construct a written response that best protects your rights and prerogatives as a manager.
SOME THINGS TO CONSIDER WHEN RESPONDING TO PAST PRACTICE CLAIMS

Single or relatively isolated incidents will not constitute a past practice.

A custom must be sufficiently long standing to create an obligation.

Managers or supervisors who fail to exercise their rights have not necessarily lost those rights.

Although the best way to preserve management's rights is to exercise them in a responsible way, those rights are not automatically "surrendered" because they are not routinely exercised. In most cases, inherent managerial rights are only limited by specific contract language.

Managers and supervisors are within their rights to protect against the establishment or expansion of past practices.

Indeed, management's silence in the face of a developing past practice has been treated as an indicator of agreement with the practice. Similarly, a union's failure to grieve management's practice has been used to indicate their acceptance.

Managers with questions about their ability to protest a past practice should consult the management rights provision of the labor contract and also obtain advice from UMD Human Resources.

Some contracts contain provisions covering management rights or completeness-of-agreement, also known as zipper clauses. These can be used to restrict or even eliminate risk of past practice claims.

Legitimate past practices cannot be unilaterally eliminated.

Because these practices have become "attached" to the collective bargaining agreement they will continue until the expiration of the labor contract. To eliminate a past practice, one party must notify the other of its intent to discontinue the custom. This is normally done through formal contract negotiations. Opinions are mixed whether simple notification of discontinuance is sufficient. Some arbitrators have held that agreement is required, not mere notification.
DISCIPLINE CHECKLIST

**Oral Warning**

G Did rules/expectations communicated?
G Did rules/expectations understood?
G Was employee responsible? If yes,

1. Explain correct behavior/necessary results
2. Explain consequences of repeat violation or unremedied deficiencies
3. Make "unofficial" record
4. Invite/document employee response
5. Inform employee of grievance procedure

**Written Warning**

G Did violation recur or deficiency continue?
G Was employee responsible? If yes,

1. Write warning including:
   ! Nature of violation/deficiency
   ! Previous oral warnings related to this same violation
   ! Possible consequences of repeat violation/continued deficiency
2. Inform employee of grievance procedure

**Suspension:** An employee must be given the opportunity to give his/her version about what happened to the supervisor before the employee is suspended.

G Did repeat violation occur?
G Was employee responsible? If yes,

1. Write out notice of suspension including:
   ! Nature of violation
   ! Previous discipline related to this same violation
   ! Effective date of suspension
   ! Return date to work
   ! Procedure for return to work
   ! Possible consequences of repeat violation
2. Inform employee of grievance procedure

**Discharge:** An employee must be given the opportunity to give his/her version of what happened to the supervisor before the employee is discharged.

G Did repeat violation occur or deficiency continue?
G Was employee responsible? If yes,

1. Write out notice of discharge including:
   ! Nature of violation/deficiency
   ! Summarize previous steps of discipline
   ! Effective date of discharge
   ! Procedure for termination
2. Inform employee of grievance procedure
TESTS FOR JUDGING WHETHER "JUST CAUSE" EXISTS IN DISCIPLINE AND DISCHARGE CASES

This is a quick and simple method to determine if the elements of "just cause" are present in an employee discipline case.

1. Was the employee aware of, or should have been aware of, the rule, order or expected conduct?

2. Was the employee aware of, or should have been aware of, the disciplinary consequences of his behavior, conduct, or performance?

3. Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employer's business?

4. Was management's directive lawful?

5. Did management conduct a fair and objective investigation before disciplining the employee?

6. Was the employee given an opportunity to be heard and explain his/her actions prior to the disciplinary action?

7. Did the investigation produce substantial evidence or proof that the employee was guilty as charged?

8. Taking into consideration the employee's previous work record, was the disciplinary action consistent with that imposed against other employees in similar situations?

9. Was the penalty imposed reasonably related to the seriousness of the offense when viewed along with the employee's work record?

A "yes" response to all of these questions would indicate that the employer is able to meet the test of "just cause" if a disciplinary action is challenged.
GRIEVANCE CHECKLIST - GENERAL DISCIPLINE

Can Your Discipline Meet These Tests?

1. Substantiate
   Verify
   Investigate
   Did your discipline come from obtaining sufficient proof or cause? Was action well thought out or premature? Was this "the straw that broke the camel's back?"

2. Balance
   Did your discipline decision balance all points and facts or did you proceed to state the result and then work backwards to justify it?

3. Remediation
   Punishment
   Is your discipline punitive with no remediation components?

4. Timely
   Is your discipline timely or is this a surprise to the employee since it is far removed from the dates of the actual incident?

5. Specific
   Are you disciplining for specific behavior? Have you made it clear what behavior is desirable or not desirable?

