



A READY REFERENCE GUIDE FOR USE BY MNA LOCAL
BARGAINING UNIT OFFICERS WHO ASSIST WITH
GRIEVANCES

Available at www.mtnurses.org

A. CONTRACT ENFORCEMENT AND THE ROLE OF THE UNION OFFICER, GRIEVANCE OFFICER, NURSE ADVOCATE, OR RESOLUTION OFFICER

Your collective bargaining agreement (CBA) – your contract between the nurses (MNA) and your employer – is a LEGAL document which brings equity and fairness to the employment relationship and the workplace. As with any legal document, the CBA is only as effective as its enforcement and application. The grievance procedure contained in a (CBA), and effectively using that process, allows the Local to enforce the CBA and creates a living document.

The key to effective CBA enforcement is the work of your local union officers, grievance/resolution officers, or nurse advocate, and members to protect the rights of each other. It also continues the collective bargaining process between your Local Unit and your employer on an ongoing basis. The best grievance procedure is of little value to its members if it is not accompanied by its dedicated, trained Local Unit Representatives who are trained and prepared to enforce the process and represent the members.

B. THE GRIEVANCE AND THE GRIEVANCE PROCEDURE

Every grievance begins with a question or complaint by a nurse, group of nurses, or your entire Local Unit alleging a contract violation. The question or complaint may address something your employer was supposed to do, or not do, such as a disciplinary action (most common), or a contract language interpretation/violation issue. Your MNA Labor Representative will assist with whether the question or complaint is a legitimate grievance alleging a violation of the agreement.

The purpose of the grievance procedure defined in your MNA CBAs is to provide a framework for timely, orderly, and equitable dispute resolutions. Every grievance procedure contains the following items:

- a. The scope of the grievance procedure.
- b. The grievance procedure contains a roadmap, i.e. the “steps”, which contains timelines that must be followed by both parties.
- c. Each step will detail the procedure to follow, the authority, and responsibility for each party.
- d. Some grievance procedures contain a provision for informal resolution prior to filing a formal grievance. Most procedures also allow for mutual resolution through non-binding mediation at a later step.
- e. The final step will be binding arbitration by a neutral third party.

C. INVESTIGATING AND WRITING THE GRIEVANCE

The first responsibility of a local union officer, grievance/resolution officer or nurse advocate when notified by a co-worker there may be a need to file a grievance, is to listen to the grievant’s story. Practice active listening techniques and lend a sympathetic ear so that you are able to “hear” the entire story. During this step, ask the grievant to provide you with a written detailed account of the facts of the situation or issue. As a local union officer, grievance/resolution officer or nurse advocate, the detailed written account you receive from the grievant, and other pertinent details, including identifying the answers to the following “6 Crucial W Questions” during your investigation will provide the basis for the grievance discussion:

1. **WHO** – Who is involved? This includes the grievant or grievants, member or members of management who acted or failed to act properly which gave rise to the issue/complaint. There may be other person(s) who may have been a witness or have knowledge of issue/complaint and any related matters. Each of the above **RN local unit members** should be interviewed by the local union officers or grievance/resolution officers or nurse advocate, either in writing or in person. Always ask your MNA Labor Representative for assistance either before or immediately following initial fact-finding. The MNA Representatives are very helpful in assisting with formulating interview questions.

2. **WHEN** – When did it happen? This question is important for three reasons:
- *Are the “days” specified in the CBA language “calendar days” or “business days”?*
 - *The time of the incident itself may be the basis for complaint/issue becoming a meritorious grievance.*
 - *The moment of the incident or action (as in a discipline) OR (at times), first knowledge of an incident or action is the start of the clock in your grievance procedure.*

Your contract will contain all the timelines that must be followed, and it all begins from the initial date of occurrence. **IMPORTANT NOTE – A grievance that is not filed and processed in a timely manner will likely not be recognized by the employer and the case may be lost regardless of the strength of the arguments or the evidence.*

3. **WHERE** – Where did it happen? The location of the event in question may be important in determining whether a management action was proper or not. This is especially true for grievances that involve disciplinary action or accusations of employee insubordination, and the setting of the incident can be a determining factor in judging the right or wrong character of that action.
4. **WHAT** – What happened? Which action or failure to act on the part of management is the basis for the complaint? It’s important to identify all the specifics of the incident and any appropriate documentation if it exists. The grievant(s) will be your major source of this information, as will any witnesses. Always remember to separate fact from opinion and discount allegations and hearsay. Always trust but verify with first-hand accounts. A lot can get lost in the translation sometimes!
5. **WHY** – Why is it a grievance? What article or articles of the contract have been violated or breached because of the action? *The complaint of the grievant may be justified; but if it is not a violation of the contract, established policy, or past practice, it is not a grievance- however, that does not necessarily mean the matter cannot be addressed.*

