

Being a Good Steward (Part 5)

Initial Interviews and starting an investigation

By John Amtsfeld, January 2008

It is a prepared steward who automatically assumes that an initial contact with a craft employee can result in a grievance or that when a steward realizes that an issue, concern or a problem can be a grievance, that immediate steps are taken to start the interview process, to start the process of documentation and to start the investigation.

First and foremost it is important to form a partnership with the grievant/complainant to document and prove the case. Whenever a grievance is filed, the burden of proof is on the grievant and the union to prove that a situation, issue or problem is a violation. It is just not enough to simply allege a violation but there has to be proof that there actually is a violation. What exactly is being violated and how and what the proposed remedy must be.

The grievant/claimant probably is isolated because of the issues being raised. The last thing he/she needs is another critic, another wet blanket, another naysayer or someone to tell them how foolish they are. What they need is someone that is clearly on their side. No ifs, ands or buts, a union representative must deal with the here and now and it does very little good to rehash what has already happened. If the grievant wanted someone to tell them how foolish they are, they could find plenty of people that will do that. What the grievant is looking for is understanding and support; someone in their corner.

Simply stating what everyone knows to be true or suspects to be true does not meet the burden of proof placed on a grievant or the union. I can almost guarantee that absent any proof, USPS will likely take the position that the violations alleged are not true or accurate, that if situations occurred that could be misinterpreted that USPS was well within their contractual management rights, that the actions alleged are not violations of any rule, policy, procedure, contractual provision or other mandated practice and as such are well within management's right to manage as outlined in Article 3 of the Collective Bargaining Agreement and that the grievance/complaint is specious, spurious and arbitrary.

Once it is apparent that a grievance should be filed; the grievant needs to be put on notice immediately that you need documentation. I always try to get the grievant to provide the following in any grievance:

- Copy of grievant's most recent PS Form 50 Notice of Personnel Action. This is important for establishing employee's seniority, enter on duty date, route classifications, address, and other important data necessary for processing a grievance and for quick reference in adjudicating the grievance.
- Copy of grievant's most recent completed PS Form 4240, Rural Carrier trip report. Again for

relevant route data such as schedule, work times, work history for two pay periods and PS Form 4240 for dates of issue of grievance.

- Copy of grievant's PS Form 4003 Rural Route description.
- Copy of grievant's statement as to what happened, what took place, who may have witnessed or overheard anything relevant, what was said and anything else of importance to the issue at hand. Caution the grievant to avoid editorial comment or in saying what he/she thinks about anything that happened. If they want to write out comments or opinions, it should be done on a separate paper/document and included.
- Copies of any other relevant paperwork including pay stubs, mail count forms, letters of warning, disciplinary letters, safety hazard forms, memos or letters to management or any other documentation.
- Copy of employee's contact information including telephone numbers, home and post office, address, email address.
- I also ask for a waiver of confidentiality to be signed by the grievant so that USPS cannot refuse to release information based on confidentiality and such waiver specifically authorizes the named steward to act as representative and is specifically authorized by the grievant/claimant to receive personal and confidential information as agent for the grievant/complainant.

Probably the first thing you will need to do is set aside some time to interview the grievant. If you have time and a little foreknowledge of the issues involved; it is a good idea to have an outline prepared so that you know what you need to ask.

When preparing for an interview or in the first contact with the grievant/complainant; he/she will have their case prepared to present to you in the best possible light to convince you that their position is right, compelling and worthy of action. As a part of their case presentation; they will hit all of the positive aspects of their case emphasizing the callous actions or arbitrary treatment of management. Remember, that however compelling the story is, it is one side. I often ask a lot of questions but in a way that is non-accusatory or non-judgmental to try and get some of the negative items that will likely present themselves.

I will often have a short preamble prepared once it is time to get to the nitty-gritty of the issues. I explain that I do not judge issues, concerns or problems so that anything that is told to me isn't going to affect how I handle the case especially in disciplinary cases. That it is very important for me to know what USPS or management is likely to tell me, to say or to claim. It is much better if I know beforehand the good, the bad and the ugly so that I am prepared for it and we have discussed it before it is raised by management. Management will likely use any negative information in the tactically most advantageous time and fashion; so it only makes sense, that as a representative I am not surprised by information used in ambush, that I have not constructed a crucial part of the grievance or union case around a set of circumstances or facts that are rendered moot or completely discredited and that I can anticipate what management will say and do and be prepared for it.

Whatever promises you make to a grievant; must be kept. Do not tell a grievant that you will not judge them or that you will keep any information confidential, if you cannot keep your promise. If you have given your word; and there is a compelling reason to have to do something other than what you promised; you need to get the grievant's permission and release before anything is done. You will need to explain and convince the grievant that you will keep your promise unless they agree to allow a limited waiver for a specific purpose.

I make sure to convince the grievant that it is important to know everything. That what I am told is confidential, will be marked confidential and will be held as confidential by the NRLCA representatives at each level of the grievance procedure. It is also critical that the grievant/complainant tell the absolute truth. Lies or partial truths are like laying mines in the middle of the Union's case that go off as the Union or the grievant tries to inch through the minefield of lies and half truths, well after the date and time of the interview. Grievants need to be aware that if they do not tell the truth to their representative, they bear full responsibility of the case simply implodes as it is being processed since the Union representative is relying on the truth of what the grievant says. Every representative will at some time have cases completely disintegrate simply because the grievant was not honest with the union representative and a lot of them were cases where the Union could have prevailed. It is also important for a representative to know what the truth is so that the representative's credibility is not jeopardized by arguing a set of facts that are not true and are not accurate.

When you are interviewing the grievant/claimant you want to pay particular attention to anyone else who may have seen, heard or known about the issues, concerns or problems for the purposes of possible investigation, interviews and possible statements as the investigation proceeds.

Explain that it is necessary to ask some tough questions, but do it in a non-threatening way. Explain that I need to ask what USPS has asked, may ask or may end up important when the case is being processed. Use the tools for determining credibility including asking the same question or key questions, or in a way to get more detail or to double check later in an interview from either a different angle or in a different context. Be sure that you explore seeming contradictions.

Also make note of any documentary evidence that is referenced that may have a bearing on the issues, concerns or problems. Ask grievant if he/she has a copy of the documentation or knows where the documentation may be for future request and investigation.

The objectives in any initial interview are as follows:

- Determine what happened, where it happened, who was involved, who else was present, when it happened, why it happened, how it happened and any related details.
- Determine how to document the issues, concerns or problems.
- Determine further steps for investigation.
- Determine time line of events or a pattern if a pattern exists.
- Determine what other evidence may be necessary for further investigation and documentation.
- Get a sense of the work atmosphere, the inter-relationships of the involved persons. Is this a long standing personality issue involving a pattern of harassment or a pattern of misbehavior.
- How have other employees been handled who were in like situations?
- Is there a clearly understood rule or policy that is regularly and consistently enforced?
- What are the office procedures involved in the issues of the potential grievance or complaint?

Another objective in an initial interview is to calm the grievant/complainant down and reassure him/her. It is necessary that the issues take have already taken place are not made worse by any actions of the grievant/complainant and there needs to be an action plan if management attempts to provoke further adverse consequences. If the grievant/complainant knows what to do if management tries to further provoke the issues, the fact that an action plan was discussed may be enough to keep the issues from degenerating into something much worse.

Prior to the close of the interview, give the grievant time to get any questions answered (do not make any promises you cannot yourself keep and answer honestly and forthrightly) and to vent if need be.

Explain that they need to be in close contact if anything else happens affecting the case and that anything they can think of as far as documentation could be very helpful.

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