

A Guide to the Grievance, Working out of Classification and Article 36.05 Procedures

2009-2012 COLLECTIVE BARGAINING AGREEMENT



OHIO CIVIL SERVICE
EMPLOYEES
ASSOCIATION

AFSCME
LOCAL 11
AFL-CIO

CHART OF OCSEA GRIEVANCE PROCEDURE AND STEWARDS' RESPONSIBILITIES

NOTE: THIS CHART IS A SUMMARY OF STEWARDS' RESPONSIBILITIES AND IS IN NO WAY INTENDED TO MODIFY THE PROTECTIONS AFFORDED THE EMPLOYEES OR UNION AS REFLECTED IN ARTICLE 25 OF THE GRIEVANCE PROCEDURE.

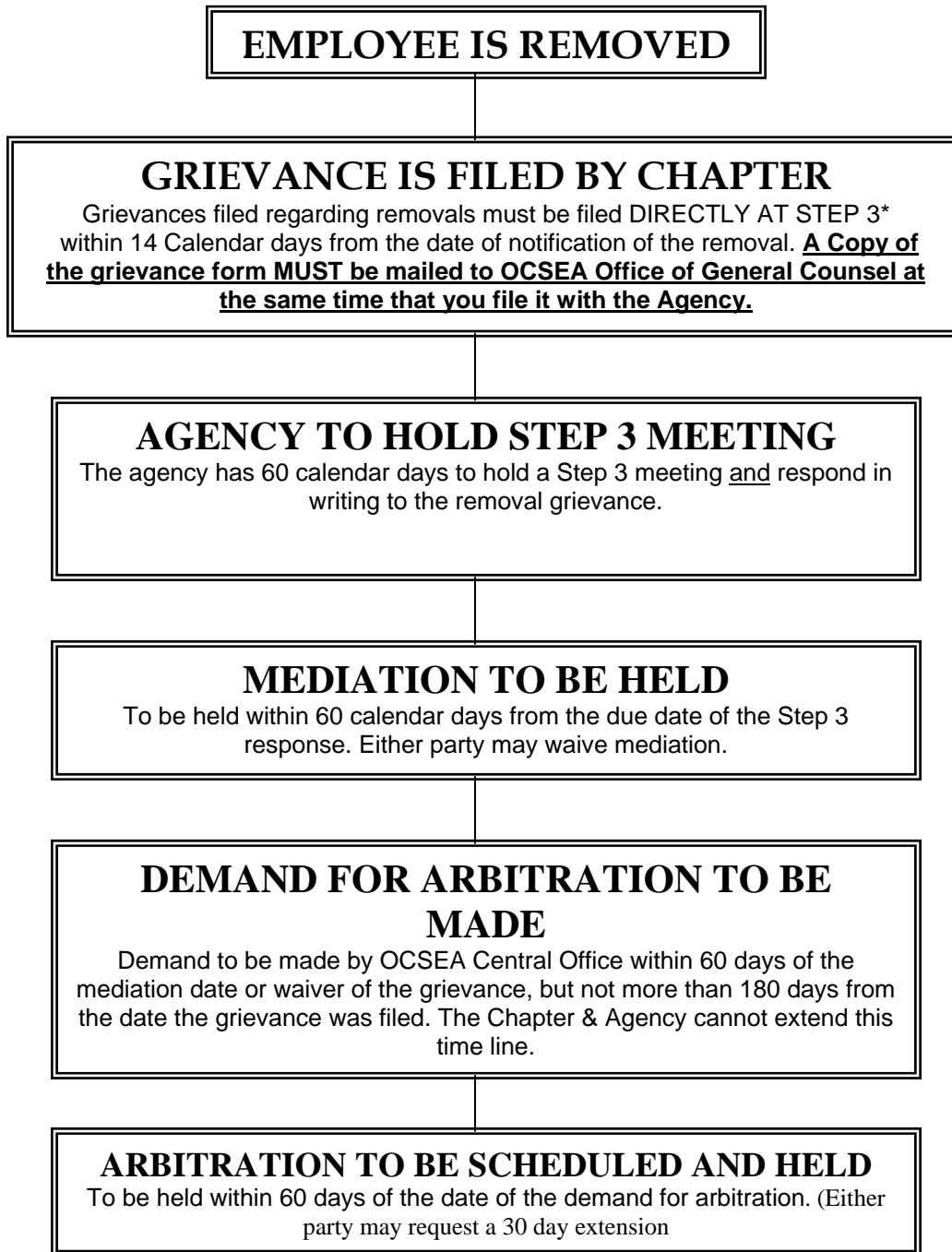
GRIEVANCE PROCEDURE	RESPONSIBILITY OF	UNION TIME LIMITS	MANAGEMENT TIME LIMITS	APPEAL TO NEXT STEP	PAPERWORK
Step 1-- IMMEDIATE SUPERVISOR. THE GRIEVANT AND/OR THE UNION SHALL ORALLY RAISE THE GRIEVANCE WITH A NON-BARGAINING UNIT SUPERVISOR	<ul style="list-style-type: none"> STEWARD AND EMPLOYEE 	<ul style="list-style-type: none"> TEN (10) WORKING DAYS FROM THE DATE THE GRIEVANT FIRST BECAME AWARE, OR REASONABLY SHOULD HAVE BECOME AWARE OF THE OCCURRENCE 	<ul style="list-style-type: none"> THREE (3) WORKING DAYS FROM WRITTEN RESPONSE.* 	<ul style="list-style-type: none"> FIVE (5) CALENDAR DAYS FROM RECEIPT OF WRITTEN STEP ONE RESPONSE* 	<ul style="list-style-type: none"> GRIEVANCE FORM SIGNED COPY OF GRIEVANCE FACT SHEET AND GRIEVANCE LOG BOOK
Step 2 -- INTERMEDIATE ADMINISTRATOR	<ul style="list-style-type: none"> STEWARD 	<ul style="list-style-type: none"> FIVE (5) CALENDAR DAYS FROM THE RECEIPT OF WRITTEN STEP ONE RESPONSE OR DATE ANSWER WAS DUE, WHICHEVER WAS FIRST 	<ul style="list-style-type: none"> SEVEN (7) CALENDAR DAYS TO SET UP DISCUSSION EIGHT (8) CALENDAR DAYS AFTER DISCUSSION, WRITTEN RESPONSE DUE 	<ul style="list-style-type: none"> TEN (10) CALENDAR DAYS AFTER RECEIPT OF STEP 2 RESPONSE* OR DATE RESPONSE WAS DUE WHICHEVER IS EARLIER VERBAL REPRIMANDS NOT GRIEVABLE TO STEP 3 	<ul style="list-style-type: none"> COPY ANSWERS GRIEVANCE LOG BOOK LEGIBLE COPY OF GRIEVANCE FORM MUST BE INCLUDED.
Step 3 -- AGENCY HEAD OR DESIGNEE IMPORTANT NOTE: GRIEVANCES WHICH INVOLVE A LAYOFF, NON-SELECTION, SUSPENSION, WORKING SUSPENSION OR REMOVAL, STEPS 1 AND 2 ARE SKIPPED AND THE GRIEVANCE IS STARTED DIRECTLY AT STEP 3.	<ul style="list-style-type: none"> STEWARD AND EMPLOYEE 	<p>LAYOFF, NON-SELECTION, SUSPENSION, WORKING SUSPENSION, OR REMOVAL</p> <p>COPY OF GRIEVANCE FORM MAILED (CERTIFIED) TO AGENCY HEAD/DESIGNEE WITHIN FOURTEEN (14) CALENDAR DAYS OF NOTIFICATION OF ABOVE ACTION (NOT THE EFFECTIVE DATE OF ACTION)</p> <p>CONTRACT INTERPRETATION</p> <ul style="list-style-type: none"> (10) CALENDAR DAYS AFTER RECEIPT OF STEP 2 ANSWER OR DATE ANSWER WAS DUE, WHICHEVER WAS FIRST 	<ul style="list-style-type: none"> MEETING WITHIN FIFTEEN (15) CALENDAR DAYS AFTER RECEIPT OF WRITTEN GRIEVANCE, UNLESS MUTUALLY AGREED OTHERWISE ANSWER TO BE GIVEN WITHIN 35 DAYS OF MEETING** 	<ul style="list-style-type: none"> IF NO MEETING IS HELD, APPEAL AS SOON AS DATE FOR MEETING HAS PASSED. IF A MEETING IS HELD, APPEAL AS SOON AS STEP 3 ANSWER WAS DUE (35 DAYS) OR RECEIVED, WHICHEVER IS EARLIER. OFFICE OF GENERAL COUNSEL SHOULD BE NOTIFIED IMMEDIATELY BY PREPARING APPEAL & PREP. SHEET AND ATTACHING A LEGIBLE COPY OF THE GRIEVANCE FORM** WRITTEN REPRIMANDS NOT GRIEVABLE TO STEP 4 	<ul style="list-style-type: none"> GRIEVANCE LOG BOOK PREPARE MATERIALS FOR OCSEA STAFF REPRESENTATIVE MAIL APPEAL & PREPARATION SHEET TO THE OFFICE OF GENERAL COUNSEL, MAIL GRIEVANCES AND ALL ANSWERS TO STEP 4 BY CERTIFIED MAIL TO OCB LEGIBLE COPY OF GRIEVANCE FORM MUST BE INCLUDED
Step 4 -- OFFICE OF COLLECTIVE BARGAINING	<ul style="list-style-type: none"> CHAPTER PRESIDENT OR DESIGNEE TO FILE TO STEP 4. OFFICE OF GENERAL COUNSEL TO APPEAL TO ARBITRATION 	<ul style="list-style-type: none"> FIFTEEN (15) CALENDAR DAYS AFTER RECEIPT OR DATE ANSWER WAS DUE, WHICHEVER WAS EARLIER. 	<ul style="list-style-type: none"> UNION OFFICE OF GENERAL COUNSEL AND OCB SCHEDULE GRIEVANCE MEDIATION CONFERENCE 	<ul style="list-style-type: none"> OFFICE OF GENERAL COUNSEL HAS SIXTY (60) CALENDAR DAYS TO APPEAL GRIEVANCE TO ARBITRATION (BUT NOT MORE THAN 90 DAYS FROM STEP 3 RESPONSE) WHEN: (1) GRIEVANCE IS NOT SUCCESSFULLY MEDIATED OR (2) EITHER PARTY GIVES NOTICE TO THE OTHER IN WRITING THAT THE GRIEVANCE CANNOT BE EFFECTIVELY MEDIATED*** 	<ul style="list-style-type: none"> FORMALLY CLOSED OUT RESOLVED GRIEVANCES

*IF NO TIMELY WRITTEN RESPONSE IS MADE, NOTIFY MANAGEMENT THAT YOU SEEK A RESPONSE AND THAT YOU WILL BE FORWARDING THE GRIEVANCE TO THE NEXT STEP.

** IF AGENCY FAILS TO MEET TIME LIMITS, OCB SHALL SCHEDULE A MEETING WITH THE STAFF REPRESENTATIVE AND CHAPTER REPRESENTATIVE WITHIN THIRTY (30) DAYS OF RECEIPT OF GRIEVANCE APPEAL. OCB SHALL HAVE THIRTY-FIVE (35) DAYS TO PROVIDE A WRITTEN RESPONSE.

*** IF MEDIATION IS WAIVED ON A GRIEVANCE BY EITHER PARTY, A DEMAND FOR ARBITRATION MUST BE MADE WITHIN (60) DAYS FROM THE DATE OF THE WAIVER.

Removal Grievance Flow Chart



***Step 3 of the grievance procedure must be filed with the Agency and not the Office of Collective Bargaining! At the same time a copy of the grievance form must be forwarded to OCSEA Office of General Counsel.**

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Introduction

The grievance procedure is set forth in Article 25 of the OCSEA/State of Ohio Contract. This guide provides a general explanation of each step in the grievance procedure and identifies the role of the employee, the steward, the chapter president and the OCSEA staff representative. Each individual has an important role, which needs to be coordinated to assure that the grievance is properly investigated and evaluated. In addition, it is important that each grievance be properly prepared and presented to assure that the Union clearly states its position.

This guide does not modify in any way the grievance procedure in the Contract. In the event that a question exists about the proper procedure to use or how the Contract should be interpreted, the steward should contact his or her chapter president. If a question still exists, the chapter president should contact his/her assigned OCSEA staff representative.

Important Rules to Remember

When processing any grievance, it is important that you observe some basic rules:

1. **Closely follow the time requirements outlined in the Contract.** The Union and management have an obligation to process grievances in a timely fashion. Failure by the Union to meet a deadline can be proper grounds to dismiss a grievance, regardless of its merit. If management fails to respond or meet on time as required by the contract, you should inform its representative(s) that you will advance the grievance to the next step within the time frame required by the Contract. Questions of timeliness should be reviewed with your OCSEA staff representative.
2. **Everyone should understand the role of the steward.** Each chapter needs to clearly identify which employees are assigned to each steward. Everyone in the work place should understand this network. The steward, as well as the grievant, has the responsibility to investigate and prepare each grievance. The steward needs to maintain a grievance log to track each grievance, and should maintain a file for each grievance.
3. **Anytime there is a change in the status of a grievance, i.e., it is moved to a higher step of the grievance procedure, or a step response is received, or a grievance is settled or withdrawn without the grievant's signature on the settlement or withdrawal form etc., the grievant(s) should be notified of the change in status by the chapter.** Failure to follow this rule may lead to a charge and/or finding that the Union has failed in its duty of fair representation.
4. **Preparedness is a key to successful grievance resolution.** Successful labor relations focuses on resolving grievances at the earliest step possible and on being fully prepared to discuss the issue that has given rise to the grievance. Grievance resolution should be the goal at each step of the grievance procedure. A well informed and prepared steward is often the critical ingredient for success.
5. **There is no substitute for knowing the Contract.** Not all problems at the work site are addressed by the Contract. Consequently, not all problems should be grieved. Our Contract defines a grievance as something affecting the application, meaning or interpretation of the Contract (see Section 25.01). Similarly, it is important to understand when the Contract does apply so that an effective argument can be made at grievance meetings. The grievance procedure gives you access to discuss your views, but your arguments still need to be well founded and must point to Contract violations.
6. **We must be fair and impartial.** The courts have determined that it is the duty of the Union to fairly represent all workers in the bargaining unit, **regardless of whether they are a member or non-member.** It is the responsibility of each steward to fully investigate all grievances and to process meritorious grievances in strict compliance with the steps laid out by the Contract grievance procedure.

7. **Identify all persons covered by the grievance.** Grievances that request a remedy for more than one grievant need to identify the persons in the group. (Section 25.01 B.) The group must be identified at Step 3. Preferably this can be done sooner. If the group (s) cannot be readily defined, request information that will allow you to identify all those that should receive the remedy requested. This is the responsibility of the Union.

Grievances concerning layoff, non-selection, suspension, working suspension, or a removal should be initiated at Step 3 of the grievance procedure. Section 25.02 states that a grievance involving a layoff, non-selection, suspension, working suspension or discharge shall be initiated at Step 3 of the grievance procedure within fourteen (14) days of **NOTIFICATION** of such action, **NOT THE EFFECTIVE DATE OF THE ACTION**. In the case of removals, the steward should notify the OCSEA staff representative when the steward learns of an employee's discharge. The staff representative can provide additional guidance on what needs to be done if the employee wishes to grieve this action. **At the time of filing a removal grievance to step 3, you need to forward a copy of the grievance form to OCSEA Office of General Counsel.**

Written or oral reprimands must be initiated at Step 1. Oral reprimands may not be grieved past Step 2. Written reprimands may not be grieved past Step 3. You cannot move an oral reprimand beyond Step 2 or a written reprimand beyond Step 3 by citing Article 2 (Discrimination).

What Constitutes a Grievance?

The purpose of the grievance procedure is to provide an orderly means of resolving complaints, which arise between members and management during the term of the agreement. A complaint need not be valid in all respects, but must be made in good faith. The employee should honestly feel he or she has a basis for filing a complaint.

Section 25.01 specifically defines what a grievance is. A grievance is not necessarily any personal problem, gripe or personality difference that an employee may have. Valid grievances reflect real problems; however not every problem is a grievance as defined by the contract.

