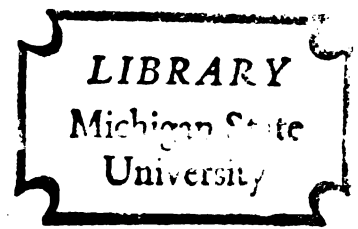


DEVELOPING A MODEL POLICE COMPLAINT
PROCEDURE

Thesis for the Degree of M. S.
MICHIGAN STATE UNIVERSITY
HERBERT K. WOLBERT
1967

THESIS



DEVELOPING A MODEL
POLICE COMPLAINT PROCEDURE

By

Herbert K. Wolbert

AN ABSTRACT OF A THESIS


Submitted to
Michigan State University
in partial fulfillment of the requirements
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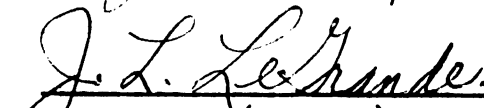
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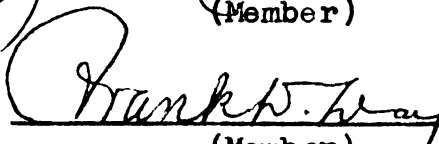
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ABSTRACT

DEVELOPING A MODEL POLICE COMPLAINT PROCEDURE

By Herbert K. Wolbert

The problem dealt with in this thesis is that of developing a police complaint procedure. The wide variety of procedures and written regulations pertaining to police complaint procedures presently in effect point to a need for additional work in this area.

The method employed in the development of the model presented in the conclusion of the thesis is the individual study of complaint procedures in other fields. A review of the literature in these fields was combined with interviews of individuals who are engaged in active work in the field.

The fields studied are the labor management grievance procedures, civil service complaint processes, the operation of the military inspector-general system, and, the ombudsman. The labor management grievance system was selected since its procedures are the result of continued negotiations in an adversarial atmosphere, and, as a result, should represent

Herbert K. Wolbert

an acceptable compromise system rather than an extreme. Civil service is of interest because of its obvious relationships with government interests and methods, and, the relationship of police with government. The inspector-general is reviewed as a somewhat unique system within an authoritarian structure similar to the quasi-military operations of the police. The amount of current interest in the ombudsman concept led to the inclusion of this method of complaint processing.

A pragmatic evaluation of these systems in the light of the special needs of a police complaint procedure, resulted in the model presented. The model obviously requires further testing and evaluation, however, it is felt that this presentation provides an important perspective for such further analysis and evaluation.

DEVELOPING A MODEL
POLICE COMPLAINT PROCEDURE

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Herbert K. Wolbert

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Submitted to
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CHAPTER I

THE PROBLEM

I. INTRODUCTION

The growth of cities, mass transportation problems, the population "explosion", rapid development of technology, the "war on poverty", rising crime rates, and a myriad of other symptoms of change in our societal environment, have indicated a need for continuing evaluation of our institutional structures. Federal, state, and local government have given formal, if indirect, recognition to the "existential anxiety"¹ which pervades much of the contemporary scene. This growing concern over values enabling a satisfying, fulfilling and meaningful life for members of our society is exemplified by its emphasis on direct contacts between government and the people.

The growth of health, welfare, and, educational organizations in the federal government is but one indication of the increased need for promotion of individual welfare and well-being. The greatly increased emphasis on individual rights and freedoms by our courts presents another aspect of this situation. The increase in mass

¹ James C. Coleman, Abnormal Psychology and Modern Life. (Chicago: Scott, Foresman & Co., 1964) pp.160-161.

demonstrations in public places, in schools, at state houses and city halls provides further illustration of the need for improvement in communications between the people and their government.

The implications of this social evolution (if not revolution) for police activities are amply conveyed by the publicity attached to the actions of law enforcement agencies in countering mass demonstrations. The police have been criticized copiously for their actions, not only in quelling disturbances, but also for their role in contributing to the causes of the disturbances. The publicity attending the disturbances in Watts, Harlem, Berkeley, Cleveland, Chicago and numerous other sites of unrest give ample illustration of views held by the public in general and news media in particular of police actions in this area. Previously accepted police tactics and investigative techniques have been subjected to criticism by the highest court of the land. This criticism has been attended by a degree of publicity which has made the names of some of the defendants, eg Miranda, Escobedo, a part and parcel of the vocabulary of most Americans.

The rapid growth and expansion of the civil rights movement in the United States has assisted immeasurably in creating a vastly improved understanding by Americans of their individual rights in a free society. Organizations

such as the American Civil Liberties Union and the National Association for the Advancement of Colored People have dedicated a major share of their efforts to establishing legal precedents and obtaining court rulings which clearly stipulate the rights of the individual in his relationship with government and governmental agencies.

II. IMPORTANCE OF THE STUDY

Against the background of increased awareness of the rights of the individual in a free society, the police have been frequently described as enemies of social justice and individual liberty. Accusations of police brutality, ethnic slurs, harrassment, and unlawful arrest have become comparatively commonplace. Some internal investigations by police departments have revealed police participating in burglary rings, accepting bribes, practicing extortion, and, operating innumerable other illegal agencies and organizations. The expected result has been an increase in complaints against police organizations, law enforcement agencies, and individual policemen.

Efforts by law enforcement agencies and local government to meet and stem the tide of complaints by members of the public have been varied and subjected to considerable criticism, discussion, and, change. Attempts to provide internal improvement in police agencies and the quality of

service rendered by them have been undertaken by numerous law enforcement groups and individual departments. The need for self-improvement seems to have won considerable support.

III. STATEMENT OF THE PROBLEM

The facet of the problem facing police administrators which is explored in this thesis is that of providing a suitable media for receiving complaints from the general public, processing and investigating them, and, making an appropriate disposition. Closely allied to this problem is the method employed for receiving complaints and grievances from members of the law enforcement agency. The purpose of this investigation is to provide a basis for establishing a model grievance and complaint procedure for law enforcement agencies. The concept of the procedure envisioned is one which will permit use of the machinery for disposition of both public and internal complaints in such a manner so as to contribute to the improvement of the agency and its personnel.

Methodology. The technique utilized in arriving at the model described in the concluding chapter is an examination and comparison of the grievance and complaint techniques utilized by organized labor in its negotiations

with management; grievance procedures in civil service systems; the military inspector-general concept; and, the ombudsman. The thesis is based on a review of the literature, personal interview techniques, and, pragmatic evaluation and comparison of the data.

The instrumentalities reviewed have the benefit of considerable experience in the field of complaint disposition. The labor/management and civil service systems have been subjected to continuous evaluation and change, and, represent the result of continuing analysis, negotiation and adjustment.

The literature in these fields is more plentiful than that pertaining to police review procedures, and, provides a wealth of experience not yet documented in the police field. An adjudication of WHO is right or wrong, rather than WHAT, prevails in most of the departmental regulations screened prior to this investigation. This process invariably requires lengthy formalities, with accompanying loss of time, money and effort to the participants. The need to search elsewhere for a solution is therefore apparent.

Limitations. The construction of a model procedure is only a beginning in the process of evolving a system which will yield pragmatic results. Seemingly unassailable logic frequently falters in actual application. The model presented herein is based on logical development of experience in other fields and must be subjected to additional testing and

analysis in establishing its validity, or lack of it.

IV. ORGANIZATION OF THE REMAINDER OF THE THESIS

The remainder of the thesis consists of five chapters.

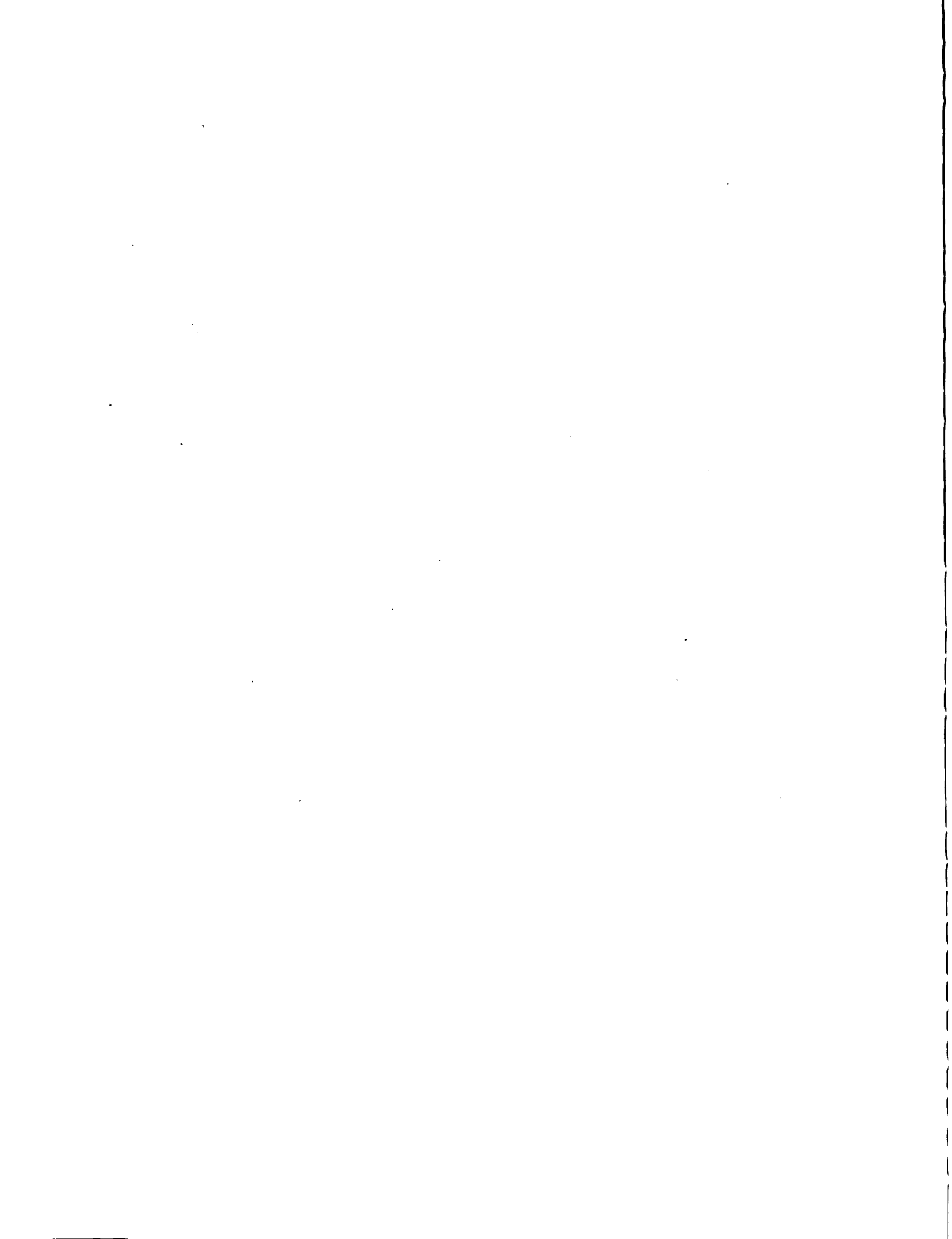
Chapter II is a study of the labor management grievance process, and, the characteristics of that system.

Chapter III reviews the functioning of civil service grievance processes at the federal, state, and, local levels. A summary of its characteristics concludes the chapter.

Chapter IV presents a review of the military inspector-general, and, the ombudsman, with emphasis on the similarities and differences of these offices.

Chapter V compares the systems reviewed in Chapters II, III, and IV. The principles underlying the operations of each of the systems are presented in a brief taxonomy.

Chapter VI develops and presents the conclusions of the thesis in the form of a model police complaint procedure, and, points to the need for further research.



