

## NTEU Chapter 52 Steward Reference Guide

### CHAPTER 5 GRIEVANCES

What is a grievance? It depends to whom you ask.

To a manager, a grievance may be perceived as a personal attack.

To a Territorial Manager, a grievance could be viewed as a waste of time.

To a Labor Relations person, a grievance is another number in their inventory

In truth, a grievance can be defined as “a formal complaint by persons who believe they have been wronged” (Arbitrator Charles Gregory, as quoted in Elkouri and Elkouri, *How Arbitration Works*, 3rd. ed., p. 197). Whether or not the employee(s) have actually been wronged is not the issue. In response to a management argument that a person cannot file a grievance until some “harmful or disciplinary action” has been taken against him, another arbitrator stated: “Whether (an employee) has a grievance or not is primarily his own feeling about the matter. Generally speaking, if the employee thinks he has grievance, he has a grievance” (Arbitrator Fischer in Elkouri, p. 213).

**This does not mean that every time a person has a complaint, he/she should file a grievance.** Union Stewards should, however, take seriously every concern expressed to us by our members, and attempt to resolve the matter using the most appropriate means available.

#### **“IS THIS GRIEVABLE?”**

One of the most often asked questions of Union Stewards are “Is this grievable?” Simply stated, the answer is usually yes. Almost everything is grievable.

But the more important question is “Is filing a grievance the best way to resolve the problem?” For example, your manager’s refusal to grant you a detail to Honolulu could be grieved, but the grievance is not likely to get you to the luau anytime soon. Be creative. Think, of other options such as desk drops, informal meetings with Management officials, newsletter articles, etc.

Partnership makes it easier to try to resolve some of these issues informally. Use this opportunity, when it is appropriate, to try to work things out before grievance.

#### **GRIEVANCE PROCESSING**

Stewards should become very familiar with the Contract (the National Agreement, Article 41) regarding the formal requirements for filing a grievance on issues other than an annual performance appraisal. See the National Agreement; Article 41 Section 7L for disagreements concerning performance appraisals. These procedures are covered later in this chapter. A *Grievance Procedure Timeframe Chart* is provided for you on this CD-Rom, for your convenience. The process is as follows for non-appraisal grievances:

## STEP ONE - IMMEDIATE SUPERVISOR

### 1. Formal Grievance

The Step One grievance procedure will be of a formal nature, see National Agreement Article 41, Section 7 on page 129. Although it should be considered that the matter is brought to the attention of the employee's manager and both parties are encouraged to attempt an informal resolution of the matter. There are obvious advantages to holding an informal meeting. Resolution may be swifter, more pleasant, a lot more time-efficient and less costly. It may be in the best interests of everyone concerned if resolution can be accomplished through a less-adversarial procedure. It may save the grievant, and the steward, unnecessary time spent on a resolution that could be reached without the formal grievance process.

There are no requirements for raising the issues in an informal setting, however if the employee brings the matter to the attention of the manager:

- a. The manager must contact the steward prior to discussing the issues with the employee.
- b. The informal meeting between the employee, manager and steward must be held within five days of the date the manager contacts the steward.

If a resolution cannot be obtained through discussion, the issues will be reduced to writing in the form of a formal grievance. The steward must define the articles and sections violated. You may wish to delay the next meeting until information can be requested from Labor Relations, received and studied. Contact your Chief or Assistant Chief Steward for assistance. Be alert to the 15 workday time limit to file your formal grievance. Any extensions to file a grievance must be in writing and signed by management.

### 2. Once the Determination to File a Formal Grievance has been made:

Interview Grievant, Gather Data & Prepare Grievance

A) Gather as many facts as possible by interviewing the aggrieved employee and any witnesses. Read all articles of the contract that may have a bearing on the dispute. Also, talk to other stewards about the circumstances of the case, and review your chapter files to determine how similar issues have been resolved. You may wish to print out all the forms that you will need during the grievance process. You can do this by selecting and printing the file [Grievance Administrative Package](#). Have the employee complete an [Employee Statement](#) and [Request for Representation](#) forms, located in this package. Forms may also be printed out separately, see Grievance Section in this disk.