6. WHOLE – What must be done to make the grievant(s) whole? There must be a remedy that will restore the integrity of the contract and find a resolution for the grievant according to the terms of the CBA. Your MNA Labor Representative will assist with drafting a remedy that will be appropriate. ******Prior to filing a grievance*****:*

- 1. Call your MNA Labor Representative to get their assistance/advice; it is imperative they know a grievance is being filed, before it is filed.*
- 2. READ your grievance process contract language so you follow the steps correctly and that all timelines are followed. Contact your MNA Labor Representative and make a plan to work together writing the grievance form.*

D. WHAT IS MEDIATION AND ARBITRATION?

- **MEDIATION:** A step contained in many CBA grievance language that allows for a neutral third-party mediator to provide assistance in reaching a resolution. If the parties agree on a remedy, that creates the settlement agreement. The grievant(s) is included and can actively participate in mediation.
- **ARBITRATION:** The process by which unresolved grievances are submitted to a mutually acceptable impartial third party who renders and final and binding decision. It is generally the last step in CBA grievance language. For any MNA grievance to advance to arbitration, it must be vetted through the MNA Grievance and Arbitration Review Panel first.

IMPORTANT TIPS TO REMEMBER ON HOW TO ASSIST IN THE GRIEVANCE PROCESS:

- 1. What is your timeline of events/facts that lead to the potential grievance? What your deadline/timeline is for when you need to initiate the grievance process, which is defined in the grievance process section of your contract.**
- 2. Talk with grievant and records facts, dates, and witnesses. Have the grievant and witnesses provide you with a written summary of events, in their own words, with specific dates, times, people involved, and other relevant facts, including direct quotes. (Email is ok!)**
- 3. Determine what section of the contract or policy has been violated.**
- 4. Ask clarifying questions and/or request additional information AT ANY TIME during the process. Remember we can always request any information from admin at any time and please seek assistance from your MNA Labor Representative.**
- 5. Separate the facts from opinions/allegations or assumptions and determine which facts are relevant to the matter in dispute.**
- 6. Continue to follow the steps outlined in your grievance procedure (PAY ATTENTION TO TIMELINES) and never hesitate to seek assistance from a MNA Labor Representative.**
- 7. Fill out the grievance form, with assistance from you MNA Labor Representative, at the appropriate time.**

INVESTIGATORY TIPS FOR YOU TO USE:

***THE CRUCIAL “W’s” OF GRIEVANCE INVESTIGATION:**

WHO is involved?

1. Grievant (nurse, nurses, Local as a whole) _____

2. Responsible management and department _____

3. Witness(es) _____

Additional Notes:

WHERE did the incident happen?

1. _____

Additional Notes:

WHAT happened?

1. What issue occurred or gives rise to the grievance? (This can be contained within the written statement of facts from the grievant(s)) (**Best practice* ask grievant(s) to email you with their account of facts giving rise to the grievance*):

Additional Notes:

WHY is it grievable?

1. Specifically, what is wrong with “What happened”?

2. Contract language or policy violated (cite article, section) _____

Additional Notes:

What should be done to remedy the situation or make the grievant WHOLE (ALWAYS ask your MNA Rep!)?

1. Remedy or resolution requested? _____

2. Other resolution options _____

Additional Notes:

GLOSSARY OF IMPORTANT COLLECTIVE BARGAINING TERMINOLOGY

A

ACROSS THE BOARD INCREASE - A general wage increase that covers all the members of a bargaining unit, regardless of classification, grade or step level.

ARBITRATION - is the process by which unresolved grievances are submitted to a mutually acceptable third party who renders a final and binding decision. It is the last and final step in most grievance processes. For any MNA grievance to move forward to arbitration, it must be vetted through the MNA Grievance and Arbitration Review Panel first.

B

BACK PAY - Wages due for past services, often the difference between money already received and a higher amount resulting from a change in wage rates.

C

COLA - A cost of living adjustment. However, this term is often used to describe wage increases that are granted across-the-board to all employees, without regard to any statistic such as the Consumer Price Index (CPI).

COLLECTIVE BARGAINING AGREEMENT (CBA) - A written agreement or contract that is the result of negotiations between an employer and a union. It sets out the conditions of employment (wages, hours, benefits, etc.) and ways to settle disputes arising during the term of the contract. Collective bargaining agreements usually run for a definite period--one, two or three years. Synonymous with Memorandum of Understanding or MOU.

CONTRACT - A labor agreement that has been negotiated between the employer and the employee union or association for a specific time period covering the wages, hours and other terms and conditions of employment for employees covered by the contract.

