

Using Past Practice Grievances To Stop Unwanted Changes

If the company is changing a past practice without negotiating and people don't like the change, you may be able to use your grievance procedure to stop them. But not everything that has been done before meets the definition of past practice. And sometimes the company is allowed to change a real past practice without negotiating. How do you know what to do?

What is a past practice?

Here's one definition which most arbitrators would agree with: A past practice is a consistent response to a recurring situation over a substantial period of time which has been accepted by both the company and the union.

Here's what that means:

- A "consistent response": This is what the company always does in this situation.
- A "recurring situation": The situation has happened more than once or twice.
- A "substantial period of time": How long this is depends on how old the workplace is, and how long the situation which led to the past practice has existed.
- "Has been accepted": Neither company nor union has challenged the practice.

But, there is no valid "past practice" grievance if:

1. Your contract has a zipper clause. Some contracts include language defining the written contract as the total, complete agreement between the union and the company, replacing all previous agreements and understandings. This is sometimes called a zipper clause, and it means that if it isn't spelled out in the contract, the company doesn't have to do it.
2. Your contract says differently. If your contract contains specific language that contradicts the past practice, you don't have a grievance. If the contract says the company has to give four hours' notice of overtime, but they've always given 24 hours' notice, they can go to four hours if they want to.
3. There's no reason anymore for the past practice. If the reason for the practice has changed or no longer exists, there's no valid past practice to grieve.