6. Expectations
   Have your expectations for behavior and performance been clarified? Have you shown this with consistency? Has the employee been made aware of this through clear communications?

7. Legitimacy
   Is your discipline legitimate for the offense or infraction? Is it permissible by contract rules, etc.? Is it consistent with other discipline to employees for the same offense? Does it conform to laws: local, state and federal?
INSUBORDINATION

I. WHAT INSUBORDINATION IS

A refusal to carry out an order given by a bona fide supervisor, typically in one of two forms:

A. Willful refusal to carry out a direct order or obey a work rule, with an employee's deliberate intent to disobey the supervisor.

B. Personal altercation between the employee and supervisor over a direct order, usually involving shouting, profane or abusive language, or actual or threatened violence.

II. WHAT INSUBORDINATION IS NOT

A. Merely protesting or grumbling about a supervisor's order unless the protesting goes too far and actually interferes with the completion of work.

B. Using profane language with the supervisor IF "salty" language is the norm for bantering between employees and the supervisor.

C. Failing to respond to the supervisor's inquiries about anything that cannot be documented as necessary to carry out the work.

D. Filing a grievance or talking to UMD Human Resources, or acting as a union steward or grievance representative to present a grievance to the supervisor in that official capacity.

E. Refusing to obey the supervisor's direct order IF to do so would endanger the employee's health or safety.

F. Refusing to obey the supervisor's direct order IF by doing so, an employee would be committing an illegal act or an act considered immoral by most of society.

G. Minor backtalk, UNLESS

! the employee, instead of executing an order, argues about it and calls the supervisor a name.

! the employee calls the supervisor a name in front of other employees.
the employee calls the supervisor a name privately but afterward brags to other employees about telling off the boss.

the employee calls the supervisor a name privately, is warned by the supervisor, but continues to indulge in the name-calling.

III. PREVENTION

Because a certain amount of griping is generally healthy, and since employees are within their rights when they protest and/or file grievances, there can be a fine line between complaint and a level of defiance that could be considered as insubordination. The employee who regularly talks back to the supervisor is building up to insubordination, which the supervisor may prevent by:

A. Picking a time when the employee is relatively calm and unstressed.
B. Taking the employee aside privately.
C. Explaining that the employee's behavior is disrupting and you expect improvement.
D. Warning the employee that you will not permit him or her to disregard you or be disrespectful.
E. Explaining that as s/he continues this pattern of behavior, you will take disciplinary action.
F. Making a written notation in your personal supervisory records that you discussed the problem with the employee on this date and explained what improvements you expect.

IV. DISCIPLINARY GUIDELINES

There are different degrees of abusive behavior, which may call for the initiation of discipline at different levels of severity.

A. For routine backtalk and supervisory disrespect, a supervisor would be well advised to use the full sequence of progressive discipline and initiate discipline with an oral warning or no more than a written warning.

B. For more serious name calling or verbal abuse, a supervisor might consider initiating discipline with a written warning but suspension without previous discipline for this violation is not advised.

C. Only in cases of gross insubordination or physical abuse is the supervisor advised to ignore progressive discipline and award summary discipline (discharge) without previous discipline for this violation.
V. ENSURING THAT DISCIPLINE IS UPHELD

When discipline for insubordination has been grieved by an employee, the discipline has usually been upheld when supervisors follow these guidelines:

A. Explained to the employee that it is the duty of the supervisor to give instructions, and it is the employee's duty to follow them. If the employee disagrees, s/he should be advised to obey the order first; then grieve.

B. Gave the instruction in clear, concise language and let the employee know that the instruction was an order, not a request.

C. Explained to the employee that if s/he did not comply with the instruction, s/he will be subject to discipline.

D. Advised the employee that s/he will have several minutes to think about which alternative s/he will choose.

E. Asked the employee after several minutes for the answer, thereby proving that the employee's action was deliberate and any less severe discipline would not have caused the employee to have complied with the order.
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<th><strong>GRIEVANCE CHECKLIST - INSUBORDINATION</strong></th>
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<tr>
<td></td>
<td><em>Can your Discipline Meet These Tests?</em></td>
</tr>
<tr>
<td>1.</td>
<td><strong>Direct Order</strong> Was the employee given a direct order?</td>
</tr>
<tr>
<td>2.</td>
<td><strong>Clarity/Awareness</strong> Was the employee given a clear order? Was s/he aware that this was not merely instruction or advice, but an order?</td>
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<tr>
<td>3.</td>
<td><strong>Compliance</strong> Did the employee fail to follow the order intentionally?</td>
</tr>
<tr>
<td>4.</td>
<td><strong>Consequences</strong> Was the employee aware of the consequences for non-compliance? Was this reiterated at the time the order was given?</td>
</tr>
<tr>
<td>5.</td>
<td><strong>Reasonable</strong> Was the order reasonable? Did the non-compliance affect the operation of the jurisdiction or department? Was a refusal to comply due to health or safety concerns of the employee? Is there a legal question at issue?</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Fairness</strong> Was the order unfair, unjust, inequitable, inconsistent, arbitrary, or capricious?</td>
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ESSENTIALS OF A DISCIPLINARY LETTER

