GRIEVANCE PROCEDURE

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I. INTRODUCTION

The problem of industrial disputes is as ancient as the employment relationship itself. Human nature is such that there always exists some discontent, express or implied, over working terms and conditions. Collective bargaining agreements (CBAs) are entered into to fix such terms and conditions. But these agreements can never be so encompassing and clear as to pinpoint all sources of conflict. The sheer human inability to anticipate all contingencies at the time of entering into a collective bargaining agreement is the foremost reason. Grievances, therefore, always arise. If not at all considered, or their consideration is unduly delayed, a "wave of distrust and dissatisfaction" will most likely affect all types of relationships between employers and their employees, with detrimental results to both parties. Strikes on the part of employees and lock-outs on the part of an employer may, therefore, result. Procedures for the adjustment of grievances must be adopted to minimize, if not at all possible, to eliminate production stoppages. Grievance procedures provided for in collective bargaining agreements are thus aptly considered 'lifeblood of collective bargaining relationship'[1], or the 'safety valve'[2] in industrial relations, or the 'core of collective bargaining agreement'[3], or as professor Shulman puts it, the 'heart of collective agreement.'[4]

II. GRIEVANCE PROCEDURE UNDER THE NEW LABOR CODE

Article 252 provides:

> The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment *including proposals for adjusting any grievances or questions arising under such agreements* if requested by either party, to agree to a proposal or to make any concession.

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1 ELKOURI, HOW ARBITRATION WORKS 107 (1973).

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

Article 260 provides:

> The parties to a collective bargaining *shall* include in their agreement provisions to ensure mutual observance of the terms and conditions of the agreement *and to establish a machinery for the adjustment of grievances.*

Article 261 provides:

> Except as otherwise provided in paragraph (b) of Article 267 of this Code, all disputes, grievances or matters arising from the implementation or interpretation of a collective bargaining agreement *shall* be threshed out in accordance with the grievance procedure provided for in such agreement.

Rule XVII, sec. 3, Rules of Procedure of the Bureau of Labor Relations and the Labor Relations Divisions provides:

A Collective Agreement *shall* contain the following:

> (c) Provisions establishing a grievance machinery for the settlement of all grievances or individual or interpretation dispute arising during the life of a collective agreement specifically cases relating to working conditions, interpretation or implementing of the collective agreement or alleged violations thereof.

A consideration of the above provisions discloses three important points. The first is that the above provisions for the establishment of a grievance procedure are mandatory in character. The second is that provisions establishing and outlining a grievance procedure adopted is part of an entire collective bargaining agreement. And the third is that there are two stages of the duty to bargain collectively. The first stage is "usually dramatic" and happens at least once every three years. Under Article 252, it involves negotiations between an employer and his employees to formulate an agreement by which to govern their employment relations. The second stage takes place throughout the lifetime of the agreement for it involves the interpretation and enforcement of contract provisions.[5] As it appears then, a collective bargaining agreement is simply a "framework, a structure of principles and guideposts."[6] To complete the collective bargaining relationship, the framework must necessarily be supplied with answers to myriad of queries that arise in the course of employment. Agreement provisions must be under-

[5] Alikpala, *CBA: Form, Essential Clauses, Administration and Enforcement, in* U.P. LAW CENTER, ASPECTS OF PHIL. LABOR RELATIONS LAW 37 (1969).
[6] RANDLE, COLLECTIVE BARGAINING PRINCIPLES AND PRACTICES 455 (1951).

stood and clarified and interpreted.[7] Thus, the grievance procedure is a part of the continuous process of collective bargaining.[8]

III. ENFORCEMENT OF GRIEVANCE PROCEDURE

A. *Exhaustion of Contract Remedy*

As a rule, an employee with a grievance must resort to an existing grievance procedure. And an employer may not dismiss outrightly his employees without referring the cause of the dismissal to a grievance committee established. Thus in the *Republic Savings Bank v. Court of Industrial Relations* case[9] the private respondents, employees of the Bank wrote and published a libelous letter to the Bank president demanding his resignation on the grounds of immorality, nepotism, favoritism and discrimination in the appointment and promotion of bank employees. The bank president dismissed the private respondents without referring the letter to the grievance machinery. In branding the bank president's conduct as a refusal to bargain and, therefore, constituting an unfair labor practice the Court held:

