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## **GRIEVANCE PROCESS IN UNIONISED COMPANIES: TRADE UNIONS PERSPECTIVE**

**Mohd Nazir Mohd Adi<sup>1</sup>, Fazian Hashim<sup>2</sup>, Nur Aniza Quantaniah Jusoh<sup>3</sup>**

**Faculty of Technology Management, Business and Entrepreneurship  
Universiti Tun Hussein Onn Malaysia  
86400 Parit Raja Batu Pahat Johor, Malaysia  
nazir@uthm.edu.my**

### **ABSTRACT**

There were voluminous researches done to look upon the nature of grievance system practised in the workplace. But, little was seen to discuss qualitatively in terms of its processes and the characteristics of a grievance system itself. The objective of this paper is to delve into the grievance process particularly in term of its initial filing process and the characteristics of its effectiveness as perceived by 8 leaders who are the chairmen/presidents of trade unions in Johore. A qualitative study was employed with cross case analysis was undertaken in order to analyse the data. Many participants perceived that no formality is needed in the initial grievance filing. Some antecedents of an effective grievance system were confirmed except for a mediator/middleman who is seemed to be unnecessary during the grievance process.

**Keywords:** Grievance process, grievance system, grievance filing, characteristics of an effective grievance system

### **Introduction**

Grievance system or some say grievance procedures is one of the alternative methods in resolving the dispute at workplace. To date, there is no such law, regulation or even directives being issued by the Malaysian authority in the form of guidelines, code of conduct or alike in implementing grievance system. Thus, grievance process may vary from one organisation to the other. But all in all, the crux of this system is to disentangle the dispute between the employer and employee. There are myriads of scholarly definitions of grievance and grievance system. In unionized organization context, grievance is defined as an allegation by a party to a collective agreement of a violation of the collective agreement (Doyle, 1999.). Further, he depicts grievance procedures as the process specified in the collective agreement for the resolution of disputes arising during the life of the agreement. This definition is undoubtedly applicable for unionized organization which has undergone a collective agreement in which grievance system has been neatly laid down as one of the methods in resolving the dispute.

### **Grievance Filing and Process**

Grievance system may involve several stages depending upon the will and policy of an organization. Some literatures argued one of the crucial moments of grievance process is that when a grievant worker expresses his dissatisfaction and files his grievance. Davy, Stewart, & Anderson (1992) notes that the contracts requiring written grievances at the early stage of the grievance procedure introduce a level of formalization that is counterproductive to early resolution. Earlier than that, Sayles & Strauss (1967) argued that a formal unwritten grievances are more flexible and are more conducive than problem-solving.

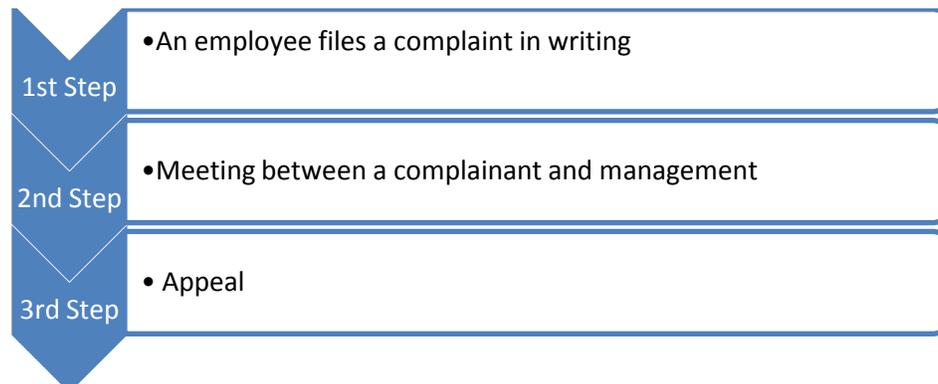
A number of literatures have discussed extensively on the topic of grievance processes. Those studies covered different angles and perspectives. For instance, an empirical study on the measures of grievance effectiveness (Lewin, 1984), values in the grievance process (Haraway, 2002). Further, several attempts had also been made in order to establish a theoretical framework in measuring the grievance process including the importance of Procedural due process and substantive due process as elements of effective a grievance system (Peterson, 1994), speedy settlement and satisfaction (Budd & Colvin, 2008). Since the review of (Bemmel, 1996) until present day that there is no “complete theory” of grievance processing has been developed through testable hypotheses.