I. IDENTIFY THE PROBLEM CLEARLY

A. Which rule or policy was violated?
B. What area of performance is not up to standard?
C. What procedure has the employee failed to follow?
D. When has the employee abused sick leave, or not kept proper work hours, etc?

II. STATE WHAT DISCIPLINE ACTION YOU ARE TAKING

A. Is this confirmation of a verbal warning?
B. Does this constitute first, second, third written warning?
C. Are you suspending the employee and if so, for what working day(s)? An employee must be given the opportunity to give his/her version of what happened to the supervisor before the employee is suspended.
D. Are you discharging the employee? An employee must be given the opportunity to give his/her version of what happened to the supervisor before the employee is discharged.

III. CLEARLY STATE YOUR EXPECTATIONS FOR THE EMPLOYEE

A. What improvements do you expect the employee to make?
B. By what date to you expect the improvements to be made?

IV. STATE THAT MORE SERIOUS CONSEQUENCES WILL OCCUR IF THE PROBLEM IS NOT SOLVED IMMEDIATELY AND ON A CONTINUING BASIS.

V. GIVE THE EMPLOYEE A SPECIFIC TIME FRAME (e.g., two weeks, one month) IN WHICH YOU WILL MONITOR PERFORMANCE TO SEE THAT THE EXPECTED IMPROVEMENT IS MAINTAINED.
Date

Mr. John Smith
120 Mixwell Avenue
Minneapolis, Minnesota 55412

Re: Absence without authorized leave
   Rule 10, Section 5--Civil Service Rules

Our records indicate that you have not reported for work since Monday, March 22, 1994, the last
day you worked. Our records further indicate that you have not applied for, nor have been
granted either approved sick leave or vacation for this time. You are now, therefore, absent
without leave.

I consider your absence a clear indication of your intention to resign from your job, as explained
in Civil Service Rule 10, Section 5.

This letter is to notify you that your employment with the University is terminated effective today.
The termination of your employment is regarded as a voluntary separation.

Harriett Whipsaw
Supervisor

cc: Personnel File
   Steward
   Business Agent
SAMPLE DISCIPLINARY ACTION WRITTEN REPRIMAND
POOR WORK PERFORMANCE - PRODUCTION OF BAD WORK

Pat Textile 3/12/94

I am giving you this Written Reprimand as a disciplinary action for your failure to fully meet the duties and responsibilities of your job in that you have demonstrated poor work performance by virtue of your production of bad work.

On Monday, 3/8/94, at approximately 7:30 a.m., I assigned you to the duty of pruning 60 hybrid red rose bushes at the President's house and garden at 43 Hillhouse Avenue. This task is among those expressly set forth in your job description which title you have had for the past ten months.

On Tuesday, 3/9/94, at approximately 9:00 a.m., I appeared at the job site while you were still engaged in the pruning project and I observed you while you were pruning a rose bush located on the drive way. I noticed that the cuts you were making with your pruning shears were vertical rather than diagonal and that you left unsightly stubs on the bush. I told you to stop immediately and then I took you with me as I inspected the 45 other bushes which you said you had already completed. I observed that the cuts on these were also all vertical rather than diagonal, and that these bushes were also left with unsightly stubs.

The basic principles of pruning call for diagonal cuts and the elimination of unsightly stubs. It is my expectation that a Senior Groundskeeper should know this. When you bid for your job as Senior Groundskeeper almost one year ago, you told me that you knew all about pruning. During the past year you have attended several pruning classes conducted on University time by myself and other members of management, and those classes reviewed the techniques of basic pruning. In spite of this, you still produced bad work.

As a result of your production of bad work, all of the 45 bushes will have to be re-pruned at a cost of another day of pay to the University. In addition, many of the bushes, approximately 25, have suffered irreparable injury and will have to be replaced at a cost of $30.00 per bush for a total cost of $750.00 to the University.

I am giving you, by this Written Reprimand, a warning and an opportunity in the future to correct your performance and to fully meet the duties and responsibilities of your job by improving your poor work performance. Should you fail to do so, you will be subject to further and more severe disciplinary action, up to and including dismissal from the University.