B) Review available data and determine the need for additional information. If necessary, submit a written request for information. Click on this link for a copy of an [Information Request to Labor Relations go-by](#), which is included on this disk. Additional help can be found in [Chapter 8](#), Access to Agency Information, of the Chapter Manual.

C) Prepare the grievance by citing appropriate contractual (and/or statutory/regulatory) provisions violated identity of the affected employee, a brief summary of the allegation, and a requested solution to the problem. The grievance should not be a legal brief; rather, it should put management on notice of an employment dispute. Click on these links for samples of grievances forms, [Step 1 Grievance Request](#) included on this disk. You are encouraged to use the sample grievances as they have been approved for format and content. DO NOT rely solely on these examples for content; rely on the contract. Although you must retain the format provided.

### 3. Writing the Grievance

Boilerplate templates are available in this manual when filing a grievance. **Do not** use your own format as our attorneys have approved the wordage and format on the provided templates. We are attempting to provide consistency in the filing of our grievances. Below are listed some tips to follow when completing the form.

Do not write it so specifically or narrowly that you exclude other events and information that might come to light as the grievance progresses. For example, never describe the nature of the grievance as “The employee was harmed by the second rating official’s rating in factor three.” You should say, “The employee was harmed by the unfair rating process.” Leave the details for the meeting.

Be sure to cite all possibly related portions of the contract. Also mention any related laws, rules and regulations. The steward must define the articles and sections violated. Use the NTEU Grievance Addendum if necessary.

Make sure that you have all the harmed employees covered if it is chapter policy to include those who did not approach the union for help. This would be a grievance “By the union on behalf of employees.”

Make the request for a remedy very broad and always add the language “And any other remedy deemed appropriate.” Unless you follow these two rules, you may wind up limiting the arbitrator’s power to impose all the remedies he/she wants.

Avoid statements of anger or accusations that will only get in the way of the formal processing of the grievance. Save these for meetings if they must be made.

Never concede anything related to the grievance in the written grievance. That can come later.

If you are asking for records and data in an information request to Labor Relations and you wish to postpone the Step One meeting until you receive and explore the information, ask management for the delay in your grievance memorandum.

#### **4. File Grievance**

The grievance must be filed within 15 workdays of the incident (or within 15 workdays of the date the grievant or NTEU became aware of the violation). Generally, you should personally deliver the grievance to the employee’s immediate supervisor or designated acting. Occasionally you may need to file the grievance via email (with receipt) or by fax if the manager is in a different location than you. If personally serving, request him/her to sign and date your copy of the grievance as proof of receipt and provide him/her with a copy. The parties may then request that a meeting be held on the matter, or the parties may agree that no meeting be held. Any extensions to file a grievance must be in writing and signed by management.

#### **5. Grievance Number and Distribution of Grievance Form**

NTEU Chapter 52 has an established database to track grievances and arbitrations. Either before or soon after delivering the grievance to the supervisor, call the Union Office to obtain a grievance number to be placed in the subject or re: line of the grievance memorandum. Begin your entries on the [Grievance Control Sheet](#) and [Grievance History Sheet](#). Distribute copies of the grievance as needed.

#### **6. Grievance Meeting and Presentation**

If a meeting is to be held, you and the grievant should meet with the immediate supervisor within 5 workdays, unless more time is allowed by mutual consent of both parties, or you are awaiting information from Labor Relations, see above.

Below are listed some tips you can follow when presenting the grievance.

Open the meeting by stating that you see the meeting as a “problem-solving” meeting and that you are most interested in solving the problem as the lowest level and at that step. Try to relieve the manager’s anxiety

and defensiveness. Perhaps you point out some joint interests the parties may have, e.g., in a safe and healthy building or a fair and credible promotion process.

