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**GRIEVANCE DRAFTING TIPS 1, 2 & 3**

*Most contracts merely require the union to put the following in the grievance: 1- Article and section violated, 2- Description of the grieved event, and 3- Remedy desired.   As clear as that or similar language appears, there are some drafting tips that will boost your chances of winning.*

#1. 　　 If the contract only requires that you cite the article and section violated, do not cite subsections or even particular sentences. You may think you are being helpful to management, but what you are doing is reducing the scope of a grievance. 　For 　example, suppose you filed a grievance citing Article X, Section X(c)(2)(A) of your contract because that section contained all the steps management must take to discipline an employee and subsection (c)(2)(A) is the particular step you already know that management botched. But now suppose that once you get the discipline file you find that management missed a couple of other steps required by that section that are not listed in subsection (c)(2)(A). Because you wrote the grievance so narrowly, you probably have to file a second grievance and potentially take the additional violations to another arbitration. 　Unless the contract or management lets you, you cannot add to the grievance after the filing deadline has passed. 　Had you just cited Section X, your grievance would have covered any other violations you found along the way.　 Feel free in the grievance meeting to tell management which specific subsections you are targeting, but make sure it knows that you retain the right to pursue any violation of the cited section.

#2.　　　 Beyond citing contract provisions violated, consider also alleging an unfair labor practice violation, particularly a failure to bargain in good faith due to a unilateral change in working conditions allegation (5 USC 7116(a)(5)).　 Here is an example why that can help. If management has always interpreted the contract requirement to give employees a “reasonable amount of time” to complete promotion applications as four hours per application, but suddenly limits them to one hour, you probably have a contract violation. But you also probably have a ULP violation, i.e., a unilateral change in working conditions.

By citing a ULP violation, you give the union a second chance to win the case.　 Should the arbitrator decide that the contract expression “reasonable time” gives management the discretion to drop from four to one hour, he can nonetheless give the union a victory by ruling that it was a violation of the law for management to make that change without first notifying the union and bargaining.　 In other words, by citing a ULP allegation you empower the arbitrator to find management had the substantive right to cut the hours, but that it could do so only after giving the union notice and bargaining over at least the impact and implementation of the change.　 That should be enough to get the union a status quo ante order and back pay.

#3. 　　 A third suggestion for drafting the scope of the grievance is that you include with the citation to the article, section and ULP provision the words, “and all other related laws and regulations violated.”　This should clearly enable any arbitrator to enforce a law or regulation related to the nature of the violation.　 Here is how that can work to your advantage. 　Suppose you cited in a grievance contract language saying that “all promotion assessments must be fair,” and that you alleged that management established the assessment criteria unilaterally, constituting a ULP.

An arbitrator could easily find that while not the best assessment, it was “fair” and that it had not been changed in the last six months.　 So, you would lose on those issues. But if you also alleged violations of laws and regulations, you get a third bite at the apple because in the federal sector arbitrator MUST follow all law and regulations.

Well, it just so happens that 5 CFR 300 requires that all promotion assessment criteria be supported by a formal “job analysis” showing there to be a　professionally validated　rational link between the criteria and successful performance in the vacant position.　 It also requires that these criteria avoid adversely impacting any protected civil rights classes.　 Had you alleged violations of related law and regulation you would be able to raise this at any time in the grievance. 　Check out this [case](http://www.flra.gov/decisions/v61/61-041.html) for an example.

*(This article was first posted on****Fedsmill****in 2011.) More Grievance Drafting tips will follow in a few days. Keep checking with Fedsmill or subscribe to get notices of new postings.　 You can subscribe by going into the Contacts page on the black menu bar under the windmill and entering your information.)*

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## ****GRIEVANCE DRAFTING TIPS 4, 5, & 6****

Before we turn to three other parts of a grievance where you can boost its winning potential and impact, remember this.  If you were unable to draft the grievance broadly enough during the grievance stage, often arbitrators will allow the parties to deviate from the exact wording of the grievance and the management responses when crafting the formal issues statement for him.  If you have that opportunity, here is an example of how a promotion-related grievance might be written for the arbitrator, “Did the agency violate Article X, Section Y of the parties’ agreement or any law, rule or regulation when it denied the following individuals promotion.” So, now let’s turn away from the grievance issue to look at your other opportunities.