______________________________
Supervisor
Date

______________________________
Employee
Date
cc: Personnel File
    Steward
    Business Agent
SAMPLE DISCIPLINARY ACTION WRITTEN REPRIMAND
UNFIT CONDITION FOR WORK

Rolling Stone

Dear Mr. Stone:

I am giving you this Written Reprimand as a disciplinary action for your failure to fully meet the
duties and responsibilities of your job in that you reported in an unfit condition for work.

On Monday, 2/22/94, at approximately 1:00 p.m., after you returned to work from your work
break, I observed you in the library walking unsteadily toward the reference desk. I heard you
talking in a loud and boisterous manner as you walked. I approached you and engaged you in a
conversation during which I asked you what was the matter with you. You attempted to walk
away from me several times during the conversation but I called you back. While talking with you I noticed that your eyes were bloodshot and partially closed,
that your head bobbed as you talked, that you wore an unusual facial expression, that your speech
was slurred and at times incomprehensible, and that your breath smelled of alcohol. You told me,
during our conversation, that there was nothing the matter with you.

Under these circumstances and in order to prevent any accident or injury to you, your co-workers
or University property, by reason of your unfit condition for work, I ordered you to clock out and
leave the University premises immediately. You did clock out at 1:30 p.m. You will not be paid
for any time after 1:30 p.m. on Monday, 2/22/94, since you failed to perform any work during
that period due to your unfit condition for work.

I am giving you, by this Written Reprimand, a warning and an opportunity in the future to correct
your performance and to fully meet the duties and responsibilities of your job by
reporting in a fit condition for work. Should you fail to do so, you will be subject to further and
more severe disciplinary action, up to and including discharge from the University.

__________________________________________

Supervisor
      Date

__________________________________________

Employee
      Date
cc: Personnel File
    Steward
    Business Agent
TIPS TO PREVENT GRIEVANCES

1. **Beware of common causes of grievances.** For example:

   - Giving orders without giving the reasons
   - Work hazards
   - Poor or broken tools and machines out of order
   - Favoritism
   - Unequal division of overtime
   - Withholding credit where credit is due
   - Blaming workers unfairly
   - Ignoring requests and complaints
   - "Hard-boiled" supervision
   - Lack of interest in workers
   - Failure to keep promises (or making promises that can't be kept)
   - Unhealthful or uncomfortable working conditions
   - Sudden, unannounced changes in methods or working conditions
   - Poor instruction
   - Taking credit for a worker's ideas
   - Ignoring or repelling suggestions
   - Setting up too many rules and regulations
   - Assigning work to employees without the skill
   - Penalizing workers for conditions beyond their control
   - Failure to abide by union contract provisions
   - Antagonistic attitude toward the steward and the union

2. **Correct Irritations Promptly.** They don't correct themselves, but tend to grow and become more irritating.

3. **Encourage Corrective Suggestions.** If you maintain a friendly and fair relationship with the steward, s/he is more likely to make a suggestion than to file a grievance.

4. **Keep Promises.** Nothing will create a grievance more quickly than a broken promise.

5. **Assign Work Impartially.** There are preferred assignments in every department. Make sure these preferred assignments and overtime are delegated as impartially as possible.

6. **Give the Reasons.** Give reasons for assignments before they are made. Workers take more intelligent interest in their work if they know the reason "why." Taking time to give reasons is a great time saver for your department.

7. **Treat Workers as Individuals.** No two people are alike. In order to treat all workers with equal fairness, you must learn to know each one as an individual. Unless you take the time to know each employee, you will not know how to lead.
8. **Give Advance Notice of Changes.** It is safe to assume that every human being will resist change unless s/he is prepared in advance for the change. Keep the steward informed of changes that are going to take place, ask for suggestions, and get help in selling the change to your team. If you surprise workers with abrupt changes, you can expect many grievances.

9. **Be Consistent.** If you penalize one worker for an offense after having overlooked it when another worker committed the same offense, you lay yourself wide open for a grievance. It is your duty to enforce rules and regulations with even-handedness.

10. **Let the Workers Know How They are Getting Along.** It is much easier to correct a small fault in a worker if at the same time you let him/her know that you recognize his/her good points. If an employee knows how s/he stands with you, s/he will be less likely to "make mountains out of molehills" and keep running to the steward with complaints.

11. **Act Promptly on Requests.** There is a difference between a request and a grievance. The more you can encourage a steward to come with requests rather than grievances, the better your relationship will be. Accept requests open-mindedly and act promptly on them, even if you must turn them down for good reason. Do not neglect requests and allow them to develop into grievances by default.