Sometimes a steward is not sure that the complaint represents a valid grievance until he or she investigates and collects the facts to make an evaluation. Sometimes there is a necessity for filing a grievance to avoid missing the deadline for initiating a grievance until an evaluation can be made. In any event, it is the steward's responsibility to review the contract and identify which part of the contract has been violated. If the steward has any questions about the validity of a grievance he or she should speak with other stewards or contact his/her staff representative. Stewards are also directed to the OCSEA Guide: Evaluating the Merits of a Grievance, found in Appendix S of this guide, which outlines how a steward should evaluate a grievance.

In deciding whether a complaint is a grievance the steward should ask the following questions:

1. Specifically, what contract article(s) were violated?
 - a. Are you clear on the intent of each article, which you claim has been violated?
 - b. Is there evidence supporting the claim(s) made against management?

Step 1—Immediate Supervisor

The grievant has ten (10) working days from the date he or she became knowledgeable about the event or incident to file a grievance (except for layoff, promotion, separation and removal grievances. The grievance should be presented orally to the immediate supervisor who is outside the bargaining unit.

This is the most important step in the grievance procedure. If the issue which caused the grievance starts at this level, reasonable people can often work out their differences and reach a compromise or some type of accommodation. The steward should never underestimate the importance of this step, even where the authority to resolve the grievance may be at a higher level.

The grievance should be filed in the name of the grievant, not the steward. Several grievances under one name creates confusion and leads to mislabeling of grievances at higher steps.

Step 2-Intermediate Administrator

In the event the grievance is not resolved at Step 1, a legible copy of the grievance form should be presented in writing by the Union to the intermediate administrator or his/her designee within five (5) calendar days of the receipt of the answer or the date such answer was due, whichever comes first.

If there is a question about who the intermediate administrator is, ask the labor relations representative at your work site before it is appealed.

The intermediate administrator must meet and discuss the grievance within seven (7) calendar days. The intermediate administrator must answer the grievance in writing within eight (8) calendar days of the discussion. He/she should provide a copy of such answer and return a legible copy of the grievance form to the grievant and a copy to one representative designated by the Union. If they cannot meet within the time frame get a written extension. If the response is not given within the timelines forward the grievance to the next step.

Oral and Written Reprimands

Oral and written reprimands are initiated at Step 1. Oral reprimands are only grievable through Step 2. Written reprimands are grievable only to Step 3. If an oral or written reprimand becomes a factor in the first subsequent disciplinary grievance that goes to arbitration, the arbitrator may consider evidence regarding its merits during that arbitration, but only if the oral or written reprimand was initially grieved. Grievances for which an oral or written reprimand is an element of the claim will not be arbitrated.

Step 3 – Agency Head or Designee

If the grievance is still unresolved, the steward should present a legible copy of the grievance form to the agency head or designee in writing within ten (10) calendar days after receipt of the Step 2 response or after the date such response was due, whichever comes first. A grievance involving a layoff, non-selection, suspension, working suspension, or discharge should be initiated at Step 3 at the agency within fourteen (14) calendar days of notification of such action.

Within fifteen (15) calendar days after the receipt of the written grievance, the parties should meet. The contract specifically states that a meeting should take place unless the parties mutually agree otherwise. If the agency prefers to skip the meeting and instead provide a written response, the steward should protest, reminding the agency of its contractual obligation and also the Union's desire to meet within the time limits provided in the contract. In order to resolve a grievance, it is important to have a Step 3 meeting so that all arguments can be thoroughly discussed.

How To Improve The Quality Of Step 3 Meetings

Obviously a successful Step 3 meeting requires two parties who want to find a middle ground, or who are open to recognizing the merits of the other's position. There is no such thing as a guaranteed method for success, but there are several rules that, when followed, will promote success.

1. The steward and the OCSEA staff representative should prepare for the Step 3 meeting in advance. The OCSEA staff representative should know the facts about each grievance, and should have enough information to evaluate the grievance before the meeting. The steward should prepare this information. Possible reasonable settlements should be explored before the steward and the OCSEA staff representative attend the Step 3 meeting.
2. If your work ahead has a high volume of grievances it is wise to schedule regular day(s) of the month to have Step 3 grievance meetings. Section 25.02 Step 3 formally recognizes the right to make these mutually acceptable arrangements. All Step 3 meeting dates should be established with the concurrence of the OCSEA staff representative.
3. It should be clear to the agency that you want a full discussion on all meritorious grievances. The Step 3 meeting should not be used to surprise the management advocate. Sometimes a preliminary discussion before the meeting helps to assure that the dialogue at the meeting will be constructive and useful.
4. Make sure that all relevant parts of the Contract are discussed as part of the grievance. If it is necessary, amend the grievance in writing and add additional contract articles, or remedies which should be discussed at the Step 3 meeting. Failure to address contract violations in the grievance can result in the dismissal of valid arguments by an arbitrator because they were not discussed early enough in the grievance procedure.
5. Each chapter should establish a grievance committee made up of stewards and the chapter president. The committee can review grievances to decide if they have merit, need investigation or meet the definition of a grievance as defined by the Contract. The committee can also be a sounding board to identify alternative ways to solve grievances and assist fellow stewards with difficult problems. Also, the chapter grievance committee's recommendation is weighed by the OCSEA Arbitration Committee. The chapter stewards committee has the authority to withdraw any grievance lacking merit except removals.
6. Review your Step 3 written response for accuracy and omissions. If a decision is made to appeal the grievance to Step 4, a separate statement should accompany the appeal to the Office of Collective Bargaining referring to omitted facts or referencing Contract article or other matters that remain in dispute.

Step 3—Layoff, Non Selection, Suspension, Working Suspension, or Discharge

These types of grievances must be filed no later than fourteen (14) calendar days from the date the employee was notified of such actions. THIS DOES NOT MEAN FOURTEEN (14) DAYS FROM THE EFFECTIVE DATE OF THE ACTION. Grievances involving layoff, non-selection, suspension, or working suspension are to be filed directly at Step 3 with the agency. These GRIEVANCES ARE TO BE MAILED TO step 3 by certified mail, return receipt requested. Save all receipts from the certified mail and staple them to the grievance file.

A response to a layoff, non-selection, suspension, or working suspension grievance will be issued by the agency head or designee within thirty-five (35) calendar days of the meeting. If no timely response is given by the agency or no written extension by the parties, forward the grievance onto the next step.

The response shall be forwarded to the grievant and a copy to one representative designated by the OCSEA chapter. In addition, the response shall also be forwarded to the Union's central office. The Step 3 response should be accompanied by a legible copy of the grievance form.

Step 3 Discharge Grievances

Grievances involving the discharge (removal) of an employee are filed directly at Step 3. The grievance must be filed within 14 calendar days of the **NOTIFICATION** to the employee of the discharge (not the date the action took place). **AT THE TIME YOU FILE THE GRIEVANCE AT STEP 3 WITH THE AGENCY, IT IS VERY IMPORTANT, BASED ON THE CURRENT CONTRACT LANGUAGE THAT YOU FORWARD A COPY OF THE GRIEVANCE FORM NOT ONLY TO THE STAFF REPRESENTATIVE BUT ALSO TO THE OCSEA OFFICE OF GENERAL COUNSEL.** The agency will conduct a Step 3 meeting AND render a Step 3 response within sixty (60) calendar days. Once the Step 3 response is received or due date has passed without resolution of the grievance, it is important that you complete the Appeal and Preparation Sheet. A legible copy of the grievance form should accompany the step 3 response. It is very important that you send a copy of the grievance form with the Appeal and Preparation Sheet. If the grievance is not resolved at Step 3, a mediation hearing will be scheduled within sixty days of the due date of the Step 3 response.

Step 3 Contract Interpretation Grievances (Non-Discipline)

The Contract requires that the agency head or designee shall give his/her written response and return a legible copy of the grievance form within thirty-five (35) days following the meeting. A copy should be sent to the grievant and one representative designated by the chapter. If the written response is not received on time the steward should appeal the grievance to Step 4 and should also note in the appeal that timely written response was not received.

Use of the Appeal and Preparation Sheet

All grievances appealed to Step 4 should be accompanied by the Appeal and Preparation Sheet. The top of the first page of the Appeal and Preparation Sheet acts as a form letter to the Office of Collective Bargaining.

It is essential that this form be completed and sent as soon as the Step 3 answer is received, or when it was due, whichever comes first. This form identifies information about the grievance and identifies important facts about the dispute. The Appeal and Preparation Sheet (1) simplifies the coordination of information between the chapter and the staff representative, (2) assists in developing a proper chapter file on each grievance and (3) permits the Union to accurately track the name, type and location of grievances.

When completing the Appeal and Preparation Sheet, the Chapter should observe the following:

- Follow the directions on the sheet. Your staff representative can assist you if you have any questions. It is essential that the staff representative and the Office of General Counsel receive their respective copies at the same time. **ALWAYS ATTACH A COPY OF THE GRIEVANCE FORM AND THE STEP 3 RESPONSE.**
- If a Step 3 meeting was not held or a timely Step 3 response was not received, a specific statement should be attached to the appeal that calls attention to this fact. IF specific procedural objections have been raised are not satisfied, specific reference to this problem should be noted, particularly if the Step 3 response is silent concerning these matters.

Additional copies of the Appeal and Preparation Sheets can be obtained from your assigned OCSEA staff representative.

IMPORTANT REMINDERS

1. All grievances should be sent to Step 4 by using the form letter that is part of the Appeal and Preparation Sheet, to the Office of Collective Bargaining, along with a legible copy of the grievance form. A copy must be sent at the same time to the OCEA Office of General Counsel. Without this copy the Union Central Office will not have knowledge of your wish to appeal the grievance to arbitration.
2. The chapter must send a legible copy of the grievance form with the Appeal and Preparation Sheet. The Appeal and Preparation Sheet should be sent to the Office of General Counsel.
3. If the agency fails to hold a timely Step 3 meeting or fails to provide a timely grievance response, do not delay your appeal unless you have a written agreement (see Section 25.06)

<h3 style="margin: 0;">Step 4</h3> <h2 style="margin: 0;">Mediation/Office of Collective Bargaining</h2>
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Receipt of Step 3 Response

Upon receipt of an answer from the agency head, the steward should consult with the staff representative. The chapter's steward's committee should also review the facts and the written response to determine if the grievance should be appealed to step 4. Grievances which lack merit should not be appealed. The OCSEA staff representative should be consulted before an appeal is made.

If a decision is made that the grievance should be appealed, it should be sent by certified mail within fifteen (15) calendar days after the receipt of the Step 3 answer, or after such answer was due, whichever comes first. The only exception should be a mutual agreement in writing that the Step 3 meeting be postponed to a specific date.

Late Step 3 Responses

If the agency fails to meet its Step 3 time limits, the grievance can be appealed to the Office of Collective Bargaining (OCB) for formal review and a meeting. The grievance still must be appealed within the fifteen (15) calendar days of the Step 3 due date. The written response shall be received within thirty-five (35) days of the meeting.

The purpose of the late Step 3 response meeting is to assure the Union receives full consideration of grievances that it believes deserve settlement when the agency failed to act in a timely fashion. The procedure requires that a chapter representative and a staff representative attend to assure that the union's point of view is fully understood. If a late Step 3 response meeting is requested by the chapter, as should always be the case, attention should be given to the merits of the grievance by the chapter. Requesting such meetings for grievances that lack merit will undermine the credibility of the Union. Use this meeting wisely.

Grievance Mediation

Grievance mediation is a process by which the Union and the employer, assisted by a neutral mediator, seek to resolve grievances without resorting to arbitration. The mediator is a trained, jointly appointed third party neutral, who aids the Union and management representatives in reaching a voluntarily negotiated grievance settlement. The mediator attempts to settle a grievance by focusing on the problems underlying the grievance, contractual rights and the mutual interests of both sides.

Grievance mediation is more informal process that does not include witnesses or complicated procedures, and does not end with a written decision. The Union is committed to scheduling all grievances for mediation before they are arbitrated, except as outlined in Article 25, unless one party believes a grievance is not suitable for mediation. If the parties are unable to reach a settlement, the mediator will make a non-binding advisory opinion as to what would have happened, in his/her opinion, if the case had been arbitrated.

If the grievance remains unresolved, the Union evaluates the merits of the grievance as is normally required. Mediation does not change the standards the Union uses to determine if a grievance should be arbitrated. Written material presented to the mediator is returned to the party at the conclusion of the mediation meeting and what happened at the mediation meeting is not relevant or admissible in an arbitration hearing.

What Chapter Representatives Can Do To Prepare For Grievance Mediation:

1. Make sure all earlier steps of the grievance procedure have been fully utilized.
2. Determine the possibility for settlement without outside assistance.
-If the possibility for settlement is there, pursue it. Do not miss an opportunity to reach a solution.
3. Meet with the corresponding management advocate(s) and review the facts, opinions and expectations before the scheduled mediation conference.
4. Prepare copies of necessary documents which are pertinent to your discussion.
5. Activate your stewards' committee so that each grievances has been reviewed before it goes to mediation.
6. Determine well in advance which chapter representatives will attend the mediation conference.

Scheduling grievances for mediation is influenced by several factors. It is not possible to specifically mandate when a grievance will be mediated because circumstances can vary significantly. Management and the Union have agreed to group cases for scheduling purposes so as to better use the parties' resources and for the best use of mediators. Such factors as geography, agency of origination, severity of discipline and the filing date of the grievance are taken into consideration. Removal grievances will be scheduled for mediation within 60 calendar days from the due date of the Step 3 response.

<h2>Step 5 – Arbitration</h2>

The Union may appeal grievances that are not settled to arbitration by the Office of General Counsel sending a written notice to the Deputy Director of the Office of Collective Bargaining. Only the OCSEA Office of General Counsel makes appeals to arbitration.

Grievances must be appealed to arbitration within sixty (60) calendar days of the unsuccessful mediation conference (but not more than 90 days from the Step 3 response). If either party believes that the grievance cannot be successfully mediated, such grievances can be moved from Step 3 directly to arbitration by **FILING A WRITTEN WAIVER WITH THE OPPOSING PARTY**. Notices must be in writing. If the chapter wishes to waive the mediation process in consultation with your staff representative, they can send a written waiver along with the Appeal and Preparation Sheet. The chapter must send the Appeal and Preparation sheet to the Office of General Counsel at the same time they appeal to OCB.

A grievance should be reviewed and evaluated at every step of the grievance procedure, including arbitration. Similarly, settlement talks with management representatives are appropriate if a fair or reasonable settlement agreement can be reached. The Union and the State may establish a meeting to review grievances, which have reached the arbitration stage.

In order to be the best advocate in a settlement meeting or in arbitration, the Union will be in far better position if those individuals who have participated in the grievance process have done their job properly. This means that the grievance has been fully investigated and reasoning on this issue in dispute is clear. The basic points of disagreement should be well known, and the case can be evaluated on its merits.

OCSEA Arbitration and Discharge Review Committees

The Arbitration Committee reviews grievances not settled at prior steps in the grievance procedure or at other settlement meetings. The Committee meets periodically to review grievances, and it approves grievances for arbitration. The Committee is made up of members from each of the OCSEA State Bargaining Units who served on the last contract negotiating team. Its objective is to help assure that the contract is interpreted in a consistent fashion and to provide an objective judgment on the merits of the grievance.

The grievant, chapter president, and the assigned staff representative are notified of the committee decision.

The Arbitration Committee may also do the following:

- Withhold judgment on a grievance if it wishes to secure additional information before making a decision. The Committee may request answers to specific questions which pertain to the circumstances surrounding the dispute, or ask for facts that are relevant to interpretation of Contract language.
- The Committee may choose to not move a grievance forward to arbitration when sufficient information is not available to demonstrate that the grievance has merit or when the information indicates that the grievance has no merit. This decision can be made after a request for additional information has been made and requested information is not sent.

The **Discharge Review Committee** will review all grievances involving discharge. The Discharge Review Committee functions like the Arbitration Committee. Grievants, however, are notified prior to the scheduled meeting, and they are asked to attend in order for the Committee to get a thorough knowledge of the facts surrounding the grievance, prior to making a determination regarding the merits for arbitration. The Discharge Review Committee is made up of three members from OCSEA State Bargaining Units who served on the last contract negotiating team.