### **Model of Grievance Procedures issued by ACAS**

In Britain, The Advisory, Conciliation and Arbitration Service (Acas) has issued a code of practice of disciplinary and grievance procedures which comes into effect in 2004. This Code of Practice provides practical guidance to employers, workers and their representatives on:

- i) The statutory requirements relating to disciplinary and grievance issues;
- ii) What constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- iii) Producing and using disciplinary and grievance procedures; and
- iv) A worker’s right to bring a companion to grievance and disciplinary hearings.  
(ACAS,2004)

The code though not compulsory to be implemented or adhered, it is highly considerable and referred by the employment tribunal before reaching a decision. There are 3 main steps or stages that complainant has to go through in the grievance system based on this code of practice. Those stages are succinctly illustrated as follows;



**Figure 1 : Steps in Grievance Process**

### **Characteristics of an Effective Grievance System**

#### *Workers Are Aware Towards the Procedures*

One of the cardinal principles of effective complaints and grievance management is that workers must be aware of and have unencumbered access to well-defined procedures that are easy to understand and use (Nurse & Devonish, 2007). Workers in an organisation may come from various backgrounds. Thus, it is the duty for the employer to ensure that the systems are concise yet understandable by all workers. Besides, the access of such information of grievance management can be articulated through a collective agreement. On top of that, the employer is responsible in explaining company rules through its employee handbooks, bulletin board notices and many other forms of bringing rules to the attention of employees (Hunter & Kleiner, 2004).

#### *Speedy Resolution and Satisfaction*

As Budd & Colvin (2008) noted that an efficient dispute resolution is one which conserves scarce resources especially time and money. Systems that are slow and take a long time to produce a resolution are inefficient; systems with shorter timeframes which produce relatively quick resolution are efficient. As far as the issue of time is concerned, it is still arguable as to the ideal timeline for the whole dispute to be resolved. It may vary from one organisation to the other depending on the facts of the case. To be wise, the administrator or employer has to set a maximum days within which the decision is finally made (McCabe, 1998).

In the United States, some researches were done particularly in grievance mediation and arbitration in terms of the time taken in settling the dispute. One of those researches done by Golberg (2004) found that the average time it took to complete an interest-based grievance mediation was 43.5 days which was faster than grievance arbitration which had an average completion time of 473 days. It is however, the time frame might be relevant in the state concerned.

‘Satisfaction’ measures normally concerned with the procedural fairness perceived by the grievance (Walker & Hamilton, 2011). Meaning to say, the grievant worker is not only concerned with how fast the grievance can be resolved but also how satisfied he is with the grievance process especially the way he is treated.

*Cheaper /No Cost At All*

The cost to be borne by the parties involved should be minimised and perhaps to some extent it has no cost to be incurred by them at all. As Budd & Colvin (2008) noted that the dispute resolution systems which are so costly are inefficient. Inevitably, the cost can stem from various features of dispute resolution systems such as the need for highly-paid experts or the involvement of numerous participants. Meanwhile, Camille Monahan (2008) investigated on grievance mediation pilot program that is underutilised despite its numerous overwhelming successes which are faster yet cheaper. Some elements or barriers inhibiting the practice of grievance mediation among others it cannot satisfy a variety of unions’ organisational membership and identity needs. Thus, they are prone to go for the grievance arbitration. The identity needs mean the elements of a union’s identity such as a rights-based advocacy organisation, the inheritor of a historical legacy of violent repression of labor rights and a modern organisation which needs to maintain membership and activist levels to succeed as an organisation.

