GRIEVANCES AND ARBITRATION

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ABSTRACT

In the course of human events in even the best managed company, employee discontent gripes and complaints, will certainly arise. An employee may feel that the foreman assigns him or her to do all the dirty and heavy jobs. A clerk-typist has just been hired at a salary of ten dollars a week greater than she is getting after a full year on the job. She goes to see her supervisor about her salary. Being an hourly-paid worker, may have been given written disciplinary warning by the foreman because of refusing to work over-time last Saturday. The worker thinks it is unfair to be disciplined for that and goes to see the union steward.

For the sake of justice to the individual and the smooth functioning of the organisation, it is necessary for management to get at the root of employee dissatisfaction by taking corrective action wherever possible.

Key Words: employee discontent, foreman, salary, disciplinary-warning, dissatisfaction

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Introduction

What constitutes a grievance vary among personnel management and industrial relations authorities. According to Beach (1980), a grievance is any discontent or sense of injustice expressed or not felt by an employee in connection with employment in an organisation. This definition includes all states of dissatisfaction or unhappiness whether they can be substantiated by facts or not.

A very narrow definition of a grievance is that adopted in many unionized companies. Here the labour policy may hold that a grievance is genuine only if there has been some alleged violation of the labour agreement. According to this view, the only rights possessed by employees are those specifically spelt out in the contract, hence they can legitimately grieve only issues involved in the application and interpretation of the union-management agreement. However, such a narrow view has serious weaknesses.

Still another way of viewing this issue is to consider the act of expressing one's dissatisfaction with his or her supervisor as a complaint. It only becomes a true grievance if the supervisor is unable to settle the problem satisfactorily and then the employee appeals the case to the next higher level of management according to the steps in a formal grievance procedure. Some labour-management agreements specify that a complainant that has not been settled on the basis of informal discussion between the foreman and the worker must be put into writing and then sub-committed to the second step of the grievance procedure, at which point it becomes a true grievance.

According to Armstrong (1992), the acceptable broad concept of the word "grievance" is any dissatisfaction or feeling of injustice in connection with one's employment situation that is brought to the attention of management. It is difficult for management to act on an employee's problem if he/she does not call the matter to their attention. The emphasis on management's part should be to create a proper leadership climate so that employees who feel they have a justifiable complaint feel free to inform management of this fact.

Background to the study

Some employers especially in non-union companies, take their view that there is really no need for establishing a formalized grievance – handling system. They hold that all their first – line supervisors are trained to hear employee complaints and to take prompt action to settle them. Also a further argument, they add that the company is well managed, and has an enlightened human relations programme in operation and employees are generally satisfied because very little dissatisfaction or complaint ever reaches the ears of top management.

Berenheim and Ronal (1980) say that it is desirable that work organisations adopt a formal means for handling employee grievances. There are a number of sound reasons.

All employee complaints and dissatisfaction are in actual practice, not settled satisfactorily by the first – level supervisor. There are many possible reasons for this. The supervisor may lack the necessary human relations skills to deal effectively with his people. He may lack the authority to take the action that is really necessary to properly solve the problem. He may even agree with the substance of the employee's grievance but know, from past experience, that it is futile to try to get higher management to act. Some supervisors may suppress the expression of grievances by their people. In those cases where the employee feels that his immediate supervisor has discriminated against him, he may feel that the supervisor can never, during a grievance discussion, fairly and objectively judge him and the situation. In this situation the employee must be able to appeal his case to some higher official.

Another justification for having a formal grievance-handling system is that it brings employee problems to the attention of higher management. The procedure serves as a medium of upward communication. Higher management becomes more aware of employee frustrations. It becomes sensitive to employee needs and well-being. Therefore, when higher management is formulating plans that will affect employees, it will have become fully cognizant of employee needs and reactions; hence complaints and grievances will be less likely to arise.

Beach (1980) states that grievance handling system serves as an outlet for employee frustrations, discontents and gripes. It operates like a pressure-release valve on a steam boiler. Employees do not have to keep their frustrations bottled up, until eventually seething discontent causes an explosion. They have a legitimate, officially approved way of appealing their grievances to

higher management. If dissatisfied with initial attempts to iron-out the difficulty with the supervisor, employees do not have to feel that they are going over their boss's headsurreptitiously, as often happens in plants lacking a grievance procedure.