CHAPTER II

LABOR GRIEVANCE AND COMPLAINT PROCEDURE

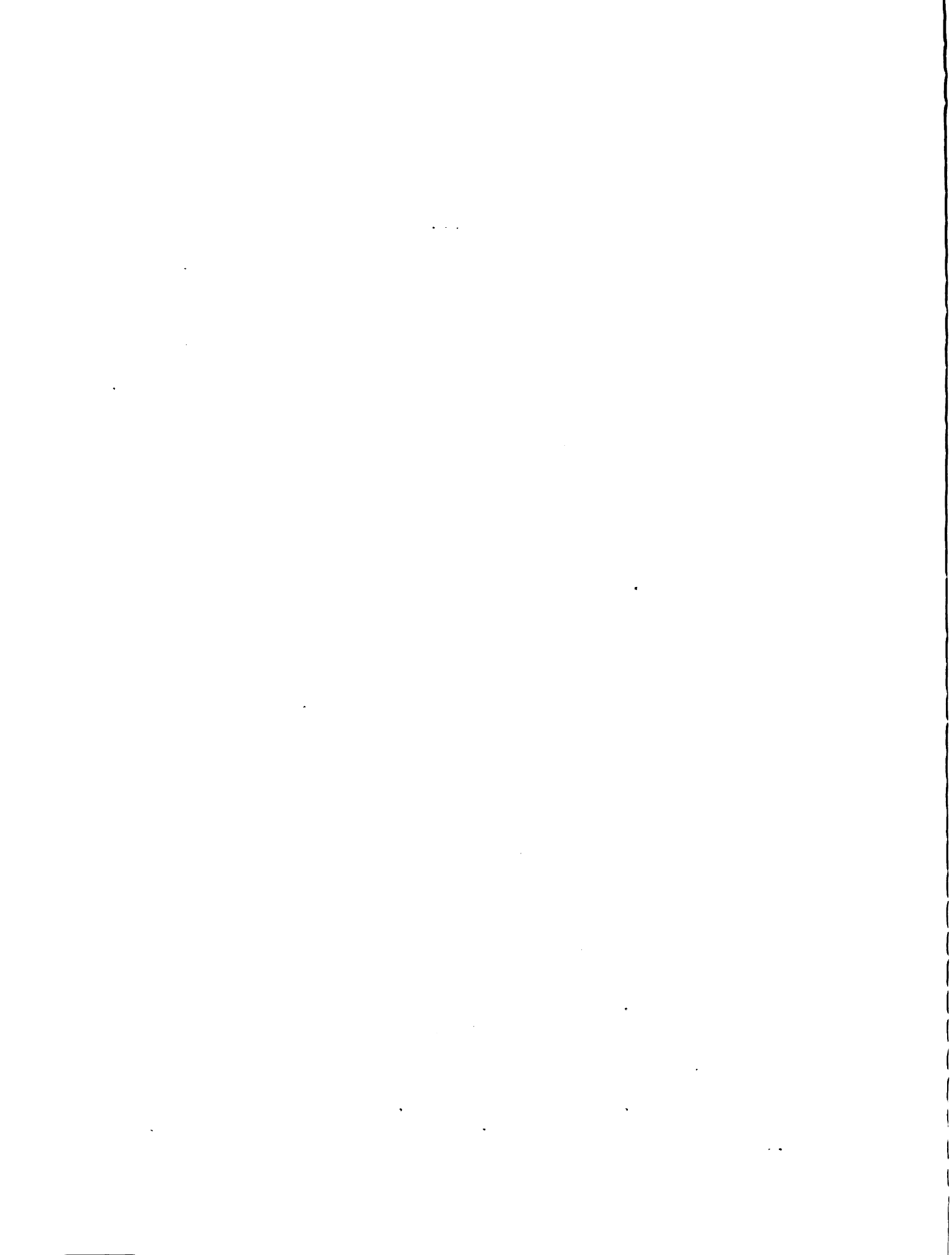
"The grievance procedure, . . . , is a social invention of the greatest importance for our democratic society."¹ The application of this invention to the practical problems of labor-management relations requires considerable variation of procedural rules from organization to organization. A survey of the field nevertheless indicates a high degree of uniformity in the conceptualization of the steps of the grievance procedure in effect in the United States labor organization, and, in its agreements with management representatives.

Crane and Hoffman's discussion of the objectives of grievance procedures² provides a starting point for this necessarily brief investigation of the area. These objectives can be paraphrased into the following points:

- 1) to provide orderly methods for bringing complaints and grievances to the surface,
- 2) to provide simple but authoritative routes for disposition of complaints and problems,
- 3) to fix definite methods for everyday administration

¹ William F. Whyte in the Grievance Process, Proceedings of a Conference March 23-24, 1956, Labor and Industrial Relations Center, Kellogg Center, Michigan State University.

² Bertram R. Crane and Roger M. Hoffman, Successful Handling of Labor Grievances. (New York: Central Book Co., Inc., 1956) pp. 2-3.



4) to fix means for compliance with laws and agreements,

5) to provide a tool for maintenance and development of safe and healthful working conditions,

6) to provide strength to the entire bargaining unit,

7) to enhance the productiveness and effectiveness of the employer, and,

8) to help establish basic rules for work, over a period of time.

Questions of definition plague the investigator at the onset. The grievance procedure is defined by the same authors¹ as "a carefully planned device, jointly used by management and labor, to maintain the industrial peace.... It is an indication of the need for reducing employee unrest." This definition appears somewhat idealistic in its reference to joint use by management and labor. In the few instances where management is afforded the use of the grievance machinery established, its only point of access is at the union-management level of meeting. The definition of grievances and complaints presents a question requiring early settlement. Some authors attempt to distinguish between a grievance and a complaint. The variances presented are without exception artificially contrived and for

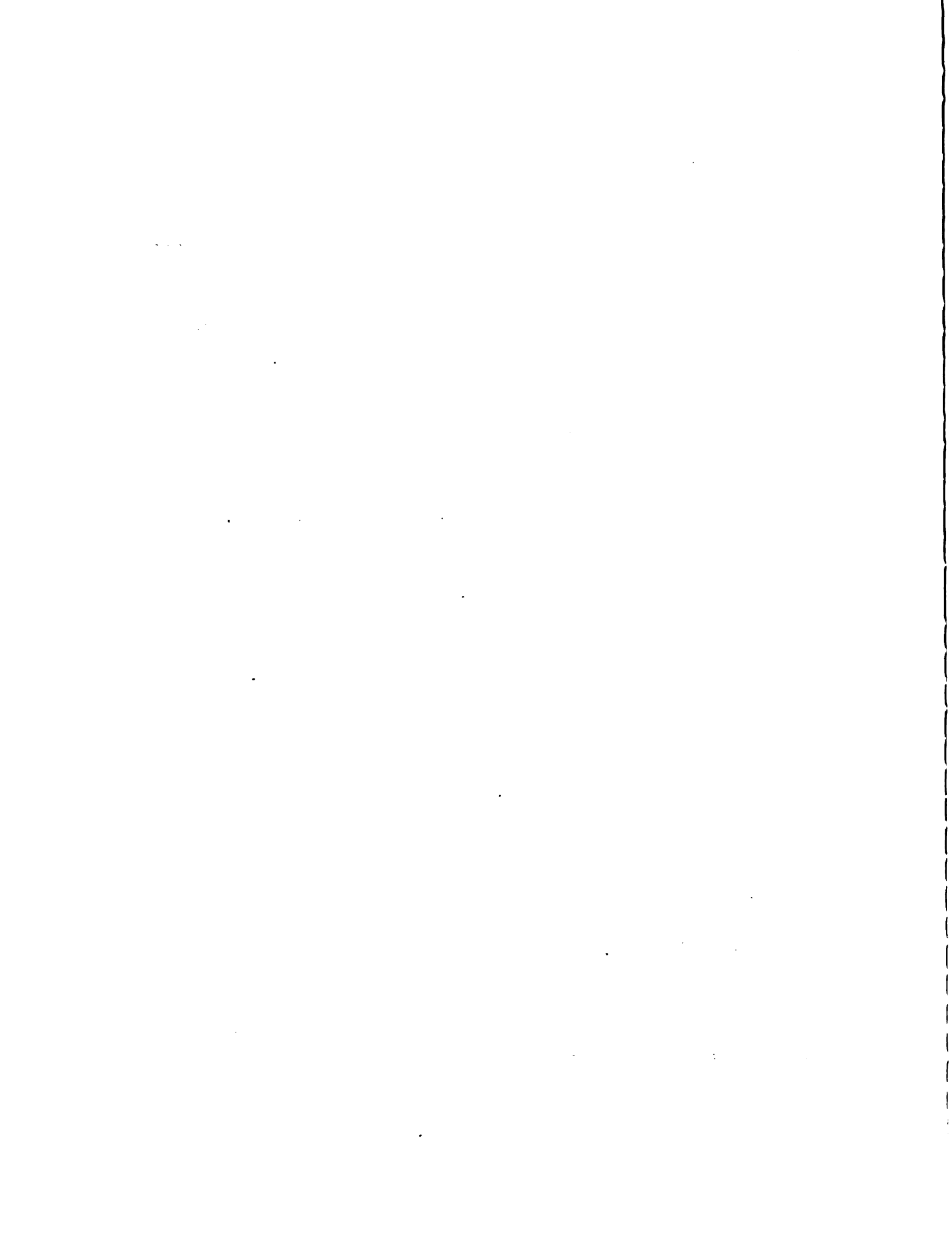
¹ Crane and Hoffman, Op.Cit. p.1.

purposes of this discussion the terms will be used interchangeably. The following definition of a grievance illustrates the point of interchangeability and will be used in the subsequent discussion: "A formal complaint... over an employee's, union's or employer's allegation, that a feature of either a collective bargaining contract, company policy, or agreement has been violated."¹

The steps normally associated with presentation of grievances by workers follow patterns similar to those included in the agreement between the General Motors Corporation and the UAW-AFL-CIO of October 5, 1964.² The initial step consists of notifying the shop steward of the nature of the complaint. The shop steward is an employee who has been elected by his fellow workers to represent them in their dealings with management. The shop steward at General Motors Corporation plants is replaced by a committeeman who usually represents two hundred and fifty employees. Another peculiarity of the General Motors agreement is that the employee is encouraged to take his complaint to the foreman first, then notify the committeeman if the complaint is not satisfactorily adjusted. If no satisfactory adjustment is made

¹ Society for the Advancement of Management: Glossary of Personnel Management and Industrial Relations Terms (New York, 1959) p.18.

² Agreement between General Motors Corporation and the UAW-AFL-CIO (Detroit: Allied Printers Trade Council) October 5, 1964, effective, November 10, 1964.



by the foreman, the complaint must then be put in writing, presented to the committeeman, and then brought before a Shop Committee meeting with local management. Failing agreement at this level, the next step of the process provides for presentation of the grievance to the Corporation and International Union on appeal. The final resort is to present the complaint to an impartial umpire for decision. The process envisioned then is a four step procedure, first, presentation of complaint to the foreman, second, presentation in writing to the shop committee, third, discussion between Corporation and International Union representatives, and, fourth, presentation to an impartial umpire (arbitrator). The number of steps used in the process vary from place to place and appear to depend primarily on the structure of the plant and its union. The starting and ending points of the process are almost invariably the same - the complaint is presented initially either to a shop steward or plant foreman by the complainant, and subsequently processed through the hierarchy of plant-union organizations until finally, if still unresolved, the complaint is submitted to an impartial arbitrator. Crane and Hoffman take pains to point out that each succeeding step in the grievance procedure is greater in terms of authority than the preceding step.¹

¹ Crane and Hoffman, Op.Cit. pp.47-63.