To avoid being put on the defensive at the outset by having management's questions, you might want to have a list of some questions of your own that you want answered in the meeting. Additional information can be located in [Chapter 5](#), Processing Grievances, of the Chapter Manual.

Work out a plan in advance with the employee/grievant to make it clear when he/she is to speak and when you are to speak. Try to calm them down and have some signals or a process for cutting the employee off if the meeting gets out of hand. On the other hand, make sure that the employee has an opportunity to participate in the meeting. After all, this is his/her day in "court". At all times, be supportive of the employee and avoid looking like you are in the middle.

If the manager goes on the attack in the meeting, warn him or her about the fact that such behavior can be considered an unfair labor practice. If the behavior continues, adjourn the meeting and leave. Consult the chief steward to see what action the union wants to take against the manager. You might wish to set up a separate meeting with the manager and chief steward later to talk about the manager's reaction and the cause of his/her resistance, but do not try to do it when the grievant's presence.

Make sure when scheduling the meeting that everyone has enough time to go over the case. Also get some private space where you will not be disturbed. It is recommended that a "Neutral" site (e.g. conference room) be used for the grievance meeting.

Try to get access to the relevant documents before any meeting or at least at it some the parties know what they are talking about.

When the manager states a conclusion, ask why they believe that and what documents/evidence might exist to prove the comment. Then get those documents.

Make a record of all of the management's defenses or explanations and try to establish a list of common views of facts held by both sides. Use the explanations to identify documents/evidence you need and assess the strength of your case.

## **7. Response**

Receive written response from the supervisor within 10 workdays from the Step 1 meeting (unless you grant an extension). If both parties agree to no meeting, then the response is due within 5 days of the filing of the grievance.

## **II. STEP TWO**

### **1. Appeal**

If the grievant is not satisfied with the response from the supervisor, appeal to the next higher-level manager within 10 workdays of receipt of the Step 1 response.

### **2. Preparation and Counsel**

Contact your Assistant Chief Steward or Chief Steward, who will work with you to prepare for the Step 2 meeting. Click on this link for your request for samples of a [Step 2 Grievance Request](#).

### **3. Meeting**

The employee, the steward filing the grievance and the next higher-level manager will meet face-to-face, unless the parties mutually agree to a telephonic meeting. It is recommended that a "Neutral" site (e.g. conference room) be used for the grievance meeting.

#### **4. Response**

Management is required to provide a written response within 10 workdays from Step 2 meeting (unless you grant an extension), or within 5 workdays if a meeting was not held.

### **STEP THREE**

#### **1. Appeal**

If the grievant is still not satisfied with the response, he/she may file an appeal to the third step within 10 workdays of receipt of the Step 2 response; contact your chapter president. The Step 3 meeting will be held between the chapter president or designee and the executive who supervised the Step 2 management official. If the Step 2 management official was an executive, there will be no further appeal under the grievance procedure and the grievance may proceed directly to arbitration.

#### **2. Preparation and Counsel**

Contact the chapter president regarding the Step 3 meeting. Click on this link for your request for samples of a [Step 3 Grievance Request](#).

#### **3. Meeting**

The executive and the chapter president will mutually determine the location and time of the Step 3 meeting.

#### **4. Response**

The executive is required to provide a written response from within 10 workdays from Step 3 meeting (unless an extension is granted).

#### **5. Appeal through Arbitration**

If the grievant is not satisfied with the response from the executive, contact the Chapter President or the Chief Steward and discuss the grievance. The representing steward is responsible for preparing the file that will go to the NTEU attorney, who in turn will make the final decision whether or not to appeal the grievance to arbitration. The NTEU attorney will review the file and contact the representing Steward if additional information is needed. Factors to be considered include strength of grievance, type of evidence or proof of violation, remedy requested, prior case law, hazards of litigation, etc. The NTEU field attorney has 21 days to invoke arbitration, so you will need to quickly organize and forward your case so that the attorney will have ample time to review the case. Use the information and templates found in [Chapter 5](#), Processing Grievances, of the Chapter Manual to prepare your case for the NTEU field attorney.

