



CENTER FOR LABOR RESEARCH AND EDUCATION INSTITUTE OF INDUSTRIAL RELATIONS (Berkeley) (415) 842-0323

BERKELEY, CALIFORNIA 94720

(RESEARCH REPORT)

JANUARY, 1979

MANAGEMENT FORFEITURE CLAUSES IN NEGOTIATED GRIEVANCE PROCEDURES,

by Norman Amundson, Chairman

A few years ago the Center for Labor Research and Education became aware of a new trend in negotiating time limits in grievance procedures in collective bargaining agreements. This trend, called a "management forfeiture clause" by some unions, applies the same penalty to management for failing to meet the time limits as had been traditionally applied to unions--namely loss of the grievance.

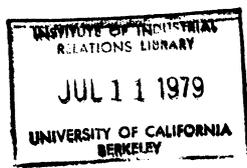
The best way to illustrate this change is with some typical language as found in agreements.

In the event Management does not conform to the time limits as stated in the grievance procedure, the grievance shall be considered settled on the basis of the claim made by the aggrieved employee or employees.

Another clause provides:

Either party not complying with the time limitations as specified in each step of the procedure set forth shall forfeit the grievance.

This development represented a change from the traditional negotiated procedure wherein a failure to meet time limits by the union meant the grievance was lost, but failure by management to meet a time limit simply meant the grievance was appealed to the next step in the procedure.



Over the past three years the Center for Labor Research and Education has attempted to follow this trend by talking to union officers, seeking copies of contracts and observing the experiences of unions which have negotiated management forfeiture language.

Currently we have 42 agreements in our files containing this language and have letters from unions and notes from discussions with union officers administering these agreements. They represent a broad spectrum including public and private sectors, service industries, transportation industries and production facilities. The particular emphasis we have made was to find out if the language did speed up the processing of grievances and what effect it had on the ability of the parties to settle grievances. At this time we can offer some tentative conclusions, with the understanding that they are based on limited study.

Most unions which have negotiated a Management Forfeiture Clause report that it has speeded the processing of grievances, which is the result they were seeking when the language was negotiated. Most of the unions we talked to feel very positive about the results from the language change and would urge other unions in similar circumstances to attempt to negotiate the same language. Where the unions reported that the language change had not resulted in an improvement in grievance processing there were other factors in the relationship which needed to be dealt with.

One large local in the Steelworkers Union reported that the only effect of the forfeiture language for them was to get grievances to arbitration faster. It had not made it any easier to resolve grievances. The spokesman stated that no matter what one did with the procedure, if the basic intent of the parties utilizing the grievance procedure was not to resolve problems the changes would have little effect. A similar statement was made by another union leader about the basic relationship being a more important factor in processing grievances than any contract language that was worked out between the parties.

Another expression along these lines was one to the effect that both sides were agreeing to extend the time limits for various reasons and the language was not restrictive for this reason. However the union felt the management time limit provisions were still important because where a "give and take" relationship did not exist delays always worked to the company's advantage.

Another expression by a union of some dissatisfaction with the rigid time limits on both sides was that they did not have time to examine the merits of many grievances in detail and they would probably in the next negotiations seek to establish longer time limits to accommodate this problem.

Another favorable comment from a union was along these lines: They felt the imposition of the time limit on management's side has made them take a more serious look at grievances and the grievance procedure. Lower level management pays more attention now to the union and to the union stewards and this has resulted in more intelligent processing of grievances and the two parties developing better answers to some joint problems.

In our discussions with the unions, we discovered that the incidents of management forfeiting the grievances by not meeting a time limit were quite rare. Even in one unit with several thousand employees and hundreds of grievances, the union stated that management has never failed to answer a grievance within the time limits.