There is widespread agreement that grievance procedures should be as uncomplicated as possible. Authorities assert that there should be a minimum of formality consistent with providing a clearly outlined procedure.¹ Consistent with this view is union insistence that complaints should be resolved at the lowest level possible, ie shop steward or foreman, to achieve optimum results.² The rationale for this emphasis lies in the fact that at the foreman/steward level there is none of the lack of understanding which is inherent in conveying grievances by records alone (in many agreements records alone provide the basis for action beyond the initial step of the procedure). The general theme is one of settling problems at the lowest level possible on a "man to man" basis. The advantages of such settlements in terms of time, money and effort are obvious.

The emphasis on uncomplicated settlements without lack of understanding has caused considerable discussion of the merits of putting complaints under the system into writing as opposed to handling them on an oral complaint basis. A detailed discussion of this question is contained in Crane and Hoffman's Successful Handling of Labor Grievances. The basis for arguments against written complaints

¹ International Labour Conference, Examination of Grievances and Communications within the Undertaking Report VII Vol. 1-2 (Geneva, Switzerland: La Tribune de Geneve) 1965. p.17.

² Ken Bannon in The Grievance Process, Op. Cit. pp.20-21.

may be briefly summarized in the following points;¹

- 1) some people have difficulty in reducing their views to writing,
- 2) oral grievance processing expedites handling and lessens possibility of delay,
- 3) in small organizations a written procedure would serve no purpose since there is frequent contact between personnel,
- 4) there is fear of future discrimination where a signed writing is required,
- 5) not every complaint justifies the use of written procedures,
- 6) there is a greater possibility for conciliation and willingness for settlement when complaints are not in writing.

An equally compelling list of reasons supporting written complaints can also be extracted from this discussion:

- 1) written procedures tend to preclude unimportant or unfounded complaints,
- 2) such procedure reduces disagreements over the facts in dispute,
- 3) they provide a written record for reference and for use in establishing precedents,

¹ Crane and Hoffman, Op. Cit. pp. 65-69.

4) possession of a record is valuable in future negotiations,

5) written records save time at higher level of multi-step procedures,

6) written records lessen possibility of conflicting decisions,

7) they decrease the possibility of decisions by unauthorized personnel,

8) written documents confine disputants to the record,

9) they assist in preventing private "off the record" agreements by lower echelons of representation, and,

10) there is a need for records for labor relations purposes in larger organizations.

The usual method of presentation is a two-step affair which has been alluded to earlier, ie the complaint is made orally at the worker-foreman/steward level and put into writing if there is no agreement at that level. The subsequent writing is then referred to higher echelons for resolution.

Procedures vary in the method of transmittal of the writing and also in whether or not the writing is accompanied by oral testimony at the higher echelons of the system. Both union and management representatives have in several

instances conveyed their strong feelings that written records alone tend to reduce understanding of the basic problems presented in a grievance. Union views in this area have already been alluded to in the discussion of employee-foreman/steward relations.¹ Mr. Edward L. Cushman, Labor Relations Representative of American Motors, is quite insistent in stating that the grievance procedure "should and must go beyond (written grievance procedure) to achieve a real understanding."²

Time is another factor which receives considerable attention in the literature on labor relations, and, is included in the majority of contracts cited by authors in this field. Crane and Hoffman point out that "many employees prefer a denial of a grievance to weeks of waiting for a decision."³ Agreements are therefore usually quite precise in stipulating specific periods of time within which each step of the grievance procedure must be accomplished. Common agreements stipulate one week or less, thirty day periods are not infrequent, and, as much as sixty days may be allowed by some contracts.⁴ The local

¹ Ken Bannon in the Grievance Process Op. Cit. pp. 20-21. (Mr. Bannon was Director of the Ford United Auto Workers at the time of the conference.)

² Edward L. Cushman in the Grievance Process, Op. Cit. pp. 18-19.

³ Crane and Hoffman, Op. Cit. p. 76.

⁴ U.S. Dept. of Labor, Bureau of Labor Statistics, "Grievance Procedure in Union Agreements" in Monthly Labor Review, July, 1951.

agreement between General Motors Corporation and the UAW-AFL-CIO stipulates a fifteen day maximum period wherein local management must reply to written grievances. The time period commences from the date of the written grievance. Appeals to the Corporation representatives and International Union directors must be resolved within thirty days from presentation although provisions for waiver of this time period are provided for. No specific time limitations are placed on the functions of the umpire (arbitrator), although a requirement that appeals to umpires must be submitted within twenty-one days of the completion of appeal action is cited in the contract. Failure to request action by an umpire within the twenty-one day limitation is construed as an indication that the previous action is final.

A general frame-work of the grievance procedure in labor management relations has been drawn in the preceding text. The remainder of the chapter will be devoted to a more detailed study of the individual steps of the grievance procedure, and, the personnel and agencies involved at each level of the process.

INITIATING PROCESS

The first step of the process is by far the simplest and most straightforward. It consists of a person to person contact between the aggrieved employee and the foreman or

shop steward. The variant is introduced by the level of representation of the union in the shop. In shops where a shop steward is designated by employees to act on their behalf with a foreman, the initial point of contact is in the rendering of a verbal complaint to the shop steward by the employee. The shop steward in turn makes an oral representation to the foreman regarding the grievance which has been reported to him, and, solicits appropriate action by the foreman. Where no shop steward is designated, the employee simply takes his complaint directly to the foreman and requests correction of the grievance. The following possibilities stem from this initial presentation:

- 1) the foreman (or steward) may make a finding that the employee's complaint is unfounded and take no further action, or,

- 2) the foreman (or shop steward) may recognize the complaint as valid and take corrective action (if such action is within the scope of his authority).

If agreement on the corrective action is reached, or the finding that the complaint is unfounded is acceptable to the employee, no need for further action exists, and in most cases no further action is taken. There may foreseeably be circumstances under which a foreman may be required by plant management to make a written record and report of the complaint and the action taken, although these would

seem to be comparatively infrequent.

Lacking such agreement on either the corrective action or the finding of unfounded complaint, or, if the foreman lacks the authority to take necessary action, the grievance is then prepared for submission to the next higher echelon of union-management representation. This preparation normally consists of reduction of the grievance to writing in sufficient copies to provide both management and union channels with basic information on which to proceed. The entire process to this point has been conducted orally and it is quite obvious that solutions to grievances arrived at in this manner can normally be expeditiously and economically achieved. The key individual to arriving at an adequate solution at this level of procedure is obviously the foreman.

The selection and training of foremen by management can therefore be visualized as an important factor in the successful handling of grievances at this level, and, in the reduction of the numbers of grievances presented to higher echelons for decisions. Considerable emphasis is placed on the training, selection and authority of foremen in various texts dealing with grievance procedures.

An illustration of the types of criteria utilized by some large firms in selecting foremen is well conveyed

by the example of the Owens-Illinois Glass Company of Toledo, Ohio. The following specifications are used in the initial selection process:

- 1) candidate must have at least five years of department service,
- 2) must be married,
- 3) not over 35 years of age,
- 4) have completed military obligation,
- 5) at least a high school graduate,
- 6) must be a former union or club officer, and,
- 7) must achieve acceptable scores on adaptability and personality tests.

Subsequent to selection, the candidate is given extended training in the operations of the department in which he is best qualified.

Crane and Hoffman¹ spend considerable effort in their text in outlining the proper delegation of authority and responsibility to the foreman by the company. Authority is cited as one of the basic requirements for creating the ability to take positive corrective action, and, the authors recommend the following powers, based on their analysis of business practices:

- 1) authority to hire - the rationale presented here is that a foreman will be more likely to persist in

¹ Crane and Hoffman, Op.Cit. pp.201-205.

efforts to train personnel of his own selection. This personal attention to the employee is viewed as a factor in reducing grievance cases among new employees. It should be noted that exceptions are called for when the personnel manager has established specific techniques for hiring personnel of specific qualifications, and, where unskilled labor is hired "on sight".

2) power to recommend discharge - this power should not be construed to indicate a "carte blanche" but rather the authority to build up a sufficient case against an employee to allow discharge without opposition by union representation, eg by giving warnings to employees in the presence of union representatives, etc.

3) authority to seek assistance - the practice of seeking, and, having a right to expect assistance from personnel staff members as well as other appropriate representatives of management in maintaining harmonious relations with employees.

- 4) authority to take certain personnel actions;
- a) approve short temporary absences on employee request,
 - b) assignment of employees to work projects,
 - c) arrange distribution of work load,
 - d) arrange maintenance of equipment and supplies,
 - e) determine the quality of work performed.

5) right to make recommendations - foremen should have the right and responsibility for making recommendations regarding need for additional help, changes in wage rates, promotions, suspensions, inter-departmental transfers, and, changes in production methods.

6) authority to change his own decisions - the prestige and acknowledgement of fallibility on the part of the foreman should strengthen relations with employees.

Considerable emphasis is placed on the qualifications for union representatives in other texts reviewed during this investigation. The Report of the International Labour Conference on the Examination of Grievances and Communications within the Undertaking¹ discusses this area in some detail. The areas of expertise mentioned correspond to a considerable degree with those cited for the foreman in the preceding discussion.

INITIATION OF FORMAL ACTION

A model grievance procedure cited in the Report of the International Labour Conference² presents a two step procedure for the second step in grievance processing. In essence this model calls for an oral presentation of the grievance

¹ Op.Cit. Part I.

² Loc.Cit.

to the department head (local management in the case of the General Motors Agreement with the UAW-AFL-CIO) by the aggrieved employee. The department head must reply within three days, and, if the reply is unsatisfactory, the grievance must then be put into writing and submitted to local management and its grievance committee. Few agreements in the United States provide for oral presentation to management by the employee. Typically the complaint is reduced to writing immediately after failure of correction (or satisfaction) at step one, and submitted to local management and its grievance machinery.

The parties to this step of the grievance machinery are normally selected members of the union, eg "Shop Committee", and designated representatives of local management. A typical structure is the Shop Committee/Management arrangement at Lansing plants of the General Motors Corporation.¹ The Shop Committee consists of four elected committeemen. These representatives are elected by the employees in biennial elections. Two additional committeemen are selected from the elected district committeemen available in the plant. This selection is made by the elected Shop Committee. An additional district committeeman is selected to participate in the committee meetings

¹ Mr. Richard Sandborn, President of Local 602 UAW-CIO-AFL, in interview conducted 30 March 1967. (Local 602 represents employees of the Lansing Fisher Body Plant.)

on a two week rotating basis, primarily to provide training for future permanent members. The full Shop Committee therefore consists of a total of seven members, four elected, two selected for long term tenures (approximately two years, corresponding to terms of elected members), and a rotating member. A chairman is elected by the four elected members from among their number. The chairman serves as the principle spokesman for the committee in its meetings with management. Management is represented by the plant Director of Labor Relations, a selected member of the plant Labor Relations staff (in addition to the director), and a secretary of the Labor Relations department, who maintains minutes of the meetings. A foreman in training frequently accompanies the management representatives, and, is present primarily for training in labor relations and the operations of the grievance system.

Meetings between the Shop Committee and management representation are conducted on a scheduled weekly basis, with the Shop Committee providing in advance an agenda for items to be discussed. The meetings are conducted informally, with the chairman of the Shop Committee presiding over the general proceedings. Management representatives are required to furnish written replies to grievances presented and discussed at the meetings within fifteen days of the date of the written grievance. This normally allows a week for

reply after the weekly meeting. A decision resulting from this process is considered settled and not subject to further appeal unless such appeal is made within five working days of such decision.

Information and evidence regarding the grievances to be considered at the weekly meetings are gathered by both management and labor representatives, based on copies of the written complaint which was furnished by the aggrieved employee through both labor and management channels. Mutual interpretations of agreements between labor and management, precedents of previous grievance hearings, and the current working contract provide basic information on which grievances are based and subsequent determination is made.