### **REQUEST FOR RECONSIDERATION: THE ANNUAL PERFORMANCE APPRAISAL**

As an exception to the negotiated grievance procedure set forth in Article 41, an alternate process as outlined in Article 12 Section 4N; will be used exclusively to grieve disputes regarding performance appraisals.

## **REQUEST FOR RECONSIDERATION**

### **1. Filing**

If the employee is not satisfied with their appraisal he/she may file a grievance called a Request for Reconsideration to either their second-level supervisor or the employee's first level Executive. The request must be submitted to the appropriate management official within 15 workdays of receipt of the appraisal. The grievance shall be in writing and set forth the employee's reasons for the grievance.

### **2. Meeting**

The second-level supervisor shall schedule and hold a Reconsideration Meeting within 15 workdays of receipt of the employee's request. The employee and the steward will attend the meeting with the appropriate hearing official. See Article 41, Section 7L(6) for additional details.

### **3. Response**

The hearing official will issue a written decision to the employee and a copy to the steward within 10 workdays of the meeting. This response is considered final.

### **4. Appeals through Arbitration**

The Union may appeal Reconsideration Decision to arbitration in accordance with the expedited arbitration procedures set forth in Article 12, subsection 4N and the then to the expedited arbitration procedures in Article 43.

## **GRIEVANCE FILE**

It is suggested that your paper work be kept in order in a folder or binder. Include all forms needed to keep organized. You can do this by selecting and printing the file [Grievance Administrative Package](#). It is very important that the file be maintained in some type of order throughout the grievance process and that the processing is timely.

Keep the file neat and up to date.

Keep the Grievance Control sheet in front, so you won't miss any important dates.

Make sure items stay in date order to facilitate control.

Grievance file must be kept secure at all times to protect the grievant's privacy.

## **HELPFUL HINTS**

1. Keep the goal of the grievance in mind.

Both the Steward and the grievant should have a clear idea of what they are trying to accomplish by filing a grievance. Too often, Stewards file grievances without knowing what it is they want to achieve. Without a goal in mind, both the Steward and the grievant may become frustrated with the process. The goal of the grievance is not always the same thing as the relief requested on the grievance. For example, the relief requested on a non-selection grievance might be "retroactive promotion including all back pay and benefits

with interest". While the actual goal the grievant has in mind is to make upper management aware that he/she wants to be promoted and is capable of doing a good job.

2. Don't be too quick to accept information as "fact".

Just because management or the Labor Relations person says something doesn't make it the truth. If you think you are right, don't give in. This is particularly true if the grievant and the supervisor disagree on what happened in a particular situation. Ask for proof or evidence of their statements but don't be hostile.

3. Be professional, not personal.

Grievance meetings should not be used as a forum to attack someone's personality. Be professional, even if it hurts. You can get your point across without personality attacks. Instead of saying to the supervisor "You are the rudest person on the face of the earth," say "You have exhibited rudeness toward your employees in the following ways..."

4. Disagree with the previous response, when necessary.

Sometimes two grievance meetings are held: the one you actually attended and the one described in the written response from management. When this happens, set the record straight (either in writing prior to the next step meeting or verbally at the start of the meeting).

5. Keep a good grievance file.

At a minimum, your file should contain a copy of the grievance, any supporting information supplied by the grievant, all the step responses from management, as well as the notes taken during the grievance meetings. If you are unable to take notes during the meetings, have the grievant do so. A "complete record" of the meetings is a requirement under the contract (the National Agreement, Article 41).

## **ULP'S AND INSTITUTIONAL GRIEVANCES**

While most Stewards are aware that IRS employees have certain rights guaranteed under the National Agreement and various other regulations and statutes, it is also true that the Union has certain rights guaranteed it as an institution. For example, we have the right to represent employees in grievances and negotiations, we have the right to speak at group meetings, and we have many other institutional rights.

