

PRIMER ON GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION

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Frequently Asked Questions

WHAT IS THE PRESENT NATIONAL POLICY ON LABOR DISPUTE SETTLEMENT?

The present national policy on labor dispute settlement is enunciated in the following instruments:

A. 1987 Constitution

Sec. 3, Article XIII provides:

“The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.”

B. Labor Code, as amended by Republic Act 6715

Article 211 of the Code provides, among others: (a) “...It is the policy of the State... to promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as mode of settling labor or industrial disputes.”

(b) “ To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes”.

WHAT IS A GRIEVANCE?

A grievance is defined as “any question by either the employer or the union regarding the interpretation or application of the collective bargaining agreement or company personnel

policies or any claim by either party that the other party is in violation of any provision of the CBA or company personnel policies”.

WHAT IS THE GRIEVANCE REFERRED TO IN TITLE VII-A OF THE LABOR CODE?

The grievance referred to in the technical or restricted sense, is a dispute or controversy between the employer and the collective bargaining agent arising from the interpretation or implementation of their CBA and/or those arising from the interpretation or enforcement of company personnel policies, for the adjustment or resolution of which the parties have agreed to establish a machinery or a series of steps commencing from the lowest level of decision-making in the management hierarchy (usually between the shop steward of the employee or

employees aggrieved and the supervisor/foreman/manager which exercises control and supervision over the grievants or who is responsible for executing the management action that have given rise to the grievance) and usually terminating at the highest official of the Company. If such dispute remains unresolved after exhausting the grievance machinery or procedure, it shall automatically be referred to voluntary arbitration prescribed in the CBA.

WHAT IS THERE A GRIEVANCE?

In the technical or restricted sense, there is a grievance when a dispute or controversy arises over the implementation or interpretation of a collective bargaining agreement or from the implementation or enforcement of company personnel policies, and either the union or the employer invokes the grievance machinery provision for the adjustment or resolution of such dispute or controversy.

COULD THERE BE A GRIEVANCE WITHOUT A UNION OR A CBA?

If the term grievance is to be applied in the loose or generic sense, any dispute or controversy respecting terms and conditions of employment which an employee or group of employees may present to the employer can be a grievance, even without a union or CBA. Under this interpretation, any complaint, question or problem that an employee or group of employees may wish to take up or discuss with the employer respecting terms and conditions of employment for the purpose of resolving or satisfying the same, constitutes a grievance. The expansion of the original and exclusive jurisdiction of voluntary arbitrators to include questions arising from the interpretation and enforcement of company personnel policies has the effect of widening the meaning and interpretation of a grievance to include a situation where there is no collective bargaining agent and no CBA.

ARE ALL GRIEVANCE ARISING FROM THE IMPLEMENTATION OR INTERPRETATION OF THE COLLECTIVE BARGAINING AGREEMENT AND/OR INTERPRETATION AND ENFORCEMENT OF COMPANY POLICIES COMPULSORY SUBJECT TO THE GRIEVANCE MACHINERY?

Yes. This is clear from Article 260 and Art. 261 of the Labor Code, as amended by Republic Act 6715.

Art. 260 is emphatic on the duty of the parties to a collective bargaining agreement to establish a machinery for the adjustment and resolution of grievances arising from the interpretation and enforcement of the CBA and/or company personnel policies, and for the mandatory use of the said machinery.

Art. 261, on the other hand, directs the NLRC, its Regional Arbitration Branches and the Regional Directors of the Department of Labor and Employment not to entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and to immediately dispose of and refer the same to the grievance machinery or voluntary arbitration provided in

the collective bargaining agreement. Moreover, in Rule XI of the Implementing Rules of the Code, the Regional Branches of the National Conciliation and Mediation Board are enjoined, in case issues arising from the interpretation or implementation of the collective bargaining agreements or those arising from the interpretation or enforcement of Company personnel policies are raised in notices of strikes or lockouts or requests for preventive mediation, to advise the parties to submit the issue/s to voluntary arbitration.

WHAT USUAL PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT WHOSE VIOLATION/S ARISING FROM INTERPRETATION AND IMPLEMENTATION, MAY CONSTITUTE GRIEVANCE/S OR THE SO-CALLED RIGHTS DISPUTES?

Every collective agreement usually contains non-economic and economic provisions. Non-economic provisions are those whose monetary cost can not be directly computed such as no-strike-no-lockout, union security, management security, check-off clauses, grievance procedures, etc. Economic provisions, on the other hand, are those which have direct and measurable monetary cost consequences such as wage rates, paid vacations, pensions, health and welfare plans, penalty premiums and other fringe benefits. Any violation arising from rights established under collective agreements, laws, rules and regulations and customary practices may constitute as grievance and is often referred to as rights dispute.

WHAT ARE PERSONNEL POLICIES AND WHAT ARE THE MATTERS USUALLY COVERED BY SUCH POLICIES, WHOSE VIOLATION/S ARISING FROM ENFORCEMENT AND INTERPRETATION MAY CONSTITUTE GRIEVANCE/S OR OTHER SOURCES OF RIGHTS DISPUTE

Personnel policies are guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matter.

They deal with matters affecting efficiency and well being of

employees and include, among others, the procedures in the administration of wages, benefits, promotions, transfers and other personnel movements which are usually not spelled out in the collective agreement. The usual source of grievances , however, is the rules and regulations governing disciplinary actions.

WHAT VIOLATIONS OF THE USUAL NORMS OF PERSONNEL OR BEHAVIOR OF EMPLOYEES MAY CONSTITUTE GRIEVANCES OFTEN REFERRED TO AS DISCIPLINE CASES?

Rules and regulations governing personnel discipline may contain the following infractions covering the following subjects:

- **AGAINST PERSON**
 - PHYSICAL INJURY, ASSAULT, HOMICIDE, MURDER
- **AGAINST PROPERTY**
 - MIS-USE OF PROPERTY
 - DAMAGE TO PROPERTY
 - THEFT AND ROBBERY
 - NEGLIGENCE IN THE USE OF PROPERTY
- **ORDERLINESS/GOOD CONDUCT**
 - FIGHTING/QUARRELING
 - VIOLATION OF RULES
 - DISCOURTESY/DISRESPECT
 - INTOXICATION WHILE AT WORK
 - POSSESSION OF DRUGS/NARCOTICS/ALCOHOL DRINKS
 - ILLEGAL STRIKE
 - STRIKE VIOLATIONS/SABOTAGE
 - FAILURE TO COOPERATE IN INVESTIGATIONS
 - HYGIENE
 - SAFETY
 - UNION ACTIVITY
 - MOONLIGHTING

- DEPARTMENT
- FINANCIAL INTEREST
- UNAUTHORIZED OUTSIDE WORK
- PERSONAL AFFAIRS
- ENTERTAINMENT OF VISITORS
- DISORDERLINESS, HORSEPLAY
- USE OF FOUL LANGUAGE

- **ATTENDANCE AND PUNCTUALITY**

- TIMEKEEPING VIOLATIONS
- ABSENTEEISM
- TARDINESS
- AWOL

- **MORALITY**

- IMMORALITY
- SEXUAL HARASSMENT

- **CONFLICT OF INTEREST**

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- **NON-PERFORMANCE**

- INSUBORDINATION
- NEGLIGENCE OF DUTY
- INEFFICIENCY
- MALINGERING
- CARELESSNESS
- POOR QUALITY