



Foreword

The purpose of the Grievance Representative Handbook is to provide basic and useful information for a grievance representative. The material in the Handbook is intended as a guideline only. You should look to your contract and/or contact your MNA labor representative with specific questions and concerns.

The MNA utilized a variety of sources to put this Handbook together.

E & GW Staff

The MNA main office number is 800/832-2051 or 517/349-5640. You can ask the receptionist to connect you with each individual labor relations representative.

Your Contract

Your contract sets forth the salary, benefits and other working conditions agreed upon between the MNA and your employer. It is legally enforceable and the grievance process is the primary means of enforcement.

Role of a Grievance Representative

A grievance representative is either elected by the staff council members or is appointed by the staff council chairperson. Qualifications for the grievance representative position include the ability to listen, knowledge of contract language, and assertiveness with management and peers.

The job of a grievance representative is to listen to the members' situation, investigate the situation, analyze the situation, determine whether the grievance is valid, assist the grievant(s) through the grievance procedure, and write out the resolution.

A grievance representative has the right to counsel an employee before, during, and after an interview with the employer, assist the employee in presenting facts during an interview with the employer, and request attendance at an investigatory interview.



MNA's Role in the Grievance Procedure

MNA's involvement in the grievance procedure occurs when the grievance representative and the employer are unable to resolve the situation. At this point, the MNA labor representative will assist the grievance representative in handling the grievance. The labor representative will analyze the grievance. Then, the labor representative will determine the validity of the grievance, the terms of settlement, and whether to proceed to arbitration if the situation remains unresolved. The MNA represents all members of the bargaining units fairly.



When to Contact Your Labor Representative

You may contact your labor representative when you need to clarify your contract, you are called to a meeting with your supervisor, you identify unsafe working conditions which continue after you have notified your supervisor, you want information on how to participate in other MNA programs and services, you believe your employer has violated your contract with a new policy, or you have other questions or concerns. Your labor representative may not immediately have answers to your questions or concerns but will either find the information you need or will direct you to someone who can assist you.

What is a Grievance?

Some employees believe that anything they don't like in the workplace is a grievance. Others experience outrageous violations of their rights by management but refuse to file a grievance. All grievances are complaints, but not all complaints are grievances. So, how can you determine if an employee has a legitimate grievance?

The first step is to conduct an investigation. The grievance representative must interview the employee, supervisor and witnesses. You may need to check records and request information from the employer. Once the investigation is complete, the grievance representative must examine all of the information to determine if the complaint is truly a grievance.



A definition of a grievance is generally set forth in the contract. This contractual definition can be very restrictive, very broad or somewhere in between. Generally, a grievance is a complaint or dispute arising out of the contract related to terms and conditions of employment.

Every contract will have a formal plan for handling grievances between the employees and the employer. A grievance can involve an individual, a group of two or more, and the Association. Grievances generally fall into one of the following categories.

Contract violations involve such matters as wages, hours, and other conditions of employment that are spelled out in the collective bargaining agreement. Some examples of contract violation grievances include time schedules are not posted in advance; job vacancies are not posted properly; or sick leave pay is denied.

Law violations involve the violation of a federal or state law. Some examples of law violation grievances include female employees receiving less pay than male employees; employee receiving straight time pay for overtime work; employer not allowing an employee to review their personnel file; or employer violating OSHA standards.

Past practices occur when a practice has been in place for an extended period of time and is accepted by both the union and management either explicitly (verbally or in writing) or implicitly (neither party has ever objected). No contract spells out every past practice. However, a past practice can be the basis of a grievance if it is violated. Some examples of a past practice violation include employees charged for breakage of equipment when no charge existed before; parking privileges revoked; or breaks eliminated.

Management responsibility involves areas that may not exist in the contract but are areas that management is responsible for and usually involve safety, health, and working conditions. An example of a management responsibility violation is where employees are not provided with a restroom.

Unjust discipline grievances result when the employee is punished and the degree of punishment exceeds the infraction.