But just as the Agency on occasion violates an employee's right, the Union's rights are sometimes violated. When this happens, we can take action in two different ways:

1. Unfair Labor Practice charges (ULP's) are filed by the NTEU Attorney with the Federal Labor Relations Authority (FLRA). ULP's are utilized when our rights under the law (particularly 5 USC 7114) are violated in some way.

2. The Chapter President files Institutional Grievances when some contractual right of the Union has been violated. The procedure for Institutional Grievances is found in the National Agreement, Article 42.

It is important to remember that neither Institutional Grievances nor ULP's are used to address charges an employee has against management. The Article 41 Grievance procedure is designed for those circumstances. Institutional Grievances and ULP's are filed solely to remedy violations of the Union's rights.

If you have any questions about Institutional Grievances or ULP's, or about the Union's rights in general, call the Chapter President, Chief Steward or other Executive Staff.

## **Guidelines on How to Conduct Employee Interviews**

**By William Harness  
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There are three distinct steps in grievance processing: The investigation, the preparation, and the presentation. The investigation basically involves gathering information—collecting documents and obtaining the accounts of the grievant and witnesses.

In this Steward Update we will discuss the process to follow when grievances are investigated through employee interviews.

As you are aware, grievances are filed for many different reasons: To resolve workplace disputes, to provide interpretations to the agreement, to protect employee rights, to protect the union's rights, to establish precedent, to ensure uniform treatment of employees, etc. Your role as a steward is to process these grievances to a successful solution.

But wait! Not every employee complaint is a grievance. Remember that a grievance has a definition: It is a violation of the agreement; it is a violation of the statutory definition found at 5 U.S.C. 7103(a)(9) and included in most of our agreements; or it is a violation of a past practice.

So, before the grievance process begins, a major role of the steward is to determine whether a story presented by an employee is really a grievance. You need to distinguish between fact, fantasy, and opinion. The upper hand in processing a grievance goes to the side with the best information on the case.

Knowledge is power! Without information, which is obtained through a thorough investigation, you cannot know if, in fact, the claimed grievance has merit or not.

NTEU processes cases on the basis of merit. To maintain the integrity and credibility of NTEU, we must ensure, to the best of our ability, that the cases we are moving forward have such merit. To do this requires that we be thorough.

How can we achieve this thoroughness in an employee interview?

Normally the first employee you will deal with is the grievant, so let's talk about this initial interview.

Subsequent interview(s) should follow the same guidelines.

When you first sit down with the grievant, it is important that you concentrate on listening. Your time for talking will come later. Initially you want to allow the employee to tell the whole story. Only interrupt to keep the employee focused. And always remember to take notes! Write down the important details and facts as the employee presents them.

When the employee is done, go back over your notes out loud. Explain to the employee that you want to make sure that you got the details straight. This is the opportunity for you to begin speaking and not just listening. Use this time to question statements and clarify facts. Be inquisitive. To ensure that your questions are sharply focused and that nothing is left out, follow this checklist:

Who was involved?  
What happened?  
Where did it happen?  
When did it happen?  
Why is it a grievance?

Questioning the employee about other persons involved in the incident is important, because it will help determine which other persons you will need to interview.

Additional "who" questions to be asked and clarified are: Who is the grievant? Is more than one employee involved, i.e., is it a group or mass grievance? Who is the violator? Is the violator the immediate supervisor, an upper manager, or a policy maker? Who are the witnesses? Who saw the event occur? If a past practice is involved, who knows, first hand, what the practice has been?

Once you have determined who is involved, you need to follow these same guidelines as you speak with each person.

What happened? Do you have all the facts on what actually occurred? Are there missing facts that, if known, would clarify what happened? What was role in the matter? Was it an action taken, or was it a failure to act? What was the employee's role in the matter? What were the roles of the witnesses?

All of these questions need to be answered. Remember that you and your investigation are vital to the successful resolution of the matter. Part of that success will be to keep coming up with new questions to "fill in the gaps" in the story.