One interesting incident was described by one union of what can happen under this procedure. Management unilaterally instituted a change in operations which resulted in employees working different schedules and performing different operations and reducing the number of personnel in a department. The union grieved the situation and management failed to answer the grievance within the time limits. Under their procedure, the grievance was settled on the basis of the remedy stated in the union's grievance which was for the company to return to the previous method of operations. The company did this, but the union realized that the company could repeat the whole process simply by doing things the old way again for a few days and then ordering the changes. The union would again grieve, and this time if management answered the grievance within the time limits, the parties would finally get to a discussion of the issues.

This unique grievance experience was denied them, however, because the company decided, on the basis of the experience during the time that the changed procedures had been in effect, that they were not a good change and decided not to reinstate them.

The Center for Labor Research and Education has a continuing interest in the subject of management forfeiture clauses in grievance procedures and we hope to hear from unions that negotiate this language in the future, or who have negotiated it. We are also interested in, and would like to hear from, any unions which have utilized another emerging concept, i.e., applying some constitutional rights in the workplace, such as "innocent until proven guilty" with regard to discipline. We have some contracts where the parties have negotiated language which provides that an employee who has been discharged cannot be removed from the payroll until he has had an opportunity to grieve and has had his grievance processed. Please forward any developments in contract language along these lines to the Labor Center.

Attached are some examples of management forfeiture clauses.

GRIEVANCE LANGUAGE REQUIRING COMPANY TO ANSWER
WITHIN TIME LIMITS OR FORFEIT GRIEVANCE TO UNION

THE DOW CHEMICAL COMPANY AND INTERNATIONAL CHEMICAL WORKERS'
UNION, LOCAL NO. 23

Article 14, Grievance and Arbitration, Section 5

"Either party not complying with the time limitations as specified in each step of the procedure set forth shall forfeit the grievance. However, either party may, upon notice to the other extend the times as specified in steps 1 through 3 of the grievance procedure. Such extension by either party shall be limited to one time in each of the above mentioned steps. Thereafter the provisions of this Section shall apply."

JOHNS-MANVILLE PRODUCTS CORPORATION, LONG BEACH, AND LOCAL NO.
255, INTERNATIONAL CHEMICAL WORKERS' UNION

Article 6, Grievance Procedure

18. . . ."If the grievance is not answered by the Company within the time limits of each step, it shall be deemed to have been settled in favor of the grievor. If the Union fails to abide by the prescribed time limits for each step, the grievance shall be presumed to be abandoned."

PACIFIC STATES STEEL CORPORATION AND UNITED STEEL WORKERS OF
AMERICA, LOCAL UNION NO. 3367

Article IX, Adjustment of Grievances, Procedure C

"Grievances not appealed by the Union within the time limit of each step of the procedure shall be considered settled on the basis of the decision last made and shall not be eligible for further appeal unless it is mutually agreed otherwise. In the event Management does not conform to the time limits as stated in the grievance procedure, the grievance shall be considered settled on the basis of the claim made by the aggrieved employee or employees."

KAISER AEROSPACE & ELECTRONICS, SAN LEANDRO PLANT, AND
AMALGAMATED LOCAL NO. 76, UAW, AND INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, UAW

Section C - General Grievance Rules

4. "Any grievances not answered by the Company within the time limit described in any step of the Grievance Procedure shall be deemed to be settled according to the Union's request. Any grievance not answered or taken to the next step within the time limit described in any step of the Grievance Procedure by the Union shall be deemed to be settled according to the Company's last written disposition. The time limits for each step may be extended by mutual agreement in writing."

BAY AREA RAPID TRANSIT DISTRICT (BART) AND UNITED PUBLIC
EMPLOYEES, LOCAL 390, SEIU

60. Grievance Procedure

Step 4: . . . "The time between the steps of the procedure may be extended by mutual agreement. Failure by the employee or Union to follow the time limits, unless extended by mutual agreement, shall cause the grievance to be considered withdrawn; failure by the District to follow the time limits, unless extended by mutual agreement, shall cause the grievance to be deemed settled in favor of the employee."

PACIFIC TREE EXPERT COMPANY AND LOCAL UNION NO. 1245 OF
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Article 15, Grievance Procedure

15.4 . . . "The Company shall reply within seven (7) calendar days after the receipt, setting forth the Company's position on the grievance.

