

Grievances 101: Inside the Process

Last month's column looked at the legal foundation of the grievance process that applies to airline pilots; this installment outlines the actual process.

The grievance process

All ALPA contracts contain both a grievance section and a System Board of Adjustment section. These sections set out the detailed rules for processing grievances that govern both the union and management. While ALPA contracts contain many similarities in their grievance and system board provisions, these sections are not identical from one contract to another across pilot groups. Each ALPA contract has its own specific rules and time lines for processing grievances. Therefore, MEC Grievance Committee members and others involved in processing cases must thoroughly know and understand the rules and requirements in their own contracts.

Most ALPA contracts provide for at least two mandatory steps in the grievance process, but in many cases, the contracts contain three or four steps.

Filing the grievance

A grievance is triggered by (1) a management act (or omission) that the union alleges violates the contract or (2) disciplinary action against an individual pilot. Each contract provides specific time limits for filing grievances. The time limits for filing vary from 7 to 120 days from one contract to another and may vary within the same contract, depending on whether the case is a contract violation case or a disciplinary case. The time period for filing typically begins from the time the grievant had knowledge (or could reasonably be expected to have had knowledge) of management's action. Failure to file a grievance within the specified time limits may be grounds for dismissing the grievance.

Grievance hearing

Most, if not all, ALPA contracts provide a grievance hearing as the first step in the grievance process. These hearings are normally conducted by a management representative, such as a chief pilot or director of operations. In many cases, the grievant will attend the hearing, and the grievant and ALPA usually will be represented by an MEC Grievance Committee member (or, in some cases, by an elected council representative and/or an ALPA contract administrator).

The contract provides time lines for management to respond to the grievance and to schedule and conduct the grievance hearing. Normally the hearing must be scheduled and held within 10 to 30 days.

The grievance hearing is designed to allow the grievant/union to present its case (or defense in a disciplinary case) to management in a relatively informal setting to resolve the case quickly and inexpensively. The hearing allows both sides to get a better

understanding of the other side's position and, in some cases, provides an opportunity to discuss settlement of the case.

The contract often requires the management representative to issue a formal written response to the grievance after the hearing has been concluded. Management's written response will either deny the grievance or grant the grievance in whole or in part. If management's response is satisfactory, the case is resolved and closed. If the management response is unsatisfactory in any respect, the case may be appealed to the next step in the grievance process.

Some contracts may provide for an investigatory hearing or other preliminary step before a grievance is filed or before the grievance hearing.

In many ALPA contracts, an appeal of management's denial of the grievance goes directly to the System Board of Adjustment. Some contracts, however, have intervening steps before an appeal to the System Board. Some contracts provide for another grievance hearing with a higher-level management representative; other contracts provide for mediation or settlement conferences before a System Board appeal.

System Board

The System Board of Adjustment is a tribunal with the legal authority to issue final and binding decisions concerning grievances arising under the collective bargaining agreement. The Railway Labor Act mandates the System Board as the final step in the grievance process, and the System Board of Adjustment section in each ALPA contract provides for creation of a Pilots' System Board of Adjustment at that airline for pilot grievances. That section also provides the rules applicable to both management and ALPA for processing cases at the Board.

Many ALPA contracts provide for a System Board in two different configurations—a Board with four members and a Board with five members.

A four-member Board consists of two members appointed by ALPA and two representatives appointed by management. The four-member Board has full legal authority to decide a case; the decision of a four-member Board will be legally binding on ALPA, management, and the grievant. The four-member board either decides the case in favor of management or the union by majority vote or deadlocks the case, i.e., the four-member vote results in a two-versus-two split. If the Board is deadlocked, the contract provides that the case may then go to the System Board in its five-member configuration.

Some contracts no longer contain a four-member System Board; others permit a four-member Board, but do not require it, before convening a five-member Board. Still others contain provisions for bypassing the four-member System Board in certain situations. For example, some contracts allow a discharge case to be appealed directly to a five-member Board.