For example: When exactly did the incident occur? You want to verify the time and date of the incident. This is important not only in terms of whether the grievance is timely, but also because it can affect the remedy—for example, if the situation involves back pay.

In addition to when the event occurred, you want to know if it is still occurring whether it involves one incident or is the latest in a long series of incidents.

The answers to the "when" questions are important because they will establish both the jurisdiction (i.e., is the incident grievable) and the available remedy.

You also need to verify where the matter occurred. If it's a disciplinary situation, it will have an impact on the nexus of any punishment. For example, if the matter occurred off-duty, we may be able to argue successfully that it should have no bearing on the employee's work record. Remember that many times whatever occurs off the job is outside the reach of the employer.

Depending on the facts of the situation, additional "where" questions will come to mind. For example, in snow grievance situations you want to know where the employee resides, where the worst snow and ice were, and what public transportation was not operating where.

Finally you need to know why the situation qualifies for a grievance. Normally you will analyze the situation and draw your own conclusion. But often the employee will have his/her own idea of what has been violated. Listen to the idea, because it may be a good one.

Once you have asked all of your questions and clarified any vague details, you should re-state the information back to the person you are interviewing. Ask him or her to correct any mistakes and then to sign the statement.

The reason a statement is important is that memories fade over time, making details fuzzy. A statement based on recollections close to the time of the situation will assist this person later. For example, the person may need to testify months later, and the statement will help to refresh any fading memory. Remember that your investigation is vital to our success. By using a structured approach to interviewing witnesses, you will ensure you are getting all the facts. The more facts you have, the better you will be able to represent your grievant.

#### Six Steps to Follow

1. Listen to the story
2. Only interrupt to re-focus
3. Ask clarifying questions
4. Determine who, what, where, when, why
5. Re-state the material for corrections
6. Get a signed statement

### **Guidelines on How to Handle Promotion Actions**

**By Andrew R. Krakoff  
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Without doubt one of the most frequent areas of complaint for which employees seek union assistance concerns promotion actions. To our members, promotions provide one of the few clear ways to secure greater financial rewards on the job.

As a steward, how often do you hear complaints that the promotion action was the product of "pre-selection" or was not done in a "fair and objective" manner? What follows is a brief review of some of the issues and problems you may face when presented with a competitive promotion problem.

## Know Your Contract

In order to properly represent an employee in promotion action, it is imperative that you have a first-hand knowledge of your particular contract. No two contracts are identical. Although similar, each contract provides somewhat different details and specific procedures, which must be followed in a competitive promotion action. It is imperative that you, as a union representative, take whatever time is necessary to thoroughly familiarize yourself with the contractual requirements.

### Analysis of Promotion Cases

In evaluating a potential promotion grievance the following analysis should be applied:

A. Is the vacancy one which management must fill according to the contract's procedures for processing competitive promotions?

The contract itself is the best reference in making this determination. Each of our contracts sets forth those actions for which the agency must follow competitive procedures. View this list carefully.

Too often management will attempt to fill non-competitively a position vacancy that it is required contractually to post and fill by petition. In such a case the union or any potential applicant may grieve the failure to post the vacancy. If such action goes unchallenged, it may result in an employee performing higher graded work without receiving the appropriate pay.

B. Does "first consideration" apply?

Many of our contracts contain a "first consideration" obligation by which the agency is required to consider current agency employees for vacancies before considering candidates from outside the agency. While we cannot require an agency to select the in-house candidate before considering the outside applicant, often this will provide a means of pressuring the agency to provide meaningful "first consideration."

In addition it is important to UC aware of applicable agency regulations, which might apply to "first consideration." Thus, for example, the Internal Revenue Service under Policy Statement PO-4 mandates that the IRS select the current employee in favor of the outside applicant where they are equally qualified. This allegation must be specifically grieved.

C. Was the vacancy announcement posted for the appropriate length of time, and did it contain all the necessary information?