Arbitration Scheduling

Arbitrators are assigned from a panel of arbitrators established through the Contract. Each arbitrator is experienced in labor/management relations and is knowledgeable about contract interpretation. Grievances are scheduled for arbitration based on the nature of the dispute, the number of employees affected, the potential impact of a continued delay on the unresolved dispute and the date the grievance was filed. Arbitrators are assigned grievances based on a schedule arrived at between the Union, the State and the Arbitrators. Once a grievance is approved for arbitration, there is no specific time period that passes before a grievance is heard for arbitration except for discharge grievances. **DISCHARGE GRIEVANCES MUST BE ARBITRATED WITHIN 60 DAYS OF THE DATE THAT A DEMAND FOR ARBITRATION WAS MADE.** However, the parties will strive to have all other cases scheduled within two-hundred and forty (240) days from the date of mediation or the waiver of mediation.

It is very important that the Union review the types of cases, which have been appealed to arbitration for the purpose of identifying the types of problems that require attention. It is possible that an arbitration award can impact positively or negatively on existing cases at arbitration. Similarly,

grievance settlements can be effective in influencing the outcome of similar disputes at other work areas. The list of grievances awaiting arbitration frequently changes because many are settled based on renewed efforts by both parties to resolve the grievance prior to arbitration.

It is the primary purpose of the grievance procedure to settle disputes between the Union and the State. Agreement by both parties to a reasonable settlement and resolution of the matter is many times superior to arbitration. It is the responsibility of the State and the Union to attempt to address their disputes through negotiation and settlement rather than to use the services of the third party. This promotes a healthy labor/management relationship and leaves resolution in the hands of the parties, rather than giving up control to a 3rd party neutral.

Non-Traditional Arbitration (NTA) Procedure

The non-traditional arbitration procedure is another method used by the Union and the State to handle grievances in a more efficient manner.

Non-traditional arbitration hearings include, but are not limited to, a presentation of the parties' arguments based on factual stipulations, a presentation of arguments without factual stipulations, and a presentation of more than one case on a given day with the arbitrator's decisions being given in an oral fashion. The arbitrator will issue a written decision to the parties by the end of the hearing day. The decisions issued in the non-traditional arbitration procedure will have precedence for progressivity purposes only, unless mutually agreed otherwise by the Union and the State. Except for patient/client related cases, the grievances presented to the arbitrator under this section will consist of disciplinary action of five (5) days or less, unless mutually agreed to otherwise.

This procedure is intended to replace the full-blown and expedited arbitration procedure. In disciplinary grievances of five (5) or less days, the non-traditional arbitration process is mandatory, with no mediation meeting.

The Office of General Counsel and OCB may mutually agree to present issue or contract interpretation grievances to a non-traditional arbitration process.

The Role of the Steward in Representing Grievants in Potential Discipline

Investigatory Interviews

One of the most important responsibilities of stewards is to prevent management from intimidating employees or coercing employees in an investigatory interview. The investigatory interview is properly used to uncover facts that can clear an individual or which can be used as a basis for discipline. The right of employees to a Union steward, in certain situations, was established by the Supreme Court decision in NLRB vs. Weingarten.

Section 24.04 of the Contract reflects "Weingarten Rights" which provide that if an employee has a reasonable belief that discipline may result from what he/she says, the employee has a right to request a steward. When an investigatory interview occurs, the following rules apply.

- Rule 1.** The employee must make a clear request for Union representation before or during the interview. The employee cannot be punished for making this request. It is best to make the request in writing so there is a record of the request.
- Rule 2.** After the employee makes the request, the employer must choose from among three options. The employer must either:

- A. Grant the request and delay questioning until the Union representative arrives and has a chance to consult privately with the employee; or
- B. Deny the request and end the interview immediately; or
- C. Give the employee a choice of (1) having the interview without representation or (2) ending the interview.

Rule 3. If the employer denies the request for Union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

Rights of Stewards

Employers often assert that the only role of a steward at an investigatory interview is to observe the discussion, in other words to act as a silent witness. The Supreme Court, however, clearly acknowledged a steward's right to assist and counsel workers during the interview. Decided cases establish the following procedures.

1. Prior to the investigation, the supervisor/investigator must inform the steward of the subject matter of the interview, i.e. the type of misconduct for which discipline is being considered (theft, lateness, drugs, etc.).
2. Prior to the investigation, the supervisor/investigator must also tell the employee the subject matter of the interview.
3. If the employee reasonably believes that the investigatory interview may lead to discipline, the employee may request a Union representative in the investigatory interview.
4. The steward must be allowed to take the worker aside for a private pre-interview conference before questioning begins.
5. In the pre-interview consultation, the Union representative should discuss with the employee the subject matter, ask the employee for his/her explanation, and any documents or evidence to support the employee's explanation.
6. Explain the procedure in the investigatory interview. Tell the employee not to answer a question until the employer finishes the question.
7. In the pre-interview consultation, the union representative must determine whether criminal charges could be brought against the employee. If criminal charges are possible, the union representative should explain to the employee about the Garrity warning.
8. The Garrity Warning—If a criminal charge is possible, the employee/Union representative should get the employer to promise (in writing if possible) that the employee's statement in the investigation won't be used against the employee in future criminal proceedings. If the employer refuses to give this guarantee, the employee doesn't need to answer the questions. This is the Garrity warning.
9. In the investigatory interview, the employee/Union representative can request the Garrity warning be put in writing. If the employer refuses to put it in writing please write yourself a note that Garrity warning was given and keep the note in the employee's file.
10. In the pre-interview consultation, the Union representative should tell the employee that in a criminal investigation, the employee can have an attorney present. Before the employee speaks to the State Highway Patrol, the employee should talk to an attorney. At the criminal investigation, the employee should make sure the Miranda rights are given. The Union representative has no right to attend such a criminal investigation, UNLESS a management person is also attending the investigation.
11. The Miranda Right -- Prior to any interrogation by a law enforcement office, an employee must be warned. 1) that the employees has the right to remain silent; 2) that any statement the employee may make can be used as evidence against them; 3) that the employee has the right to have an attorney present, and 4) that if the employee can not afford an attorney, one will be appointed.
12. In the pre-interview consultation, the union representative should not counsel the employee to be non-cooperative in the investigatory interview. However, if the employer refused to give the employee the Garrity warning, the employee can refuse to answer questions.

13. In the pre-interview consultation, tell the employee the type of discipline usually given for the violation allegedly committed.
14. No investigatory interview should be conducted by the management representative with the State Highway Patrol present in the room. If both are in the room, take the management person aside and explain to them about the person's right to remain silent and not incriminate themselves before the State Highway Patrol.
15. The Union representative cannot turn the investigatory interview into an adversarial proceeding. Don't start fighting with the interviewer.
16. The steward must be allowed to speak during the interview. However, the steward does not have the right to bargain over the purpose of the interview.
17. The steward can request that the supervisor clarify a question so that the worker can understand what is being asked.
18. In the investigatory interview, the Union representative has to be careful about interrupting the employer's questions since it can be construed as interfering with an investigation.
19. If the need arises because the employee is getting emotionally upset or confused, ask the employer if you can caucus with the employee for a few minutes.
20. Before the investigatory interview ends, the Union representative can add anything that the employee has neglected to mention. The Union representative can explain an employee's answer. Make sure that you mention all clarifications, additions and mitigating circumstances that the employee forgot to mention before the investigatory interview ends.
21. Make an internal file for each person's investigatory interview and write down what occurred during the investigatory interview including a Garrity warning, copies of any evidence submitted, and discipline threatened against the Union representative, and notes of the hearing.

It must be emphasized that if the Weingarten rules are complied with, stewards have no right to tell workers not to answer questions, or to give false answers.

Workers can be disciplined if they refuse to answer questions unless there is a potential criminal investigation and the employer has refused to give the Garrity warning.

The Union has no right to represent an employee in a performance evaluation process. The Union does not provide an attorney for representation in criminal matters. It is the employee's responsibility to select and pay for outside counsel in a criminal case.

Investigations for Pre-Disciplinary Meetings

Many times stewards are made aware of events that probably will give rise to disciplinary actions even before they have received formal notice that a pre-disciplinary meeting will be conducted.

It is very important for the steward to be the first one at the scene, if at all possible. The steward should be contacting, interviewing and taking statements from witnesses and the accused. Statement and interview will set the facts in your mind more solidly than trying to recall the event days or weeks after it has happened.

In addition to taking statements and interviewing witnesses, the stewards should tour the physical location of the event, if the location is relevant. Take measurements, re-enact events and make a map of the area if it is necessary to explain what led to the dispute.

Prior to the pre-disciplinary meeting, management is to notify the employee of the reasons for and the form of discipline. This notice should cue you into what work rules, policies and procedures you would review and what other type of information would be relevant. You will conduct your investigation for a pre-disciplinary meeting in much the same way you would for a disciplinary grievance already filed.

Also, prior to the pre-disciplinary meeting, you should notify management of witnesses you intend to have present. Also, notify management of any information you need which you know they have. If management interferes with your ability to gather information by denying requests for documents or witnesses, make a procedural objection and ask that the record reflect the objection. Explain your objection and how or why it has impaired your ability to represent the employee.

Pointers: Disciplinary Meetings

1. The employee and Union should receive at least 3 days notice prior to the hearing. Use this time to identify the alleged rule infractions(s) and the circumstances surrounding them.
2. Ask questions about the evidence and what each management witness knows. Try to obtain a complete understanding of the case from the employee's as well as management's perspective.
3. Often employees make statements at the pre-disciplinary meeting that they cannot support later or they may regret, because pre-disciplinary statements may later be used in arbitration. Counsel the employee that what is said in the hearing becomes part of the record.
4. Section 24.05 of the contract specifically requires that management notify designated chapter representatives of pre-disciplinary meeting notices. Make sure your chapter has formally notified management of steward names, addresses and assignments.
5. Be prepared to serve as a witness to prevent supervisors from giving a false account of the conversation.
6. Be prepared to help fearful or inarticulate employees to explain what happened. Raise extenuating factors if you believe it will be helpful.

Investigation of Grievances Regarding Disciplinary Action

Your first responsibility is to thoroughly investigate the incidents upon which the disciplinary action was based. This is lengthy, but necessary. To do this effectively, you must gather and review the following information by interviewing the grievant, interviewing witnesses, checking the grievant's personnel file, requesting information from management and discussing the matter with another steward who may have represented the grievant at a pre-disciplinary meeting or investigation.

The information you will need is:

- Notification letter of discipline imposed
- Handwritten statement by grievant
- Witness statements
- Disputed policies management violated
- Pre-disciplinary conference notice
- Notes from pre-disciplinary meeting and/or investigatory interview
- Prior disciplinary actions to date
- Hearing officer's pre-disciplinary meeting report and recommendation
- List of witnesses against the grievant
- Past two (2) evaluations
- Disciplinary actions taken against other employees under similar circumstances
- Disciplinary policy
- Discipline grievance checklist (See Appendix I)
- Any other relevant information that will apply to your grievance.

After reviewing the preceding information, the steward, along with the president and/or chief steward, should assess whether a grievance should be filed regarding the disciplinary action.

If a determination is made to file a grievance you must determine what articles and sections of the contract have been violated. Keep in mind that many times sections of the contract have been violated. Keep in mind that many times sections other than Article 24 have been violated. These should be listed in the section of the grievance form designated for the Contract articles allegedly violated. Under this section of the grievance you should also list any policies, directives or procedures that have been violated. Along with listing the various violations, you should include the statement “any other Contract articles and section, laws or policies that may apply.”

The violations are to be followed by a statement of facts to support the violations you have listed. Remember the basic questions (who was involved, what happened, where did it happen, when did it happen and how). How has the Contract or other provisions been violated? The steward should review the pre-discipline checklist when making his or her investigation.

Finally, you will write the remedy or the grievant’s desired resolution to the grievance. This should include a request for back pay (if appropriate) and an expungement of the grievant’s record in regard to the events that gave rise to the disciplinary action. You should include any benefits the grievant has missed as a result of the action. This can include lost holiday pay or overtime, which the Union can clearly show the grievant, would have earned. And always include the statement, “and to be made whole.” (Be prepared to explain what needs to be done to make the grievant whole).

Naturally the information requested on the top of the grievance form is necessary. Do not leave out addresses or home phone numbers, etc.

The grievant should sign the grievance form. This is his/her signature indicating that he/she agrees with the statement of facts, violations and remedy sought. However, if for some reason the grievant is not available to sign the grievance form, the steward should sign the grievance form and file it in a timely manner.

Commonly Asked Questions

1. Should I save my best arguments for arbitration?

NO. Make all arguments at or before Step 3 meetings. At arbitration some agencies have argued that the Union has waived its right to use all elements of just cause as a defense because not all arguments were raised at the Step 3 meeting.

For example, an employee is disciplined for tardiness. At Step 3 the Union may state that the tardiness did take place, but that the penalty was not commensurate with the offense.

Later, at arbitration, management may assert that the union has waived the right to raise the argument that it was denied important information that was relevant to the case, since the Union did not mention it at Step 3. Therefore, management states the Union can only raise the issue of whether the penalty imposed was proper. It is important that the Union raise all appropriate just cause arguments at Step 3, in addition to whether the discipline is commensurate with the offense.

Further investigation by the Steward may permit new arguments to be made at Step 3. Check your pre-discipline checklist for other arguments to be incorporated into the grievance (Appendix I). If you think the management representative has not properly described the argument or facts presented at the hearing, notify the management representative in writing of what has been left out or been misrepresented. It could be useful if the grievance is later arbitrated.

2. Our chapter has its own method of tracking grievances. Do we need to use the Appeal and Preparation Sheet?

Yes. Any grievance appealed beyond Step 3 requires the use of the Appeal and Preparation Sheet. A legible copy of the grievance form must always be attached to the sheet. Failure to use the Appeal and Preparation sheet can lead to the Union's failure to make proper appeal to arbitration. It also significantly simplifies the Union's ability to track grievances or prepares them for arbitration. If you have any questions about how to fill it out or you need more copies, contact your staff representative.

3. I have not been assigned a grievance number. What should I do?

If no grievance number is assigned to your grievance, demand one. If a number is not obtained on time for your appeal, specifically note on your appeal that you requested a number from management but one was not assigned.

Always double-check the grievance number when you appeal a grievance. If the number on the grievance form is not the same as it is on the Appeal and Preparation sheet or the Step 3 response, it makes it very difficult to identify the proper grievance at later stages of the grievance procedure. The State has claimed that certain grievances were not appealed properly because incorrect grievance numbers were noted on the grievance appeal.

4. Is it more effective to file separate grievances involving a specific incident when management has violated more than one section of the Contract?

No. Don't file several grievances over a single management Contract violation. It can fragment the issues in dispute.

The proper way to resolve a grievance is to file a single grievance listing all the different sections of the Contract, which have been violated. Additional procedural violations committed by management in processing the grievance should be added to the original grievance. The procedural violations should not be filed as separate grievance. The same principle applies to both Contract interpretation and discipline grievances.

Some chapters also have a practice of filing a number of grievances over a single management action then merging the grievances at step 3. The Office of General Counsel can't tell whether management has agreed to merge all the grievances. It takes management's agreement to allow all the individual grievances to be merged. If the parties do agree to merge several grievances together make sure you get it in writing.

5. Is it OK to file grievances using the name of the steward?

No. Only in cases of class action is it appropriate. File grievances under the name of the person(s) affected by the Contract violation, not the name of the steward or chapter president. Tracking grievances for those not named on the grievance is very difficult. In the case of a group grievance, name the people affected and describe on the grievance all others who should be affected by the remedies sought. Be sure you're broad in your description and don't have out employees in other work areas, if they should be included.

Special Note: Section 25.01 B requires the union to identify the affected persons covered by a grievance by Step 3. If more than one person is covered by the grievance, try to list the affected persons or describe as specifically as possible the group or persons that you believe will be impacted by the grievance.

6. The State has failed to provide a timely Step 3 response. What should I do?

Even though the State is not holding up its end of the bargain, you should still follow the correct procedures. Don't let management's inaction stall the process. If you do not move the grievance as

outlined in the Contract, and the case is finally arbitrated, management can argue that you did not adhere to procedure, potentially damaging the case before the arbitrator.

Here's what to do: If a Step 3 meeting is not held within the period required by the Contract, and no written agreement has been made to extend the time periods (see Section 25.05), then the grievance must be immediately appealed to Step 4. An appeal is made by filling out an Appeal and Preparation Sheet and sending it, along with a legible copy of the grievance form. Request a late Step 3 meeting with OCB. (Section 25.02 Step 4). It is also important that management at your agency be informed that their delay will result in your appeal.

7. How do I use the grievance tracking log (See Appendix Q)?

The grievance tracking log is a log book which assists stewards and chapter leadership to track the timelines and status of grievances. Therefore, stewards can more readily identify where a grievance is located in the grievance steps and the deadline to move the grievance to the next step.

Working-Out-of-Classification Procedure

Important Rules to Remember:

When processing any grievance, it is important to observe the following basic rules:

1. **Closely follow the time requirements outlined in the Contract.** Both the Union and management are required to process grievances in a timely manner. Failure to meet a deadline could constitute grounds for an arbitrator to dismiss the grievance without a hearing on the merits.
2. **Be prepared.** Oftentimes, grievances can be successfully resolved at pre-arbitration stages if the employee and the steward carefully document and investigate the alleged Contract violations and may present a thorough analysis of the Union's position to the Agency Director or designee at Step 1 of the WOC procedure.
3. **File only meritorious grievances.** Much time and money is spent in resolving contract disputes. For this reason, it is important that the membership only file grievances, which meet the following criteria:
 - a. The duties that the grievant claims are outside of his/her classification must not appear in the grievant's current classification concept or classification specification
 - b. The grievant must perform the duties outside of his/her current classification for a minimum of four workdays.
 - c. The grievant must meet the classification concept for the grieved classification and the duties outside of his/her classification must specifically appear in the classification specification for the grieved classification and NOT in the employee's current classification specification. The classification concept is the short description of the classification, which is listed at the beginning of the classification series purpose. The classification specification is the larger more detailed description of what the classification duties, minimum qualification etc. are.
 - d. The grievant must spend a substantial portion (at least 20% of his/her time of a higher classification and 80% if to a lower classification) performing the duties outside of his/her current classification.
 - e. The duties outside of the employee's classification must be listed, in detail, on the WOC grievance form.

Procedure for Filing a WOC Grievance

Before preparing a WOC grievance be sure to obtain a copy of the employee's current classification specification as well as the classification specification in question and read them carefully. In order to get a copy of the classification specification; the employee must request a copy of the classification specification from a personnel officer. Under Article 19.01, the employer must provide a copy of these specifications. It is important to require the agency personnel officers to fulfill their responsibilities. Classification specifications can also be obtained by going to the OCSEA website (www.ocsea.org).

A WOC grievance form **MUST** be used to file a WOC grievance. This form is different from a regular Article 25 grievance form. Forms are available from the chapter leadership and in Appendix T.

The grievance should specifically:

1. List all the duties the employee is performing which are inappropriate to the employee's assigned classification (i.e. duties not listed in the employee's current classification but are listed in another classification specification, if the duty falls in both the current classification and the alleged classification that duty would not be considered outside of the employee's classification).
2. Describe the amount of time spent performing the duties listed in the higher classification (remember that the employee must perform the duties outside of his/her classification for at least 20% {approximately 8 hours of the week} of the grievant's work time or 80% if grieving a lower classification.)
3. Refer to both the current and grieved classification specification. The grievance must be detailed and refer to the classification specific to which the outside duties belong.

NOTE: The type of duties performed by co-workers is not relevant. The WOC grievance is a review of a particular position. It is not a review of one person's duties in relationship to other positions. It is a review of one person's job duties in relation to the grieved classification specification.

Step 1 – Appeal to Agency Designee

If an employee or the Union believes that he/she is performing a substantial amount of duties outside of the employee's classification specification, either may file a grievance with the Agency Director or designee.

An employee may obtain a WOC grievance form from the chapter leadership or copies can be made from Appendix R. After filing a WOC grievance, the agency has 35 calendar days to respond. Although the contract only requires agency management to review written submissions (i.e. the WOC grievance form and any supporting information), the parties may mutually agree to a meeting. The Office of Collective Bargaining (OCB) may also request a meeting.

The Office of General Counsel still only has 20 days from the date of the step 1 answer or the date the Step 1 answer was due to appeal the grievance to arbitration. Failure of the chapter to timely notify the Office of General Counsel of a WOC grievance response, or a failure by management to respond may lead to a late demand for arbitration.

Step 2 - Arbitration

If the WOC grievance has not been resolved through the first step of the WOC procedure, the chapter leadership must appeal the grievance to the OCSEA Office of General Counsel on the 36th day after the grievance was filed, if no answer was received, or on the day after the Step 1 answer was received, whichever is earlier. The Office of General Counsel will request arbitration upon receiving notification from the chapter leadership that management has responded to the WOC grievance or that

the time for management's response has expired. Without notification from the chapter to the Office of General Counsel regarding a WOC grievance, an appeal to arbitration may not be made. In any event, the chapter leadership must notify the Office of General Counsel on the 36th day after the filing of a WOC grievance. If management fails to respond to the grievance, the Office of General Counsel then has up to 120 days from the original filing date of the grievance to request arbitration.

The WOC Arbitration Hearing

Approximately two weeks before the grievance is to be arbitrated, the Office of General Counsel employee who is assigned to advocate the grievance will contact the grievant to discuss his/her duties. The grievant should be prepared to discuss, in detail, all relevant information pertaining to the duties he/she is performing outside of his/her classification (the duties enumerated on the grievance form).

The WOC arbitration hearing is held before a neutral arbitrator and lasts for approximately one hour. Present at the hearing shall be a Union representative (the advocate) and the employee whose duties are being challenged; a management representative (usually the supervisor of the employee performing the duties) and an agency designee. No other bargaining unit member will be granted release time to attend the hearing. After both sides present their case, the arbitrator will render a decision. The decision will be made at the conclusion of the hearing and will be in writing.

Possible Award

If the arbitrator finds that the grievant is working outside of his/her classification, then the arbitrator will order management to cease and desist assigning these duties to the grievant.

In addition to the cease and desist order, the arbitrator may award backpay. Backpay will extend from four days before the filing date of the grievance to the time the employee ceased doing the duties or the date of the arbitration hearing, whichever is earlier. The monetary award shall be the difference between the employee's hourly rate of pay and the hourly rate of pay at the applicable step of the higher classification. The applicable step shall be the step, which is approximately four percent higher than the current step rate of the employee. If a step does not exist in the higher pay range that guarantees the employee approximately four percent increase, the employee will receive the last step of the higher pay range for back pay purposes. The last step does not necessarily guarantee an approximate four percent increase.

If the Union and the State mutually agree and if the duties are of a permanent nature, the employee may be reclassified to the higher classification (discussed more fully below). Article 19 shall not be used to pre-position employees to the detriment of employees protected by other articles of the Contract, including but not limited to article 16 (Seniority), Article 17 (Promotions), and Article 18 (Layoffs).

Reclassification

Reclassification is available only in limited circumstances. Reclassification should be the exception and not the rule. The purpose of this language is to reclassify employees performing higher level duties only when appropriate due to the natural evolution of their positions and when posting the position in accordance with Article 17, could have a detrimental effect on affected employees. The arbitrator in a WOC arbitration does NOT have the authority to reclassify employees under this article.

Holding Classification

An employee in a holding classification can file a WOC grievance if the duties he/she are performing are in a higher classification. The documents considered in such a case are:

1. Employee's current position description,

2. Classification specification in effect at the time (non-holding classification equivalent, and
3. Classification specification containing higher duties.

Commonly Asked Questions About WOC Grievances

1. Can the arbitrator award me a reclassification?

No. The arbitrator cannot award you a reclassification. Section 19.02 permits an employee to be reclassified only by mutual agreement of the Union and the employer where the parties agree that the higher level duties are of a permanent nature.

2. Can I file a WOC grievance if no monetary settlement can be awarded?

Yes. You can file the WOC grievance and the grievance can be arbitrated. However, in cases where the employee grieves a classification with a lower pay range, the employee must be performing the out of classification duties for at least 80% of the employee's time. And, if the arbitrator issues a cease and desist notice for a lower classification, it is possible that the grievance could be laid off.

3. If the personnel officer doesn't respond to my request for a classification specification, from whom else can I request a copy of my classification specification or position description?

You can obtain your classification Specification at the OCSEA web page at www.ocsea.org or call the Office of General Counsel. OCSEA DOES NOT have access to copies of employee's position descriptions. If a chapter is not successful in obtaining a copy of an employee's position description please contact the Office of General Counsel.

<h2 style="margin: 0;">Article 36.05</h2> <h3 style="margin: 0;">Classification and Pay Range Changes</h3>
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Classification Changes Proposed by the State

The State, through the Office of Collective Bargaining, may create, change the pay range of a classification, authorize advance step hiring if necessary for recruitment or other legitimate reasons, and issue or modify classification specifications as they believe necessary. Before proposing changes to the Department of Administrative Services (DAS), an agency must discuss the changes with the Union (Section 8.02). The Office of Collective Bargaining shall notify the Union 45 days in advance of any change of pay range or changes to classification specifications. The Union may place classification issues on the Labor/Management agenda for discussion and possible resolution of outstanding issues. If the Union is not in agreement with the proposed changes, and the Union and State are unable to resolve their differences, the issue shall be resolved through arbitration pursuant to Section 25.03 of the Contract.

Joint Review

A joint committee will be established for classification reviews. Members of this standing committee include a designee from OCB, a designee from DAS, Compensation and Recruitment, and 2 designees from OCSEA Central Office. This standing committee will determine the scope of review including defining a segment, a series or portions of the class plan and/or classifications to be studied. If the standing committee cannot mutually agree, OCSEA will choose the segment, series or portion of the class plan and/or classification to be jointly reviewed in good faith. Once the decision has been

made, other members will be chosen for the joint committee based on the class segment under consideration with a limit of 5 members each in addition to the standing committee.

The purpose of such reviews is:

- To meet state needs
- To have employees placed in the proper classification in accordance with their assigned duties
- To have the proper compensation assigned to duties being required to be performed
- To evaluate to ensure that bargaining unit duties remain within the bargaining unit.

If specialized training is required directly related to the positions being reviewed, the joint committee will work with the agencies to determine such training needs. Training will be offered to those employees whose position is directly impacted in order of seniority.

The joint committee shall develop a comprehensive proposal that includes, but is not limited to:

- Rationale for change, creation, modification, deletion and/or replacement of the existing classification specification
- An allocation plan
- A transition plan
- A statement of cost
- Process to handle transition issues

Upon developing a proposal, the joint committee shall consider the following factors as appropriate:

- Career paths
- State operational need
- Cost
- Delineation between exempt and bargaining unit work
- Possible reduction of contracting out
- Training needs
- Other factors deemed appropriate by the committee

The standard allocation process (unless otherwise mutually agreed upon) will be:

1. **Employee performing duties of a lower classification.** The employee shall be assigned to the lower classification and shall be placed in the step within the new pay range that provides the employee with compensation equal to his/her current rate or the least amount of increase, but no decrease in pay. In this case, the employer will make a reasonable effort to assign duties within the original classification. If the employee's base rate of pay exceeds the maximum rate of pay in the new pay range, the employee shall be placed in step X. Longevity supplements shall not decrease as a result of being placed in step X.

2. **Employee performing duties of a higher classification.** The employee shall be placed in the higher classification at the step in the higher pay range which is approximately 4% higher than the current step rate of the employee. When an employee is being placed into a new classification in this manner and the employee has completed a probationary period, the employee shall be placed in a step no lower than step 2 of the new pay range.

3. **Pay Adjustment.** Pay adjustments shall not be made effective before the beginning of the next fiscal year unless mutually agreed otherwise. If the parties cannot mutually agree to the implemented pay range assignments or compensation method, the Union shall have the right to appeal the pay range determination directly to Step 5 of Article 25 within 30 days. An Arbitrator will have no authority to award back pay for any period of time prior to the beginning of the fiscal year that begins after the grievance award.

4. **Assignment Dispute.** If the joint committee cannot mutually agree to the employee's proposed classification assignment, the employee through the union has 60 days from the date of the transition notice to appeal the classification assignment. The chapter must appeal using the Working Out of Class form to OCSEA and OCB, stating which classification assignment is appropriate. An arbitrator shall determine

whether the proposed assignment is appropriate and their decision will be final and binding. The employee shall receive any pay adjustment effective the date the study was implemented.

Discontinuation of the Joint Committee

In cases where the committee decides to discontinue its work and no other joint OCSEA reviews are in progress, the Union may revert to the traditional 36.05 Union Review procedure outlined below.

At the request of employees the Union shall review a classification for appropriate duties and pay range assignment. A subcommittee may be formed to research the request. At such time the subcommittee believes it has sufficient information to support the review of a classification, the topic should be placed on the agency labor/management meeting agenda. The classification will be discussed at that labor management committee meeting in accordance with the State's classification and compensation procedure. In instances where the agency agrees with the Union's request, the agency will follow the procedure outlined in "Classification Changes Proposed by the State".

In situations where the Union and the agency do not agree on the request to review a classification for duties and pay range, the staff representative will then present that classification to the Union Classification Review Committee. The Classification Review Committee will select classifications which have been presented with facts to support the need for a review of that classification. The Union can submit up to eight classifications per year to the Department of Administrative services to be reviewed for duties, responsibilities, education and/or experience, certification and/or licensure, and working condition factors. The review by DAS will be combined with salary survey data to determine the appropriate pay range assignment. Unless mutually agreed, the salary survey data will not be used to reduce a classification pay range assignment.

The review of classifications by DAS will be based upon the completion of a position description questionnaire survey (PDQ) by all employees statewide who hold the classification that is being reviewed. The completion of the PDQ by employees and review by DAS should be completed within 180 days from the date the Union makes a request for the review. If a classification has more than 200 incumbents the timelines will be agreed to between the Union and the State. Each employee will be required to complete his/her own PDQ. Those employees who do not complete an individual PDQ will be assigned to the classification and pay range based on the supervisor's review and DAS's review. Employee's who are on disability at the time of the PDQ review will be given the option to complete a PDQ, or have their supervisor complete a PDQ.

Prior to the distribution of the PDQ by the State, the Union and the State will be conducting a joint training on state time regarding how to complete the PDQ properly. The content of the training, date, time and location of the trainings will be mutually agreed upon by both parties.

If an employee is found to have been improperly classified as determined from his/her PDQ, the employee will be placed into the appropriate classification as determined by DAS's review. If the employee is found to be performing duties of a classification which carries a lower pay range, the employee will be placed into the lower pay range which provides the employee with compensation that is equal to his/her current rate or that provides the least amount of increase, but no decrease in pay. An employee, through the Union, has 60 days from the date the Union receives the findings of DAS to appeal the classification assignment. Appeals will be conducted by the arbitrator selected for the WOC arbitration hearings. The arbitrator shall determine whether the employee is appropriately allocated to the new classification. If the arbitrator determines that the allocation is inappropriate, the arbitrator will determine the appropriate classification assignment. Employees who do not complete a PDQ will have NO right to appeal the DAS determination.

If it is determined that employees are performing duties of a higher classification, the employee will be placed into that classification and be placed in the step in the higher pay range which gives the employee a pay range increase of approximately 4%.

A Guide to the
Grievance,
Working out of Classification
and Article 36.05 Procedures

APPENDICES



GRIEVANCE FORM

STATE OF OHIO - OCSEA, LOCAL 11 AFSCME, AFL-CIO

Date: _____ Grievance #: _____

Grievant(s) Name: _____ Soc Sec#: (last 4 digits) _____

Home Address: _____ Work phone: (_____) _____

City, State, Zip: _____ Home phone:(_____) _____

Job Classification: _____ Work location: _____

Agency: _____

Steward name: _____ Work phone: (_____) _____

Home address: _____

City, state, zip: _____

Layoff/Non-Selection/Discipline Grievances:
 The Union submits grievances involving layoff/non-selection/discipline at Step 3 within 14 calendar days of the date of notification of action. Send the original, completed form to the Agency Head or Designee.
(IN CASES OF DISCHARGE, A COPY OF THE GRIEVANCE FORM SHOULD BE MAILED TO THE OCSEA CENTRAL OFFICE GENERAL COUNSEL UPON FILING AT STEP 3.)

All Other Grievances: Contract interpretation grievances and written or oral reprimand grievances shall be filed at Step 1 of the grievance procedure.

Contract article(s) allegedly violated: _____ **GRIEVANCE TYPE:** _____

	Issue _____
	Removal _____ Suspension (No. of Days) _____

Statement of facts (who, what, where, when?):

Remedy sought:

Signature: _____ Date: _____

(Grievant/Union Representatives)

Step 1: Immediate Supervisor

Discuss within 10 working days of date of Incident

Date received: _____

Deliver oral response within 3 working days of discussion; if not resolved, give written statement attached acknowledging discussion.

Date discussed: _____

Date response: _____

Response by immediate supervisor:

Signature: _____

Date: _____

(Immediate supervisor)

Step 2: Intermediate Administrator

If appealing, the Union submits within 5 calendar days of receipt of Step 1 response or the date such answer was due, whichever is earlier.

Date received: _____

Date meeting: _____

Discuss within 7 calendar days; give response within 8 calendar days after discussion

Date response: _____

Signature: _____

Date: _____

(Immediate Administrator)

See attached response

CERTIFIED MAIL RECEIPT NUMBER _____ - _____ - _____ - _____

Step 3: Agency Head or Designee

If appealing, the Union submits within 10 calendar days of receipt of Step 2 response or the date such answer was due, whichever is earlier.

Date received: _____

Date meeting: _____

Meet within 15 calendar days unless mutually agreed otherwise: the agency head or designee will respond in writing within 35 calendar days after the meeting unless mutually agreed otherwise.

Date response: _____

DISCHARGE GRIEVANCES: Mgmt must meet and respond within 60 calendar days. A COPY OF THE GRIEVANCE FORM SHOULD BE MAILED TO THE OCSEA CENTRAL OFFICE, OFFICE OF GENERAL COUNSEL UPON FILING AT STEP 3.

Signature: _____

Date: _____

(Agency head or designee)

See attached response

CERTIFIED MAIL RECEIPT NUMBER _____ - _____ - _____ - _____

Late Step 3 Response: Meeting with the Office of Collective Bargaining requested.
(Date Step 3 response due: ___/___/___)

Step 4: Office of Collective Bargaining

If appealing, the Union submits appeal to the Office of Collective Bargaining within 15 calendar days of receipt of Step 3 response or the date the response was due, whichever is earlier.

Date submitted: _____

See attached response

NOTE: If you are appealing beyond Step 1, a legible copy of the grievance form must be attached to the appeal, and all previous step response must be attached.

NOTIFICATION OF DESIGNATED STEWARD

TO: Agency Head (agency & name) _____

FROM: Chapter President (name) _____

RE: Designated Steward Assignments

DATE: _____

The following assignments have been made by OCSEA/AFSCME, Local 11 for

(Institution or facility location)

JURISDICTION

SHIFT

STEWARD'S NAME

In cases where the assigned steward is unavailable due to absence or illness, all correspondence should be directed to the following individuals respectively:

Chapter President (name) _____

Chapter Vice President (name) _____

Chapter Chief Steward (name) _____

NOTIFICATON OF UNION DESIGNEE FOR STEP 3 RESPONSE

TO: Labor Relations Officer for (agency) _____

FROM: Chapter President (name) _____

RE: Union Designee for Step 3 Response

DATE: _____

The following local chapter officer has been designated by the Union to receive a copy of all Step 3 responses:

Name: _____

Title: _____

Address to mail: _____

City, State, & Zip: _____

MEMORANDUM FOR EXTENSION OF TIME LIMITS

TO: _____
(Labor Relations Officer or Other Management Representative)

FROM: _____
(Steward's Name)

RE: Time Extension

DATE: _____

The parties mutually agree to extend the time limits for grievance number _____
grievant's name _____, until _____.

Chapter Steward Date

Labor Relations Officer Date

REQUEST FOR INFORMATION AND DOCUMENTS

TO: Labor Relations Officer _____

FROM: _____

RE: Grievant _____

Grievance Number _____

DATE: _____

The Union hereby requests, pursuant to Article 25, Section 25.09 of the OCSEA/AFSCME Contract, that Management provide to the Union the following documents by:

(date and time) _____.

1. A list of names of all persons with knowledge of relevant facts concerning this grievance.
2. Copies of the following documents:
 - a. Names of all witnesses and copies of all documents used to support the employer's action.
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____

Union Representative

Date

<p style="text-align: center;">NOTIFICATION LETTER TO GRIEVANT OF STEWARDS COMMITTEE DECISION</p>
--

(Name of Grievant)

(Street Address)

(City, State & Zip)

RE: Grievance Number _____

Dear _____:

On _____ (date), the chapter stewards committee carefully reviewed the facts involved in your grievance. The committee is comprised of stewards from your chapter with the staff representative assigned to your chapter serving as a consultant. For the following reasons the committee decided to recommend/deny your grievance for arbitration:

(in the cases of recommend) The decision of this committee is not final. This case will be further reviewed by the OCSEA Central Office Committees who will make a determination as to whether the case should be arbitrated.

(in the case of denial) The decision of this committee cannot be appealed.

In Solidarity,

Chapter President

<p style="text-align: center;">RECORD OF CHAPTER STEWARD COMMITTEE DECISION</p>
--

CHAPTER STEWARD COMMITTEE DECISIONS

DATE: _____

Committee members Present:

The chapter stewards committee reviewed the following grievances;

1. Grievance number: _____
Action: (recommend, not recommend):
Reason:

2. Grievance number: _____
Action: (recommend, not recommend):
Reason:

3. Grievance number: _____
Action: (recommend, not recommend):
Reason:

4. Grievance number: _____
Action: (recommend, not recommend):
Reason:

5. Grievance number: _____
Action: (recommend, not recommend):
Reason:

6. Grievance number: _____
Action: (recommend, not recommend):
Reason:

7. Grievance number: _____
Action: (recommend, not recommend):
Reason:

<p style="text-align: center;">CHAPTER STEWARDS COMMITTEE RECOMMENDATION ON A REMOVAL GRIEVANCE</p>
--

TO: OCSEA Discharge Review Committee

FROM: _____, Chapter Stewards Committee

RE: Grievance Number & Name _____

DATE: _____

The chapter stewards committee recommends/does not recommend (in case of removal) the above listed grievance for the following reasons:

NOTE: The chapter stewards committee does not have the right to turn down removal grievances. The chapter's recommendation, however, is given great weight by the OCSEA Discharge Review Committee.

DISCIPLINE GRIEVANCE CHECKLIST

INSTRUCTIONS:

This checklist is designed to assist you in representing employees at pre-disciplinary or Step 3 hearings. Each box reflects an obligation or requirement, which if not met by management, may win a disciplinary grievance. Prior to your disciplinary or grievance meeting, go over the facts of the case with the employee. Then review the checklist. Check those boxes next to each obligation or requirement which you believe management has not met.

When you go into your meeting with management, raise those obligations or requirements you believe management has not met and tell them why. Failure to raise them may be grounds for an arbitrator to not consider them.

When you appeal the grievance to the next step, use this checklist to identify those problems raised and not resolved at the lower step. Then state those issues in your letter of appeal to the next step, if they are not already set forth in the original grievance form.

NOTE: All removal grievances must be filed directly to step 3 and at the same time forward a copy of the grievance form to OCSEA Central Office, Office of General Counsel.

1. INVESTIGATORY INTERVIEWS.

- a. ____ Was the employee denied a right to a union steward? (Did the employee request a steward?) Section 24.04 paragraph 1. (It is the responsibility of the employee to request a steward.)

2. PRE DISCIPLINARY HEARING.

- a. ____ Did the employee receive a written notice of the hearing?
- b. ____ Was the notice meaningful? (What, Where, When, Why)
- c. ____ Did the employee receive a written notice of the hearing?
- ____ Did the notice set forth the possible penalty contemplated by management? (was the issue raised?) Section 24.04 paragraph 2
- ____ Did the employee have enough time to prepare a meaningful defense? (Was a continuance requested?) Just cause requirement Section 24.01
- d. ____ Did the employer provide the Union a list of witnesses and those documents used to support the possible disciplinary action? Section 24.04 paragraph 2.
- e. ____ Was the Union given the opportunity to comment, refute or rebut the allegations? (Did it request to do so?) Section 24.04 paragraph 2.

3. IMPOSITION OF DISCIPLINE

- a. ____ Does the order or letter of discipline clearly set forth the alleged specific facts used to support the discipline? (Are the reasons vague? Do you know what to rebut?)
- b. ____ Did the Employer give the decision in writing to the Union and employee within 60 days of the pre-disciplinary conference? Section 24.05 paragraph 1

- c. ____ Was the disciplinary action initiated as soon as reasonable possible? Section 24.02 paragraph 3
- d. ____ Was the discipline imposed in the presence of the other employees, clients or the public? Section 24.05 paragraph 5
- e. ____ Did the Employer follow the principles of progressive discipline? (Was prior discipline of a same or similar nature?) Section 24.02 paragraph 1
- f. ____ Is there an issue of double jeopardy? (Is the Employee being disciplined for acts that already resulted in discipline?)
- g. ____ Did the Employee receive discipline for the same reasons set forth in the pre-disciplinary notice?

4. STEP 3

Raise all appropriate just cause issues. (check those raised at step 3)

____ The Employee was not adequately warned of the consequences of his/her conduct. (Look at work rules, disciplinary rules. If the Employee has prior discipline was he/she warned of future conduct? Was the warning meaningful or “boilerplate”? Did the past practice negate any written notice?) If not, state why.

____ The Employer’s rule or order was not reasonably related to efficient and safe operations. (Is off duty conduct involved? Does the Employer have good reason for the rule?) If not, state why:

____ The Employer did not investigate before administering the discipline. If no investigation was conducted, explain what occurred.

____ The investigation was not fair and objective. If not, state why. (Did the Employer interview the Grievant? Did the Employer interview all witnesses? Did the Employer check the facts for accuracy?)

____ There is not substantial proof of guilt. (Lack of evidence exists, or fault has not been clearly established.) Explain why there is not substantial proof of guilt.

____ The rules, orders and penalties were not applied even handedly without discrimination. (Were work rules not enforced? Are sex or race issues involved?) If not, state how.

____ The penalty is not reasonable related to the seriousness of the offense and the past record (lack of prior discipline, good work record, years of service, harm was insignificant). If not, state why.

____ Were other mitigating circumstances (family, personal problems) raised? If so, please list:

b. ____ Were all pre-disciplinary procedural problems identified above raised at Step 3?

c. ____ Was the Union denied a request at Step 3 for any specific documents, book, paper or witness reasonable available to the Employer and relevant to the grievance? If so, please list those items denied. Section 25.09.

d. ____ Did the Employer make an EAP program available to the grievant? (Does the Employee have a problem that can be helped by an EAP program?) Section 24.09

ISSUE GRIEVANCE CHECKLIST

What specific contract article(s) was violated? _____

What is the intent of each violated article:

Any Fact Sheets that provide guidance?

Any Past Arbitration Decisions that provide guidance?

Any Past Settlements that provide guidance?

Is there evidence to support the claim that management violated the article(s)?_

Is the grievance filed within timelines? _____

Does the employer's action violate federal or state statutes, regulations, rules, or Appointing Authority directives where the contract is silent? (Section 44.02) _____

Is the employer action a past practice as defined in Section 44.03? _____

Does the employer action meet all five tests of a past practice:

Exist for a reasonably long time? _____

Occur repeatedly? _____

Clear and Consistent? _____

Known to both management and the union at all levels? _____

Accepted by both management and the union at all levels? _____

Is the employer action an unfair labor practice? _____

Is there a better remedy that can be offered by another administrative procedure in or outside the contract (for example, OCRC/EEOC, Article 19, OSHA, FLSA, court action)? _____

Does the problem better lend itself to Labor/Management resolution? _____

ARTICLE 17 - Non-selection Grievance Check List

Grievant Name (one grievant per sheet): _____

Is there more than one member who wants to grieve non-selection under this PCN? _____

Is this grievant (listed above) the most senior of all the grievants for this PCN? _____

Grievance # if applicable _____

THRESHOLD ISSUES

A Merit review of Article 17 grievances should first address five (5) threshold issues regardless of the pay range. **ALL** threshold issues must all be met in order to be arbitrable and before continuing.

1. Was the grievant employed by the agency that posted the position? YES or NO
If the answer is NO. STOP HERE!
(See Article 17.05(A)(4))
2. Did the Most Senior employee receive the position? YES or NO
-If the answer is YES, the non-selection of the grievant is not grievable. STOP HERE!
-If the answer is NO, you may have a grievance-move to question 3.
(See Article 17.05)-Management sets standard by their selection.
3. Did the Grievant fail to meet minimum qualification on paper, on the application form? YES or NO
-If the answer is YES, the non-selection of the grievant is not grievable. STOP HERE!
-If the answer is NO, you may have a grievance-move to question 4.
(See Article 17.04)
4. Was the grievant from a *different* office, institution, or county as the posted position and the selected employee from the *same* office, institution, or county as the posted position? YES or NO
-If YES. STOP HERE!
-If NO go to question 5.
(See Article 17.04 (1) & (2))
5. Was this a demotion or a lateral for the grievant and a promotion for the selected applicant who at the time of selection was a state employee? YES or NO
-If YES. STOP HERE! You have failed to meet the threshold issues and the non-selection is not grievable.
-If NO, you have met ALL the threshold issues and may continue with a grievance!
(See Article 17.02 (E))

*****If you pass **ALL** of the threshold issues listed above you need to file your grievance, and make the relevant document request. Use the second page of this checklist to assist in preparing your case.

(Over)

6. Were the grievant and the selected applicant *both* from the *same* office, institution or county as the posted position? YES or NO
 (See Article 17.04)
 If answer is YES go to question 8 (skip Q # 7).
 If answer is NO go to question 7.

7. Were the grievant and the selected employee *both* from a *different* office, institution, or county as the posted position? YES or NO
 (See Article 17.04)

8. Is the position in Pay Range 28 and above? YES or NO
 -If YES, illustrate how the Grievant is superior to the selected employee in at least three (3) of the following: Qualifications, Experience, Education and Active Disciplinary Record.
 (See Article 17.05)

As listed on the application.

Employee	Education	Experience	Qualifications	Seniority	Any active Discipline (list)
Grievant					
Successful applicant					

-If NO, how did the employer demonstrate that the junior candidate is demonstrably superior to the grievant? (Pay range 27 and below)
 (See Article 17.05)

As listed on the application.

Employee	Education	Experience	Qualifications	Seniority	Any active Discipline (list)
Grievant					
Successful applicant					

9. Was a test, structured interview, or other assessment given? YES or NO
 (See Article 17.06)

If YES:

What was the score of the selected applicant?
 What was the score of the grievant?

CHECKLIST (all items below must be included in your grievance)

If appealing to step 4 the following items must be provided:

1. This check list
2. Application of selected applicant and grievant
3. Posting (highlight the PCN)
4. Seniority date of selected applicant and grievant
5. Classification Specification
6. A copy of the document request for the test, structured interview, or assessment.
7. Step 3 response.
8. Test Scores

Should I use the Contractual Grievance Procedure or an Alternate Procedure?

The choice of whether to use the contractual grievance procedure or an alternate procedure depends on the nature of the dispute. Also the nature of the relief sought can significantly affect the choice of what procedure to use.

Selected Administrative Agencies

There are several administrative agencies which are specifically charged with the responsibility to resolve certain types of disputes.

1. Department of Labor-Wage and Hour Division

The U.S. Department of Labor is charged with the responsibility to administer the Fair Labor Standards Act (FLSA) which guarantees basic benefits to employees including minimum wage, and overtime pay, as well as definitions of which hours of work require payment. The FLSA normally has a two year statute of limitations. This means that an employee can receive back wages for a violation of the law back to two years prior to when the complaint is resolved.

It is the Union's experience, based on several arbitration decisions, that arbitrators will not read the FLSA into our contract (Decision # 100 and #146). Therefore, in almost all cases where the State's action is a violation of the FLSA and not a clear violation of the contract, the employee should file a claim with the Department of Labor, rather than filing a grievance on the issue. You can contact area offices of the Wage-Hour division in Cleveland, Akron, Columbus, or Cincinnati.