> What the bank should have done was to refer the letter-charge to the grievance committee. This was its duty, failing which it committed an unfair labor practice... For Collective bargaining does not end with the execution of an agreement. It is a continuous process. The duty to bargain imposes on the parties during the term of their agreement the mutual obligation to meet and confer promptly and expeditiously and in good faith... for the purpose of adjusting any grievance or question under such agreement, and a violation of this obligation is an unfair labor practice.
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> Instead of stifling criticism, the Bank should have allowed the respondents to air their grievances. Good faith bargaining required of the Bank an open mind and a sincere desire to negotiate over grievances. The grievance committee created in the CBA would have been an appropriate forum for negotiation. Indeed, the grievance procedure is a part of the continuous process of collective bargaining. It is intended to promote as it were, a friendly dialogue between labor and management as a means of maintaining industrial peace.

And in the case of *Woodward Iron Co. v. Ware*[10] the Court said:

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[7] *Ibid.*

[8] G.R. No. L-20303, September 27, 1967, 21 SCRA 226 (1967); United Steel Workers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 347, 4 L. Ed. 2d 1409 (1960).

[9] *Ibid.*

[10] 261 F. 2d 138 (1958).

> Grievance procedure is appropriate if an aggrieved employee challenges his suspension or discharge with the hope of reinstatement and continuance of his former employment status. In a suit for specific performance, reinstatement, protection of seniority rights, cases in which employment relationship has not terminated, primary resort to grievance procedure is logical and proper and should be a prerequisite to an employee filing suit.

Accordingly a union, on behalf of an employee, may bring suit to compel arbitration of a grievance. The *United Steelworkers of America v. American Manufacturing Co.*[11] is illustrative. There the agreement between the union and employer sets out a detailed grievance procedure with a provision for arbitration of all disputes between the parties "as to the meaning, interpretation and application of the provisions of this agreement." The agreement also reserves to the Management the power to suspend or discharge for "cause". It also contains a provision that the employer will employ and promote employees on the principle of seniority where ability and efficiency are equal.

Sparks, a union member, left his work due to an injury and, while off work, brought an action for compensation benefits on ground of partial disability. Later, the union filed a grievance which charged that Sparks was entitled to return to his job by virtue of the seniority provision of the CBA. Respondent refused arbitration on this question. Hence, suit was filed to compel arbitration. The Court said:

> The CBA calls for the submission of grievances in the categories which it describes irrespective of whether a court may deem them to be meritorious. The function of the Court is very limited when the parties have agreed to submit all questions of contract interpretation to the Arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the Arbitrator.
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> The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is a particular language in the written instrument that will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious.
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> The union claimed that the company violated a specific provision of the contract. The company took the position that it had not. There was, therefore, a dispute as to the "meaning and interpretation and application" of the CBA. Arbitration should have been ordered.

[11] 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed. 2d 1403 (1960).

In view of the foregoing decisions, the rule may thus be formulated that dismissal is premature until and unless the cause giving rise to it is submitted to a grievance committee for deliberation. And courts will compel parties to settle issues where such issues come within the province of a grievance procedure established. The rule is based on a pragmatic approach to problems and grievances that arise under a collective bargaining agreement. Cognizant of the detrimental effects of a protracted litigation of disputes, it makes possible their settlement by a "simple, expeditious and inexpensive procedure, and by persons who, generally are intimately familiar therewith."

B. *The No-Strike No-Lock-Out Clause in a Collective Bargaining Agreement*

As a recognition of the well-settled doctrine of exhaustion of remedies, the employer and the employees usually provide in their agreement that there shall be no strikes on the part of the employees, and no lock-outs on the part of the employer, as long as grievances are settled through the procedure provided for such purpose. This mutual obligation to employ the procedure is a solemn contractual obligation[12] which law and honor require to be observed.[13] To employ strike or lock-out in disregard of the procedure is to abandon the collective agreement.

Thus, in *Textile Workers Union of America v. Aleo Manufacturing Co.*[14] case, a Federal District Court issued an injunction to compel an employer to comply with the terms of an arbitration agreement, the collective bargain-agreement between the parties containing the following:

> Since this agreement provides for the orderly and amicable adjustment and settlement of any and all disputes, differences, there should be no resort to strikes by the employees nor any lock-out by the company of any employees or group of employees.