Informal or verbal counseling is also called “friendly conversation” because it is where the supervisor talks to the employee to correct bad

habits and remedy a situation without discipline. Informal counseling is not recorded so it should not exist in an employee's file. It usually occurs prior to disciplinary action and is not the basis for a grievance.

As a grievance representative, you should educate your members to ask the supervisor if the counseling is informal because if it is not then the employee may want a grievance representative present.

Discipline and discharge cases constitute the majority of grievances processed. The grievance representative must acquire additional information for these cases as the information obtained may help win the grievance.

The employer must give actual oral or written communication of the possible discipline for the misconduct. So, find out if the employer investigated into whether the employee actually committed the misconduct. Request a copy of the employee's personnel file and previous disciplinary records. Then, see if the employer conducted their investigation fairly and obtained substantial proof of misconduct. Determine whether the employer discriminated against the employee by disciplining this employee to a higher degree than other employees for similar conduct. Finally, decide whether the employee's conduct was serious enough to warrant the discipline or discharge based on their performance record.

"Just cause" is the standard which ultimately determines whether the employer acted reasonably. By obtaining the additional information, the grievance representative and the MNA labor representative can effectively determine whether the employer used just cause in their actions.

Writing a Grievance

A good written grievance answers three simple questions.

1. What happened or failed to happen?
2. Why is this situation a grievance?
3. How should the employer correct the situation?

In most cases each question can be answered with one simple sentence. The following is an example.

Jane Smith says she was staff adjusted for an eight hour shift while a less senior employee worked.

To answer question one you should write, "Jane Smith was inappropriately staff adjusted on or about January 1, 2002." Make sure you use the date of the incident when you write the grievance, while leaving room for expanding the grievance if it turns out the violations occurred on other dates as well, and make sure you date the grievance on the day you submit it to management.

To answer question two ask yourself: Did the employer violate the contract, the law, or a past practice? In this case you would note that Article X of the contract states staff adjustments are accomplished by first sending home the least senior employee. So, you would write, "This violated Article X and all others that apply." "All others that apply" is a catch all phrase which can be used if you later determine another provision was violated.

To answer question three, ask what Jane would have now if the situation had not occurred. You would write, "Jane Smith should be paid 8 hours pay and be made whole." "Be made whole" is another catch all to include everything due to the grievant.

Basic Steps of the Grievance Procedure

The employee for whom a grievance is filed is called the grievant.

Depending on the contract, the grievance procedure usually has three to five steps with each step progressing higher through the union and management. Your contract will define your specific steps and time limits in the grievance procedure. However, all contracts will contain certain provisions to encourage prompt settlement at the lowest possible level, represent employees through each step of the procedure, and provide objective and impartial review of an ultimate decision. Proceeding through the steps in a timely and orderly manner provides the grievant(s) with a fair grievance procedure.

Generally, the first step consists of the employee and their immediate supervisor talking together to try to resolve the grievance. If the grievance is not mutually and satisfactorily resolved, then the grievance is appealed in writing to the director. If the grievance is still not mutually

and satisfactorily resolved, then the grievance is appealed in writing to the administrator and MNA becomes involved. If the grievance remains unresolved MNA may submit the matter to arbitration. The grievance representative's presence throughout this procedure will influence the conduct of the parties, influence outcomes, assure fairness in the hearing, and assist in resolving the problem.

MNA's involvement does not occur until the formal levels so that the grievance representative can develop their leadership and effectively handle problems at the unit level.

Also, contrary to popular belief, a grievance representative can encourage employees to file grievances.



Grievance Process

Before the grievance is written the grievance representative must investigate thoroughly and take notes of the findings. However, grievance representatives do not have the right to conduct union business during work hours, unless your contract provides otherwise.

While there is no guaranteed method of success to investigate thoroughly, the following questions will certainly help:

1. Who was involved? The member, the supervisor, the witnesses, etc. – anyone who can contribute to your knowledge about the case.
2. What happened? What was the sequence of events? Was there a background of action which went before? What was said?
3. When did it happen? Time, date, etc. Any special holidays or such that tie in?
4. Where did it happen? Location should be identified if possible, or if important, building, department, area.
5. Why is this a grievance? Or, why can it be a grievance? The clause in the contract, or the law violated, or the harm done to the member should be spelled out so you can ask for the remedy.