A five-member Board is composed of two ALPA representatives, two management representatives, and an arbitrator (also often referred to as a neutral or neutral referee). The five-member Board is an arbitration tribunal (a five-member System Board hearing is synonymous with arbitration). The contract describes how the arbitrator is selected and the hearing is scheduled and conducted.

The arbitration hearing at most airlines whose pilots are represented by ALPA is a somewhat formal legal proceeding. Normally ALPA and the individual pilot/grievant are represented by an ALPA contract administrator; management is also represented by counsel. Both sides have the opportunity to call, examine, and cross-examine witnesses, to submit and to object to evidence, and to argue their positions orally and in writing.

After reviewing the evidence, the neutral will normally draft a proposed decision. The other four members of the Board review that draft. If two other members agree with the decision, it is signed and issued as the decision of the Board. A System Board (arbitration) decision is final and legally binding on ALPA, management, and the grievant.

Settlements

Not all ALPA grievances are decided and finally resolved through the arbitration process. In fact, many ALPA cases do not actually proceed to arbitration. Grievances can be resolved in a number of other ways.

Management may agree (or be persuaded to agree) with the pilot's or ALPA's position and, after a grievance hearing, may grant the grievance. The grievance would then be resolved.

ALPA or the grievant may, after further reflection and/or research and consultation with ALPA's legal or other resources, acknowledge that the grievance has no merit or that insufficient evidence is available to prove the grievant's claim. In such a case, the grievance may be withdrawn and resolved in that way.

The parties (management, ALPA, and the grievant) may also settle the case. A settlement is different from management's granting a grievance or ALPA's withdrawing a case or the System Board of Adjustment deciding a case, because in those situations, no agreement is necessary from the opposing party. A grievance settlement, on the other hand, requires the agreement of all of the parties.

While some ALPA contracts may specifically provide for settlement conferences as part of the grievance process, most do not.

Grievance settlements can and do occur at any point after a grievance is filed. A settlement may occur before the grievance hearing, at the grievance hearing, after the grievance hearing, at or during an arbitration hearing, and even, in unusual cases, after an arbitration decision is issued.

Mediation may lead to a settlement, but the decision of a System Board or other tribunal is not considered a settlement because the parties have not all agreed to the outcome.

A settlement is an agreement by the parties to resolve a grievance and results in an end to the processing of that particular case. A settlement is usually a compromise by both sides, although that is not necessarily the case. Grievances can be settled with or without precedent. Settlements should be confirmed in written settlement agreements setting out the specific terms of the agreement.

ALPA resources

Successfully processing grievances requires marshaling and coordinating many ALPA resources. The MEC Grievance Committee members are often the initial point of contact with the grievant. They gather the basic facts relevant to the grievance and establish a point of contact for the grievant and others with information about the case. During the initial investigation of the grievance, the Grievance Committee members gather evidence including reports, documents, other physical evidence, and witness statements. They locate, contact, and interview potential witnesses. They also research the contract and company policies and procedures. The Grievance Committee members also coordinate with ALPA staff members as needed.

The MEC Negotiating Committee may provide valuable input for understanding the history and intent of the contract section at issue. In cases involving pension or benefits issues, the MEC Retirement and Insurance Committee and ALPA R&I Department staff may provide expertise and background. In operational or accident/incident cases, the Safety Committee or ALPA Engineering and Air Safety staff will be consulted. Similarly, the Scheduling Committee or Training Committee may have a significant role to play in scheduling/assignment or training cases. ALPA Aeromedical Office resources are available to assist in cases regarding medical issues and disability. The pilot members of the System Board of Adjustment coordinate with ALPA Representation and Legal Department attorneys to ensure the strongest possible presentation of ALPA's case to the Board.

ALPA Representation Department contract administrators provide representation for ALPA and individual pilots throughout the grievance process, including representation at grievance hearings, where necessary, and at System Board/arbitration hearings. The ALPA Legal Department attorneys handle arbitration cases as well and provide additional expertise in cases in which drugs, alcohol, or novel legal issues are involved.

Next up: More about the grievance process.