12. **Learn to Listen.** If you are unwilling to listen, it always appears that your mind is made up before hearing the other side. This in itself antagonizes people. It makes them feel that you do not respect their point of view, and you will not give them a fair hearing. Under such circumstances, the steward or worker will magnify his/her complaint in order to get attention somewhere else. Being a good listener will help you prevent many small complaints from growing into large ones.
1. Resolve Problems Before They Become Grievances. Many grievances can be avoided by detecting problems before they reach the grievance stage. Develop an awareness of these problems and you will earn greater respect from your employees with a resulting increased effectiveness.

2. Study the appropriate Grievance Procedure. Before processing any grievance, you should keep certain checkpoints in mind to make sure that a wise personnel decision is made. The grievance procedure is spelled out in the contract or Civil Service Rules, so study it completely.

3. Make sure it is a Grievance. Make sure the grievance presented is actually something that is the proper subject matter for a grievance.

4. Advise Employees of the Concept "Work now and grieve later". Except in cases of employee safety, you should implement a policy of continuing work and grieving the dispute later. Employees should be told that failing to continue work or following a supervisor's direct orders will be considered insubordination.

5. Follow the Time Limits. Time limits are provided in the contract. Make sure that the Union has followed them and that you follow them. Make use of the time limit that you have been given and confer with your supervisors concerning the issue, particularly if the issue is complicated.

6. Know your Settlement Authority. Make sure you are aware of your authority in the various areas involved in grievances. It may be that a decision to settle a grievance is beyond the scope of your authority. Many grievances filed at a supervisory level do not directly involve an action of that supervisor. You may have to deny a grievance in order to defer the final decision to the next step and higher authority.

7. Obtain All the Facts. When completing the grievance investigation work-sheet, make sure that you have all the facts and write them down. Avoid making a poor decision based upon insufficient or incomplete information.

8. Grievance Meeting - Listen and Question. After the appropriate filing of a grievance, a Step 1 grievance hearing is held. At this meeting the grievant's side is to be aired thoroughly and listened to intently. Questioning on the part of the supervisor is permissible. A union representative will be present. Avoid confrontations. Keep the meeting at a cordial, professional level explaining the grievant will have a written answer from you within the required time limits.

9. Don't Rush a Decision. Don't panic. The only types of grievances that require an immediate decision are normally in the areas of safety or emergency. If you need
additional time, ask the union and notify the UMD Department of Human Resources.

10. Advise your Superiors of Your Decision. After you have obtained all the facts, reviewed the contract and other decisions, and are certain of your authority, decide the grievance as soon as practicable. After you have made your decision, make sure your supervisors are aware of your action.

11. Maintain Complete Records. In the event your decision is appealed, make sure that all of your records are given to upper management so that the grievance can be processed expeditiously. When a grievance is appealed, complete the grievance file with accurate documentation in writing. This will be helpful if the grievance ever goes to arbitration. Many times the arbitration hearing is conducted several months after the grievable event occurred, when memories are somewhat dim with regard to the facts.

12. Correct your Mistakes. Don't be afraid to admit you made a mistake. Your overall relationship with people you supervise will be much better if you correct a wrong decision without having higher management reverse your decision. Here consultation with your department director or UMD Department of Human Resources is advisable.
HOW TO HANDLE A GRIEVANCE

1. HEAR THE COMPLAINT.
   
   (a) Make yourself available. Employees may not talk if your attitude discourages communication. Be sure that the employee is given ample time to explain the story.
   
   (b) Use questions to be completely sure you know what the issue is.
       
       (1) What contract agreement or rule has been violated? In what way?
   
       (2) What are the facts from the employee's perspective?
   
       (3) What would resolve the matter to the employee's satisfaction? (This does not mean it will be resolved in that manner, it only clarifies what is at issue.)
   
   (c) Listen for meaning. Dig beneath the complaint to discover the cause.
   
   (d) Go slow in "typing" people. Just because someone has a complaint does NOT make him/her a troublemaker. Cataloging people quickly closes the door on open communication.
   
   (e) Repeat to the employee the essentials of their complaint as you understand them. Allow the opportunity for them to correct any misunderstandings.

2. GET THE FACTS.

   Who is involved? Does the complaint affect anyone else?

3. WEIGH AND DECIDE.

   After you have heard the complaint and done as much as reasonably possible to learn the facts, you must weigh the facts and decide an answer.

4. GIVE THE ANSWER.

   During the hearing itself, do not take any position. According to the appropriate procedure, respond to the grievance in writing within the time limits. You may need to follow-up the hearing with additional research and should not indicate a decision until checking all the facts.

   It is important that your decision be "sold". Merely announcing a decision does not sell the employee on the idea that the grievance had to be denied or that the settlement had to be different than the employee originally expected or hoped.
If the language of the contract gives a clear answer to the grievance, quote it and repeat it to impress the point. Your objective is to sell all those concerned that your decision is right and reasonable.