2. Occupational Safety and Health Act (OSHA)

The rights and protections of employees which are extended to employees by OSHA is extensive. OSHA provides standards for protection against safety hazards, noise, chemicals, and radiation. In the State of Ohio the OSHA provisions are administered by the Public Employees Risk Reduction Program (PERRP). Enforcement is by state health and safety inspectors. Employees have the right to request an inspection if they think there are hazardous conditions in their work place. They also have a right to have a union representative accompany an inspector and to find out the results of an inspection. The law also requires that the union have access to information on injuries, and chemicals in the work place. In addition the National Institute for Occupational Safety and Health (NIOSH) can also provide information and advice on hazards.

An individual or the Union has a right to request an inspection by filing a complaint alleging dangerous or unhealthful conditions. Complaints are usually done with the use of an OSHA complaint form requesting an inspection or by a letter of request. Such complaints should be made without delay to help insure the inspector can properly evaluate the situation. Specific attention should be given to the protections in Article 11 of the agreement to see if any of the sections cover the complaint. Before you file a complaint your staff representative can help you determine if there is a violation of the code. The Public Employee Safety and Health Section can be contacted in Columbus, Cleveland, and Cincinnati.

3. State Employment Relations Board (SERB)

The Union or an individual may file a complaint called an unfair labor practice (ULP) with SERB if a violation of the collective bargaining law (ORC 4117) has occurred. Revised code section 4117.11 (A)

sets forth unlawful acts by the employer that constitute unfair labor practices. General categories include interfering with employee rights to form a union; refusing to bargain over mandatory subject of bargaining, establishing a history or pattern of denying the union ability to process grievances, using lockout or other work stoppage tactics to bring pressure upon the Union or employees to resolve a labor relations dispute or compromise the Union's position; and causing the union to commit an unfair labor practice.

An overlap can occur between the rights identified in the contract and the rights guaranteed by ORC 4117. A category in which overlap of jurisdiction is likely to occur is in the area of interference with employee rights. For example, section 4117.03 (A) guarantees employees the right to act collectively in good faith without retaliation from the employer; the right to present grievances ; and the right to be free from discrimination on the basis of the exercise of rights protected by the law.

A ULP must be filed within ninety (90) days of the occurrence of the unfair labor practice. In those instances of potential overlap where specific contract language has been violated, a grievance should be filed. At this time it is recommended that your staff representative be contacted. If the staff representative believes that an unfair labor practice has been committed, he/she will make a recommendation to his/her supervisor. To assure a consistent practice which reflects the policies of the Union, ULP's are filed through the OCSEA Central Office. Consultation with the OCSEA Office of General Counsel by your assigned staff rep is required before OCSEA will file a ULP. SERB then requires a detailed account of the facts.

4. Ohio Civil Rights Commission (OCRC) and Equal Employment Opportunity Commission (EEOC)

Under state and federal laws, it is unlawful for an employer to discriminate on the basis of race, color, religion, sex, national origin, handicap, age or ancestry. In addition, the OCSEA contract and Governor's Executive Orders prohibit discrimination on the basis of political affiliation, sexual orientation or family relationship. An employee can file administrative charges, a grievance or a lawsuit.

Matters relating to discrimination often require a level of expertise because the investigation and the meaning of the law is critical in determining whether you have a case which meets the requirements of the law. It is advisable to take a complaint to the intake procedure that is required by OCRC. This procedure is required before a formal charge can be filed. At this time a trained investigator can review your case and indicate the strengths or weaknesses of your complaint and whether you have the type of case that warrants filing a charge. The same level of detail is required to support your charge filed at OCRC as it is at arbitration. The expertise and time devoted by an experienced investigator who can also help negotiate a settlement is often considered superior to the grievance procedure, particularly as most arbitrators have little training or experience with discrimination cases.

The time limit for filing a charge of discrimination under the Ohio law is six (6) months, and three hundred (300) days under the federal law. An aggrieved employee may want to file a lawsuit and administrative charges, in which case he/she should secure legal counsel. OCRC has offices in every major city in the state. Filing an administrative charge does not require an attorney.

Suspensions and Removals

Where a suspension or removal occurs and it is alleged that the employer's action is at least in part motivated by discrimination, a grievance should be filed within the required fourteen (14) days of notification of the discipline. In an overwhelming majority of the cases the best protection is the standard of just cause which can be complemented by an Article 2 violation if sufficient evidence exists regarding discrimination. In the case of suspensions and removals an employee should always seek advice from his/her attorney before he/she determines to file a lawsuit or administrative charge.

Helpful Criteria for Determining the Proper Administrative Remedy

Where there may be doubt as to whether a grievance should be filed your staff representative should be consulted. It can be helpful to review the following criteria.

1. **Expertise of the Administrative Agency.** OSHA investigators are knowledgeable concerning the law and applicable standards. OCRC and EEOC have investigators who can make a thorough investigation of alleged discrimination and who have expert knowledge of state and federal laws.
2. **No Specific Provision.** Sometimes the spirit of the contract is well known but no specific contract section applies to the situation which needs correction. For example violations of the FLSA can result in recovered compensation when the contract is not specific about when employees should be in a pay status. The assignment of new classifications to an exempt status without SERB approval is best addressed by a ULP.
3. **Authority and Expertise of an Arbitrator.** The arbitrator is limited to disputes involving the interpretation, application or alleged violation of a provision of the agreement and he/she cannot impose a limitation or obligation not specifically required by the express language of the agreement. Punitive damages or the recovery of costs associated with the complaint can be requested under the FLSA and in a discrimination law suit. Arbitrators are not permitted to negotiate settlement unless both parties mutually agree to extend such authority. Arbitrators are rarely trained in matters of discrimination and frequently lack expertise in this area.
4. **The Length of Time to Obtain a Final Result.** Regardless of which administrative remedy is selected, there is no guarantee on the length of time it will take to reach a final conclusion. Similarly the filing of a non-contract complaint or a contract grievance is not a guarantee that it will be adjudicated by the agency or arbitrated by the Union. The administrative agency can be contacted to determine the probable time of their intervention. This can be compared to an estimate of when a grievance would be arbitrated.
5. **The Final Result You Want to Obtain.** The impact of filing a grievance or a non-contract complaint may have a different effect on the employer. Sometimes the intervention by an investigator from an administrative agency can have the effect of modifying the employer's behavior. For example, the threat of a citation by an OSHA inspector can modify management's behavior.

Hints on How to Improve Decisions on Whether to File a Grievance or to File with an Administrative Agency

The following are suggestions that may assist your evaluation of what procedure to follow:

1. If you have questions contact your staff representative. Early involvement can preserve possible options.
2. An early review by the Chapter stewards committee can be instrumental in determining if the grievance has merit. If it lacks merit perhaps another administrative remedy is appropriate.

Where to Get More Information on Administrative Agencies

The OCSEA Education Department has distributed and made available on the OCSEA web site fact sheets which provide addresses, phone numbers and additional facts about non-contract administrative remedies. The following are relevant fact sheets #400-Discrimination, #500-Fair Labor Standards Act, #600-Sexual Harassment, #700-How to Make a Healthy and Safe Work Environment, and #800-What is an Unfair Labor Practice ?

The Duty of Fair Representation

What is “The Duty of Fair Representation”?

The duty of fair representation is a term that is hard to define precisely. There is no universal standard which tells the union how they must process grievances. Whether a union has breached its duty of fair representation depends on the facts of each case. Despite the fact that the laws are not specific, many standards have been established by the courts. The Union holds itself to these standards which require that an employee must be treated in a fashion that is not arbitrary, discriminatory or in bad faith.

The courts have determined that the Union holding exclusive recognition must represent all workers in the bargaining unit, whether they are members or non members, in an impartial manner. It is the responsibility of each steward to fully investigate all grievances and to process meritorious grievances in strict compliance with the step identified by the contract grievance procedure.

What kind of standard is used to determine if a steward has violated the Union’s duty of fair representation?

The Union has failed in its duty if it deliberately or unjustifiably refuses to represent the worker. On the other hand, negligence or mistakes are not enough to be deemed a violation if it can be shown that the steward properly investigated the grievance, that an evaluation was made and a good faith effort was made to seek a resolution of the grievance.

The State Employment Relations Board (SERB) has jurisdiction to review claims of a Union’s breach of the duty of fair representation. SERB requires that the Union provide a legitimate and rational explanation of its conduct. This explanation must not be arbitrary or without reason.

Is the Union required to take every grievance to arbitration even if it is considered non-meritorious?

NO. The courts realize that only a small percentage of grievances should be arbitrated and that federal labor policy promotes the settlement of grievances short of costly and time consuming arbitration. Therefore, the Union clearly has a right to settle a grievance or decide that a particular grievance lack sufficient merit to justify arbitration.

Experts agree that it is not good labor relations practice to move a significant number of grievances to arbitration. It is clearly in the best interests of both parties to resolve grievances at the lowest step possible. Work place disputes are often best resolved by mutual agreement decided rather than a third-party arbitrator.

Does the Steward violate the duty of fair representation when he/she chooses not to appeal a grievance to the next step in the grievance procedure?

If the Steward makes an inquiry into the facts and his or her interpretation of the contract has some basis in reason, the Union’s refusal to process the grievance will not be considered arbitrary and will not be considered a breach of duty of fair representation.

When the Steward drops a grievance at some point in the grievance process, he or she needs to provide an explanation to the grievant(s) as to why the grievance lacks merit, at the time the decision

is made not to move the grievance forward to the next step.

It is essential that the Steward review the definition of a grievance in the contract. Applicable provisions of the contract should be reviewed. The steward should also obtain the assistance of a Steward's Committee established by the chapter. Questions of the contract interpretation should be referred to your assigned OCSEA Staff Representative.

If I settle a grievance don't I deprive the employee of their right to go to arbitration?

An employee who files a grievance does not have an automatic right to go to arbitration. Arbitration is a last resort. A reasonable settlement offer by the employer is a very acceptable reason for not approving a grievance for arbitration. A good Steward will emphasize a wish to reach a fair and reasonable resolution at any step in the grievance procedure before they recommend that the dispute be given to an arbitrator.

How far should I take a non-meritorious grievance before it should be dropped?

The facts you have to support your decision are much more significant than how far a grievance is advanced. Your investigation that uncovers the facts necessary to determine that the grievance lacks merit is most important.

In some instances the grievance must proceed through the grievance procedure because management needs to provide required information or you want to assure that your facts are confirmed. Time should be made available to secure a possible settlement. Under the State Contract the Step 3 meetings with the agency should, in most cases, provide ample time to investigate a grievance and fully discuss it with management. A decision to drop a non-meritorious grievance should be made when the Step 3 written decision is received and evaluated. If the necessary facts are already available, the grievance should be dropped before the Step 3 meeting.

What is meant by arbitrary?

If a steward dismisses a complaint without investigating it, his or her decision is arbitrary. If a Steward fails to process a grievance because it is filed by a non-member, it is arbitrary.

Basically, you as a Steward have the responsibility to do three (3) things: (1) Investigate a complaint when brought to your attention. (2) Review the facts against the contract to determine if it is or is not a good grievance. (3) Avoid any consideration based on the person's race, sex, religion or union membership.

If you do these three things you will fulfill your duty of fair representation.

What if I think a person is being treated unjustly, but I know the contract is not violated?

It is unfair to let a person believe they have a good grievance when they do not. Honesty is the best policy. If you have a bad situation which is not a grievance, you may want to talk to your staff representative to explore other remedies. A short list of other remedies is EEOC, OCRRC, Worker's Comp, disability, labor-management meetings and future contract negotiations.

Isn't it better to process every grievance to arbitration just to play it safe?

No. The Union should investigate all alleged violations of the contract or the employee rights. The Union has no obligation to pursue a grievance that lacks merit or has no chance of success. If the Steward files frivolous grievances it will affect their credibility and their ability to settle meritorious grievances. Under the state contract, a steward who files all grievances to Step 4 does not discriminate between good and bad grievances and does not give management an idea of what is most important. Generally the courts recognize that mistakes will be made. The courts are interested in good faith effort, done without hostility or discrimination.

What guidelines can Stewards follow if they want to insure they will not face a charge of breaching the Union's duty of fair representation?

The most effective prevention is common sense. There is no such thing as a guarantee that will prevent anyone from making a charge or accusing you of violating your basic responsibilities. There are several things you can do to successfully defend against such a charge.

You need to have a reason to reject a grievance and your judgment should be free from arbitrary or discriminatory intent.

Every complaint, no matter how farfetched it first appears, should be investigated. This does not mean that a grievance needs to be filed. Enough facts should be known to make a reasonable judgment if the contract is violated.

The Union must show that it did investigate the complaint. Keep a clear record of your investigation by using one of the pre-printed fact sheets about each complaint. The Steward should know the 5 w's (who, what, when, where, and why). A clear record of each grievance must also be kept. Use the pre-printed grievance form to show what was done and the final disposition of the complaint or grievance. A chapter should maintain a file on all grievances it has handled.

Every effort should be made to convince the grievant that the grievance or complaint is not legitimate when that is the case. If you have doubt of the legitimacy of a grievance you should continue with your investigation until you are satisfied that all relevant facts are known. If a question exists about the legitimacy of a grievance, the Steward should contact the OCSEA staff representative before action is taken to drop a grievance.

The grievant should be given in writing the terms of the settlement. An explanation should be made personally to the grievant if a decision is made to withdraw a grievance.

The Steward should know their contract. The Steward has an obligation to attend training sessions concerning the contract and the grievance procedure.

WITNESS FACT SHEET

Instructions: This form is to be filled out by OCSEA stewards and/or local officers and must accompany the Grievance Prep sheet. Make out a witness sheet for each witness. Use additional sheets if necessary.

Part 1- Grievant Data

Original filing date: _____ Grievance No. _____
Grievant: _____ Work phone #: (____) _____ Home #: _____
Place of work: _____
Issue: _____

Part 2- Witness Data

- 1) Witness name and title: _____
 - 2) Witness Address: _____ City: _____ Zip: _____
 - 3) Telephone: work _____ Home _____
-

Part 3- Witness Background

- A) Will witness testify for or against grievant? _____
- B) What is the pertinent part of witness' testimony?:

- C) If witness is favorable, will the witness testify willingly? _____
- D) If witness is NOT favorable, is there a reason? Explain: _____

- E) Additional Comments: _____

Print Name: _____ Date: _____

Reduce Grievance Errors: 4 Checkpoints for Filling out the Appeal and Preparation Sheet

Appendix O

APPEAL AND PREPARATION SHEET

Point 1: It is important that you mail this form and needed documents to the staff representative and the OCSEA Office of General Counsel (OGC) on the same day you mail the appeal **along with the grievance form** to the Office of Collective Bargaining.

Step 4 Grievance Designee
Office of Collective Bargaining
100 E. Broad Street-14th Floor
Columbus, Ohio 43215

Grievant Name: _____
Grievance #: _____
Chapter Name/ #: _____
Agency/Work Location: _____

- Removal
 Issue (Contract Interpretation) Suspension (# of days _____)

IF STEP 3 RESPONSE WAS NOT RECEIVED:

- Step 3 Response was due on ___/___/___ but was not received. The Union requests a Step 4 meeting.

Date the Appeal was mailed to Step 4 ___/___/___ Staff Rep: _____

This letter is to inform you that we are appealing the above captioned grievance to Step 4 of the grievance procedure pursuant to Article 25.02 of the labor agreement between the State of Ohio and OCSEA AFSCME, Local 11, AFL-CIO.

Please send correspondence to: _____

PART A (PLEASE FILL OUT THESE BLANKS)

Point 2: It is important that you fill out all blanks on the Appeal and Preparation sheet, including the grievant's last 4 digits of their social security number, date of the Step 3 meeting, date the Step 3 response was due, whether or not there was a mutual agreement regarding timeline extension.