The existence of an effective grievance procedure reduces the likelihood of arbitrary action by supervision because the supervisors know that the employees are able to protest such behaviour and make their protests heard by higher management.

Statement of the problem

Armstrong (1992) says that if some problem or condition bothers or annoys an employee or if he/she thinks the treatment has been unfair, he /she may express discontent to someone else. When he/she vocalizes dissatisfaction, such an action can be classified as a complaint. Usually, when a person "sounds off" about something, he/she hopes that the listener (a fellow employee or supervisor) will do something to correct the difficulty.

But an unexpressed dissatisfaction can be just as worthy of consideration by the supervisor as the spoken complaint. Just as untreated wound can cause dire consequences for a human being, socan a festering discontent in the shop lead to grave results.

There are many reasons why an employee may keep a problem inside himself. He may simply have a higher tolerance limit for frustration. Or he/she may feel that the condition may soon change in such a way that the problem will then be corrected. He/she may have found from past experience that it is not good to complain to his supervisor. Sometimes a person may even feel that others will criticize him if he complains. By establishing a sound and healthy relationship with his people (one of mutual trust and confidence) the supervisor can do much to dispel employee fears and encourage free expression of feelings.

Objectives

When dealing with grievance procedures, there are aims that need to be achieved and these are given hereunder:

- To establish a formalized grievance-handling system;
- To take prompt action to settle employee complaints;

- To bring employee problems to the attention of higher management; and
- To make grievance-handling system serve as an outlet of employee frustration, discontents and gripes.

Grievance Settlement for Unionised Employees

In an organisation, management represents the shareholders while workers are represented by the trade union. For communication with management formally, on behalf of employees, the trade union demands for the establishment of grievance settlement procedure. Beach (1980) says that (practically) all labour management agreements contain procedures for the handling of grievances. It is understood by union and management alike that the signing of a labour contract does not automatically take care of all labour-relations problems that will arise during the life of the agreement. Therefore, a grievance procedure provides one means of settling such difficulties.

With the presence of union, employees know that it is fully legitimate to submit complaints and grievances to management. Often the union officials encourage the expression of grievances. This is done in order to bring to the surface all underlying discontents to demonstrate to management that all is not well in the plant to identify issues that can strengthen the union's hand or to show the employees that the union can successfully help them achieve their needs and wants on the job. The economic and social power of the union commonly serves to prevent lower-level supervisors from taking punitive action against those workers who have submitted grievances against management actions. The general pattern for handling grievances in unionized establishments has become rather standardized, although specific details vary from company to company.

Because management is presumed to possess full authority to operate its business as it sees fit, the reasoning is that a grievance represents a request by an employee, group of employees and the union, for a change in some management action or lack of action. In effect, management administers the business and applies the provisions of the union-management agreement. If the employees or the union do not like the way this is done, they must submit a grievance according to the procedure outlined in the labour agreement. Table 1 belowshows the individuals or officers involved at each step of a typical grievance procedure.

Table 1 :A Typical Grievance procedure

STEP	UNION REPRESENTATIVE	EMPLOYER REPRESENTATIVE	TIME LIMIT FOR EMPLOYER DECISION	TIME LIMIT FOR UNION APEAL
1	Employee and union steward	Supervisor	3 days	3 days
2	Chief steward or business agent	Superintendent or Personnel Personnel Vice-President	7 days	7 days
3	Grievance Committee and national Union Representative		10 days	10 days
4	Arbitration by		Impartial	Third Party

The exact job titles vary from organisation to organisation. Although most labour agreements specify a four-step grievance procedure, some have five steps and others have only three steps. In order to prevent managers from stalling or sitting on grievances, most contracts show a time limit within which management must give a written response to the union at each stage. Likewise, in order to prevent the union from stalling or appealing old grievances, contracts generally specify a time limit for appeals as is exhibited in Table 1.

In companies, the labour relations or personnel office plays a major role in representing the employers interest. When a grievance is appealed by an employee or the union beyond the first-level supervisor step, it is the responsibility of the personnel office to investigate the facts of the case. This involves gathering written documents and interviewing concerned persons and witnesses. The personnel or labour relations manager must decide the response to be made to the aggrieved person by testing the events and circumstances of the case against the meaning and language of the union-employer contract. He or she will also test the response against practice and personnel policy. In deciding the proper answer to give the aggrieved, the personnel or

labour relations manager generally consults closely with the appropriate line executives such as superintendents, heads of departments and plant managers. It is important for the personnel office to take a lead in handling the employer's responses at the various steps of the grievance procedure.