In the absence of an express no-strike, no-lockout provision in a collective bargaining agreement, is there at least an implicit obligation to exhaust a grievance procedure?

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[12] Manalang v. Artex Dev. Co., G.R. No. L-20432, October 30, 1967, 21 SCRA 568 (1967) where it was held that a CBA entered into by officers of a union and an employer gives rise to a valid enforceable contractual relations. Hence, a no-strike no lock-out clause is necessarily enforceable, it being a part and parcel of a CBA.

[13] *The No-Strike Clause, in* MATHEWS, ED., READINGS ON LABOR LAW 143 (1953).

[14] 94 F. Supp. 626 (1950) and cited in MATHEWS, *Ibid.*

Some American arbitrators recognize the existence of such an implied obligation.[15] A case in point is the *Commercial Pacific Cable Co.*[16] (11 L.A. 219) where the arbitrator, Clark Kerr, upheld an imposition of a disciplinary penalty on a group of employees "who had refused during an emergency period caused by a broken cable, to send messages over the facilities of another company, which at that time was involved in a strike." The arbitrator regarded such refusal as constituting work stoppage. He then concluded:

> While the contract here involved does not include a no-strike clause, it does have grievance machinery, including provision for an impartial chairman, which the union should have utilized rather than taking matters into its own hands.
>
> The refusal to handle this emergency work was not sanctioned by the contract nor by past practice. It constituted action outside the channels for settlement provided in the contract.

Similarly, in the case of *Waterfront Employers Association of Pacific Coast v. International Longshoremen's and Warehousemen's Union*[17] (9 L.A. 5, 11), it was

> ...firmly established... that in accepting the arbitration provisions the parties, by necessary implication, have agreed to forego economic action as a means of settling disputes arising during the term of the contract and in lieu thereof have agreed to refer all such disputes for settlement under the grievance procedure before resorting to such action.

C. *It is an Unfair Labor Practice to ignore a Grievance Procedure*

Article 247 of the Labor Code provides:

It shall be unfair labor practice for an employer

(g) To violate the duty to bargain collectively as prescribed by this Code;

(j) Any violation of a collective bargaining agreement.

As prescribed by the Labor Code, collective bargaining encompasses and includes the settlement of grievances through a grievance machinery. The settlement of grievances being a part of a bargaining process, refusal to adhere to a grievance procedure

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[15] "They feel strongly that self-help is intolerable where an orderly method of deciding disputes exists, even if the CBA did not contain a no-strike pledge."

[16] *The No-Strike Clause*, MATHEWS, *supra*, note 13 at 144.

[17] *Ibid.*, p. 145.

constitutes an unfair labor practice.[18] And even if adherence is made, any settlement must be made in good faith.

Further, assuming that grievance settlement is not a part of the bargaining process, a refusal to settle grievances, nevertheless, constitutes an unfair labor practice because it is a "violation of a collective bargaining agreement."

Similarly, a refusal by a union to refer a dispute to a grievance machinery constitutes an unfair labor practice for it is either a violation of its duty to bargain with an employer[19] or a violation of a collective bargaining agreement,[20] or both.

IV. SUCCESSFUL GRIEVANCE SETTLEMENT REQUIRES OBSERVANCE OF SOME BASIC PRINCIPLES

A. *Due Process of Law Clause; Estoppel or Waiver*

Procedural due process requires both notice and hearing. The presence of one without the other is fatal and renders an act of dismissal unjustified. Thus, in the case of *Elegance, Inc. v. Court of Industrial Relations*,[21] the Unionship provision of the CBA provides: "All present employees and workers in the bargaining unit who are not now members of the Union, must become members within 30 days after the signing of this Agreement. If any dispute arises as to whether an employee is a member of the Union, his dispute shall be disposed of as a grievance.