A particularly interesting feature of the structure and its operations is the importance placed by both labor and management on the training of personnel in grievance procedures. In the interview previously cited, Mr. Sandborn indicated that tenures of office for Shop Committeemen and foremen were usually quite long (he cited one example of a Shop Committeeman who had been re-elected to his office over a span of twenty-five years). This factor was considered of prime importance in providing adequate training in an "on the job" status for rotating committeemen who would usually have correspondingly long tenures in their positions, thereby enabling repeated attendance at grievance meetings

over the years. Similar experience factors were cited for plant foremen participating in the hearings.

This second step of the grievance procedures provides the largest number of personnel participating in formal hearings on a regular basis. Of the total of eleven persons in attendance (seven union committeemen and four management representatives), the primary roles are played by the Shop Committee Chairman and the Director of Labor Relations. These heads of the labor-management teams conduct the primary discussions with comments and assistance from the other participating members being furnished as required by the nature of the business at hand. The foreman in training and the rotating shop committeeman do not usually participate actively as befits their "in training" status. It is felt that the presence of a comparatively large number of representatives at the hearings provides added insurance that all facets of the problem will be aired. In the event that a suitable agreement is not reached as a result of this proceeding, an appeal will bring the grievance before the next higher echelon of the grievance procedure.

TOP LEVEL REVIEW 1,2

The Chairman of the Shop Committee will furnish the

¹ Agreement between General Motors and UAW-AFL-CIO, Op.Cit.

² Previously cited interview with Mr. R. Sandborn.

plant management with a copy of a written "Notice of Unadjusted Grievance" on forms supplied by the management. Both management and labor will then prepare complete "Statement(s) of Unadjusted Grievance" setting forth all facts and circumstances surrounding the grievance. Copies of the statements by labor and management are exchanged and forwarded through their respective channels to the next higher echelon of their structures. Statements must be completed within five days of the "Notice of Unadjusted Grievance", although provisions for extending this period by mutual agreement are made.

A Regional Director of the International Union then reviews the case submitted to determine whether or not a grievance actually exists, whether such grievance should be appealed, and, the manner of presentation of the appeal. Visits to the plant are made by this director or his representative after prior request for permission to make such a visit has been granted by management. Provisions are included to permit private interview of employees on this visit. Such interviews are limited to the aggrieved employee and such other employees as may have information regarding the grievance. In the event of any further dispute between labor and management in this process, the outcome is decided (by written agreement) by an umpire. (Detailed discussion of the umpire and his functions is

contained in the review of the fourth step of the grievance procedure.)

If the Regional Director decides that a case should be appealed, he then gives notice of appeal to management. Such notice must be given within thirty days of the exchange of "Statement(s) of Unadjusted Grievance", or a mutually agreed upon extended date. The case will then be considered by a four man board consisting of the Regional Director of the union (or his representative), the Chairman of the Shop Committee of the plant where the grievance arose, the Director of Industrial Relations for the Corporation, and, the Director of Labor Relations for the plant where the grievance was initiated. Provisions are included for expanding the structure to include additional members but numbers of representatives of labor and management must remain equal.

Meetings of the committee for appeals are normally conducted every two weeks for each bargaining unit serviced, and, are normally conducted at the various plants where appeals originate. Provisions are made to reimburse personnel appearing at appeals committee hearings at the same rate as of their normal employment.

The primary activities of the Appeals Committee are conducted by the Regional Director of the Union and the Director of Industrial Relations of the Corporation. The Shop Committeeman and plant Director of Labor Relations

serve primarily by supplementing the written data which has been presented to the committee with their own observations and interpretations. Minutes of the meeting conducted between the Shop Committee and management, copies of the original grievance, Statements of Unadjusted Grievance, records of interviews conducted, and, the current contract and agreement stipulations provide the basis for action by the Appeals Committee. In the event an adjustment is not made to the mutual satisfaction of the participants at this level, the matter is referred to an umpire. Management is required to furnish a copy of its decision to the union within five days of the termination of the Appeals Committee meeting (copies of minutes of the meeting are also provided at this time). These documents are then added to the material used by the Appeals Committee and furnished to the umpire at the next level of proceedings.

It should be noted that the participants of the Appeals Committee proceedings are full-time labor specialists who may be expected to bring with them the benefit of considerable experience and training in the field, as well as having available to them a wide variety of resources, data, and, personnel, for use in reaching mutually acceptable decisions. The membership includes persons who are at the peak of the respective echelons of both labor and management.

ARBITRATION

On completing the preceding step, the ability of labor and management to reach mutually acceptable decisions in the grievance procedure is considered as having been exhausted. The next step therefore consists of submission of the dispute to an "outsider", the umpire. Of the numerous expressions of opinion rendered regarding this procedure, one selected from a work-shop conducted at Michigan State University seems to adequately describe the consensus: "there will be a better result for both parties if they can be 'big enough' to resolve their own problems without resorting to outsiders."¹ The selection of these outsiders hinges on mutual agreement on a nominee by local management and union representatives. In the local case under consideration (General Motors and UAW-AFL-CIO), nominations may be made by either labor or management and are subject to approval by both prior to confirmation. Salaries of the umpire selected are split evenly for payment by management and labor. Nominees may apparently come from any walk of life, but in this area are usually attorneys or "college professors". Some effort is made to nominate personnel who have had specific training in the labor field, and, the usual result is to obtain the services of a specialist in the field.

¹ The Grievance Process, Cp. Cit. pp. 53-55.

Procedures for bringing an appeal before an umpire parallel in many respects the methods employed in the appeal to the Appeals Committee. Cases must be appealed within twenty-one days of the date of decision by the Appeals Committee. Either party may appeal and "Notice of Appeal" must be submitted to the other party as well as the umpire within the twenty-one day time limit established by the agreement. Provisions exist for a re-investigation of the grievance after the case has been appealed, but, prior to the umpire hearing the case. Conditions for this investigation are identical to those cited in the preceding step of the process. Both parties are required to submit briefs to the umpire within twenty-one days of the date of receipt of the "Notice to Appeal".

The powers of the umpire are spelled out quite specifically within the basic agreement and stipulate the subjects regarding which the umpire is empowered to rule. Procedure itself is one of the subjects on which the umpire is entitled to make a decision. A further stipulation provides that any case appealed to an umpire, in which he is not entitled to rule, will be returned without action. It is further agreed that all decisions by the umpire will be final, and, that the union will actively discourage actions by its members to take the action to court or before a labor board, once a decision has been handed down

by the umpire. The union agreement further states that the union will not be liable to any claim that it has failed to act relative to a prosecution, presentation, or, settlement, of any claim by an employee or former employee. The termination of this final step of the grievance process, therefore, does not completely bar but does effectively limit the possibility of future litigation or claims in regard to the grievance cited. The umpire is therefore placed in a situation very much akin to that of the ombudsman (discussed along with the inspector general in a subsequent chapter), in that his powers to act are conferred by disputants, and, that he has no primary affiliation with any of the disputants, and, that to a large degree, the success of his mediation depends on the voluntary cooperation of the disputants. He is awarded liberal powers of investigation and access to personnel, records, and, facilities, on which to base his independent judgment.

SUMMARY

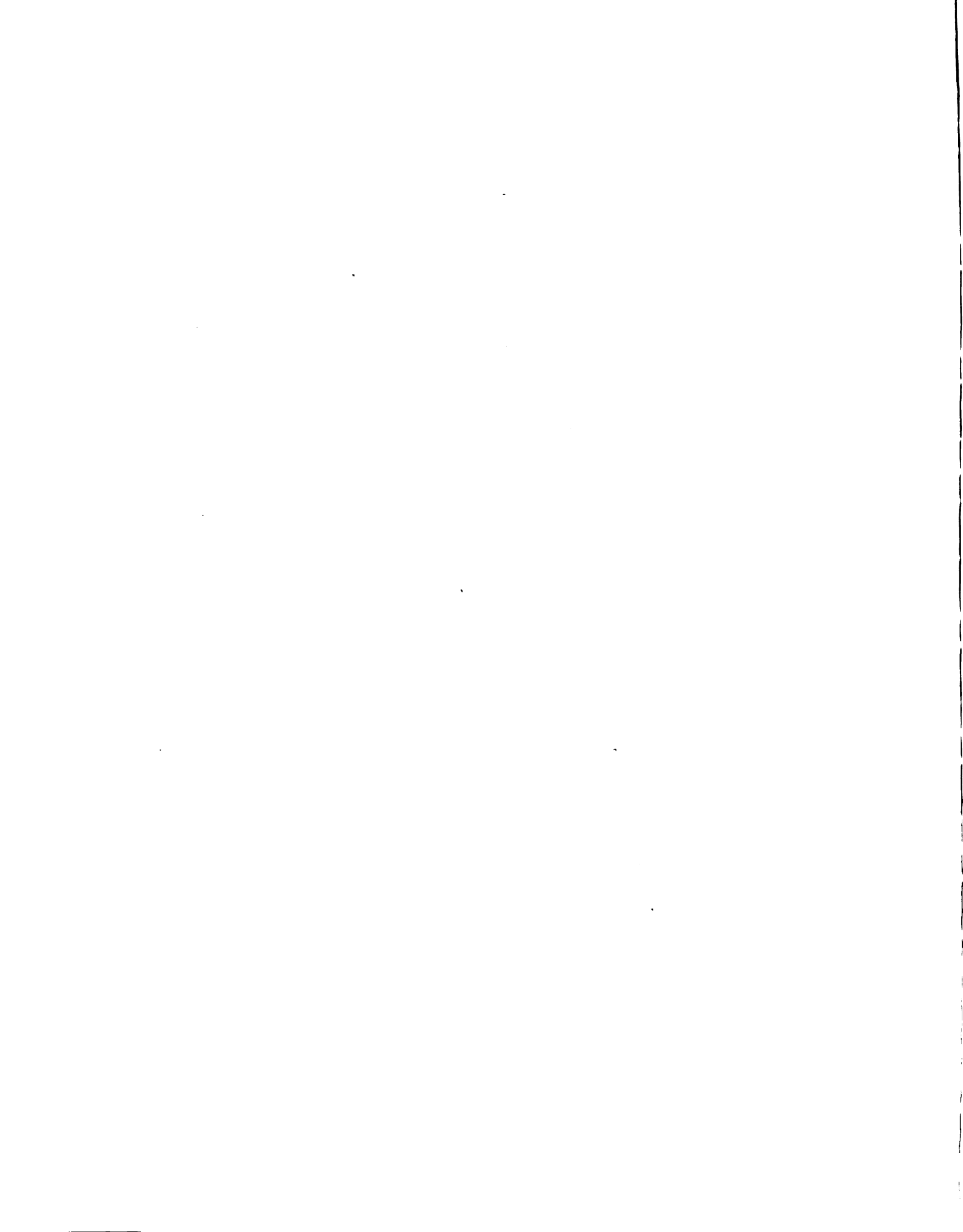
It seems advisable at this point to extract the salient features of the labor-management grievance procedure from the detailed presentation for use in further comparisons with techniques described in succeeding chapters.

1) A written procedure outline dictates the procedures for aggrieved workers presentation of complaints through established channels. Specific directions of this type are desirable and indeed necessary for efficient presentation and processing of complaints.

2) A multi-level approach is in general use, thereby creating sources of appeals action and obtaining adequate authority for action to remedy the grievance. Numbers of levels in the procedure vary, and, normally correspond to the levels of authority in existence at the plant or industry which are in turn usually duplicated by union channels. It is axiomatic that authority of each successive echelon increases throughout the process.

3) Settlement at the lowest possible level is emphasized, primarily to eliminate possibilities of misunderstanding generated by proceedings at higher, more removed levels of authority. Where feasible an oral complaint technique comprises the first step of the grievance procedure. There appears to be considerable merit in the idea of settling at this level for reasons of economy in time, money and effort.

4) Formal procedures are initiated at the lowest working level possible. The obvious difficulty inherent in this technique is the lack of labor relations (and human



relations) training and experience available to the participants at this level. Shop stewards and foremen have primary duties other than labor relations and usually have little or no actual experience. Various efforts are being made by both labor and management to provide training for these personnel in labor relations via formal and "on the job" training techniques.