In handling grievances, both the union and the employer representatives should view the grievance process as a means of developing solutions to problems. Often creative solutions and compromises satisfy the complaint, the union and the employer.

Over 90% of all collective-bargaining agreements in the private sector and about 75% of those in the public sector,provide for binding arbitration as the final step in the grievance procedure. This is the peaceful method of settling an unresolved grievance.

Grievance Arbitration

In the vast majority of union-employer relationships, management has accepted binding arbitration as the terminal point in the grievance procedure even though this means that management does not have the "last say" in determining the outcome. In return for granting binding arbitration, management customarily receives a written pledge from the union during the term of the union-employer agreement.

There are two basic ways of employing an arbitrator. One is the permanent arbitrator and the other is the ad hoc system. Some large corporations and certain trade associations, employ full-time arbitrators on a salaried basis. There is some justification for having a permanent arbitrator. Further, he/she can become an expert in the particular problems of the industry and there is no delay in engaging his services. Not-withstanding these considerations, however, the most common method is to engage arbitrators on an ad hoc basis. An ad hoc arbitrator hears either one case alone or he/she may hear several cases during the course of one or two days. An advantage of the ad hoc system is that the individual can be selected on the basis of his/her expertise for the type of case to be heard.

The procedure for selecting an arbitrator is commonly spelt out in the labour agreement. Often the arbitrator is selected from a panel of qualified arbitrators listed by (in the case of United

States of America) the Federal Mediation and Conciliation Service. If it is unable to agree-upon an individual, the contract often states that an arbitrator will be appointed by another agent. It is almost a universal practice for the union and company to share equally the arbitrator's fee.

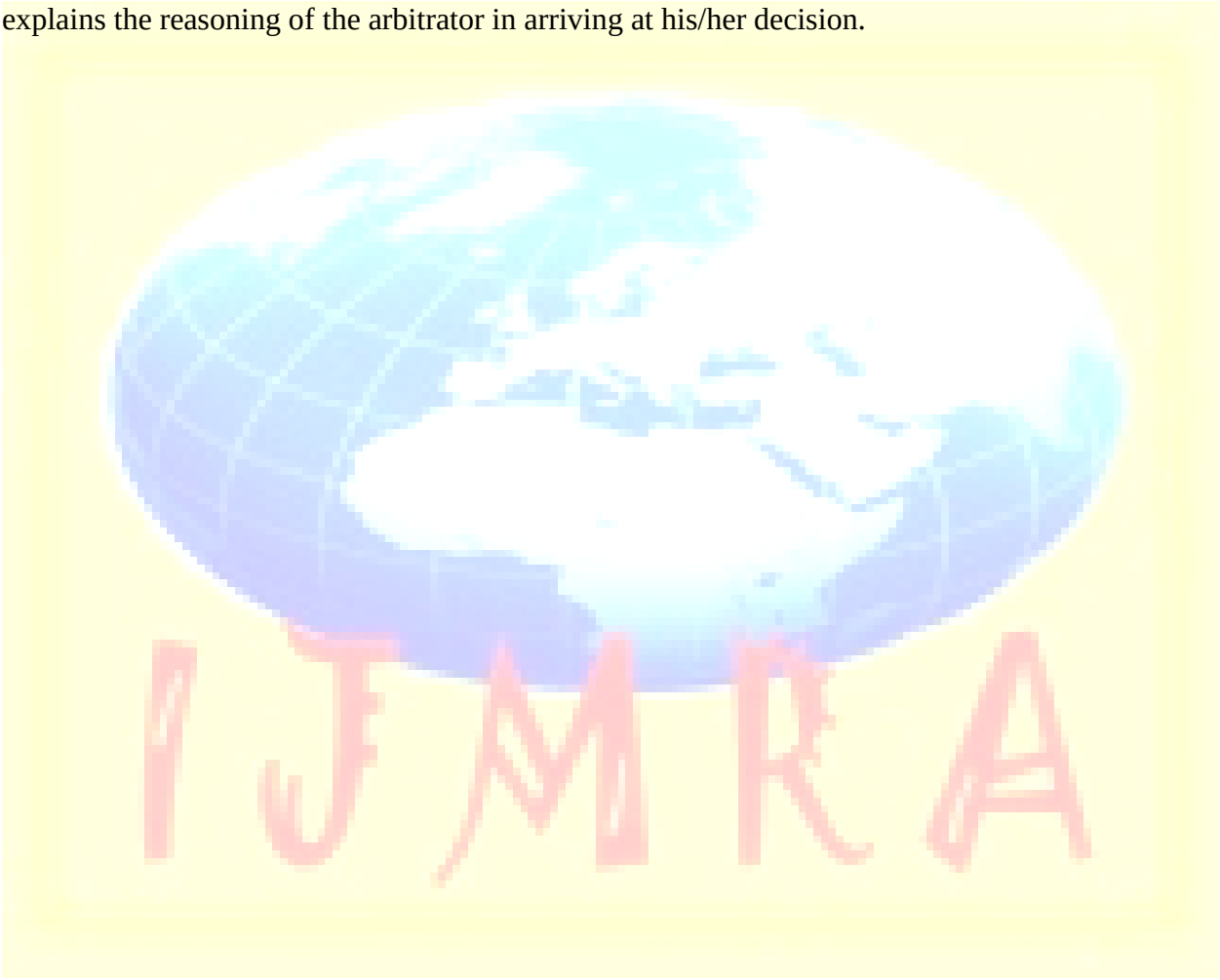
Labour agreements generally specify that the decision of the arbitrator shall be final and binding upon all parties concerned – the company, the union and the employees. Further they state that the arbitrator shall have the authority to interpret, apply or determine compliance with the provisions of the union-management agreement (Ivancevich, 1992). This simply means that the parties expect the arbitrator to act in the role of a judge and not a legislator.