Complainants sent their applications within 30 days. But the Union had not received the application. After the 30-day period had elapsed, the Union demanded that the company dismiss the complainants. In the afternoon of the day of the demand, the grievance committee was convened to discuss said demand. During the meeting the company president stepped out and confronted one of the complainants about her not joining the Union. Then the Company President went back and acceeded to the Union's demand. The Court ruled:

> Said employees were obviously not given a hearing in the grievance committee. They were not present during its deliberations, as the company president had to step out to confront one complainant about her not joining the Union. The other respondents had not been similarly questioned. Had they been afforded the opportunity to be heard, it stands to reason that they would have apprised petitioner of the fact that they had applied for membership by means of a

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[18] Republic Savings Bank v. Court of Industrial Relations, *supra*, note 8.
[19] LABOR CODE, Art. 248, par. (c).
[20] LABOR CODE, Art. 248, par. (g).
[21] April 20, 1971.

registered letter before the expiration of the 30-day period. Hence, the precipitate manner in which the dismissal was carried out was not justified.

Suppose that the grievance procedure fixes a five-day limit for the appeal of grievances from a department manager's ruling, and that a Union waited seven days to elapse on the company president's assurance that the company will not invoke the time limit, should a grievance thereafter presented be considered barred?

Stern literalists would deny the grievance without examining its merits, if the company lawyer subsequently invokes prescription to preclude the grievance from reaching, for example, the appeal stage. However, the doctrine of waiver or estoppel, based on the principles of justice, would demand that the invocation should be ignored.[22]

B. *Statutory Duty to Bargain in Good Faith*

If approached with the proper frame of mind, the grievance procedure serves the interests of an employer, a union and the employees. Through a grievance procedure properly conducted, management is enabled to discover sore spots in industrial operations. Again, through it a union is provided with a channel by which it can communicate its sentiments against management. And lastly, through it a union performs an invaluable service to its members which may increase the latter's loyalty to the former.

To realize the above three-fold purposes, the Labor Code fixes the parties' (a grievance settlement) right frame of minds by requiring them to bargain in good faith.[23] And since grievance settlement is a part of the continuous process of bargaining, the parties are likewise bound to settle disputes in good faith.

There is no immutable standard by which to gauge good or bad faith bargaining. Courts look into the peculiar facts of the cases to determine its presence or absence. Thus, in the case of *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[24] the Court found that there is bad faith on the part of an employer where his course of conduct, taken as a whole, is incompatible with the expeditious resolution of disputes between the parties. Good faith is not shown where, after the parties had agreed to meet, the management sent no representatives to the meeting, and the company's managing director left for the

[22] Cox, *Reflections upon Labor Arbitration*, in SELECTED ESSAYS REPRINTED FROM THE HARVARD LAW REVIEW 162-163 (1964).

[23] LABOR CODE, Art. 252.

[24] G.R. Nos. L-30632-33, April 11, 1972, 44 SCRA 350, 369 (1972).

province before the meeting. According to Werne,[25] good faith requires that the parties deal with each other with open and fair minds and sincerely attempt to overcome differences existing between them.

C. *Is a System of Precedent in Grievance Settlement Desirable?*

A system of precedent in grievance settlement refers to the practice of accumulating successive decisions, relative to disputed matters, within an industrial enterprise. The parties to industrial disputes may desire to establish a form of stare decisis for their own guidance for the following purposes:

1. To avoid the difficulty of rethinking every recuring case from scratch.

2. To secure uniformity of action among officers of management of co-ordinate authority.

3. To assure adherence to the policies established by employees' superiors.

4. To reduce or contain the possibilities of arbitrary action or discretion.[26]

But this form of precedent is only possible where a collective bargaining agreement provides for a formal method of presenting grievances and of handing down decisions. Any practice of accumulating and preserving decisions, however, must be subject to the generally recognized principle that the same be not contrary to law, morals, public policy, etc.

V. HOW A GRIEVANCE PROCEDURE OPERATES

THE INITIAL STEP:

In the actual operation of a grievance procedure, problems may be encountered as to 1) what constitutes a grievance, 2) who may present a grievance, 3) How may a grievance be presented and 4) When should a grievance be presented.

A. *What Constitutes a Grievance?*

A collective bargaining agreement usually provides what matters should be considered as coming within the category of "grievance." The provision may take the form of a broad and general description. For instance, it may define a grievance

[25] Cited in FERNANDEZ, LABOR RELATIONS LAW 254 (1974).
[26] Shulman, *Reason, Contract, and Law*, in SELECTED ESSAYS REPRINTED FROM THE HARVARD LAW REVIEW 145 (1964).

as 'any dissatisfaction or misunderstanding (real or imagined) of an employee, arising from his job or his relationship with his employer that he thinks is wrong or unfair.'[27] Under this definition, practically any sentiment, grief, regret or censure arising from an employer-employee relationship is a disputable matter. The provision may also be in the form of an enumeration of acts agreed upon by the parties as constituting "grievance." Under this latter method of definition, what is not included in the enumeration is usually deemed excluded.[28] As above seen, the definition of a grievance is subject to delimitation by the parties themselves.