5) Both parties have the right to appeal. As in most other forms of adjudication, the right to appeal, or rather the use of this right, appears somewhat one-sided. Management seems considerably less likely to make an appeal since decisions are primarily made by management representatives. The right for such appeal is nevertheless clearly recognized and stipulated in agreements and contracts.

6) Final appeal is to a disinterested party. The theory of using umpires and arbitrators rests primarily on the impartiality of these "judges". No specific criteria for qualifications of the umpire were found in agreements examined, however, these requirements would appear to be well served by the stipulation that the umpire must be acceptable to both parties. Appointments to this position are based on a one year tenure of office. Such frequent changes of umpire personnel would seem to be helpful in reducing a tendency to establish bias over longer periods.

7) Records of meetings and investigations are maintained and furnished to both parties to the dispute. Emphasis appears to rest on informal procedures with adequate recording of data to sustain further appellant action where necessary, provide data for establishing precedent, and, provide guidance for determining future actions. Minutes of meetings are normally kept in a summary fashion with "position papers" submitted by both parties furnishing specifics of the case.

8) Emphasis is placed on avoiding litigation. No substantial bar to such action is included in the grievance agreements however. The aggrieved employee is effectively barred by his agreement with the union from litigating against the union for failure to present, prosecute or otherwise act on his complaint.

9) Time limits for completion of each step of the process are included in virtually all agreements regarding grievance procedures. Such stipulations serve to bring about timely decisions, preclude loss of evidence, and, reduce errors and faulty recollections.

The overall view of experts in the field of labor relations appears to be that there is no such thing as a "perfect legal agreement",¹ and that broad definitions are

¹ Crane and Hoffman, Op.Cit. p.9.

necessary since "the relationship of the adversary and cooperative aspects of this relationship are no more definable in its contingencies than the contingencies of the marital relationship."¹ Flexibility appears to be a keynote in the compilation of labor-management agreements. Those reviewed are replete with provisions for adjustments via mutual agreements between management and labor representatives at all levels of the multi-step procedure. The very informality of the proceedings tends to contribute to this flexibility.

In utilizing this compilation of information on the labor management grievance procedure as a basis for developing a complaint process for police, several inherent factors must be kept in mind:

- 1) Both parties to the labor management grievance process have organization with equally well training personnel specializing in the field of labor relations.

- 2) Hazards to the aggrieved individual are reduced by contractual agreements which provide for his remuneration for time lost from work while participating in the grievance procedure; his job tenure may not be affected by his complaint; and, he is provided with adequate assistance in prosecuting his complaint.

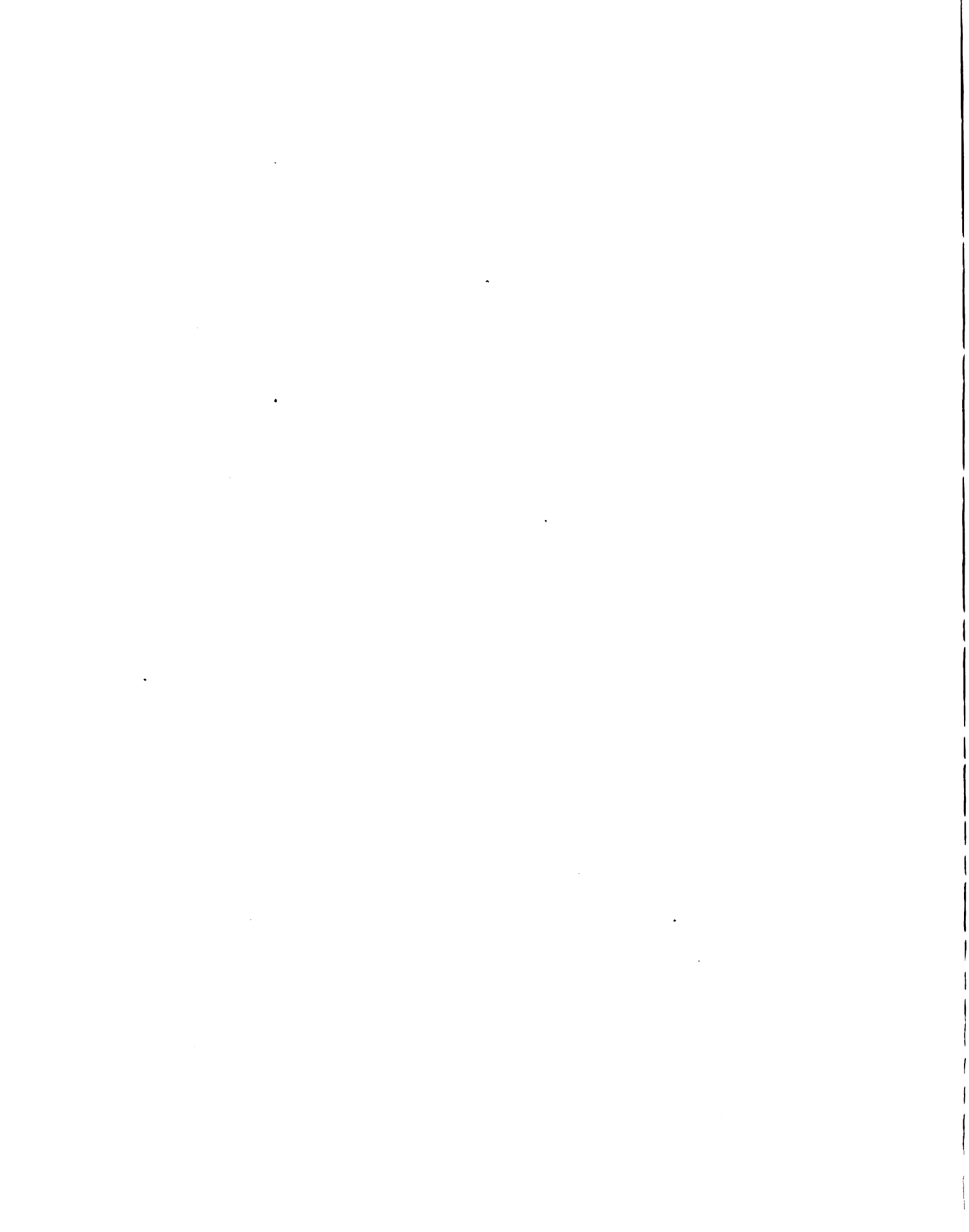
¹ Isidore Katz, "Minimizing Disputes through Adjustment of Grievances", in Law and Contemporary Problems. Duke University Law School. (Durham, N.C.: Duke University Press, 1947)

3) Grievances are normally based on allegations of violation of written agreements and contracts. The content of these agreements is well known to both parties to the dispute, and, complaints are normally questions of interpretation of the writings.

4) The specific channels and methods for presenting complaints are well known to both parties, constituting an integral portion of their daily relationships. Copies of pertinent agreements outlining grievance procedures are furnished to individual union members at the time of initiation into the union. Discussions of working conditions and contract applicability are conducted at union meetings which the member is required to attend (the usual rules require members to pay fines for meetings missed - some stipulate that a member may not miss two meetings in a row).

5) The action sought by union members in entering a grievance is not normally punitive in nature. The ultimate aim of the adversary relationship in labor and management grievance processes is to restore the desired degree of cooperation which both require for fulfillment of their purposes. Basic emphasis is on WHAT is wrong, not WHO is wrong.

6) The grievance process in industry (labor relations) usually takes place in an informal setting



among persons who are known to one another, and who have mutual interests. There is little of the cold formality of a meeting among strangers, and, probably little loss of understanding as a result of this factor.

Despite these obvious differences in circumstances surrounding labor-management and police-public relations, there remain several valid areas for comparison and assimilation of ideas. These will be discussed in the final chapters in the effort to combine the features of the several grievance and complaint processes discussed.

CHAPTER III

CIVIL SERVICE GRIEVANCE PROCEDURES

"The goal in providing any sound plan (for grievance procedures) is a satisfied and contented corps of public servants, the attraction and retention of competent personnel, and, the uninterrupted service to the people." ¹

Civil service has had a lengthy and sometimes infamous history of development in the United States. Its history is of only trifling concern to this investigation. Suffice it to say that the days of the "spoils system", inefficient public service, graft, nepotism, and, favoritism, have brought about a series of concerted drives to remedy these faults. The operation of a grievance system is virtually indispensable to such efforts, and, it can be assumed that the current status of civil service grievance machinery has reached a reasonable degree of specificity and sophistication. A fragmentary analysis of state and federal civil service grievance machinery will serve to introduce a more detailed account.

An element which has considerable bearing on the question of grievance processing under civil service is simply that personnel administration in government is dictated by rules and regulations such as those issued by the

¹ Second Report of the Committee on Labor Relations of Government Employees. American Bar Association, June 27, 1955. p.1.

United States Civil Service Commission. Unlike the agreements between labor and management (cited in the preceding chapter), these rules are promulgated as a result of the initiatives of government, the employer, without specific direct reference to the employee or his representatives. Despite the statutory authority vested in the Civil Service Commission by various acts of Congress¹ considerable latitude for employee management relations exists. This latitude is primarily the result of comparatively recent decisions regarding the right of government employees to participate in "employee organizations or associations".² This permissiveness regarding organization membership, without specific regulation other than the prohibition against joining groups which might obligate members to strike against the government, and, against joining subversive organizations, has left considerable leeway with the federal agency in handling employee relations. The agencies have nevertheless maintained basically uniform procedures in this area.

The grievance procedure is one of the areas which has retained conventional approaches. Wilson Hart³ lists those features which are standardized to a great extent

¹ Wilson R. Hart, Collective Bargaining in the Federal Civil Service (New York: Harper and Bros., 1961) pp.73-74.

² Federal Personnel Manual, Chapter E2(10) 1950. (Wash., D.C. Federal Printing Service, 1950)

³ Wilson R. Hart, Op.Cit. pp.80-81.

as follows:

1) Policy that grievances should be settled at the lowest possible level,

2) Provision for multi-level stages of grievance processing up to the head of a department or agency,

3) The aggrieved employee must be afforded the opportunity to be heard by a committee of his fellow employees. In the armed services military officers may also serve on grievance committees.