In a clear-cut case, the facts themselves decide the grievance. A clear statement of the pertinent facts is essential in selling your decision.

If other cases have been decided on the same basis as the one you have decided, refer to them. They help prove that your decision is not an arbitrary one and that a similar decision has been accepted as satisfactory. ASK YOURSELF THESE QUESTIONS:

**IS MY ANSWER FAIR?** Does it respect the rights of the employee and protect the rights of UMD.

**DOES IT ANSWER THE QUESTION?** Some written responses avoid the issues. The right answer may solve the problem.

**IS IT GROUNDED ON THE FACTS OF THE CASE?** If facts are omitted or avoided, your decision is likely to be appealed.

**IS IT AN OBJECTIVE ANSWER?** Answers that are perceived as being biased, prejudiced, capricious, or based on anything less than a full investigation are not helpful and can further damage employee relations.

**DOES IT CLARIFY THE SITUATION?**

5. **FOLLOW-UP.**

Make sure your answer to the problem is working. If changes were agreed upon, check that they were in fact made.
THE "WHO, WHAT, WHEN, WHERE, AND WHY" OF GRIEVANCE IDENTIFICATION

One of a supervisor's most important jobs is to handle and settle grievances. Often, however, supervisors fail to document a grievance properly with the result that the University may lose factual information. When this happens, employees may not get the relief they are entitled to, or the department may be faced with unnecessary costs. Supervisors who know and understand the basics of grievance investigation are more effective as supervisors. Always check for the following:

Who is involved in the grievance? Name or names, department number? Don't forget the steward or other union representative who may be involved.

When did the grievance occur? Date and time, day of week, exact time when act or omission took place which created the grievance.

Where did the grievance occur? Exact location, department, etc. Why is this a grievance? What has been violated -- the contract, supplement, past practice, past rulings or awards?

What happened that caused the violation? Improper use of seniority? Discipline inappropriately administered?

What adjustments are necessary to completely correct the alleged problem? What, if any, is the total liability to the University?
GRIEVANCE INVESTIGATION WORK SHEET

1. What is the problem?

2. What section of the contract was violated?

3. What facts are important? Get the date, time, and place the problem occurred. List the facts that led to the grievance.

4. Name and classification of the aggrieved employee, and the names of other employees who may be involved, were present, or have knowledge of the situation.

5. What caused the grievance?
6. What other considerations are involved?

7. What are the possible solutions to this grievance?

8. What precedent has been set in prior grievances (Check with your supervisor or UMD Department of Human Resources).

9. Explain your decision.

10. Record of what you did.
SUPERVISOR'S CHECKLIST FOR GRIEVANCE HANDLING

G RECEIVE THE GRIEVANCE WELL
Listen attentively and calmly without interruption.
Ask questions when the employee is finished, but take no position.
Ask the employee to repeat the story and take notes on what is said.
Repeat the story to the employee in your own words, from your notes, to make sure you heard correctly.

G CONDUCT AN INVESTIGATION
What right does the employee say was denied, or procedure not followed?
What circumstances surrounded the event which will put it in context, e.g. did the work load, staffing, budget, or procedures affect the employee's complaint?
Where did the event occur?
Were other employees involved, or did others witness what happened? If so, what is their understanding of the event?
What records, notes, or documentation exists to verify the facts?

G CHECK THE RULES
How do the Civil Service Rules or labor contract apply to the grievance?
What are the department's policies and practices in this situation?
What has been the experience of other supervisors in this position, and have their actions been upheld?
Ask advice of the UMD consultant, Judith Karon (726-6326)

G TAKE THE NECESSARY ACTION
Avoid confusion by explaining your decision to the employee and any other staff involved at the earliest possible moment.
Document your action, stating what you are doing, and when, and with whom.
Make all necessary corrections required by your decision.
If necessary, pass all facts and documentation up the next step or level.
G  \textit{FOLLOW UP}

Make sure the grievance solution was carried out promptly.

Monitor the situation to be sure the solution has solved the problem.

Stay alert to any situation which might bring a grievance, and attempt to correct all such situations before a grievance is filed.
ALTERNATE CHECKLIST FOR HANDLING GRIEVANCES

Coordination of the management/supervisory team is essential in avoiding precedent-setting decisions that will have an adverse effect on the University.