The rights of either an employer or employees to present grievances may be unduly curtailed if they are to be bound by an enumeration of what precisely constitutes a disputable matter. Hence, a definition of what can be brought up as a grievance must not:

1. be used to stifle legitimate dissatisfaction for the parties can hardly foresee all possibilities that may affect a grievance definition;

2. 'negate the cathartic value of grievances.' Simply explained, employees must be afforded an opportunity to ease themselves. Given a chance to be heard by management, the employees may decide to forego their dissatisfactions;

3. purposely close the channel of communication, thereby defeating the very essence of a grievance procedure.[29]

Likewise, the definition should not be broad enough as to be construed as encouraging the presentation of petty or trivial grievances. This type of grievances may be settled through some other way, not through the grievance machinery. Otherwise, the machinery may be overburdened to the prejudice of meritorious disputes.

B. *Who May Present A Grievance?*

Article 255 of the Labor Code provides:

> The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the *exclusive* representative of the employees in such unit for the purpose of collective bargaining. *However, an individual employee shall have the right at any time to present grievances to their employer.*

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[27] Buenviaje, *Grievance Machinery and Arbitration in Collective Bargaining Agreement*, in U.P. LAW CENTER ASPECTS OF LABOR RELATIONS LAW 42-43 (1972).

[28] *Inclusio unius est exclusio alterius.*

[29] Buenviaje, *op. cit.*, pp. 45-46.

Under the above provision, two persons appear to have the right to present a grievance, namely, 1) a union as the exclusive *representative of the employees* and 2) the individual employees themselves. The right of the former to present and negotiate can hardly be doubted. For a union means "any association of employees which exists, in whole or in part, for the purposes of collective bargaining, or of dealing with employers concerning terms and conditions of employment."[30] If it exists for the purpose of collective bargaining, and the term collective bargaining embraces, as prescribed under the Labor Code, the settlement or negotiation of disputes, it logically follows that a union may present grievances. For the greater right to bargain and settle disputes includes the lesser right to present. On the other hand, the latter's right to present is conferred by the above express provision.

A cursory reading of the above provision of law is liable to engender a confusion. For it may be interpreted that the grant to an individual employee of the right to present a grievance is a disregard of the mandate to bargain collectively. A literal approach to the problem, however, discloses that the right conceded is merely the right to present, and not the right to individually bargain and negotiate. Under this kind of interpretation, the individual employee makes the initial move. But once a grievance is presented, the union's participation seems indispensable in the process of negotiation and settlement of grievances.

May an individual employee *present and negotiate* a grievance?

Article 255 was patterned from a similar provision of the Industrial Peace Act; and the latter provision of the latter Act was, in turn, patterned from section 9 (a) of the United States Wagner Act. In the absence of an interpretation by our courts of Article 255, resort must be made to U.S. decisions interpreting section 9 (a) of the Wagner Act.[31]

The U.S. Court of Circuit Appeals had occasion to interpret the above provision in the *Hughes Tool Co. v. National Labor Retions Board.*[32] There it said:

> Sec. 9 (a) does not give the representative exclusive right to handle them unless they really involve a bargaining unit, or an

[30] LABOR CODE, Art. 211 (e).

[31] Sec. 9 (a) enunciates the rule that the majority union is to be the exclusive representative of all the employees in an appropriate bargaining unit. Also, it contains a provision "that any individual employee or group of employees shall have the right at any time to present their grievances to their employer."

[32] 147 F. 2d 69 (1945).

> interpretation of the bargain. On the contrary, it expressly gives each employee or group of employees the right to present their own grievances to the employer. The purpose is to preserve in each employee, as a right, this direct approach to the employer to secure full consideration of his case. The trial examiner seems to have considered that the word 'present' means no more than to call attention to the grievance, and that all prosecution of it must be by representative. We understand the Board disagree with this interpretation, and hold that individuals and groups may, under the Statute, fully prosecute their grievances through all stages and appeals. The Board is right. No one would think a case in Court was 'presented' by merely filing it. A presentation of it would include the taking of evidence, the making of argument and all things necessary to its full understanding.