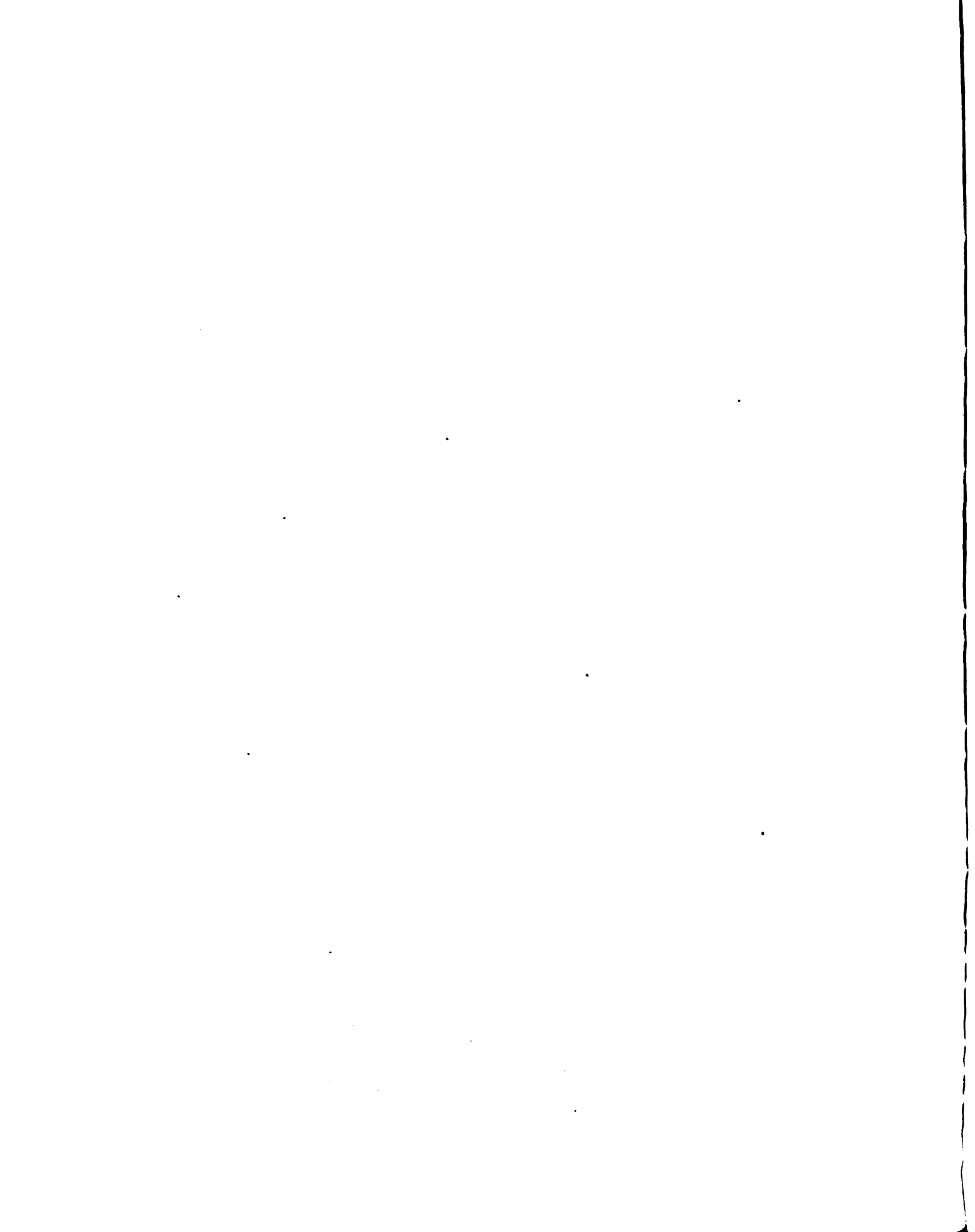
4) Actual decisions are rendered by line management officials at each step of the process. Recommendations of grievance committees are purely advisory and not binding on the head of the installation or agency.

5) Employees presenting a grievance may be represented by counsel.

6) Decisions at advanced stages of the grievance process are based on the written record exclusively. This record normally contains a transcript of the grievance hearing.

Practices under Army Civilian Personnel Regulations contain grievance provisions which correspond generally to the conventional approaches cited by Hart.¹ The initial

¹ The description of the Army Civilian Personnel Procedure is based primarily on the author's personal experiences as a military supervisor of civilian personnel in several command areas, as well as experience as a member of civil service grievance boards, while on active military service status.

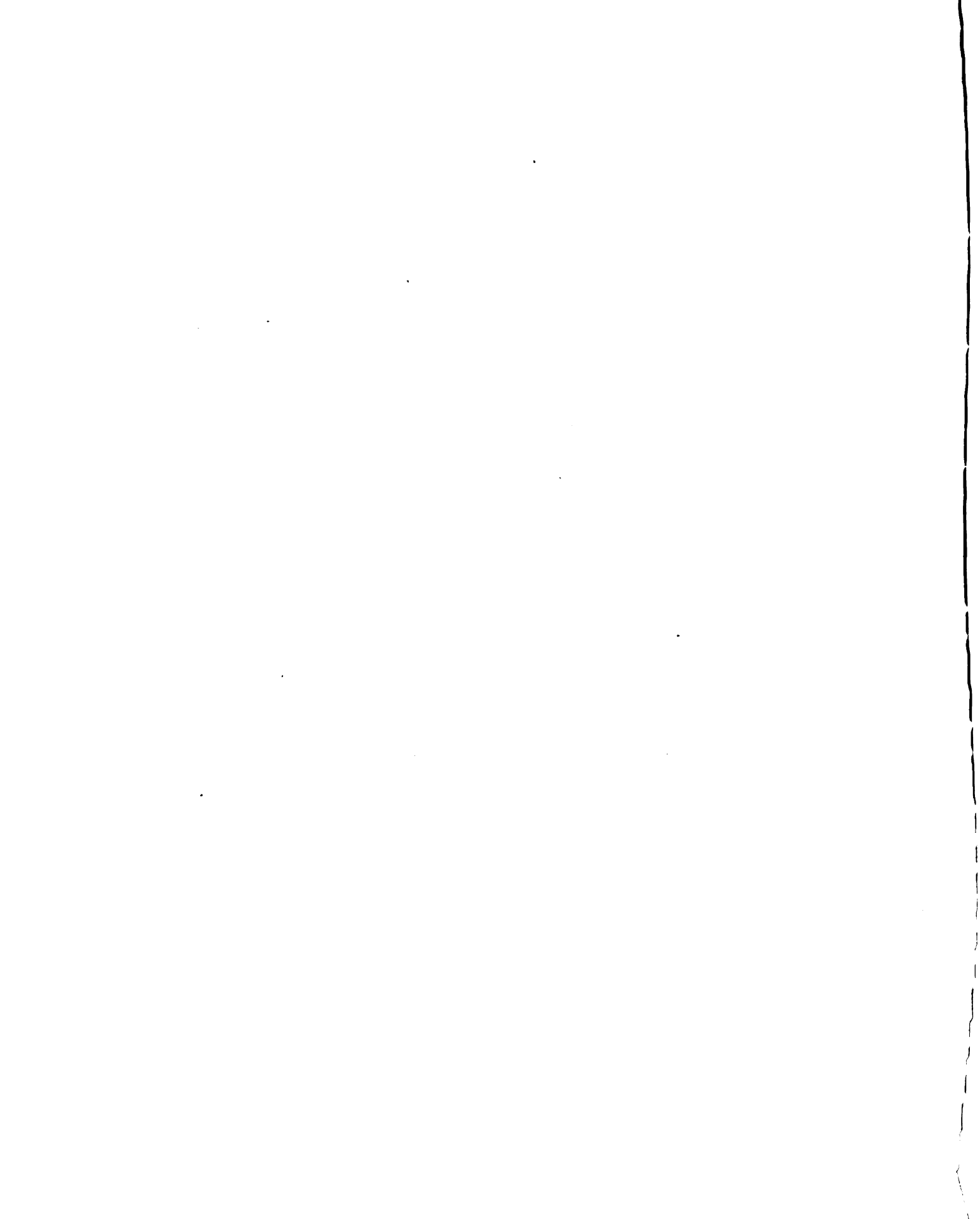


point of contact for the aggrieved employee is with his immediate supervisor. Policy letters and directives promulgated by various Army commands encourage close liaison between military supervisors and their civilian employees. Work conditions are clearly defined in such media as job descriptions, work classification texts, pay and promotion scales, job rating scales, examination and general qualification scales, man-power guide manuals, and, are normally reviewed at specified periods by members of the Civilian Personnel Office servicing the command. Situations vary, however, the Civilian Personnel Officer is normally a civil service rated employee, specializing in personnel administration. The size and composition of this officers staff are dictated by considerations of size of the command, number of civilian employees, and the relationship of the command to higher echelons in the personnel administration field (data processing centers commonly operate from highly centralized facilities and service a number of separate, though not necessarily subordinate, personnel offices).

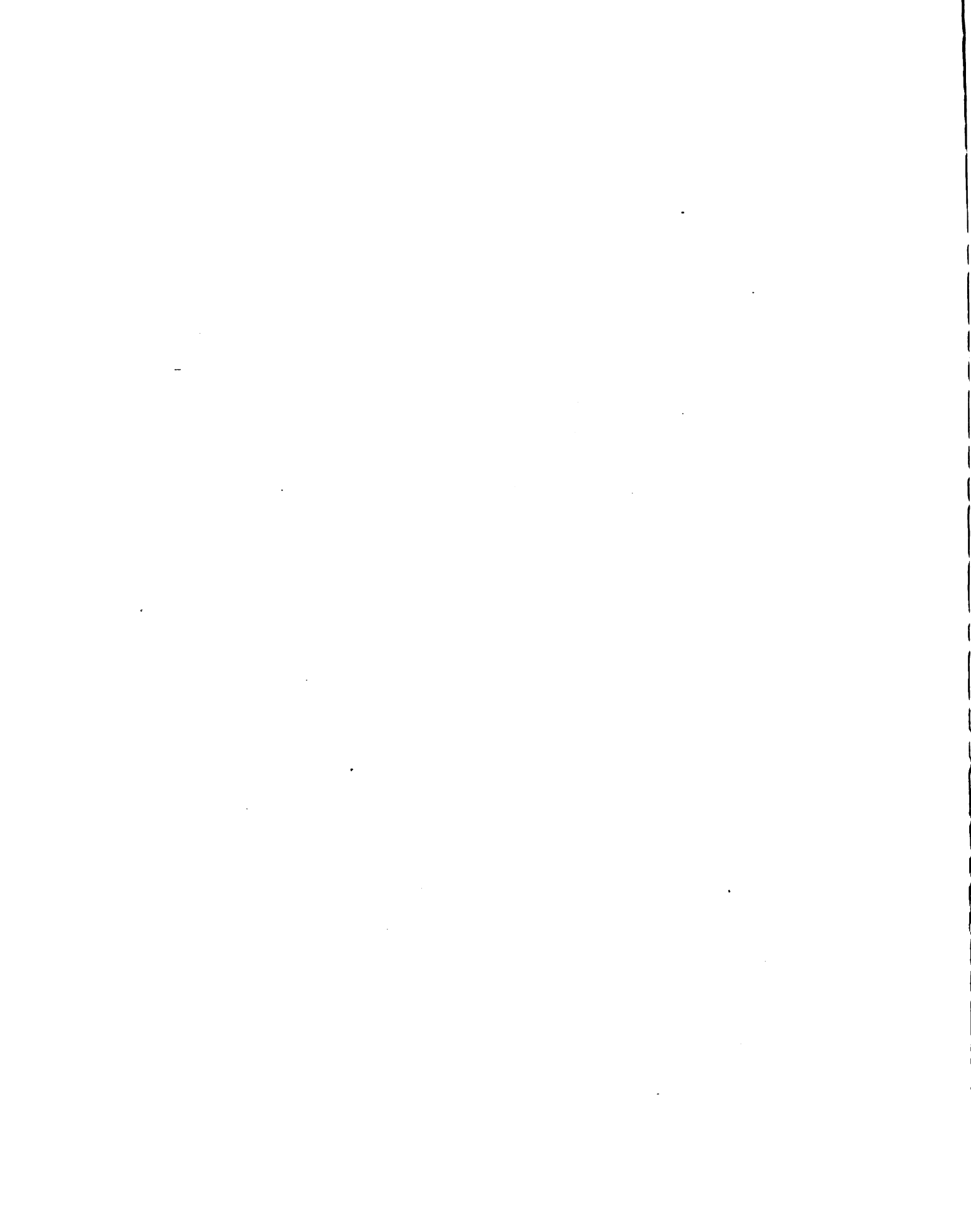
The immediate supervisor is usually limited quite severely by published regulations in his relationship with the subordinates of his department. The subordinates are usually aware of the regulatory restrictions placed on the supervisor, and consequently, the superior-subordinate grievance procedure most frequently consists of a joint examination and

interpretation of established rules and regulations pertinent to the complaint. If the interpretation of these regulations is satisfactory to the employee, no further action is taken and the matter is considered closed by the oral exercise described. Failing agreement, two avenues for reaching a solution are available. The supervisor may obtain additional information and interpretation of the rules from the next higher level of command (usually in writing) for further transmission (orally) to the employee. The employee may similarly request additional information and interpretation from the Civilian Personnel Office where his employment in the position was initiated and where his personnel records are maintained. Either of these two procedures may (and very often do) result in resolving the complaint.