*Be Accompanied/Representative*

A grievant worker may be overawed or feel intimidated by some hearings, and the accompanying person can help the individual to make all the necessary points. Besides, a right to accompaniment is also intended to secure the welfare of the worker especially a less educated worker from being oppressed, depressed or any other conducts which undermine his right. Antcliff & Saundry (2009) commented that the right to accompaniment may impact upon grievance procedures in number of ways; Firstly, It could ensure that the vulnerable worker can get full support and advice they need. From this perspective, the workplaces are constrained from making any unduly harsh decision. Secondly, by providing employees representative with a procedural role, channels of communication are opened to parties to resolve the dispute without recourse to disciplinary action or dismissal.

*Independent Mediator/Arbitrator*

*Nemo judex in causa sua* is a Latin phrase which literally means no one should be a judge in their own cause. This maxim is based on the concept of natural justice which basically inhibits a person to judge a case in which he has an interest. In grievance process, it is still arguable whether an employer can be a middle man to resolve the dispute raised by an employee. If the above maxim to be applied strictly, the employer has to look for an external party to resolve the dispute in the workplace.

In the United State, alternative dispute resolution (ADR) is practised as alternative to the court system. The ADR system may involve the so called a mediator and an arbitrator. The former takes place when two parties to a dispute to seek its resolution through the less formal method of mediation by a neutral third-party and the ultimate acceptance or rejection of the proposed remedy lies with the disputing parties. Whereas, the latter elucidates as "Grievance arbitration is a system created for collective bargaining relationships that provides the parties with

a procedure for final and binding resolution of their disputes that arise over the interpretation, administration, application or alleged violation of the terms and conditions of employment contained in the collective agreement during its term."

### **Aims of the Study**

The purpose of this article was to explore with a sample of trade union leaders their perceptions of the grievance process practised in their workplaces. The researcher believed that by knowing grievance process in depth, some related variables like the characteristics of effective grievance system would be well understood. In seeking to understand this phenomenon, the study addresses two main research questions

- (a) How is grievance filing practised in the unionized companies in term of its formalization?
- (b) What do participants perceive about the characteristics of an effective grievance system?

### **Method**

#### *Research Design*

A case study approach was employed in this study. According to Yin (2003) one of the reasons that a case study design should be considered is when the focus of the study is to answer "how" and "why" questions. He further defines a case study as "empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident". In this study, multiple-case studies were selected by comparing the views of the various participants from different trade unions.

#### *Sample*

A purposeful sampling procedure was employed in this study as subjects were selected due to some characteristics. As Patton (1990) notes that a purposeful sampling method is typical especially in a qualitative research. A list of trade unions including their detailed addresses was obtained from the Department of Trade Unions of Johore. A convenience sampling strategy was used to select the participants from the list given. Merriam (1998) notes that convenience sampling is just what is implied by the term-you select a sample based on time, money, location, availability of sites or respondents and so on. In this study, there were only 8 participants agreed to be interviewed. Whereas the rest were either reluctant or cannot be reached at all.

#### *Interview*

In this study, the interview was selected as the primary method for data collection. The researcher believed that the interview was felt to be the most appropriate tool especially when conducting a case study. Further, it gives the researcher an insight understanding regarding the phenomenon studied. As Merriam (1998) notes the interview is a fundamental tool in qualitative research. There were 8 participants representing trade unions were interviewed from which 7 were through telephone and 1 was met in person. The interviews were last about an hour. Before the interview began, informal questions were raised up in order to make the interviewer and interviewee knew each other. Semi-structured questions were prepared along with the research questions as guidance. On top of

that, matrices were constructed to illustrate the relationship between the research and interview questions.

### *Data Analysis*

The data was analysed by using 3 concurrent flows as introduced by Miles and Huberman (1994) : data reduction, data display and conclusion drawing/verification. The meta- matrix chart was used by entering the data from the interview. The participants and the variables which were anticipated from the literature were also entered and sorted out accordingly. The objective of creating the meta-matrix chart was for making contrasts and comparisons of views of the participants especially regarding the characteristics of effective grievance system.