"If Company fails or refuses to comply with the time limits herein, the merits of the grievance shall be considered as admitted and the demands of the party asserting the grievance shall be granted. The seven (7) day period may be extended by mutual agreement. Amended 1-1-70."

ROHR INDUSTRIES INC, RIVERSIDE AND LOCAL 964, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Section 23, Grievance Procedure, 23.05 Step 3--Special
Committee

. . . "If the Company neglects to give its written disposition within these time limits, the grievance will be settled in favor of the Union."

AEROSTRUCTURES DIVISION, AVCO CORPORATION, NASHVILLE,
TENNESSEE, AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AERO LODGE NO. 735, AFL-CIO

Article IX, Adjustment of Grievances, Section 8. Time
Limits

"In the event the Company does not answer grievances within the time limits set forth in the Grievance Procedure, the grievance shall be considered settled on the basis of the Union's written request. Any grievance that is not instituted by the employee or referred by the Union to the next appropriate step within the time limit specified in the Grievance Procedure shall be considered settled in favor of the Company."

PACIFIC WESTERN AIRLINES AND INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

Arbitration Procedure

13. "It is understood and agreed that unless otherwise mutually agreed, (which agreement will not be unreasonably withheld), should either party exceed the time limits set out herein, the party exceeding the time limit shall concede the grievance."

COUNTY OF SANTA CLARA AND LOCAL 715, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Section 18.4 - Informal Resolution/Time Limits

"It is agreed that workers will be encouraged to act promptly through informal discussion with their immediate superior on any act, condition or circumstance which is causing worker dissatisfaction and to seek action to remove the cause of dissatisfaction before it serves as the basis for a formal grievance. Time limits may be extended or waived only by written agreement of the parties. *If either party fails to comply with the grievance time limits, the grievance shall be settled in favor of the other party.* If as a result of such action the parties are unable to reach agreement on an appropriate remedy, the matter may be referred to an arbitrator as provided below and the arbitrator shall fashion an appropriate remedy.

KEYES FIBRE COMPANY AND UNITED PAPERWORKERS INTERNATIONAL UNION
SACRAMENTO LOCAL NO. 859

Article XVIII - Adjustment of Complaints

18.01 "A complaint as used in this Agreement, shall mean a dispute involving the application or interpretation of the Agreement, or the alleged violation of any employee's rights under the Agreement.

"If any complaint is not answered, within the time limits specified at each step, said complaint will be conceded by the Company in favor of the complaining party by forfeiture.

"Grievances will not be honored by the Company or Union in those instances whereby the grievant had the opportunity to correct the error or omission causing the grievance prior to its occurrence. This applies to posted schedules where the employee has an opportunity to see the schedule prior to the time it takes effect."

ORO GRANDE PLANT RIVERSIDE CEMENT COMPANY, A DIVISION OF AMCORD, INC. AND UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, AFL-CIO, LOCAL NO. 192

Article 18 - Grievances and Arbitration

Sec. (c) "It is understood and agreed that failure to appeal to the next step or to meet within the prescribed time limits shall mean automatic forfeiture of the grievance for the party who failed to live up to the limits. However, any of the time limits outlined above may be extended if both parties involved agree to such an extension. Such an extension shall be in writing and be signed by both parties as part of the record of the grievance."

LOUISIANA-PACIFIC CORPORATION SAMOA PAPER DIVISION AND THE ASSOCIATION OF WESTERN PULP AND PAPER WORKERS, LOCAL UNION NO. 49

Section 29 - Adjustment of Grievances

Step II ". . . Within ten (10) calendar days of submission to Step II the two parties shall meet. Should the two committees fail to meet within the above ten (10) day limit, the Company shall automatically award the remedy or correction requested in the grievance to the Union, unless such failure to meet is because the Union has refused to meet with the Company, or results from mutual agreement to meet at a later date. . . ."