Lacking satisfaction of the complaint at the level described above, the employee has available to him procedures for obtaining a hearing by a grievance board. These procedures entail the completion and forwarding through channels directed of a form (furnished by the Civilian Personnel Office of the command) outlining the nature of the complaint, and identifying witnesses and such other information as the employee may feel have a bearing on his grievance. A determination as to whether a



grievance actually exists is made by the Civilian Personnel Officer based on the applicable regulations and policies of the command. A grievance board is appointed in writing to hear the complaint, if the grievance is determined to be valid. (There is usually very little possibility of an adverse finding since regulations and directives have already been screened in the procedures at the supervisor-employee level.) The grievance board must by regulation have a majority of civilians, although military personnel may and often do sit on grievance board hearings. The board normally consists of three persons; a representative of the Civilian Personnel Officer (civilian), and two other disinterested persons, one of which may be a military person. The representative of the Civilian Personnel Officer brings to the board meeting copies of statements furnished and the complaint itself, arranges for the presence of witnesses, the complainant, and, members of the board. The aggrieved employee is entitled to counsel at the hearing, but, this right has been waived in each of the boards within the author's experience. The right to counsel envisioned refers to selection by the employee of another civilian or military person in the establishment to act as his counsel (these persons will be provided if "reasonably available") as well as retention of an attorney by the employee at his own expense if he so desires.



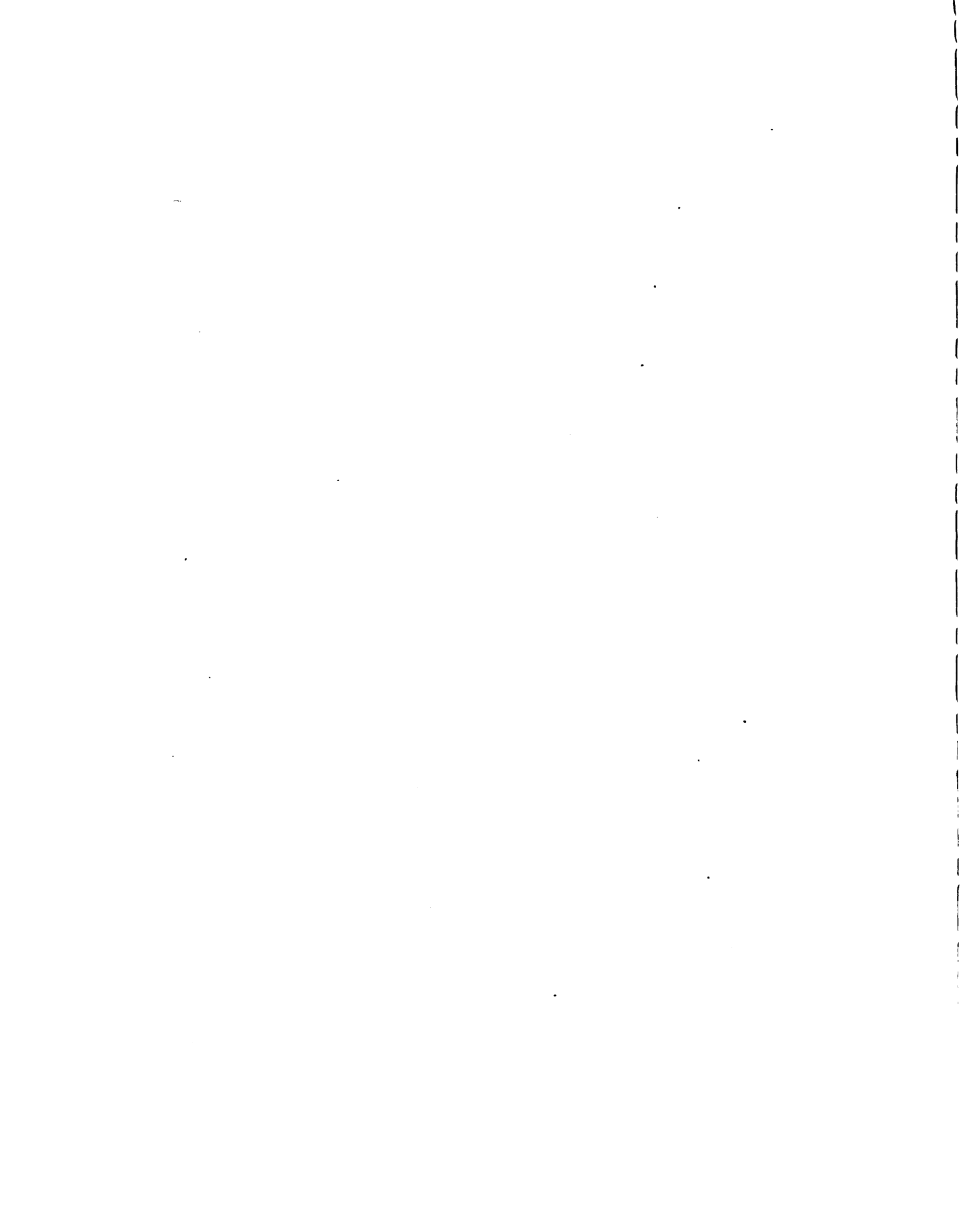
The disinterested members of the board are not apprised of the evidence or detailed information pertaining to the case to be heard until the board actually meets. In this sense they correspond to jurors in a formal court case, except that they normally participate extensively in the examination of witnesses, evidence, and the like, prior to reaching a "verdict". The result of the grievance hearing is a recommendation by the board, based on its findings, to the appropriate commander. This commander is normally represented by the Civilian Personnel Officer in this process, and this individual will make the decision as to whether the findings and recommendations of the board should be accepted and arrive at a conclusion. Where the recommendations include actions relating to military personnel of the establishment, the Civilian Personnel Officer will enter into consultation with the military commander of the department prior to implementing his decision "For the Commander".¹

Successive steps of appeal are available to the employee by forwarding a request for reconsideration of the grievance by successive higher echelons of the military command. These may ultimately result in a hearing by a Civil Service Commission Labor Board. In each step the process basically repeats the initial proceedings, except that a board is not necessarily convened at each succeeding

¹ The CPO acts on the authority of the commander.

level. Individual investigators may be appointed to make supplementary recommendations and adduce additional evidence, but, the actual decision is made by the appropriate command representative who is not bound by these recommendations. As a matter of general practice, the recommendations are almost invariably accepted and acted upon accordingly.

It is readily apparent that the Army procedures outlined in the preceding discussion contain every facet of the conventional approach cited by Hart. The military structure of civil service employment has peculiarities not generally found in the purely civilian organization. There exists a degree of continuous distinction between the military and civilian role, even in situations where military and civilian personnel perform the same jobs, side by side. Presumably the fact of living under separate regulations, "enjoying" separate working conditions, and, social status differences (real or imagined) are responsible for generating a variable degree of clannishness in the two groups. On occasion an almost adversary-like atmosphere exists between the military and civilian members which has obvious implications for the nature and frequency of grievance presentations. The degree of regulation present for both parties no doubt generates considerable



frustration and anxieties, which bring about this phenomenon.

The organization of federal, state, and, municipal government employees by such unions as the American Federation of Government Employees (AFGE)¹, and the American Federation of State, County, and Municipal Employees (AFSCME), have some apparent implications for the operation of grievance procedures for government employees. As of 1961, the AFSCME claims 292 collective bargaining agreements with agencies of government. One hundred of these agreements provide for arbitration of grievances of members by the union.²

The Tennessee Valley Administration has been cited as an example of collective bargaining in public services, and the AFSCME reputedly points to Philadelphia as an ideal establishment for collective bargaining under union auspices.³ Philadelphia was the first major city to recognize one union as the collective bargaining agent for all non-uniformed workers. The agreement⁴ recognizes the union as the sole bargaining agent for all employees except professional employees and supervisors above the level of foreman, and,

¹ A national union affiliated with the AFL-CIO.

² Wilson R. Hart, Op.Cit. p.136.

³ "Unions Eye Municipal Employees" Business Week, March 21, 1959. pp.118-122.

⁴ Text of Agreements in Cornell, "Collective Bargaining by Public Employee Groups" U. of Penna Law Review 43, op.59-63.

uniformed employees of the city. Employees retain the right to present and adjust their own grievances if they prefer, using the established machinery of the city. Union representation may be obtained for presentation of the grievance. The final stage of the city's grievance machinery was adjusted to establish an advisory board consisting of three members appointed by the city personnel director and three appointed by the union. In the event that this board cannot reach agreement by mediating between the city personnel director and the union, the board is empowered to elect a chairman (seventh member of the board) acceptable to both sides, to enable a majority decision. The findings of the board are advisory in nature and the city is not bound by the decision of the board.

It can be seen that in many respects the union representation does not radically change the procedures for adjusting grievances, nor has the point of final decision (the city) been changed. The system described parallels the Army procedure in that the board decision is not binding on the manager, but rather advisory in nature. The agreement further stipulates that there shall be no strikes, lock-outs, or, work-stoppages. The need for persuasion and mutual agreement in reaching solutions to disputes between unions and city management is inherent in the system. Such agreement has apparently been reached

since Mr. Eli Rock (then Labor Relations Consultant for the City of Philadelphia) cites the presentation of a "united front" by the executive branch and the union in presenting a budget for financing agreed programs to the legislature and subsequently to the Civil Service Commission.¹

The Tennessee Valley Authority deviates from the conventional in its grievance procedures.² The TVA was initially established by Congress in such a manner as to render it quite similar to a private industry in its operations. The TVA has authority to determine its own pay schedules for both hourly rate and salaried personnel (usually at a "local prevailing rate" scale). Provisions exist for arbitration of wage-rate disputes by the Secretary of Labor, however, resort to the Secretary has been infrequent since both sides prefer collective bargaining to the use of an outside agency.

There is no provision for a grievance board or committee to conduct formal hearings of grievances within TVA. Nor is there provision for appeal to the general manager or board of directors, or review, approval, or veto by the head of the agency of an arbitrator's decisions. In these respects TVA differs considerably from the conventional approaches normally utilized by

¹ Eli Rock, "Practical Labor Relations in the Public Service", 18 Public Personnel Review 71, 1957. p.75.

² Wilson R. Hart Op.Cit. pp.96-106.

government agencies.

Most of TVA's blue collar employees are members of one of the AFL-CIO craft unions which are members of the Trades and Labor Council. The director of personnel for TVA is the authorized agent for TVA in bargaining with unions and is also the agent for arriving at management decisions in grievance cases.

TVA's grievance procedure provides that an employee may file a grievance personally, or, through the authorized representative of the union. If a grievance is presented personally by the employee to the director of personnel, the decision of the director is final. If the grievance is presented through the union, the director of personnel and the union representative jointly seek a mutually satisfactory decision. If such a decision is not reached, the director of personnel prepares a written decision on behalf of management, which may be subjected to impartial arbitration at union request. The pay and expenses of the arbitrator are jointly borne by the union and TVA.

Although the written material reviewed by the author pertinent to the grievance procedure of TVA does not specifically indicate presentation of the grievance at the lower levels, it may be reasonably inferred that discussion of grievances with immediate supervisors does precede the

the actions described in the forgoing. The procedure apparently is quite successful since only two cases were submitted to arbitration in the first thirteen years of TVA's operations under collective bargaining agreements.¹

Still another degree of variation in grievance procedures and collective bargaining with civil service employees is presented by the State of Michigan.² State employees may join "employee associations and organizations" and are in fact represented by a branch of the AFSCME and a Michigan State Employees Association (MSEA) with a preponderance of the employees belonging to the latter organization. Unlike Philadelphia, where employees are represented by one union for all employees, state employees in Michigan are split between the two organizations cited and no union affiliation at all. The status of the Michigan strike rules is not clearly defined.³ Previous rules which provided simply for dismissal penalty for any worker who "absents himself from work by participating in a strike", have been changed to specifically cover sit-down or slow-down strikes and permit disciplinary action short of

¹ Harry L. Case, Personnel Policy in a Public Agency - The TVA Experience (New York: Harper and Bros., 1955) p.49.