F

FAIR LABOR STANDARDS ACT (FLSA) - The 1938 federal Wage-Hour Law, which establishes minimum wage, maximum weekly hours and overtime pay requirements in industries engaged in interstate commerce. The law also prohibited the labor of children under 16 years of age.

FAMILY AND MEDICAL LEAVE ACT (FMLA) - Federal law establishing a basic floor of 12 weeks of unpaid family and medical leave in any 12-month period to deal with birth or adoption of a child, to care for an immediate family member with a "serious health condition", or to receive care when the employee is unable to work because of his or her own "serious health condition."

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS) - Independent agency of the Federal government created by the Taft-Hartley Act in 1947 to mediate labor disputes that substantially affect interstate commerce.

G

GRANDFATHER CLAUSE - An exception provided in a contract article that either exempts or continues a prior benefit to those covered employees who were employed prior to the negotiation of that article.

J

JUST CAUSE - A reason an employer must give for any disciplinary action it takes against an employee. An employer must show just cause only if a contract requires it. Most contracts have just cause requirements that place the burden of proof for just cause on the employer.

L

LONGEVITY DIFFERENTIAL - A payment, above the base rate of pay, based on years of service. This payment does not become part of an employee's base pay.

M

MANAGEMENT RIGHTS - The claimed rights of employers to control operational aspects of the workplace. Usually found in a separate contract article.

MEDIATION - The involvement by a neutral (often the Federal Mediation and Conciliation Service or state agency) to assist in negotiations by discussing the disputed issues with the parties together or separately and assisting the parties in reaching a settlement. This is a voluntary procedure that is non-binding on the parties.

MEMORANDUM OF AGREEMENT - Most often refers to the written document summarizing the terms of settlement for a successor collective bargaining agreement and signed by both parties. Sometimes it is also used to refer to the written collective bargaining agreement itself.

MERIT INCREASE - Increase in wages given to one employee by the employer to reward good performance. Merit increases lack objective criteria for awarding increases, and thus allow favoritism to enter into the decision awarding such increase.

N

NATIONAL LABOR RELATIONS ACT OF 1935 (NLRA) - Federal law guaranteeing workers the right to participate in unions without management reprisals. It was modified in 1947 with the passage of the Taft-Hartley Act and modified again in 1959 by the passage of the Landrum-Griffin Act.

NATIONAL LABOR RELATIONS BOARD (NLRB) - Agency created by the National Labor Relations Act, 1935, and continued through subsequent amendment, whose functions are to define the appropriate bargaining units, to hold elections, to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the Act's provisions prohibiting certain employer and union unfair practices, and otherwise to administer the provisions of the Act.

O

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) - The Law which authorizes the OSHA agency to set standards, obligates employers to provide a safe workplace, and provides for enforcement of the standards. The law encourages the states to develop their own safety laws, which displace the federal law.

OFF-THE-RECORD - Discussion or talks that occur where no official record is kept, and notes are not taken.

P

PAST PRACTICE - An unwritten, repeated application of a work rule or policy over a period of time that is known and accepted by both labor and management. Past practice is used by arbitrators to judge how a contract term has been interpreted at the workplace when the language of the agreement is ambiguous.

PREMIUM PAY - An extra amount over the normal hourly time rates, sometimes a flat sum, sometimes a percentage of the wage rates, paid to workers to compensate them for inconvenient hours, overtime, hazardous, or unpleasant conditions, or other undesirable circumstances.

PROTECTED ACTIVITY - Activity by an employee such as participating in union activity, filing an appeal, appearing as a witness on behalf of another employee or the union, marching in a picket line. Such activities are called "protected" because the employee is legally protected from retaliation by the employer for engaging in such activities.

Q

QUID PRO QUO - A Latin phrase meaning literally, "What for what." The phrase describes an implied or expressed expectation that one party will get something for something else given up.

R

RETROACTIVE PAY - Retroactive pay (or back pay) is a retroactive wage increase. For example, a negotiated contract expires December 31st, but employees continue to work while a new contract is negotiated. A new contract is approved the following

March which includes a pay increase retroactive to January 1st. The retroactive increase, or back pay, is paid for work beginning January 1st.

S

SENIORITY - A worker's length of service with the employer. Seniority often determines layoff order, promotions, recall or transfers. Various forms of seniority may be negotiated, including: facility-wide seniority; bargaining unit seniority; and classification seniority.

SETTLEMENT AGREEMENT – When a resolution to a grievance is mutually agreed upon, the parties have reached a settlement. A settlement agreement is a written contract between the union and the employer that contains the terms of the resolution.