Step 3 Meeting Date: ___/___/___ Step 3 Decision Due: ___/___/___ Step 3 Decision Received: ___/___/___

Primary Article grieved: Key Article () 2nd Art. () 3rd Art. () 4th Art. ()

Brief Statement of Grievance: _____

Please state your opinion as to the strengths and weaknesses of this grievance: _____

PART B

Is there a timeliness issue? If so, please explain in detail what was mutually agreed to and attach any written extension agreed to: _____

PART C

Point 3: When filling in the primary articles grieved, it is important that you list all article sections that apply to this grievance.

The following information must be attached:

- ✓ Grievance Form (Must be attached with all copies)
- ✓ Step 3 Decision
- ✓ Applicable Work Rules
- ✓ Witness Fact Sheets
- ✓ Job Specifications Relating to Work Dispute
- ✓ Vacancy Postings in Dispute
- ✓ Copies of Written Agreements to extend time limits
- ✓ Any other Applicable Documents

Preparers Name: _____ Grievant Name: _____
Last 4 digits of Soc. Sec.#: _____ Last 4 digits of Soc. Sec. #: _____
Title: _____ Address: _____
Address: _____ Phone: (____) Home: _____ Work: _____
Phone: (____) Home: _____ Work: _____ Date this Prep sheet was completed: ___/___/___

SEND WHITE COPY TO OCSEA OFFICE OF GENERAL COUNSEL; YELLOW COPY TO CHAPTER; GREEN COPY TO STAFF REPRESENTATIVE.

Point 4: If a mutual agreement to extend the timelines exists, please make sure that you state that on the Appeal and Preparation Sheet and attach a copy of the written agreement. (See Appendix D)

Remember to read the full instructions on the Appeal and Preparation sheet before mailing.

STEWARD GUIDE: GRIEVANCE POINTERS

Q: The use of the internal agency mail system is convenient, but should it be used for grievance appeals?

A: No. The agency mail system can be unreliable, and because there is no receipt, it does not provide the steward with a record of when the grievance was appealed. You may also create a disagreement on when the agency should have date-stamped the appeal as received. Grievance appeals, particularly at Steps 3 and 4, should always be sent by certified mail. Section 25.01 E specifically prohibits utilizing agency systems where different work locations are involved.

Q: I am evaluating a grievance on improper assignments from an overtime roster. What information should I have to document the grievance?

A: First, get a copy of the overtime roster reflecting the exact number of hours worked by all eligible persons and their ranking when the violation occurred and after it occurred.

Second, have a full understanding of the work place practices on how work assignments are made and the classifications of the affected employees.

Lastly, calculate the number of overtime hours worked that are in question and who specifically should have been given the overtime assignments.

*** Don't waive pre-disciplinary hearing**

Be on the look out for agency pre-disciplinary notices offering the employee an opportunity to waive the pre-disciplinary meeting and accept whatever penalty management proposes. Employees should NOT sign off on such waivers. Such notice may be accompanied by a "waiver of right to meeting form which may state that the employee's attendance at a pre-disciplinary meeting is not necessary if the proposed discipline is accepted. It is important that the employee require management to put on its evidence supporting the potential discipline.

A quick response by the steward who is notified of the hearing can prevent future problems. Every chapter should have formally notified the agency labor relations officer of chapter designated stewards. A pre-discipline meeting serves to let the employee know what evidence management is using to support the discipline. Having a pre-disciplinary meeting also helps the union identify and formulate their arguments for Step 3. It also helps the steward decide if a grievance should be filed. Remember, it is the chapter president's, not OCSEA Central Office's responsibility to notify the LRO of who the stewards are.

OCSEA Grievance Tracking Log

Appendix Q

Date Filed	____, ____	Name of Member	Member Solution to Problem	Disposition
Step 1 Response Due	____, ____			
Step 2 Filed	____, ____			
Step 2 Response Due	____, ____	Grievance Number		
Step 3 Filed	____, ____			
Step 3 Response Due	____, ____			
Step 4 Filed	____, ____	Article Violated		
Mediation	____, ____		Steward of Record	
Arbitration Committee	____, ____			
Date Filed	____, ____	Name of Member	Member Solution to Problem	Disposition
Step 1 Response Due	____, ____			
Step 2 Filed	____, ____			
Step 2 Response Due	____, ____	Grievance Number		
Step 3 Filed	____, ____			
Step 3 Response Due	____, ____			
Step 4 Filed	____, ____	Article Violated		
Mediation	____, ____		Steward of Record	
Arbitration Committee	____, ____			
Date Filed	____, ____	Name of Member	Member Solution to Problem	Disposition
Step 1 Response Due	____, ____			
Step 2 Filed	____, ____			
Step 2 Response Due	____, ____	Grievance Number		
Step 3 Filed	____, ____			
Step 3 Response Due	____, ____			
Step 4 Filed	____, ____	Article Violated		
Mediation	____, ____		Steward of Record	
Arbitration Committee	____, ____			
Date Filed	____, ____	Name of Member	Member Solution to Problem	Disposition
Step 1 Response Due	____, ____			
Step 2 Filed	____, ____			
Step 2 Response Due	____, ____	Grievance Number		
Step 3 Filed	____, ____			
Step 3 Response Due	____, ____			
Step 4 Filed	____, ____	Article Violated		
Mediation	____, ____		Steward of Record	
Arbitration Committee	____, ____			

ALTERNATIVE DISPUTE RESOLUTION

Often disciplinary actions do not require a full day to arbitrate. Formerly these grievances had to be scheduled as full-blown arbitrations.

Non-Traditional Arbitration:

Except for patient/client related cases, disciplinary grievances of five (5) days or fewer must go to non-traditional arbitration. In a non-traditional arbitration, the arbitrator renders a bench decision at the hearing. In disciplinary grievances adjudicated in this forum there shall be no mediation and the parties may have one witness each. The non-traditional arbitration procedure has the following advantages.

- More than one grievance can be scheduled per day, usually more than 10 cases will be scheduled per day;
- You will leave the hearing with a decision on the grievance;
- Grievances can be scheduled in a more timely manner;
- OCSEA chapters will be better able to tell when their outstanding disciplinary grievances will be arbitrated.

The Union and the Office of Collective Bargaining may jointly decide to take issue grievances to a non-traditional arbitration process.

Q: What is the difference between a non-traditional arbitration and a full-blown arbitration?

A: In a non-traditional arbitration the arbitrator has the same authority to uphold, deny, or modify the relief sought in a grievance in any of these arbitrations. These grievances shall not be mediated. If witnesses are required to present facts, under the non-traditional arbitration process the Union and the Office of Collective Bargaining can call one witness each. The arbitrator can arbitrate more than one grievance in a day. NTA decisions do not carry the precedential value that full blow arbitration decisions do.

In a full-blown arbitration, the hearing may take one or several days, and only one grievance will be scheduled typically. Unless specifically ruled upon by the arbitrator or mutually agreed to by the parties, there is no limit to the number of witnesses which each party can call. In a full-blown arbitration, the arbitrator has up to 45 days to render a decision.

Q: May I take removal grievances to non-traditional arbitration?

A: No. Only disciplines involving suspensions and working suspensions can be scheduled. If a grievant has more than one disciplinary grievance, they can all be handled on the same day. Also, the employee who was removed could request that the Union take his/her removal to expedited or non-traditional arbitration, but both the Union and the Office of Collective Bargaining would have to mutually agree.

Q: What are some other benefits of Alternative Dispute Resolutions?

A: The non-traditional arbitration procedure has a significant impact on reducing the disciplinary grievance backlog because these disputes will be scheduled and/or settled more quickly.

Q: Where are the hearing sites for the Alternative Dispute Resolution hearings?

A: Hearing sites are decided based on the geographic location of the grievances scheduled for the day. When grievances come from institutions or large facilities, the parties frequently choose to hold the hearings at the same work site; however, based on the OCSEA Central Office evaluation of the grievance, the Union may decide to arbitrate the grievance(s) elsewhere including at the OCSEA Central Office. The hearing sites are determined by mutual agreement between the Union and the State. The goal is to reduce the required travel time for the grievant and related witnesses if such action is not contrary to the Union's overall arbitration strategy.

EVALUATING THE MERITS OF A GRIEVANCE

Stewards must always be evaluating and re-evaluating the merits of a grievance. A steward may at one point be completely convinced that a grievance is (or is not) meritorious. Later, the steward, upon learning of new facts or hearing counter arguments realizes that his or her original evaluation was wrong, or not as accurate as originally thought. This can happen to the most experienced advocate! The grievance procedure involves give and take. If either party adopts a rigid position instead of maintaining an open mind, the procedure cannot work properly.

Given an open mind and respect for the other party in the dispute, the steward should approach the investigation of a grievance in an objective and disciplined manner.

The following preliminary facts should be investigated.

Facts to Get From the Grievant

Q: Who is the Grievant?

A: Detailed information about the grievant is essential: name; title; current mailing address; home email address; home and work telephone numbers; classification; seniority date; department or agency; work location; last 4 digits of their social security number; name of immediate supervisor; shift worked; and days off. If the steward fails to get this information, it may lead to extra delays in processing a grievance.

Grievances can be filed for more than one individual (see Section 25.01 (B) of the grievance procedure). Grievances can also be filed on behalf of the Union.

Q: What is the problem?

A: This means that the problem is spelled out. For example, “payment for overtime was not granted”, “past days were inappropriately scheduled” or “the grievant is being treated unfairly by the supervisor.”

Q: Is this a grievance?

A: A complaint, even an important complaint, may or may not be a basis for the filing of a grievance under the collective bargaining agreement.

It is essential that the steward review the definition of a grievance as contained in the contract. If OCSEA and management disagree on whether something is a grievance, the question of whether it is a grievance may well become the primary issue in the grievance procedure. This question may, itself, need arbitration to determine whether the case’s merits will ever be judged.

The steward must ask the following questions concerning problems with the State Contract:

1. Specifically, what contract article(s) was violated?
 - Are you clear on the intent of each article that allegedly has been violated?
 - Is there evidence to support the claim(s) made against management?

2. Is the proposed grievance filed within the time requirements reflected in Section 25.02 Step One or Section 25.02 Step 3?
3. Does the employer action violate state statutes, regulations, rules or Appointing Authority directives where the contract is silent? (Section 44.02)
4. Is the employer action a past practice as defined in Section 44.03?
5. Is the employer action an unfair labor practice?
6. Is there a better remedy that can be offered by another administrative procedure in or outside the contract? (For example, EEOC, Article 19, OSHA, FLSA, court action.)
7. Does the problem better lend itself to labor/management resolution? (overtime procedures)

Q: Where did it happen, when did it start, and who is involved?

A: It is important to be as accurate as possible about dates, times, places and persons involved. This information is essential not only in fashioning a remedy but also in evaluating how big the problem is. While some claims may have only minor implications, others may affect many employees or involve large amounts of money and major managerial principles.

Grievances may be filed for more than one person. It makes sense that only one grievance be filed if management is taking a single action (or not taking an action) which affects a number of people. If each individual is required to file a separate grievance on the same issue, then the grievance machinery for the Union would be slowed down. It is important that everyone who is affected be identified on the group grievance as required by Section 25.01 (B) of the State Contract. Also, it is important that the group of affected employees be described, e.g. "all second shift Hospital Aides on B ward at the Central Ohio Psychiatric Hospital". Please keep in mind that the group of employees should include all employees who should benefit from the remedy sought.

Q: How does this action pose a problem to the grievant?

A: Why is the employee considering filing a grievance? Feelings of unjust treatment loom large in this area. At this stage, many employees feel they have been unfairly treated. Care must be taken to determine whether the action is regarded as "unfair" simply because one does not like it or because it is contrary to certain rights guaranteed by the contract. If there is no violation of the contract, a grievance should not be filed.

A brief comment on how management's actions affect employees might also be included in the statement of facts, to help judge how severe the problem is.

Q: What corrective action should be taken?

A: The requested remedy must be one that management can grant. If the employee wants compensation that cannot be provided, the grievance will simply waste the participants' time at each level. For example, a request that a management employee be reprimanded or disciplined is not a proper remedy; an arbitrator will not grant it.

Investigate the harm to the grievant to clarify whether the remedy sought would “make the grievant whole”. Don’t just say that the grievant be made whole- be as specific as possible.

Examples of specific remedies for a removal case include:

- back pay
- no loss of seniority
- pay for lost overtime opportunities, and
- reinstatement
- accrued vacation and sick leave
- holiday pay.

There may be other remedies in addition to the above listed ones which you may want to request.

Q: Were there any witnesses?

A: Although witnesses are more commonly used in suspension or discharge cases, witnesses are also used in contract disputes. Witness statements may be needed to prove past or present management actions or policies. Witness statements may be necessary to verify the grievant’s statement and may be necessary at the various steps in the grievance procedure. It is also important to know who management witnesses will be. Sometimes it is necessary that the Union use a witness who will be hostile to the Union. It helps to know in advance whether a witness will be hostile or friendly to the Union.

Q: What is the accepted interpretation of this problem?

A: Do not judge whether a management action violates the contract by first reactions. Once the applicable provisions are identified, they should be read thoroughly. It is possible that the true meaning of a provision- what the parties intended when they wrote it, and how it has been interpreted – can be shown only through further investigation.

A cardinal rule is: **If you aren’t sure about the meaning or intent of a provision, ask.** Stewards have a network of other stewards. The OCSEA staff representatives have been trained on the intent of the contract language to help them answer these questions. Chapter officers and assembly officers are other rich sources of information.

Q: Who should be consulted?

A: Stewards can direct their questions to the OCSEA staff representatives. Stewards can also turn to their chief steward or the chapter steward committee for help.

Q: Are there any records which shed light on the problem?

A: Where such matters as pay, attendance and leave, hours of work, distribution of overtime, seniority, Workers’ Compensation, and leave with pay are in question, an investigation of appropriate records is important. Past discipline records are essential to understand whether progressive discipline was used. Position descriptions are necessary to successfully argue qualifications for promotion. McBee cards or other attendance records are necessary for discipline involving absence or tardiness. In addition to other State-maintained records, information from a personnel file is often important. Make requests for records in writing at each step of the grievance process. If the State does not make documents available, the Union has documentation to argue that the discipline should be lessened because of a procedural violation.

Q: Has a similar problem happened before?

A: A review of previous grievances and arbitration summaries may help. Also, informal discussions with other OCSEA stewards may show how a similar problem was handled before it rose to a grievance. If the same type of grievance was filed in the past and withdrawn because it lacked merit, a new grievance on the same issue with the same facts should not be filed.

Q: What are the time limits?

A: In the case of the State Contract, a contract interpretation grievance cannot be presented more than 10 working days from the date the grievant became aware of – or should have become aware of - the act giving rise to the grievance. In any case it can be no longer than 30 days after the event giving rise to the grievance happened.

After the grievant signs the grievance form and it is filed, the time clock begins running on the grievance process. In the absence of a timely grievance hearing, or in the event of a late grievance response, the steward must appeal the grievance to the next step. There is no contractual penalty on management if it does not timely respond. But if the Union doesn't timely respond, the grievance is treated as withdrawn. Remember, under the State Contract, time limit extensions must be in writing.

Q: Are there previous settlements on this issue that provide precedent?

A: Here, OCSEA stewards should evaluate earlier arbitration decisions and stipulated settlements on the particular issue. It is often helpful to look to other settlements on the particular issue. It is often helpful to look to other settlements for ideas and general guidance for what has proved to be acceptable or workable – even when they may not be precedent setting. Even if an issue has been settled in an agreement which can't be introduced into an arbitration, it is a strong indication of what management can do in a similar instance to resolve a problem. Stewards' committees often provide a rich pool of experience and knowledge that can be used to identify what has been done in the past.

Q: Should other employees or supervisors be interviewed?

A: There is no substitute for firsthand information. Relying on another person's "say-so" without going to the original source can be dangerous. Often there are other people in an institution, facility, agency, or department who have immediate knowledge about the facts of a particular case, and their views should be sought and reviewed. When making an evaluation, the steward should only rely on proven facts, not a general belief about what has taken place. When and if a case gets to arbitration, the Union should use only the best evidence i.e., original sources, not hearsay.

Q: Should the work area be visited?

A: The OCSEA stewards may find it useful to go the grievant's work site to gain a better understanding of the problem. This step should be taken if it is likely to provide useful results. Remember, a picture is often worth a thousand words.

Once facts are collected determine what is important

Fact: Separate disputed from undisputed facts.

