

Grievance Arbitration

When a complaint concerning a bargaining unit member's employment is not resolved through the negotiated grievance process, a union or agency can decide to take the case to arbitration. With arbitration, an independent third-party, referred to as the arbitrator, assesses the evidence presented by both parties outside of court and delivers a legally binding judgment. Grievance arbitration procedures may vary between unions, depending on their contracts. Usually, unions can choose to be represented at arbitration by a retained union attorney. By retaining a labor law attorney, unions can rest assured they will be represented by someone dedicated solely to protecting their rights and negotiating a settlement with their best interests in mind.

First Steps in Fighting Proposed Discipline

When an employee is confronted with a proposed disciplinary action

he or she has a number of decisions to make. At the proposal stage the employee can contact his or her union or an attorney. Once the reply is submitted and an agency decision is issued, the employee has additional choices to make. If the disciplinary action

is less than a 15-day suspension, the employee should bring the case to the union. The union can recommend that the employee file a grievance or alternatively recommend the EEO route, if discrimination is involved. If the disciplinary action

is over 14 days, the employee can opt to file a grievance, which is handled under the union's collective bargaining agreement. If a grievance is not filed, the employee can ask the union to file a MSPB appeal. In the case of a grievance, only the union can agree to have a union attorney for the employee or allow the employee to retain his or her own private attorney at the employee's expense. In the case of a MSPB appeal, the union can retain an attorney for the employee. However, unlike a grievance, employees who choose to go to the MSPB always retain the right to pursue the MSPB appeal on their own with their own privately retained attorney.

How We Can Help

The grievance arbitration lawyers at Tully Rinckey PLLC are experienced in arbitrating a variety of grievances for unions and bargaining unit members. Our Federal Labor Law practice is headed by Mark D. Roth

, the longest-serving general counsel of the American Federation of Government Employees (AFGE), the nation's largest federal and D.C. employees' union. Tully Rinckey PLLC will aggressively represent unions and bargaining unit members in arbitration or unfair labor practices, collective bargaining agreement violations and adverse actions such as suspensions or removals.

Fighting A Disciplinary Action

The employee can choose to file either an appeal with the MSPB or a grievance if the action

is a suspension over 14 days or one of a series of “adverse actions.” For discipline that is 14 days or less a grievance may be filed by employee, as the MSPB is generally not available.
The Arbitration Process

Grievance Procedures

The union and agency management attempt to resolve a grievance over a disciplinary action against a bargaining unit member.

If both parties cannot resolve the problem, the union can request arbitration.

Pre-Arbitration

The union can choose to have a union lawyer handle the grievance and represent him or her at arbitration. If the union chooses not to retain an attorney, the employee can ask to hire retained outside counsel at their own expense.

The lawyer representing the member will gather evidence to support his or her case.

The Federal Mediation and Conciliation Service (FMCS) will provide a list of available arbitrators in a geographic area.

The arbitrators on this list may be certified by the FMCS or the American Arbitration Association.

The attorneys for both parties will select an arbitrator through a process of elimination.

Arbitration Proceedings

A federal labor law attorney will present relevant evidence and examine and cross-examine witnesses.

A federal labor lawyer will challenge evidence and testimony submitted by the agency’s attorney.

A federal labor lawyer will highlight when, where and how the actions by agency management violated the terms of a collective bargaining agreement or federal labor law.

Arbitrator Decision/Settlement

A federal labor law attorney can negotiate a settlement with the agency, prior to an arbitration hearing or arbitration decision, giving the aggrieved member instead of the arbitrator an opportunity to determine what damages or corrective actions should be given or taken, if any.

An arbitrator's decision is legally binding.

Post-Arbitration

Unfavorable arbitrator decisions can be appealed to the Federal Labor Relations Authority or sometimes to the U.S. Court of Appeals Federal Circuit.

Grievances not Addressed by Arbitration

If your union's leadership decides not to file a grievance on an employee's behalf, bargaining unit members can appeal adverse action, personnel actions to the Merit System Protection Board. Tully Rinckey PLLC's union attorneys can help bargaining unit members with their MSPB appeals

.Tully Rinckey PLLC's federal sector employment and labor law attorneys are also capable of representing bargaining unit members in legal matters that might fall outside their union agreement's grievance procedures or that are handled by other federal entities, such as Hatch Act violations

and whistleblower retaliation

(Office of Special Counsel, OSC), discrimination complaints

, (Equal Employment Opportunity Commission, EEOC), and security clearance denials/revocations

(Defense Office of Hearings and Appeals, DOHA).Tully Rinckey PLLC's federal labor law attorneys can represent federal sector unions and their members in arbitration anywhere in the country. Call today to schedule a meeting with one of our grievance arbitration attorneys at 703-525-4700 or e-mail info@fedattorney.com

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