

## Sample grievance #

## Failure to meet for Informal Discussion

Step A Issue Statement: Did the Employer violate Contractual provisions, including but not limited to, Articles 3, 5, and 15 of the Collective Bargaining Agreement; the NLRA; and the Dispute Resolution Process; by failing to meet for an initial informal discussion of a grievance?

### Article 15

#### Informal Step A

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. **This constitutes the Informal Step A filing date.** The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. **During the meeting the parties are encouraged to jointly review all relevant documents to facilitate resolution of the dispute.** The Union also may initiate a grievance at **Informal Step A** within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. **An Informal Step A** Union grievance may involve a complaint affecting more than one employee in the office. An employee or union representative must discuss the grievance with the employee's immediate supervisor within fourteen calendar days of when the grievant or the union first learned, or may reasonably have been expected to learn, of its cause. The date of this discussion is the Informal Step A filing date.

- If the union initiates a grievance on behalf of an individual, the individual grievant's participation in a Informal Step A meeting is neither required nor prohibited.
- If a letter carrier instead files his or her own grievance, management must give the steward or other union representative the opportunity to be present during any portion of the discussion which involves adjustment or settlement of the grievance (see the pre-arbitration settlement H7N-5R-C 26829, April 2, 1982 M-01065).
- Should the grievance affect more than one employee in the office, the union may initiate a class grievance on behalf of all affected employees.

During the Informal Step A discussion the supervisor and the steward (unless the grievant represents him/herself) **have the authority to resolve the grievance.** Both parties must **use the JCAM** as their guide to the contract. A resolution at this informal stage does not establish a precedent. While either representative may consult with higher levels of management or the union on an issue in dispute, this section establishes that the parties to the initial discussion of a grievance retain **independent authority to settle the dispute.**

**Time Limits.** The fourteen days for filing a grievance at Informal Step A begin the day after the occurrence or the day after the grievant or the union may reasonably have been expected to have learned of the occurrence. For example: if a grievant receives a letter of warning, day one of the fourteen days is the day after the letter of warning is received.

**Continuing violations** are an exception to the general rule stated above.

In H1N-5D-C 297, June 16, 1994 (C-13671), National Arbitrator Mittenthal explained the theory of continuing violations as follows:

Assume for the moment, consistent with the federal court rulings, that the Postal Service incorrectly calculated FLSA overtime for TCOLA recipients under the ELM. Each such error would have been a separate and distinct violation. We are not dealing here with a single, isolated occurrence. Management was involved in a continuing violation of the ELM. The affected employees (or NALC) could properly have grieved the violation on any day the miscalculation took place and such grievance would be timely provided it was submitted within the fourteen-day time limit set forth in Article 15. This is precisely the kind of case where a “continuing violation” theory seems applicable. To rule otherwise would allow an improper pay practice to be frozen forever into the ELM by the mere failure of some employee initially to challenge that practice within the relevant fourteen-day period.

## **Article 5**

### **Past Practice**

The following explanation represents the national parties’ general agreement on the subject of past practice. The explanation is not exhaustive, and is intended to provide the local parties general guidance on the subject. The local parties must insure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

Article 5 may also limit the employer’s ability to take a unilateral action where a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

**REMEDY:** Cease and Desist violating Article 15: Monetary awards may be appropriate for repeat violation: Compensate Steward lump sum for managements failure to respond to requests to meet: Compensate Grievant lump sum for being denied due process and/or any other remedy deemed appropriate.