A brief meeting between the OCSEA steward (and sometimes the grievant) and management should quickly establish those facts relevant to the case which both parties agree upon. Once these facts are recognized, the parties can focus their attention on the areas of disagreement.

Fact: Evaluate sources of information.

Evidence may be oral or documentary. “Oral evidence: is verbal; “documentary evidence” is generally in writing. Documentary evidence can also take the form of charts, tables and pictures. It may make sense to take evidence such as McBee cards for different employees and create an exhibit which summarizes the information contained in the McBee cards so that the attendance record of different employees can easily be compared.

Get information from the individual who is most likely to know about the truth of a matter (for example, the person responsible for record keeping, as opposed to a manager more removed from the case). Get those records or documents that can provide the most reliable and detailed information (for example, actual time and attendance records, as opposed to a memo in which someone notes his or her recollection of the matter).

In evaluating oral testimony, the grievance representative should consider whether the person has firsthand or personal knowledge of a situation or is basing his or her statements on hearsay. Also to be considered is whether that individual has an accurate memory, is truthful, and is reliable (i.e., does the person tell his story the same way each time he/she tells it).

Among the standards that are used in evaluating credibility are demeanor (appearance, voice, attitude, conduct); character of the testimony (overall manner in which questions are answered); quality of perception, recollection, and communication (the ability to see, hear, or experience something and then to remember and tell about it); consistency or inconsistency (with other known facts); inherent probability; bias, interest, or other motive; character; and admissions about lying.

Fact: Distinguish between allegations, assumptions, opinions, & facts.

When asked about their views on an issue, some people take a strong position with little to back it up. Others will draw conclusions based on a limited range of facts. Conclusions should be limited to the verified facts which can support that conclusion.

So, in examining testimony and evidence, care should be taken to distinguish between unfounded opinions, evidence that is circumstantial, and evidence that is direct. In some situations, strong circumstantial evidence may be enough, but never should unfounded statements and assumptions be given much weight.

Fact: Weigh the evidence you gather.

Before deciding whether to file a grievance, it may be wise to consider whether there is enough proof to substantiate the position to be taken

Technically, there are varying degrees of proof, ranging from a preponderance of the evidence, to clear and convincing proof, to proof that is beyond a reasonable doubt. Stewards

at Steps One and Two should, based on all the known facts, be convinced that the grievance has merit. In a contract case, this means being assured that:

- the grievant is covered by the clause or practice in question;
- that there is a valid question of whether the grievant was harmed by management's action or inaction; and
- that there are enough facts, based on such factors as contract interpretation and management policy, to support the Union's position.

Summary

When a steward evaluates a grievance, there are several basic questions that should be asked or facts that must be determined. Listed below are areas that need to be covered.

Keep Good Records.

- ✓ Maintain a file on grievances and use the OCSEA grievance Log Book which shows proper time limits for both OCSEA and management. Every grievance that goes beyond Step 3 must have a fully completed Appeal and Preparation Sheet filed in a timely manner.
- ✓ Establish a research bank with information on contract provision and relevant cases. The chapter should maintain past grievance files. The arbitration summaries should be reviewed. Past grievance settlements should also be saved. Records of disparate treatment in absence and tardiness cases should be kept.

Investigate Grievances Thoroughly.

- ✓ Use the OCSEA Appeal and Preparation Sheet as your guide for information gathering.
- ✓ Gather facts from the grievant: name, title, address, social security number, home and work telephone numbers, classification, department or agency, work location, name of immediate supervisor, nature of problem, date of employment, date of appointment (seniority date if different), date of occurrence, remedy sought, witnesses, shift worked and days off, home email address.
- ✓ Gather facts from other sources: applicable contract provisions, State rules or regulations, personnel file, etc. For example, if you grieve Article 44.02, get a copy of the relevant statute, rule or regulation.
- ✓ Explore the meaning of a contract provision through discussions with other stewards, review of records and materials, and an examination of arbitration decisions and previous grievance settlements. Discuss the negotiation intent of the contract language with the staff representative.
- ✓ Determine whether the problem has occurred before and if so, whether there is an accepted local arrangement or system wide practice for handling it.

- ✓ Interview other employees and supervisors and write down their statements.
- ✓ Make a work-site visit, if appropriate.

Be Sure There is a Full and Fair Grievance Review.

- ✓ Before the review:
 - Conduct a thorough, independent investigation.
 - Evaluate management's position.
- ✓ During the review:
 - Establish facts and clarify information on individuals involved in the grievance, dates, statements of issues, and remedy sought.

Carefully evaluate the Merits of the Grievance.

- ✓ Separate disputed from undisputed facts.
- ✓ Evaluate sources of information.
- ✓ Distinguish between allegations, assumptions, opinions, and facts.
- ✓ Weigh the evidence.

<u>Conclusion</u>

A knowledgeable steward is in the best positions to fashion a fair resolution of a grievance. An informed steward also develops credibility with the grievant as well as with management. By proper investigation, non-meritorious grievances can be screened out. This helps the Union to prioritize the most important grievances which need to be arbitrated.



WORKING OUT OF CLASSIFICATION GRIEVANCE FORM



STATE OF OHIO - OCSEA, LOCAL 11 AFSCME, AFL-CIO

Date: _____ Grievance #: _____ Art. 19 Art. 36.05

Grievant Name: _____ Soc Sec#: (last 4 digits) _____

Home Address: _____ Work phone: (_____)

City, State, Zip: _____ Home phone:(_____)

Who is filing this grievance? Employee Union Grievant's Current Pay Range: _____ Step: _____

Work Location: _____

Email Address: _____

Immediate supervisor: _____ Work phone: (_____)

This is the address to which the Employer shall send the Step 1 Response:

Chapter Representative: _____ Work phone: (_____)

Home Address: _____

City, state, zip: _____ Steward Name: _____

Job Information:

Current Classification Specification Title: _____

Current Classification Specification Number: _____

List all duties being performed outside of your current classification. (Attach additional sheets if necessary):

Duty	Hours per Day	Days per Week

(Please attach any additional information or use the back of this form)

Date Employee began these duties: ___/___/___ Dates duties ended: ___/___/___

To what classification do you believe these duties belong:

Classification Title: _____ Classification #: _____

How closely is the employee supervised? Please include how often the employee discusses work or receives instructions from the supervisor:

Grievant or Union Signature: _____ Date: _____

Agency/OCB Response: (due 35 days after management receives WOC grievance; attach additional comments if necessary.) Date Received: ___/___/___

Agency Director or Designee: _____ Date: _____

If no answer is received from management within 35 days or if the answer is unsatisfactory, immediately appeal grievance to the OCSEA OFFICE OF GENERAL COUNSEL.



WORKING OUT OF CLASSIFICATION APPEAL TO ARBITRATION



STATE OF OHIO – OCSEA AFSCME, LOCAL 11 AFL-CIO

IMMEDIATELY MAIL TO THE OFFICE OF GENERAL COUNSEL IF NO ANSWER IS RECEIVED WITHIN 35 DAYS OF THE FILING OF THE WOC GRIEVANCE OR IF THE ANSWER IS UNSATISFACTORY.

TO: OCSEA Office of General Counsel
Working-Out-of Classification Section
390 Worthington Rd., Suite A
Westerville, OH 43082

FROM: Grievant Name: _____

Phone Numbers: Work _____ Home _____

Grievance Number: _____

Steward (Person Filling Out Form): _____

Steward's Phone Numbers: Work _____ Home _____

DATE: _____

I am enclosing the following documentation pertaining to this grievance:

___ Grievance Form (Must include the last 4 digits of the Social Security Number)

___ Agency/OCB Response

___ Information in Support of Union's Position

___ Information Submitted by the Employer in Support of its Position

Signature: _____ Date: _____

THIS FORM IS TO USED FOR ARTICLE 19 GRIEVANCES ONLY

**GRIEVANCE SETTLEMENT AGREEMENT
(OCSEA)**

This Agreement made _____, _____ by and between the State of Ohio, _____ and the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), and _____ (Grievant), parties hereto.

WHEREAS, there is now pending, a grievance filed by the above named employee and OCSEA against _____ pursuant to the Collective Bargaining Agreement, identified as grievance number _____ based on the following allegations:

The Employer violated section _____ of the Collective Bargaining Agreement.

WHEREAS, _____ denies any liability in connection with the alleged claim;

WHEREAS, all parties hereto wish to reach a full and final settlement of all matters and causes of action arising out of the claim hereinafter set forth;

Now therefore, all parties hereto, in consideration of their mutual covenants and agreements to be performed, as hereinafter set forth, agree as follows:

OCSEA agrees to waive any and all rights it may currently or subsequently possess to obtain any reparation, restitution or redress for its members as a result of the events which formed the basis of the aforementioned grievance, including the right to have the grievance resolved through arbitration, or through resort to administrative appeal or through the institution of legal action.

OCSEA agrees to withdraw the aforementioned grievance and to waive its right to pursue any and all claims that may arise as a result of the timely implementation of the terms of this Agreement.

All parties to this Agreement hereby acknowledge and agree that this Agreement is in no way precedent setting. This Agreement shall not be introduced, referred to, or in any other way utilized in any subsequent arbitration, litigation, or administrative hearing except as may be necessary to enforce its provisions and terms.

AGENCY

DATE

OFFICE OF COLLECTIVE BARGAINING

DATE

OCSEA, AFSCME LOCAL 11

DATE

OCSEA, AFSCME LOCAL 11

DATE

(This settlement is valid without the Employee's signature. The Employee's signature is only needed to obtain waiver of individual rights).

Employee agrees:

To waive any and all rights they may currently or subsequently poses to receive any reparation, restitution or redress for the events which formed the basis of the aforementioned grievance, including the right to resort to administrative appeal or through the institution of legal action. Employee specifically agrees to withdraw the following actions which are currently pending:

I have read the above paragraph and I am making a KNOWING and VOLUNTARY Waiver of my rights as set forth above.

GRIEVANT

DATE

GRIEVANCE WITHDRAWAL FORM

OCSEA AFSCME, Local 11, hereby withdraws its request to arbitrate
the below noted grievance:

(Grievant's Name)

(Grievance Number)

Signed:

Grievant or Chapter President or
Chapter President's Designee

Date

Staff Representative (Signature not
Necessary if Grievant signs withdrawal)

Date

OCSEA—State of Ohio Grievance Procedure

25.06—Time Limits
 Grievances may be withdrawn at any step of the grievance procedure. Grievances not appealed within the designated time limits will be treated as withdrawn grievances. The time limits at any step may be extended by mutual agreement of the parties involved at that particular step. Such extension(s) shall be in writing. In the absence of such extensions at any step where a grievance response of the Employer has not been received by the grievant and the Union representative within the specified time limits, the grievant may file the grievance to the next successive step in the grievance procedure.

Date of Incident
 10 Working Days
 To file with immediate supervisor

Grievance Filed

3 Days for Answer from
 Immediate Supervisor

Immediate
 Supervisor's
 Decision

5 Calendar Days from
 the Receipt of the Step 1
 Answer or When Step 1
 Answer was due

Appeal to Step 2

Last step for oral
 reprimands. The
 grievance cannot be
 forwarded to Step 3

7 Days to Set Up Discussion

Step 2 Meeting

8 Calendar Days after Discussion
 Written Response is Due

Intermediate
 Supervisor's
 Decision

10 Calendar days after Step 2 response
 is received or due

Grievances involving lay-off, non-selection and discipline are filed directly at Step 3.

Appeal to Step 3

Last step for written reprimands. The grievance cannot be forwarded to Step 4.

Meet within 15 calendar days
 unless otherwise mutually
 agreed to.

Step 3 Meeting

Step 3 Hearing Officer has 35
 calendar days to issue a decision

Step 3 Answer
 Or when due

15 Calendar days to
 Appeal to Step 4 which
 goes to OCB, OCSEA
 and the Staff Representa-
 tive "Penalty" meeting
 requested as Step 3 answer
 was not received.

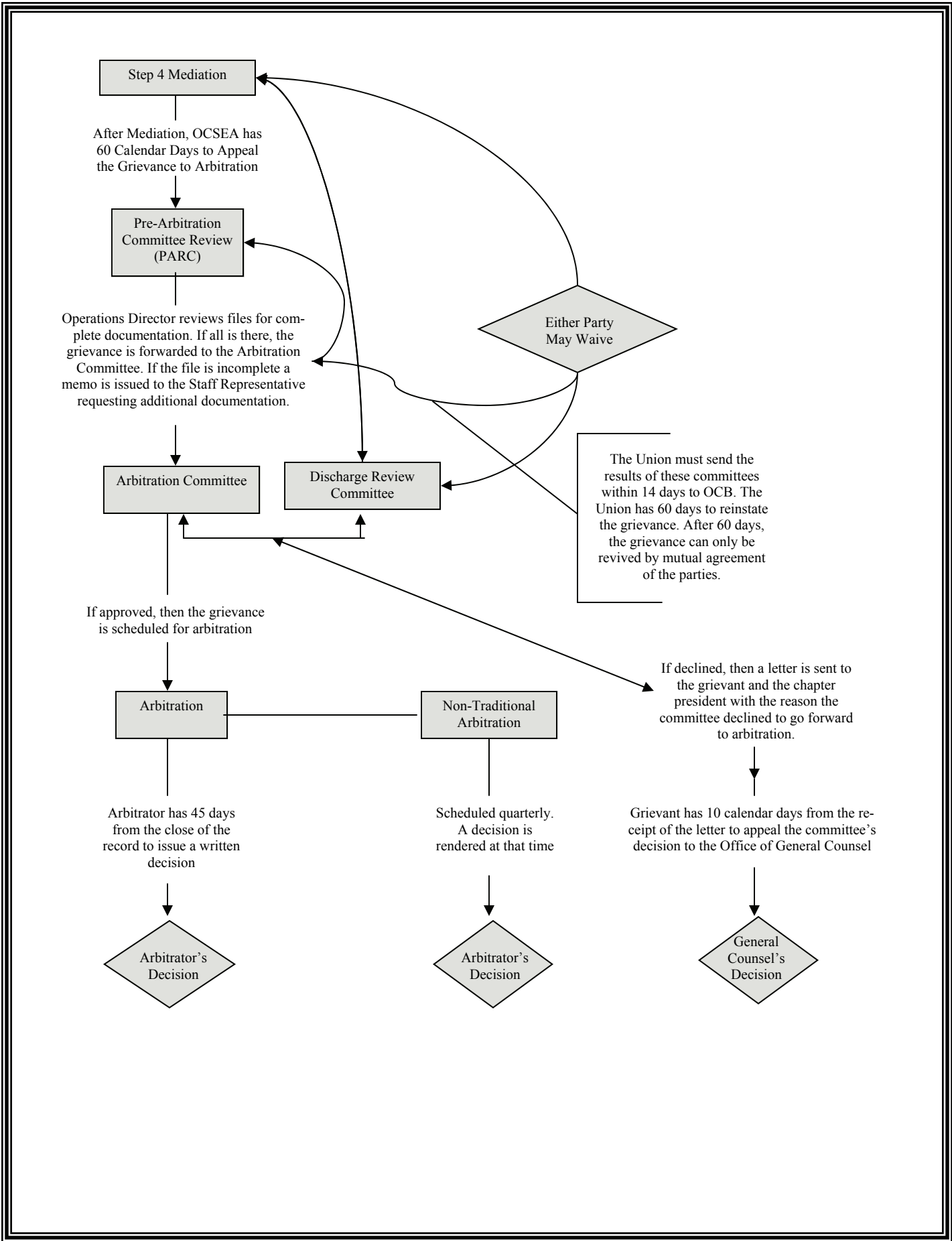
15 Calendar days to Appeal to
 Step 4 which goes to OCB,
 OCSEA and the Staff Representa-
 tive Step 3 Answer received
 timely. No "penalty" meeting is
 requested.

30 Calendar Days to
 schedule and hold the
 "penalty" meeting

Step 4 OCB
 Meeting

OCB has 35 Calendar
 Days to Answer

Step 4 Mediation





390 WORTHINGTON ROAD
WESTERVILLE, OHIO 43082
614-865-4700
800-969-4702

CUSTOMER SERVICE
888-OCSEA 11
(888-627-3211)

PREPARED BY THE OCSEA
OFFICE OF GENERAL
COUNSEL
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