Thus, the rule may be laid down that an employee may present and negotiate a grievance provided it does not "involve a bargaining unit, or an interpretation of a bargain." But it seems that a union may be present during the settlement since it has the right to ascertain that any adjustment is not in violation of a collective bargaining agreement.

Further, a union may not claim the sole right to negotiate and settle a grievance peculiar to an employee to the exclusion of the latter on the ground that it is the exclusive bargaining representative. The reason is that the term "exclusive" is construed under the Wagner Act "to mean that the employer must treat with the representative to the exclusion of all others claiming bargaining agents."[33] Therefore, a union cannot assert a right to settle a grievance to the exclusion of an aggrieved employee who acts in his own behalf and who does not claim to be a bargaining agent.

It is therefore settled that where a majority union stands aside unwilling to press or settle a grievance of an employee who is a member of a minority rival union, the employee may present and negotiate his grievance with his employer. His minority union cannot negotiate for him as it is an unfair labor practice for an employer to negotiate with a minority union.[34] Again under the aforesaid circumstance, another protection for an individual employee is to enforce and implement the duty of fair representation imposed on a union certified as the exclusive bargaining representative of the employees. As stated by the United States Supreme Court

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[33] FRANCISCO, LABOR LAWS IN THE PHILIPPINES 717 (1967).

[34] Hughes Tool Co. v. N.L.R.B., supra, note 32; The original draft of the Wagner Act stated "individual employee...shall have the right to present grievances to their employer, through representatives of their own choosing." After discussions on the dangers of allowing grievance settlement by a minority union, the words through representatives of their own choosing was deleted. Then came the Huges Tool Co. case decision. (REYNARD, READINGS ON LABOR LAW 248-249 (1945).

in *Steele v. Louisville and Nashville R.R. Co.*,[35] and subsequently reiterated in *Huges Tool Co. v. N.L.R.B.*,[36] the reason is:

> When the Steelworkers Union accepted certification as the bargaining representative for the group, it accepted a trust. It became bound to represent, equally and in good faith, the interest of the whole group.

The above decision is simply a recognition that a union has no power to destroy the rights of an employee under an agreement.[37]

C. *How May a Grievance Be Presented?*

A grievance may be presented formally or informally. A formal procedure requires that a grievance be submitted in writing. On the other hand, an informal one admits of an oral presentation of a grievance. Some oppositions are made to the formal manner of presentation on grounds that 1) it unduly discourage illiterate employees from submitting complaints; 2) it instills fear in the employees' minds in that written records may be used against them; 3) it gives opportunity to stall settlement of disputes; and 4) grievance cases are often lost because of ill-drafting of complaints. On the other hand, some preferences are expressed in formalizing the presentation of a grievance. Reasons given are: 1) It reduces the number of frivolous grievances since an employee harboring a fictitious grievance usually experiences difficulty in writing them; 2) It furnishes a record of previous settlement; and 3) It reduces disagreements over facts.[38]

In some firms where the relationship between the employer and employees is characterized by mutual confidence, the parties prefer an oral approach to grievance presentation.[39] The most obvious advantage of this approach is that grievances are most likely settled with dispatch.

D. *When Should a Grievance Be Presented?*

The performance of the mutual obligation to meet and convene promptly and expeditiously has two phases: 1) to promptly and expeditiously meet and convene to negotiate an agreement and 2) to promptly and expeditiously settle disputes. And to speedily settle disputes or grievances, they must be immediately presented. It

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[35] 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 (1946).
[36] *Supra*, note 32.
[37] Eligin & J. & E. R. Co. v. Burley, 325 U.S. 711, 65 S.Ct. 1282, 90 L.Ed. 928 (1945.)
[38] RANDLE, *op. cit.*, note 6 at 481-482.
[39] *Ibid.*

is no surprise, therefore, that collective bargaining agreements contain provisions prescribing time limits within which to present presented is necessary for the purpose of imparting some order in a grievances. But while the time within which grievances shall be grievance procedure's operation, the time limit should not be utilized to evade meritorious grievances.[40] Necessary adjustments must also be made.