I. REceiving the Grievance
   1. Call for grievance tracking number (726-6520)
   2. Inform your supervisor
   3. Check the union contract
   4. Check the time limits
   5. Check grievability
   6. Check department policy and practice

II. Holding a Grievance Meeting
   1. Let grievant and/or steward tell his/her story
   2. Don't personalize issues
   3. Take notes, names, dates, etc.
   4. Ask for explanation of contract article or clause allegedly violated
   5. Get the remedy desired
   6. Ask employee to repeat issue
   7. Paraphrase issue of employee in own words
   8. Give employee a fair hearing
   9. Maintain control — stay on issue
  10. Listen, don't interrupt
  11. Ask questions, take no positions
  12. Maintain professionalism, stay calm
  13. If a mutual resolution can be reached during the meeting, have your resolution contingent upon future review so you can follow-up on its appropriateness

III. Writing the Grievance Response
   1. Adhere to time limits
   2. Check agreement for essentials in your response
   3. Respond in answer to alleged violations and remedy sought
   4. Check with supervisors or UMD Department of Human Resources
   5. Distribute response to appropriate individuals
ESSENTIALS OF A WRITTEN RESPONSE TO A GRIEVANCE

CONSIDER THE CHARGES MADE BY THE EMPLOYEE AND YOUR POSITION.

Before you begin to write your response, ask yourself:

Can I support the facts as I see them?

Will the records verify the facts as I see them?

Can I get reliable testimony to back my position?

Am I taking anything for granted in my assumptions?

BEGIN YOUR LETTER BY ADDRESSING THE CHARGES AS STATED IN THE GRIEVANCE APPLICATION.

State your acceptance, modification, or refutation of the facts as stated by the employee.

Add any facts the employee omitted.

Explain the records or investigation from which you derived your facts.

ANSWER SPECIFIC CHARGES IN GREAT DETAIL.

These may include allegations that you showed unfairness, favoritism, or inconsistency in certain instances.

Use whatever detail is necessary to counter each instance.

Use a simple denial for broad generalized charges the employee makes without giving examples.

SUMMARIZE AND STATE YOUR CONCLUSION.
WRITING THE DECISION

A number of factors should be considered when writing a decision. First, you must be concise. A good rule is not to become enmeshed in subjects that do not bear directly on the grievance. Unnecessary remarks become part of the official document. Such items serve no useful purpose and have the potential of inflicting damage to successful employee relations.

CHECK RULE OR CONTRACT INTERPRETATION. Be sure the employee has stated the rule or contract correctly. In some cases, the grievant's interpretation may not be correct. If this is the case, be sure to say so in your decision. If the employee correctly states the rule, it is not necessary to note your agreement. If you have any doubts or questions regarding a particular rule, you should contact the UMD Department of Human Resources for information and guidance.

ADDRESS PROCEDURAL VIOLATIONS. Procedural violations may involve anything from not submitting the grievance within the time limits to the complaint not being something covered by the grievance procedure. If the grievance is being denied for procedural violation, then the decision should name the article and section in the contract containing the rule that has been violated, as well as how it has been violated.

DISCUSS REMEDIES. It may be necessary to discuss the remedy sought by the grievant.

CONSIDER THE BURDEN OF PROOF. It is very important to remember that the burden of proof in a grievance rests with the employee who filed the grievance, except in discipline cases. This is an essential fact to keep in mind, as it will have an impact on the decision in the vast majority of grievances. If, for example, an employee is alleging that a supervisor has been unfair to him/her, the employee has to prove the charges are true. The supervisor does not bear the responsibility for proving s/he has not been unfair to the employee. In writing your decision, it may be advisable in some instances to include a statement noting where the burden of proof was or was not met by the employee who filed the grievance. It should be noted that in cases in which disciplinary action has been taken against an employee and a grievance has been filed alleging that the disciplinary action was inappropriate, management has the burden of proof, since in this instance, management is the moving party rather than the employee.

EXPLAIN YOUR DECISION. Finally, explain to the employee what factors or items were important in reaching your decision. Explaining your reasons to the employee in a straightforward manner may be very valuable in helping to reduce problems created by the incident. In all decisions, it is important to address the arguments made by the employee since these are the ones the employee feels are most important and therefore must be dealt with.
SAMPLE GRIEVANCE FORM

NAME    N. O. Class
WORK LOCATION   George Meany High School
JOB TITLE    Classroom Teacher
UNION REPRESENTATIVE   Ruth Less
ARTICLE(S) & SECTION NUMBER(s)   Article XV, Section 2
STATEMENT OF GRIEVANCE:   I have 28 students enrolled in my wood shop class.  There are only 25 complete work stations.  Article XV, Section 2 of the contract requires that "Student Enrollment should not exceed number of work stations..."
RESOLUTION OR REMEDY SOUGHT:   Immediately reduce the class size of my wood shop class to not more than 25 students.

