

Grievance and arbitration

Grievance (and, subsequently, arbitration) is the legal recourse unions have to settle disputes, when discussion and politics have failed. It is important to understand that it is not the member, nor the delegate, nor the Sector Director who decides whether a grievance will be filed. That decision lies with the advisors and, ultimately, with the President, who take into account all the details of the case.

This is an important point, since, not only do you, as member, delegate or SD, not have the right to file the grievance—the grievance is not even yours. A grievance is always the property of the union.

For that reason, in dealing with members you should never make a commitment to file a grievance on their behalf, since that commitment could come back at you when a study of the file indicates that grievance is not justified. Here, as in other cases, it is extremely dangerous to create false expectations with a member. Not only could he or she conclude from conversation with you that grievance is a “fait accompli”, he could pass the information on to colleagues in the same situation. You’d then find yourself with a fine kettle of fish on your hands.

Similarly, it is up to AENQ to decide to refer a grievance to arbitration and thus to request a judgement in a case. Here, again, you should never make a commitment to a member that his or her case will be heard by an arbitrator.

Not only do we have limited slots to have grievances heard in arbitration, but we are now, since 2005, subject to the “loser pays” system. That means that if we go to arbitration with a grievance and the arbitrator rules against us, AENQ has to assume all the costs. As all hearings (with rare exceptions) take place in the North, those costs can be substantial. We therefore have the responsibility to send to arbitration only grievances that possess “winning conditions.”

For these reasons, you should be very careful when you talk about grievance and arbitration with a member. We recommend that you say the case will be evaluated by AENQ (advisors and the President) and a decision will be taken after.

To avoid any confusion, the advisors now send letters with this information to any member concerned. An example appears on the following page.