The vacancy announcement must be posted for a specified length of time (e.g., 10 days). Furthermore, the contract will specify what information the announcement must include. The failure on the part of the agency to provide any of the substantive information required on the announcement could result in other employees being interested in the position and will warrant an extension of the posting time.

D. If a long-term vacancy announcement or a roster is being announced, is it used correctly?

In many of our agencies, particularly the IRS, long-term vacancy announcements and rosters are used when management expects several vacancies to occur over a period of time. The long-term announcement and roster allows them to go through the ranking process once, rather than several times, when filling "ad hoc" vacancies.

E. Was the employee properly evaluated?

Most promotion grievances result from deficiencies beginning in the evaluation stage or the ranking process. The fundamental question is: Did the employee receive a fair and objective evaluation by his or her supervisor or by the ranking official/panel? If we can demonstrate that the employee did not receive a fair and objective evaluation, and if we can raise the employee's score to a degree that he/she makes or improves his/her position on the Best Qualified List, then we can succeed with the grievance. So first we must determine whether the assigned rating reflects actual performance in that factor.

F. Was the selection proper?

Any selection technique employed by the selecting official, such as interviewing the best-qualified candidate, must be uniformly applied. When this uniformity is breached, the grievant is entitled to relief.

G. Was the selection properly effected?

Generally our agreements specify the time period following a selection during which a promotion must take effect. Failure to properly follow these guidelines could result in back pay for the employee.

**What is the Appropriate Remedy?**

In general, the main remedy an employee may receive is priority consideration for a subsequent position for which the employee is qualified. This would occur where the employee was erroneously left off the Best Qualified List, where an employee's ranking on the Best Qualified List is improved as a result of the grievance, or where an employee was omitted from or improperly ranked on a roster. Employees must recognize that receiving priority consideration does not automatically entitle them to a promotion. Instead, they will be considered before any other candidates. An employee may, however, grieve the failure to be accorded proper—i.e., meaningful good faith consideration— when receiving priority consideration if the union pursues the grievance to arbitration, the arbitrator will generally be limited to determining whether the employee received a "fair and objective" ranking. Where that is the case, the arbitrator will be empowered to order the agency to reevaluate the employee. The arbitrator cannot, however, substitute his or her judgment for the agency and determine what score the employee should receive. Should the employee receive the higher ranking, as described above, then he or she will receive a priority consideration.

In an extremely limited number of cases the grievant may be entitled to retroactive promotion, displacing the person who was selected. In these cases, we must prove that "but for" the error made in the promotion process the grievant would have been selected. We must demonstrate a direct causal relationship between the error made by management and its failure to select the grievant. The decisional law requires a non-discretionary agency policy or procedure, the violation of which prevented the grievant from being selected.

**Request the Appropriate Information**

Central to your analysis and subsequent representation of any employee in a promotion action is obtaining the relevant information. As outlined in Chapter 8 of the NTEU Steward's Manual, "Access to Agency Information", the Civil Service Reform Act gives the union the right to information that is relevant and necessary to process your grievances. Many times the contract will specifically identify the information to which you are entitled in a promotion case. Again, it is imperative to consult the contract when working on such a case.

At a minimum you must obtain the "promotion package." A promotion package will contain the supervisory evaluation with narratives, the ranking panel's evaluation with narratives, and any other evaluative material such as records of experience, training, and awards.

If the information is sanitized in order to protect the privacy of applicants, the agency must nevertheless use some type of coding process so that you can identify the scores relevant to the respective candidates (e.g., in alpha code for applicant A, applicant B, etc.). Such information will enable you to compare the accuracy, consistency, and completeness of the ranking panel's score and supervisor's appraisals of the grievant and other candidates.

Analyzing such information is admittedly tedious. The promotion package may be quite thick. Nevertheless, a careful review utilizing spreadsheets or charts can be the difference between a successful and an unsuccessful grievance.

For additional information on this topic see [Chapter 9](#) of the NTEU Chapter's Manual.