Ask the questions and listen to the answers. Then, go back and double check to assure you have all the facts. Keep in mind that following the grievance procedure will help you win grievances.



As you go through the grievance procedure, closely observe the time limits. Failing to follow the time limits will likely result in losing the grievance. You should gather information throughout the process. After a complete investigation, write the grievance on the MNA grievance form. Fill out the MNA grievance form including all pertinent information. If there is not adequate time to fully investigate a grievance either reduce the grievance to writing to preserve the time limits or have the Employer grant you an extension in writing. Remember the time limits for a grievance usually begin when the employee learned of the incident.

When you meet with the employer, you should stick to the issues. Listen carefully to what they have to say. By doing this you may discover more witnesses and supporting documentation. Assure that you are correct before you submit an answer. Support your position with previous decisions and documentation. Respect the employer and receive the employer's respect. Do not allow delays to occur. You should never "deal" to solve one grievance as it may affect future grievances. Do not give up until the final step of the grievance procedure is completed. The grievance has the right to know what occurs throughout the grievance process and may need the grievance procedure explained so continually communicate with the grievant. Write a summary of the meeting as soon as possible and with as much detail as possible.

You may gather support for the grievance by distributing leaflets about the grievance, circulating a petition among employees, meeting with other employees to discuss the grievance, and any other activity sponsored by the union or consistent with the union's position.

Your communication with the grievant is confidential as to the employer so that the employer cannot require you to disclose that information.

There are a number of ways that the employer engages in unfair labor practice including:

- intimidating the grievant
- threatening an employee who testifies at a hearing
- dealing directly with the employee privately to adjust the grievance
- refusing the grievance without calling a grievance representative

- increasing the discipline because a grievance is filed
- discouraging the use of the grievance process
- insisting that the union withdraw a grievance as a condition to a new contract
- any other activity that interferes with the grievance process like failing to provide requested information.

Grievance Record

Every bargaining unit must maintain written records for every valid grievance. To develop a grievance record, MNA recommends including the following material in a written format:

- chronological history of facts
- the grievance and grievance answers
- minutes and reports from meetings
- evidentiary proof that is likely to come forward at a hearing, i.e. employee's personnel file including previous disciplines, patient's charts, schedule, copy of employee's pay stub, etc.
- any correspondence sent and received related to the grievance.

MNA should receive a copy of all grievances filed, with a note as to the outcome if settled before MNA was involved, and the entire grievance record, should the grievance proceed to arbitration.

Arbitration

Arbitration is the voluntary, mutual agreement of the parties to determine the dispute based on evidence and arguments in front of a neutral arbitrator. Therefore, arbitration is a judicial proceeding in that the arbitrator's decision is final and binding.

The Associate Executive Director for Labor Relations, Labor Attorney and the Labor Representative assigned to the staff council will review the grievance and determine whether the grievance should proceed to arbitration. If arbitration is not recommended, then either the Associate Executive Director for Labor Relations or the Labor Representative

assigned to the staff council will notify the grievant in writing along with the procedure on how to appeal the decision not to arbitrate.

Equality Rule

When you are in your “grievance representative” role you are considered an equal with management. This means that an employer cannot impose discipline for actions such as a raised voice, a challenge to management’s claims, and a threat of legal action. The “grievance representative” role is present when you investigate a grievance, request information, present a grievance, and otherwise represent employees but the role is not present when you discuss your work assignment, discuss your work performance, and comply with work rules. The equality rule, however, may not protect conduct that is “outrageous” such as using extreme profanity, threatening violence, organizing work disruptions, and filing grievances in bad faith.



Duty of Fair Representation

The MNA has a duty to represent its members fairly and in good faith throughout the grievance procedure. The MNA must represent all members of the bargaining unit regardless of race, gender, nationality, age, religion, politics, etc. The MNA has a legal duty to represent non-members of a bargaining unit as well. The MNA violates the duty of fair representation when its conduct in representation is “arbitrary, discriminatory, or in bad faith.” However, to prove a violation requires more than bad results or mistakes.