SIDE-BAR - A discussion that occurs away from the bargaining table, usually between the chief negotiators from either side. Often side-bars are used to probe areas of settlement or to clarify questions or to share information. Sidebar talks are always considered to be off-the-record. In some negative instances these have been used to actually reach an agreement with the full negotiating committee not involved.

SIDE LETTER - An agreement outside the main body of the contract similar to an addendum, but as binding as anything else in the contract itself unless explicitly stated otherwise.

STEP INCREASE - An automatic increase in pay when an employee advances up a wage scale step. The steps are negotiated by the parties in advance and are usually based on years of service.

T

TIMELINE AND TIMELINE EXTENSION – The amount of time allowed for all actions, including initial filing, for every step contained within a grievance process as defined in a collective bargaining agreement. Most contracts contain language that can allow for an extension of timelines with mutual agreement.

U

UNFAIR LABOR PRACTICE ("ULP") - An action by an employer or a union that violates the bargaining law. Violations include interfering with organizing, discrimination against an individual for union activity and bad faith bargaining. Charges alleging an unfair labor practice are filed with the NLRB (private sector) or the state labor relations commission (public sector).

UNILATERAL ACTION OR CHANGE - An action taken by an employer without bargaining with the union.

W

WAGE SCALE - A schedule of wages paid for different jobs usually according to grade level. Wage scales often include "step" raise increases that are earned on an employee's anniversary date.

WEINGARTEN RIGHTS - Named after a 1975 U.S. Supreme Court decision which ruled that an employee has the right to a union representative in any interview the employer might hold that is intended to investigate a possible discipline charge against the employee.



Weingarten Rights



If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my Union Representative, Officer, or Steward be present at this meeting.

Until my representative arrives, I choose not to participate in this discussion.

MNA Grievance Tracking Form

*WHO is involved?

1. Grievant (nurse, nurses, Local as a whole: _____

2. Responsible management and department: _____

*WHEN did it happen?

Time and date of event: _____

Additional Notes:

3. **WHEN must grievance process be initiated, or the grievance be filed? Are the “days” allotted in the CBA calendar days or business (working days) days? What is the timeline defined in your CBA?**

3A. What is the timeline for Step 1 (or informal) Step Meeting (or whatever the informal language per the CBA indicates).

- When is the first step notice (or grievance filing) due to the employer? _____
- Additional Notes:

3B. What is the timeline for employer response to Step 1 grievance?

- Due date: _____
- Additional notes:

NOTE: There are a lot of variables regarding informal/formal first steps in the grievance procedure- Don't Stress!! Ask your MNA Labor Representative for assistance.

4. Does the employer's response to Step 1 response satisfy the grievant?

Yes? Call your MNA Labor Representative and discuss.

No? Call your MNA Labor Representative and discuss.

4A. What is the deadline for advancing to Step 2 (based on the Step 1 response)?

- Due date: _____
- Date advanced to Step 2: _____
- Additional notes:

4B. What is the deadline for the Step 2 meeting?

- Due date: _____
- Step 2 actual meeting date: _____
- Additional notes:

4C. What is the deadline for employer response to Step 2 (based on Step 2 meeting date)?

- Due date: _____
- Step 2 response received _____
- Additional notes:

5. Does the employer's response to Step 2 response satisfy the grievant?

Yes? Call your MNA Labor Representative and discuss.

No? Call your MNA Labor Representative and discuss.

5A. What is the deadline to advance to Step 3? (based on the Step 2 response)?

- Due date: _____
- Date advanced to Step 3: _____
- Additional notes:

5B. What is the deadline for the Step 3 meeting?

- Due date: _____
- Date Step 3 meeting held: _____
- Additional notes:

5C. What is the deadline for employer response due in response to Step 3 meeting (based on actual step 3 meeting)?

- Due date: _____
- Date Step 3 response received: _____
- Additional notes:

****CALL YOUR MNA LABOR REPRESENTATIVE TO REVIEW NEXT STEPS ASAP****

SAMPLE
GRIEVANCE FORM

GRIEVANT(S): _____

EMAIL ADDRESS: _____

PHONE NUMBER: _____

GRIEVANCE BRIEFLY DESCRIBED: (Include accurate dates, times, and places):

ARTICLE(S) AND SECTION(S) OF THE CONTRACT OR ANY POLICY(S) VIOLATED (INCLUDING BUT NOT LIMITED TO):

REMEDY SOUGHT (INCLUDING BUT NOT LIMITED TO):

INFORMATION REQUESTED:

Grievant(s) Signature(s): _____

Local Unit/MNA Representative:
Phone:
Email:
Signature:

LOCAL UNIT:
DATE FILED: