

NTEU, Dale Yeilding

Subject: FW: Grievance Entire Step B Waiver - Steward Observing Not Permitted to Speak
Attachments: GrievanceAdecisionStewardObservation.pdf

From: NTEU, Dale Yeilding
Sent: Monday, March 15, 2010 2:33 PM
To: Bolduc, Angela
Cc: Budnick, John; Robinson, Jay; Buchholz, Jeri; McDermott, James
Subject: Grievance - Steward Observing Not Permitted to Speak

NTEU is filing a grievance on behalf of Alex Murray (NTEU Steward) who was inhibited in performing representational duties as a steward in training when the Agency's Human Resource Labor Relations Specialist (John Budnic) would not permit him to speak during a Step A grievance meeting. Mr. Murray was assigned as the Union representative for an employee regarding a Time & Attendance case in a training capacity since his steward appointment was just over a month ago. This inappropriate agency verbal restriction is in violation of article 46 of the Collective Bargaining Agreement and restricts a Union representative in performance of a representational duty which is a protected activity. Thus NTEU claims the agency has committed an Unfair Labor Practice.

CBA, Article 46.7, Representation states: "One additional steward will be permitted to attend grievance meetings, as an observer, as part of steward training."

Webster defines observe: "to watch, to arrive at a conclusion after study, to say or mention casually, to take notice or remark"

5 USC 7116: Unfair labor practices: (a) For the purpose of this chapter, it shall be an unfair labor practice for an agency - (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;... (8) to otherwise fail or refuse to comply with any provision of this chapter.

5 USC 7102: Employees' Rights: Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right - (1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government,

The Union will present at the Step A grievance meeting facts associated with how a steward in training is restricted from their complete ability to understand the grievance proceeding, by not being able to speak during the observation. To properly observe, you must have the ability to use all five senses including the ability to ask questions or provide feedback as to whether the steward in training properly understood a concept presented by the employee, union or management. Certain portions of the Union's presentation may actually be presented by the steward in training in a learning capacity. As both the Union steward and steward in training are authorized official time, who the Union uses to present a concept at a grievance meeting is a unilateral decision by NTEU as is the assignment of stewards to grievance cases.

As a remedy, the Union requests the agency to permit stewards in training to speak at Step A grievance meetings and any other remedy and Arbitrator deems appropriate. Contact Dale Yeilding for the time and place for the Step A grievance meeting.

---Dale Yeilding

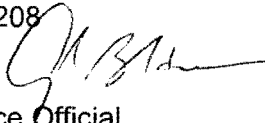
National Treasury Employees Union



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 23, 2010

MEMORANDUM TO: Dale Yeilding, President
NTEU Chapter 208

FROM: Angela Bolduc 
Step A Grievance Official

SUBJECT: STEP A GRIEVANCE DECISION

This is in response to your Step A grievance filed on behalf of Alex Murray on March 15, 2010. On March 17, 2010, you waived the Step A meeting on behalf of Mr. Murray. You allege that the NRC violated the parties' Collective Bargaining Agreement (CBA), specifically Article 46.7, when Mr. Murray was not allowed to speak at a grievance meeting he was attending as an observer under Article 46.7.

Article 46.7 provides:

46.7 Representation (Employee)

An employee filing a grievance under this Article is entitled to representation by the Union or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present at all meetings between the NRC and the employee regarding the grievance. For such meetings the Union shall be given reasonable advance notice. In all grievance meetings where the Union serves as the representative of the grievant, the time of the meeting shall be mutually arranged. A maximum of one Union representative will be allowed to utilize official time to attend the initial step (Step A) meeting unless the parties mutually agree otherwise. Two representatives shall be authorized official time to attend the final step (Step B) meeting of any grievance unless the parties mutually agree otherwise. **One additional steward will be permitted to attend grievance meetings, as an observer, as part of steward training.** More than one additional steward, under these circumstances, may be permitted on an exception basis. (Emphasis supplied.)

There are many definitions of "observer" provided in a multitude of dictionaries. You provide one such definition in your grievance. In light of so many definitions, it is useful to look at the context in which the term is used. Once that is done in this case, we believe that the most appropriate definition is that found in the Merriam-Webster Dictionary, to wit: "a representative sent to observe but not participate officially in an activity." Article 46.7 differentiates between union officials attending grievance meetings as representatives and as observers. The observer is not there to represent the employee, but rather to watch and learn. Indeed, the observer's role is specifically restricted to union officials undergoing steward training and that is the sole basis for allowing an observer to be present. Accordingly, the "observer" is there to observe and not participate.

This interpretation of Article 46.7 is bolstered by Article 52.5.5 which provides:

52.5.5 Notwithstanding the limits set forth in 52.5.1 – 52.5.4, two representatives will be allowed to attend the final step (Step B) meeting of any grievance or any arbitration hearing. In addition, an additional steward will be permitted to attend a grievance meeting or oral reply, as an observer, as part of steward training when the additional steward has served as a steward for less than a year or the grievance involves a novel issue.

This provision clearly supports that an observer attends a grievance meeting merely to watch and learn: not participate.

This understanding of Article 46.7 is attested to by the members of the management negotiating team, who all recall substantial discussion of this matter and a clear understanding by the parties that the observer would not participate in the meeting.

For the reasons stated above, I must deny your grievance.

If you are not satisfied with this decision, you may appeal this decision to the Step B Official within ten workdays after the date you receive it. The Step B official will be Jeri Buchholz, Associate Director for HR Operations and Policy. As an alternative to Step B, you may request mediation. If you wish to request mediation, and the NRC agrees, the services of the Federal Mediation and Conciliation Service, or any other mutually agreed upon dispute resolution service, will be requested. Mediation will not exceed two sessions. The costs of the mediation services will be shared equally by NTEU and NRC. This mediation phase is similar to settlement discussions. Issues raised during the mediation phase will not be used as evidence or in any other manner in any arbitration hearing. If no settlement is reached during the mediation sessions, the NTEU may invoke arbitration on behalf of the grievant, in accordance with the Collective Bargaining Agreement. If arbitration is not timely invoked, the grievance is terminated. The timeframe for invoking arbitration will begin on the first workday after the final mediation session took place.