If an employee is a victim of racial, ethnic, or gender discrimination/harassment, then the MNA must respond.

Grievance representatives must avoid conduct which may subject the Staff Council or MNA to a duty of fair representation charge.

However, it is the grievance representative’s responsibility to investigate and determine whether an employee has a legitimate grievance. In the event a grievance is not valid the grievance representative should meet with the grievant immediately to explain the determination. The employee should be informed before all others. The representative should acknowledge the employee’s feelings and make



recommendations for other ways to deal with the issue. If the grievant wants to proceed with the grievance, you should explain that the union will lose credibility with both its members and management if it files frivolous grievances. Doing so can weaken the union's chances of resolving legitimate grievances. If after all that the grievant still wants to proceed, you must allow them to take the grievance forward.

On the other hand if an employee wants to withdraw a valid grievance for whatever reason the grievance representative should encourage the employee to continue, support the grievance, and explain that withdrawal weakens everyone.



If there is a contract violation that does not require the employee who raised the grievance to prove the violation, then the grievance should continue on behalf of the whole bargaining unit. However, if the grievance requires the employees' testimony and they are unwilling to follow through, then you must drop the grievance.

A employee who wants to process their own grievance, without the assistance of either the grievance representative or the MNA, has a legal right to do it. However, try to convince the employee that proceeding alone usually derives poor results and strongly insist that either a grievance representative or the MNA are present when the employee meets with the employer.

NLRA/PERA

An employee who works for a privately owned health care facility is provided many rights under the National Labor Relations Act (NLRA). An employee who works for a public health care facility is provided very similar rights under Michigan's Public Employment Relations Act (PERA). Both laws govern the relationship between employees, employers and unions. They are important for purposes of grievance processing for two reasons:

1. Filing a grievance is a form of union activity and employees engaging in any grievance activity, whether it is as a grievant, witness, or union representative, are protected from retaliation by their employer.
2. Employees may be able to seek a remedy through the grievance process, the filing of an unfair labor practice charge, or both.





Sometimes the action an employer takes may be both a violation of the collective bargaining agreement and a violation of the NLRA or PERA. Consequently, it is important for grievance representatives to be familiar with the five types of prohibited conduct that constitute an unfair labor practice under both laws. It is an unfair labor practice for an employer to:

1. Interfere with, restrain or coerce employees of their rights guaranteed by the NLRA or PERA (such as organizing or taking part in grievances);
2. Dominate or interfere with the formation or administration of any labor organization;
3. Discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in a labor organization;
4. Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the NLRA; and
5. Refuse to bargain collectively with the representatives of its employees.

Some examples of conduct which constitute unfair labor practices under the NLRA or PERA listed above are:

- retaliation or threats of retaliation if an employee files a grievance or engages in other protected union activity
- discrimination against an employee who files a grievance, including discharge, lay off, demotion, failure to promote, disparate treatment or any other form of discrimination based on the protected union activity
- unilateral changes in the terms and conditions of employment without bargaining with the union
- direct bargaining with an employee (failing to include the union when discussing or changing any term or condition of employment, even for one particular employee)
- favoring non-bargaining unit employees over bargaining unit employees if it leads to an erosion of the bargaining unit
- failure to comply with an information request.



If you believe your employer has committed an unfair labor practice, contact your labor relations representative immediately. There is a short time limit for filing an unfair labor practice. It must be filed no later than six months after the incident or the date when the union knew or reasonably should have known of the violation.

Weingarten Rights

Weingarten rights apply to employees who work at both public and privately owned health care facilities. Union employees have a right to union representation at any meeting with any member of management when the employee reasonably believes the meeting could result in discipline or discharge. Usually, employees exercise this right during investigatory interviews. The union representative accompanies the employee in order to provide representation on the employee's behalf, take notes of the meeting, and provide advice or assistance to the employee. The most important thing to remember about Weingarten rights is that the employee **MUST** make the request for such representation because the employer is not obligated to inform the employee of this right, or to offer the representation.

Once the request for union representation is made, the employer must honor the request by delaying the interview until the representative arrives, giving the employee the option of having the interview without the representative or ending the interview. The employee may exercise this right at any time during the meeting, but should make the request before the meeting starts to provide the most protection.

Once the representative arrives to the interview, the following process should occur:

- the supervisor informs the employee and representative of the subject matter of the interview
- the representative may take the employee aside for a private pre-conference before questioning
- the representative may speak during the interview, interrupt to object to a question or to request a clarification, and advise the employee not to answer misleading, confusing, or harassing questions

- the representative may provide information to justify the employee's conduct after questioning.

As a grievance representative, if you see an employee in a supervisor's office, you have a right to request admission to the meeting, but the employer may deny the request if the meeting is routine as opposed to an investigatory interview, or if the employee refuses the representation.

Loudermill Rights

Under Loudermill, the Supreme Court held that most public employees are entitled to a hearing before they are discharged. This is not a full evidentiary hearing and need not include the opportunity to cross-examine the accusers. All that is required is:

- oral or written notice of the charges and time for hearing;
- an explanation of the evidence; and
- an opportunity for the employee to present her side.

Garrity Rights

Under Garrity, the Supreme Court held that statements obtained in the course of an investigatory interview under threat of termination from public employment could not be used as evidence against the employee in subsequent criminal proceedings. However, these statements can be the basis for discipline/discharge from employment.

To ensure that your Garrity rights are protected, you should ask the following questions:

1. If I refuse to talk, can I be disciplined for the refusal?
2. Can that discipline include termination from employment?
3. Are my answers for internal and administrative purposes only, or will they be used for criminal prosecution?

OSHA

The Occupational Safety and Health Act (OSHA) gives employees the right to have a place of employment that is free from hazards that cause serious harm, provides personal protective equipment at no cost when

necessary, provides a right to know if you are being exposed to hazardous chemicals in the workplace, and offers safety and health training.

OSHA establishes health and safety standards.

An employee may refuse unsafe work if the following conditions exist:

- the employee reasonably believes there is a real danger of death or serious physical injury
- the employee asks the employer to eliminate the danger and the employer fails to do so
- the danger is so urgent the employee cannot risk waiting for OSHA to inspect
- the employee has no reasonable alternative.

If an employee identifies a health or safety problem at work, they may file a written complaint or call MIOSHA in an emergency for an immediate inspection at (517) 322-1814. Or for more information, visit the website at www.osha.gov

FMLA

The Family and Medical Leave Act (FMLA) requires employers to provide eligible employees with up to 12 work weeks of unpaid leave each year to:

- care for an immediate family member with a serious health condition
- care for a newborn, a newly adopted child, or a newly placed foster child
- treat or recover from a serious health condition.

The employee will be able to return to the position held before the leave. An employer must grant a leave request for FMLA purposes, including the allowance of part-time or reduced-week schedules for employees with serious health conditions, cannot impose penalties for FMLA absences, and must continue group health benefits during the leave. However, the employer may force the employee to exhaust paid time off such as sick leave and vacation time during the FMLA leave before taking unpaid time off. Some collective bargaining agreements

may provide for benefits in excess of those required under FMLA. Such benefits include short and long term disability, which may coincide with the FMLA leave.

To obtain more information or to file a complaint, contact the U.S. Department of Labor/Wage and Hour Division office by calling (313) 226-7447, or visit the website at www.dol.gov (click on Major Laws).

Bullard-Plewecki Right to Know Act

Under the Bullard-Plewecki Right to Know Act, employees have the right to periodically review their own personnel record and obtain copies of its contents upon written request. Usually, an annual review is sufficient, but employees with potential discipline problems may want to review their file every six months. Many times, the employee will be required to pay for the copies unless the collective bargaining agreement provides otherwise. An employee does not have the right to possession of the file in order to make his or her own copies, and may not remove the file from the employer's premises.

If the employee disagrees with the information contained in the file, he or she has the right to submit a written response which will be kept in the file with the information the employee found disagreeable. If an employee needs assistance with personnel file matters, please contact your MNA labor relations representative.