Legal Status of Arbitration

Mahey, Salaman and Storey (1998) say that the U.S.A Supreme Court decisions, grievance arbitration and arbitrators' awards have acquired very substantial authority and sanctity. In essence the court said that whether a particular grievance issue is properly arbitrated under the labour agreement between the company and union is a matter to be decided by the arbitrator not the courts. Also questions on which the union and company disagree, must come within the scope of the grievance and arbitration provisions of the collective bargaining agreement, unless the two parties have specifically excluded certain matters from arbitration in the language of the agreement. Additionally, the court established a standard for only very limited review by the lower courts of an arbitrator's award. Courts should enforce an arbitration award unless it clearly is inconsistent with the labour agreement. Ordinarily a court, as a result of the trilogy decisions, will only review an arbitration award on appeal by a union or a company if the arbitrator committed fraud or was arbitrary and capricious. It might also review an award if the arbitrator exceeded his authority under the collective agreement. According to Beach (1980) largest single category of issues appealed to arbitration is discipline and discharge. The next common issue has to do with wages. This is a broad category that includes such matters as job classification for pay purposes, over-time pay, compensation for out-of-title work, pay increments and wage incentives.

Conclusion

An arbitration hearing is a quasi-judicial process. It may be conducted quite formally or the entire process may be rather informal. Quite often after the hearing has been concluded, both the union and the company will file a post-hearing brief with the arbitrator to summarise facts and arguments of each side. Typically the arbitrator then has 30 days to make a decision and prepare the award and supporting opinion. The opinion summarises the positions of the two parties and explains the reasoning of the arbitrator in arriving at his/her decision.



References

Armstrong. M., (1992), A Handbook of Personnel Management Practiced, Kogan Page.

Beach.D.S., (1980), Personnel: The Management of People at Work, Macmillan Publishing Company.

Brewster. C., (1989), Managing Industrial Relations, Handbook, London.

Ivancevich. J.M., (1992), Human Resource Management: Foundations of Personnel, IRWIN.

Mahey. C., Salaman.G.and Storey. J., (1998), Human Resource Management: A Strategic Introduction, Blackwell Publishing Ltd.

Lowry. P., (1990), The Unsung Heroes of Dispute Resolution, Personnel Management.

Mackie. K.J., (1989), A Handbook of Industrial Relations Practice, Kogan Page.

Robbins.S.P. and Coulter.M., (1999), Management, Prentice Hall.

Thomason. G.T., (1984), A Textbook of Industrial Relations Management, London.

IRS Employment Trends, No. 454 December (1989).