THE INTERMEDIATE STEP:

A. *How a Grievance May Be Processed.*

A grievance procedure may be classified according to the principle of procedure employed into 1) legalistic or mechanistic or 2) clinical. The procedure is of the former type when the parties attempt to 'win the case' irrespective of its merits. Under this type, a grievance "is tried rather than solved." In the parties' (to a grievance) desire to outwit each other through sheer technicalities, a grievance may simply be sidestepped, with the result that a grievant is still aggrieved. On the other hand, the procedure is of the latter type when the parties honestly attempt to find the source of friction, and accordingly prescribe a remedy. The end result of achieving a harmonious relationship is what matters, and not strict adherence to the technicalities prescribed.[41] Most, if not all, of present grievance procedures are of the latter type since they are intended to promote human relations in industrial enterprises.

B. *How Long Should It Take to Settle a Grievance?*

Promptness is one of the most important aspects of grievance settlement. But the time element undoubtedly varies with the nature and extent of the business of an enterprise, the seriousness of the grievance, and the number of stages of a procedure. The mechanics of time limitation is provided for in a collective agreement. For example, it may be provided that if no answer is given by the representatives of management to a complaint within a prescribed period, the complaint is thereby ipso facto elevated to the next higher stage. Or the procedure may provide that a demand by a union relative to a grievance is granted upon the management's failure to timely reply. This latter provision is, however, apt to lead to a hasty and ill-considered action[42] because a grievance is not thereby considered on its merits.

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[40] Buenviaje, *op. cit.*, pp. 47-48.
[41] RANDLE, *op. cit.*, note 6 at 459-460.
[42] *Ibid.*, pp. 485-486.

Suppose that a union referred a grievance for settlement on time, and the grievance procedure established provides that the employer must reply within ten days from receipt of the complaint, and the employer failed to timely reply. Is said failure to timely reply fatal on the part of the employer?

The Supreme Court in *National Union of Restaurant Workers (PTUC) v. Court of Industrial Relations*[43] ruled that:

> The condition under sec. 14, Republic Act No. 875, requiring the employer to reply within 10 days from receipt of a written notice making demands, is merely procedural, and as such its non-compliance cannot be deemed to be an unfair labor practice.

Although section 14, R.A. No. 875 is concerned with the procedure for collective bargaining (as opposed to a grievance procedure), still the said ruling may also be applied to a similar provision under a grievance procedure established. The reason is that like the former provision, the latter may be argued as procedural in character, it being merely intended to give an additional element of order to a grievance procedure.[44]

THE APPEAL STAGE:

A grievance procedure may be characterized as a system of appeals. Its structure consists of those stages involved in securing the settlement of grievances. A grievance can never be expected to be settled at the initial stage. And a grievance not so settled assumes a more serious and delicate character. Consideration of it then passes to the next higher stages until the same is settled. The idea is to have higher and different representatives of the employees and of an employer to express new and different points of view, for higher officials tend to have broader views essential to easier settlement. After a grievance reaches the last stage and still receives an unwelcome response, it then passes to the realm of arbitration.

VI. CONCLUSION

As previously stated, a grievance procedure has been, and still is, regarded as the "heart of collective agreement." But the "heart" must be placed in a body proper for its functions. Representatives, therefore, of both employees and employer composing a grievance committee must be willing to settle in a "cooperative and constructive spirit." This calls for a joint meeting in an attempt to honestly

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[43] G.R. No. L-20044, April 30, 1964, 10 SCRA 843 (1964).
[44] ELKOURI, *op. cit., supra*, note 1 at 147.

consider and settle disputes with the aim in view of later eliminating conditions that engender grievances.

To effectuate friendly negotiations, the Labor Code has installed a safeguard by imposing upon the parties the duty to settle disputes in good faith. And good faith, as Teller has aptly said, is not satisfied by a sheer readiness to engage in settlement. "It must mean a settlement with a bona fide intent to arrive at a solution."[45] A grievance procedure, therefore, cannot succeed until the parties to a settlement are convinced that their special interests will be honestly and fully considered. In the final analysis, the success of a grievance procedure depends much on the parties themselves.

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[45] Perez, *Certain Aspects of Labor Relations Procedure*, in U.P. LAW CENTER, ASPECTS OF PHIL. LABOR RELATIONS LAW 65 (1973).