FLSA

The Fair Labor Standards Act (FLSA) regulates minimum wage, overtime, and compensatory time. The FLSA may become important for problems with on-call pay, approval of overtime, compensation on a per visit rate, and public employers right to offer comp time as opposed to overtime payments. The MNA recommends both filing a grievance and a complaint with the Wage and Hour Division for issues involving overtime, comp time, or other wage disputes. The Wage and Hour Division may enforce better remedies than the grievance procedure.

To obtain more information or to file a complaint, contact the U.S. Department of Labor/Wage and Hour Division by calling (313) 226-7447 or visit the website at www.dol.gov (click on Major Laws).



Whistleblower's Protection Act

The Whistleblower's Protection Act (WPA) is a Michigan law which protects employees from retaliation for reporting a violation or suspected violation of the law committed by the employer. The WPA states that an employer shall not discharge, threaten or otherwise discriminate against an employee regarding the terms and conditions, compensation, location or privileges of employment because the employee reports or is about to report a violation of law. The report may be made verbally or in writing. It does not protect reporting of unsafe practice situations, such as unsafe assignments, unless they are considered a violation of laws such as OSHA.

If an employee fears retaliation for reporting a violation, please contact an MNA labor relations representative so that a determination can be made if the WPA will protect that person and assistance can be provided in the reporting process.



FOIA

The Freedom of Information Act (FOIA) is a Michigan law that ensures that the public has full and fair information regarding the affairs of the government and the official acts of public officials and public employees. FOIA only pertains to public employers, such as a health department or health facility owned and operated by a county or city. A public agency has five days to respond to a FOIA request.

Some examples of items you might request under FOIA are: (1) information about the employer to use for bargaining, (2) information about what action the Board of Commissioners has voted upon, and (3) information regarding processing grievances, such as personnel files of employees, names of witnesses involved, and documents in the employer's possession which may be helpful to the grievance representative. Please contact your MNA labor relations representative before filing a FOIA request.

ADA

The Americans with Disabilities Act (ADA) is a federal law that protects those persons with a physical or mental impairment that substantially



limits one or more major life activities from discrimination and requires employers to make reasonable accommodations. The ADA's state counterpart is the Michigan Persons with Disabilities Act, sometimes referred to as the Michigan Handicappers Civil Rights Act. Both laws protect against discrimination on the basis of a covered disability.

Grievance representatives can use ADA charges or threats to file charges to encourage the employer to reassign job duties for a disabled employee in order for the employee to stay on the job or get a promotion, and to force the employer to recognize the restrictions placed upon a disabled employee.

For more information or to file an ADA claim, contact the Equal Employment Opportunity Commission at (202) 663-4900 or www.eeoc.gov.

Civil Rights Laws

Title VII is part of the Federal Civil Rights Act which forbids employment discrimination on the basis of race, color, sex, national origin, or religion. The Michigan Elliot-Larsen Civil Rights Act mirrors Title VII but grants even more protection because it protects against discrimination based on sex, religion, race, color, national origin, age, height, weight, familial status, or marital status. In both cases, sex discrimination includes sexual harassment and pregnancy discrimination.

Grievance representatives can help employees with potential Civil Rights claims by contacting the Equal Employment Opportunity Commission (EEOC) at (202) 663-4900 or visiting the website at www.eeoc.gov.

ERISA

The Employee Retirement Income Security Act (ERISA):

- regulates pension, health, and welfare plans
- establishes vesting rights
- protects employees in the event of bankruptcies
- mandates prudent investment of pension assets.



If you have questions about Retirement other than what is provided for in the collective bargaining agreement, please contact your MNA labor relations representative.





Notes





Notes





Important Names & Numbers

Staff Council Chairperson _____

Phone Number _____

Other Grievance Representative _____

Phone Number _____

Other Grievance Representative _____

Phone Number _____

MNA Representative _____

Nursing Officer _____

Phone _____

Human Resources Director _____

Phone _____





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Michigan Nurses Association

***Grievance
Representative
Handbook***



**Taking care of Michigan.
Taking care of you!**