**#4** Closely related to the scope of the charges leveled in the grievance is who is covered by the grievance.  The most common kind of grievance involves a single employee; perhaps she is opposing a reprimand or pursuing a higher evaluation.

However, there are other situations where just a single individual might have asked the union to file a grievance, but it is obvious that other employees were similarly harmed.  For example, let’s say that a group manager ignored the contract and unilaterally implemented a new criterion for granting performance awards in his group.  While only one employee might ask the union for help, you know that others were similarly harmed.

Here are the options the union has.  It could file the grievance solely on behalf of that individual or it could file on behalf of that employee and all other employees in the group.  Doing the latter increases the size of the potential remedy, although the higher dollar cost also probably makes it harder to settle on a remedy just for the one employee.

A third option would be for the union to send a message to all employees under the offending manager asking them to tell the union whether they want to be included in the grievance.  That forces employees, including non-members, to contact the union and ask for its help, which is never a bad thing. It also reinforces for the members the need to stand up for themselves.

If all the non-members fail to ask to be included, then neither the arbitrator nor management may give them a remedy if the grievance is sustained.  FLRA has made that clear.  FLRA made that clear in a case out of AFGE, Local 916. “An arbitrator exceeds his or her authority when, for example, the arbitrator issues an affirmative order that exceeds the scope of the matter submitted to arbitration or awards relief to persons who did not file a grievance on their own behalf and did not have the union file a grievance for them.” 42 FLRA 680.  (See also 65 FLRA 787)

**#5**  Almost every grievance requires that the union get access to certain information to help it argue its claim or even decide whether to go forward. You certainly have the right to delay asking for it until after you file the grievance, but you can also ask for it a week or so before filing.  Here are the plusses and minuses of each.

If you asked management for information before filing the grievance and not received it by the time the grievance is to be filed, you can add the denial of the information to your grievance, e.g., allege a 7116(a)(1 and 5) unfair labor practice.  By adding it to the grievance, you avoid having to file a separate case just to get the information.  Putting the information issue with the basic grievance also gives the arbitrator more clout and raises management’s risks.  We have seen unions lose the basic grievance, but have the arbitrator order management to produce so much information that management suddenly decides to settle the case.

If you wait to request the information until after the grievance is filed, generally that means there will be more delay in processing the grievance and it is much harder to add the denial to an already-written grievance.  Normally, unions have to negotiate into their term contract the right to amend a grievance with related charges.  If you cannot amend the grievance, you now have to do two separate, but related cases before an arbitrator or the FLRA.

Of course, in either case, you always have the option to treat the information denial as totally separate from the basic grievance and file the ULP with FLRA.

**#6**   The same level-of-detail advice applies to remedies as offered earlier about drafting the scope of the grievance.   You have the right to only ask for something as specific as priority consideration as a remedy.  But, if by the time you get to arbitration you find that you can prove the employee is entitled to retroactive promotion, you are in trouble. The maximum remedy an arbitrator can grant is what you specifically stated in the grievance–unless management lets you ask for more. (Don’t bet on that.) So, in this case even if the arbitrator agrees that the employee should be retroactively promoted, she can only give the grievant priority consideration.

The far better approach is to list any specific remedies and then add to that list the phrase “and all other appropriate remedies.”  For example, your grievance could have said that as a remedy you want “a public admission in writing that management was wrong, priority consideration and all other appropriate remedies.”  That expression gives the arbitrator the power to impose any remedy she feels is just, even if you never discussed it in the grievance meetings. In addition, you have increased management’s liabilities if it lets the case go to arbitration.

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