### *Findings and discussion*

Following is a discussion of the findings extracted from the interviews that had been gone through several stages of data analyses. The findings were meant to portray a broad range of experiences of the respondents and thus give the living experience for the reader. Different respondents might have different perspectives on the topic asked. Further, some illustrative quotations taken from the interview were embedded in order to support and explain each finding. Following is a further discussion of the findings.

Finding 1: The majority (5 of 8 [65.5%]) of the respondents indicated that they did not have a formal procedure of grievance filing. A formal procedure means that the parties both employer and employee does not have a single system of how to initiate the grievance like a written form of complain to be filled in by the grievant. Whereas, (3 of 8 [37.5%]) respondents commented that a formal procedure had to be adhered by the grievant when filing the grievant including filling in the formal grievant form to be handed in to the management. Based on the participants' descriptions, majority of them approached to the trade unions officers and made their complaint verbally without any formal written document provided. It was also found that some collective agreements did not expressly state a formal procedure of grievant filing. The participants expressed their comment on the following ways;

We do not need such form...what is more important as a member of a trade union, he or she must consult to the committee of the trade union first. (Madam Zah, Chairman of a trade union in Pontian)

As far as the collective agreement is concerned, it did not require us either to fill in the form or undergo such procedure...actually it is our tradition when a member is not satisfied for a certain thing whatsoever...just inform us, we are ready to help. (Mr. Fadlan, Chairman of a trade union in Johore Bahru)

Prescisely, our collective agreement does spell out the right of a member to file his or her grievance, but...unfortunately there is no mention such procedure at all.. (Madam Won, Chairman of a trade union in Pontian)

On the other hand, those participants who claimed that such procedures of grievant filing have to be adhered expressed their comments on the following ways;

well...we have a quite systematic grievance system. For example, our collective agreement requires a grievant to file his grievance by filling in a particular form...indeed our trade union does provide such form for our member to make a complaint towards the management.(Mr. Huzir, Chairman of a trade union in Batu Pahat)

The implementation of grievance system is initiated when a grievant fills in grievant form...within a period of 7 working days, the issue complained is discussed internally by the committee of the trade union. Normally it will be forwarded to the supervisor of the worker concerned. For the record, a trivial thing can be resolved when the chairman meets the supervisor (Mr. Yatim, Chairman of a trade union in Johore Bahru)

**Finding 2:** All 8 participants (100%) concurred that meeting and discussion with management were ultimately needed. Without doubt, all participants agreed that they need to meet and discuss with the management. However, through their experiences, they perceive different ways on how the meeting and discussion should be conducted effectively and efficiently. For instance, (2 of 8) participants perceived that in order the grievance system to work effectively the grievant worker shall be accompanied during the meeting. The participants expressed their comment on the following ways;

We always believe that the aggrieved worker must be accompanied or present in the meeting, otherwise the meeting may not be effective....he has to explain his dissatisfaction, especially in the case of disciplinary action. We as representatives of the trade union must back him up....(Huzir, Chairman of a trade union in Batu Pahat)

In my opinion, the complainant should be present at the time of the discussion is made between the trade union and the management...well in a way the complainant can clarify the issue. Moreover, it may cut the time off rather than we to explain the case. (Mr. Muri, Chairman of trade union in Johore Bahru)

In order a grievance system to be more efficient, one of the participants perceived that the grievance should be resolved in a timely fashion and with a minimum cost incurred. Most of the participants did not state the ideal timeline of a grievance should be resolved. Further, no direct cost was incurred during the discussion or meeting was held. With regard to time spending, they expressed their opinion as follows;

Actually for us it depends on the case...I mean it is a case by case basis..some cases might be resolved within a short period of time ....trivial issues like miscalculating overtime rate can be resolved easily but issues which affect collective agreement may take a longer time to settle as it is involved several stages...so we have to be sort of tolerance for that...(Mr. Muri, Chairman of a trade union in Johore Bahru)

With regard to cost, one of the participants expressed the view that;

So far we did not experience such cost incurred in our grievance system...the only cost that normally borne by the management was the refreshment after the discussion that is all.. (Mr. Fadlan, Chairman of a trade union in Johore Bahru)