DATE    May 16, 1994
SIGNATURE

IMMEDIATE SUPERVISOR'S RESPONSE:    There are 28 work stations made up of tables and stools.  The grievance is untimely, enrollment in class has been at 28 since the third week of September 1993.  The language of Article XV, Section 2, is permissive, not mandatory.  Past practice is to enroll 28 students in wood shop.

DATE    February 13, 1994
SIGNATURE

Distribution of Copies:
Immediate Supervisor
Grievant
SAMPLE
GRIEVANCE RECORD

DATE: November 17, 1993

EMPLOYEE(S) INVOLVED: O. T. Gripe

UNION REPRESENTATIVE: Ty Rade

EMPLOYEE'S COMPLAINT: Gripe and Rade came into my office on 11/14 at 8:30 a.m. and complained that Gripe should have been placed on the 11/11 overtime work list. Rade said that Gripe had not been getting equal overtime along with other employees as required by the contract.

REMEDY SOUGHT: Gripe wants to be assigned to overtime tonight. Rade agreed, but thought Gripe should also get some money for the overtime lost.

ALLEGED VIOLATION OF: Article XII, Section 5 — AFSCME Agreement

GRIEVANCE FILED WITHIN TIME LIMITS: Yes.

FACTS INVESTIGATED: I reviewed my files and found that Gripe was given equal chance of overtime, but turned it down on 9/1, 9/15, 10/4 and 10/12. If he had accepted overtime on those days, he would be equal with other employees in his qualification.

ANSWER GIVEN: I met with Gripe and Rade on 11/17 at 8:30 a.m. and reviewed times that Gripe had turned down overtime. Told Rade I had to deny the grievance. Rade said that they would think about it.

ACTION TAKEN: Grievance was denied.

FOLLOW-UP: None, except to work with Gripe on future overtime assignments so he knows he is getting equal chance.
SAMPLE
GRIEVANCE FORM

NAME    O.T. Gripe

WORK LOCATION    Building Services Department

JOB TITLE    Plumber

UNION REPRESENTATIVE    TY RADE

ARTICLE(S) & SECTION NUMBER(s)    Article XII, Section 5

STATEMENT OF GRIEVANCE:    I should have been placed on the overtime work list
on November 11, 1993. I have not received equal overtime as required by Article XII,
Section 5.

RESOLUTION OR REMEDY SOUGHT:    Pay for three hours overtime on November 11,
1993, at the rate of time and one half. In addition, assignment to available overtime on
November 14, 1993.

DATE ___________________________    SIGNATURE ___________________________

IMMEDIATE SUPERVISOR'S RESPONSE:    Grievant was offered overtime on
September 1, September 15, October 4, and October 12, 1993, and turned it down. If he had
accepted overtime on those days, he would be equal with the other employees in his
classification. Finding no violation of Article XII, Section 5, this grievance is denied.

DATE    November 17, 1993    SIGNATURE ___________________________

Distribution of Copies:
Immediate Supervisor
Grievant
SAMPLE
GRIEVANCE FORM

NAME

WORK LOCATION

JOB TITLE

UNION REPRESENTATIVE

ARTICLE(S) & SECTION NUMBER(s)

STATEMENT OF GRIEVANCE:

RESOLUTION OR REMEDY SOUGHT:

DATE

SIGNATURE

IMMEDIATE SUPERVISOR’S RESPONSE:

DATE

SIGNATURE

Distribution of Copies:
Steward
Grievant
UMD Department of Human Resources
GRIEVANCE ANALYZER FOR SUPERVISORS

RECEIVE THE GRIEVANCE WELL:

G Give the employee a good hearing - show respect and interest.

G Listen - don't interrupt. Keep an open mind.

G When the employee has finished, ask questions, but take no position (who, what, when, where, why).

G Take notes, KEEP RECORDS.

G Ask the employee to repeat any aspects of the situation where additional information is needed.

G Repeat the essentials in your own words.

G Accurately document any and all actions, statements or information taken.

GET THE FACTS:

G Learn the section of the contract rules allegedly violated.

G Check the contract or other official document.

G Ask open-ended questions requiring more than a "yes" or "no" answer.

G Check the experience of others in similar cases

G Check department policies, practices, rules and regulations.

G Check with the UMD Department of Human Resources.

G Reach a preliminary decision in the case — but keep it to yourself until you have completed your investigation.

TAKE THE NECESSARY ACTION:

G Settle the grievance at the earliest moment that a proper settlement can be reached.

G Explain your position.

G Make any correction required by your decision if possible.

G If necessary, pass all the facts to the next level of the grievance process.

FOLLOW UP:

G Make sure the action is carried out.

G Be alert to situations which might bring new grievances.

G Correct such situations before another grievance is filed.

G Make sure your answer to the problem is working.

G Record all pertinent data.