### ***Non Formality in Grievance initial Filing***

As noted earlier, the grievance initial filing is literally the first step for a grievant worker to express his grievance. Based on the interview conducted, the majority of the participants perceived that there is no such formality needed at this stage. Such formality like filling in a form or writing a formal letter seemed to be unnecessary. In other words, the grievant may just verbally complain to his immediate supervisor or representative of the trade union or directly to the management. This would give more flexibility of the system and make the grievant conducive to the situation. Several literatures which are in parallel to this notion is by (Sayles and Strauss 1967) and (Davy et al., 1992). When asked why they do not have such formality, one of the participants responded “*Our collective agreement does not spell out so*” (Mdm Zah, Chairman of a trade union of a trade union in Pontian). The other respondent viewed “*I am not sure whether our collective agreement requires to do so*”(Mr. Azizan, Chairman of a trade union in Johore).

The researcher found that there were only three participants who reported that their collective agreement clearly spelt out that the grievance must be in writing by filling in a form provided by the management. It was later discovered that these 3 participants were from branches of the trade union of well known government link companies (GLCs). Invariably, this kind of trade union has a national headquarter and branches in each district of Malaysia. The rest of the participants who have no formality in initial filing of grievance are literally from in- house trade unions.

### **Characteristics of Grievance System**

#### *Being present and accompaniment/representative*

As noted earlier, several participants perceived that for a grievance system to be effective, the grievant worker himself must attend to the meeting. The rationale is that the management and the trade union have the first hand information over the issue. Further, the grievant must be accompanied either by the officer of the trade union or its representative. The right to be accompanied and to be represented is the rights guaranteed under the natural justice for every individual not only in the court of law but also in workplace. Thus the introduction of statutory right to be accompanied by a trade union representative would encourage the dispute resolution (Antcliff & Saundry, 2009).

#### *Timeliness*

Majority of participants perceived that they can tolerate with the time spent for the grievance to be resolved contingent on type of case or issue. If the case is trivial, it needs to be solved within a reasonable and acceptable timeline. But, if it the case involved something which is serious for instance affecting the collective agreement like salary, working conditions or alike, the participant seemed to be tolerant in a way it takes a longer time to be resolved. It should be borne in mind that though speedy settlement is considered one of the characteristics of effective grievance system, the management should not leave out the procedural fairness along the system. This is confirmed by the previous studies by (Walker & Hamilton, 2011), (Budd & Colvin, 2008), (Hoffmann, 2005) (Gamage, 2007). As one of the legal maxim says “*Justice delayed is justice denied*” which must be read together with two other notable maxims i.e “*nemo judex in causa sua*” (no one can judge for his own cause) and “*audi alteram partem*” (the right to a fair hearing).

### *Cost*

All participants perceived that there was no apparent cost incurred for a grievance system to be workable. Some indirect cost like travelling cost was borne by the trade union and the light refreshment after the meeting was usually borne by the management. The researcher found that most of the literatures noted that cost to be incurred was due to the payment of professional fees for a third party who acts as a middle man/mediator to resolve the conflict. As a matter of fact, this is not being practised by the participants and they are reluctant to appoint an external party on the ground that he or she has no idea about the background of the issue and also the scenario of the company.

### **Conclusion**

In a nutshell, this study has revealed and confirmed several antecedents of an effective grievance system. At the same time, it also dissents that the presence of an independent party or middle man can make the grievance system works effectively. The grievance system practiced in a big company is seemed to be more systematic in a way that it is clearly stated in the collective agreement and more importantly the trade unions are not only aware about it but also have the insight on its contents and objects as compared to in-house trade unions. The system itself should not be seen as a one-dimensional in nature. Meaning to say, one characteristic of effective grievance system would complement to other characteristics. In order for the grievance system works effectively, the government may take initiative by issuing a code of practice in grievance system which can be applicable to all industries in Malaysia. The code might be made flexible in term of its procedures yet conceives several substantial elements of the best practice of grievance system.

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