² Interview with Mr. John R. O'Connor, Employee Relations Division of Civil Service Commission, State of Michigan, March 31, 1967.

³ "Civil Service in Michigan State Government" 1965 Annual Report of the Department of Civil Service, State of Michigan, p.24.

dismissal against employees who take part in strike activity.

The grievance procedure in effect for state employees in Michigan is essentially a five step procedure. Each of the nearly two dozen departments of the state government¹ maintains its own grievance rules and procedures which must comply with state Civil Service Commission minimum standards.² These standards provide that an employee must be furnished with a copy of the state grievance rules (for which he must receipt) at the time of appointment and any subsequent revision of the grievance procedure; that the procedure is available to all employees regardless of membership in an employee organization; employees have a right to fellow employee representation beginning with the first step of the procedure, and any reasonable representation at the third and fourth steps, and, the right of private consultation at any time with any representative; appeals to hearings boards may be made within fifteen days of final decision by department head; employee and immediate supervisor shall discuss and attempt to resolve any issues prior to resort to the grievance procedure; grievances must be reduced to writing at the first step of the grievance procedure;

¹ Departmental listing contained in "Recognized Employee Organization Payroll Deduction", Michigan Department of Civil Service, October 29, 1966.

² Letter dated September 23, 1966, "Revision of Departmental Grievance Procedures", Michigan Department of Civil Service. p.2.

and, in cases of dismissal, suspension, demotion, lay-off, or similar actions, the grievance should be initiated at that step where authority lies to accomplish the relief requested.

The five step procedure essentially consists of the following: 1 2

- 1) presentation of written grievance to the immediate supervisor for consideration and action,³
- 2) presentation of the grievance to the division head where the grievance occurred (normally the next echelon of the supervisory structure),
- 3) appeal to the department head if no satisfactory conclusion at the preceding level,
- 4) appeal to a hearing board,
- 5) further appeal to the State Civil Service Commission.

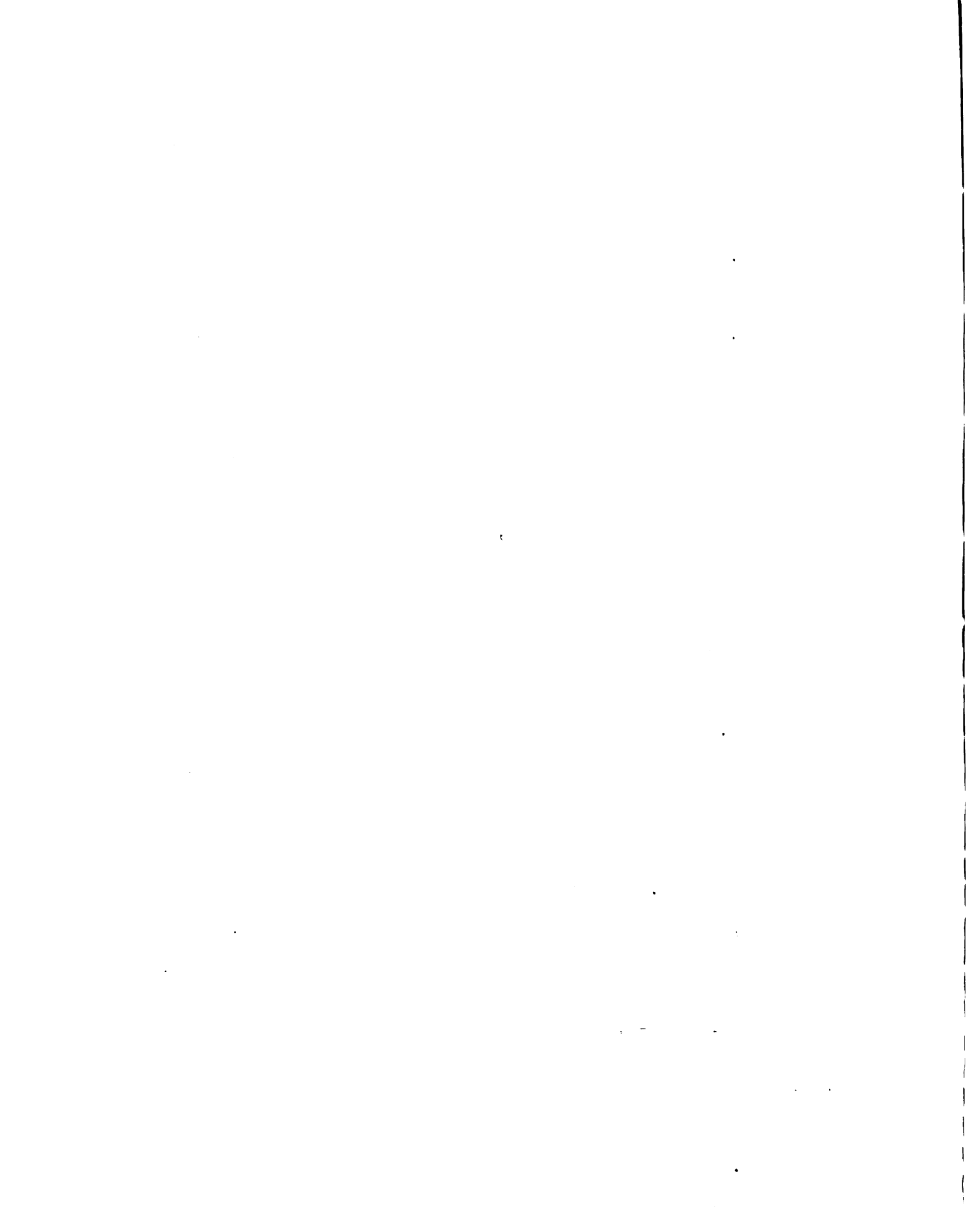
Statistics for the year 1965 indicate that the overwhelming majority of grievances are settled at the department level (one of the three steps up to and including the department head).⁴ Of a total of 1150 employee grievances submitted, 1037 were settled at the department level. The remaining 113 grievances were presented to a hearing board,

¹ Ibid. pp. 2-3.

² "Civil Service in Michigan State Government" Cp. Cit. p. 24.

³ This step is merely a formality since rules require oral discussion with supervisor prior to entering grievance procedure.

⁴ Ibid.



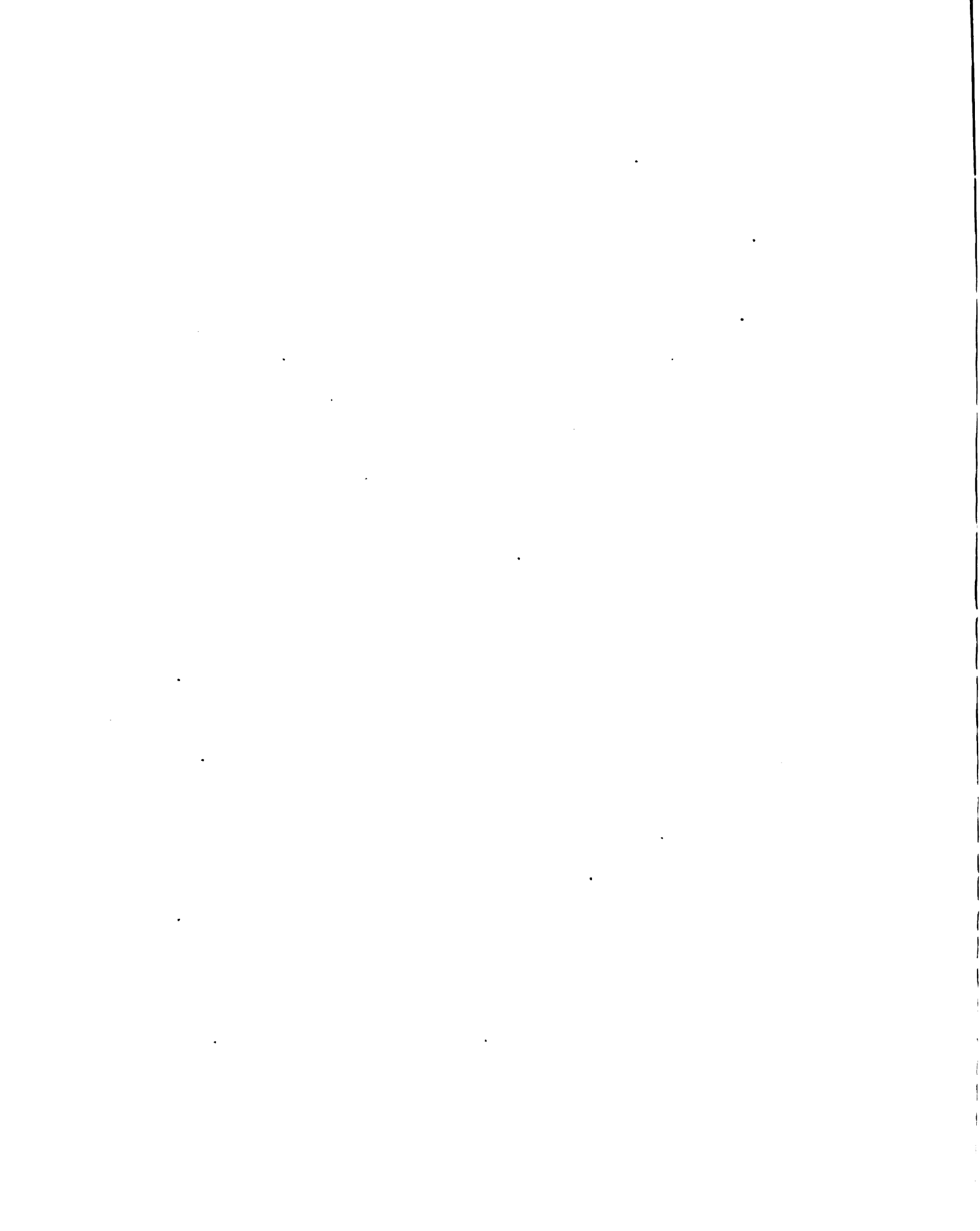
and 50 of these were further appealed to the state Civil Service Commission.

The hearing board is interesting in several of its features. Members are "prominent local citizens who represent the public in a dispute between the state and the employee".¹ The members of the board are selected from industry, labor, government, and the professions. One to four members serve on the board at a hearing. These are selected from a panel of "prominent citizens" which at the end of 1965 consisted of nine members. Hearings are held twice each month and members are remunerated for their services on a per diem basis.

Additional steps for adjusting grievances exist outside the five step procedure outlined by the Civil Service Commission and apparently receive relatively frequent use. Matters pertaining to civil rights may be appealed to the Civil Service Commission or the Civil Rights Commission. Nine such appeals were adjusted by the Civil Rights Department during 1965. Court litigation is also available and frequently implemented. Seven cases were cited as pending completion of litigation at the end of calendar year 1965.

The role of the unions in the grievance procedure appears to be limited to furnishing the employee with representation during the grievance procedures. The interview with Mr.

¹ Ibid.



O'Connor, previously cited, indicates that union activity in the grievance procedure is largely limited to this representation and bargaining negotiations with the state Personnel Director regarding claims for wages lost, salary scales, layoffs, and the like.

New procedures for grievance processing have been proposed by the state Employee Relations Division of the Civil Service Commission for incorporation into the 1966 Annual Report (not yet published). The draft furnished the author in the interview cited indicates that the changes proposed for incorporation have actually evolved during grievance processing in the year 1966. The major changes cited are as follows:¹

- 1) the recognition of the right of the employee to prior consultation with his employee organization,

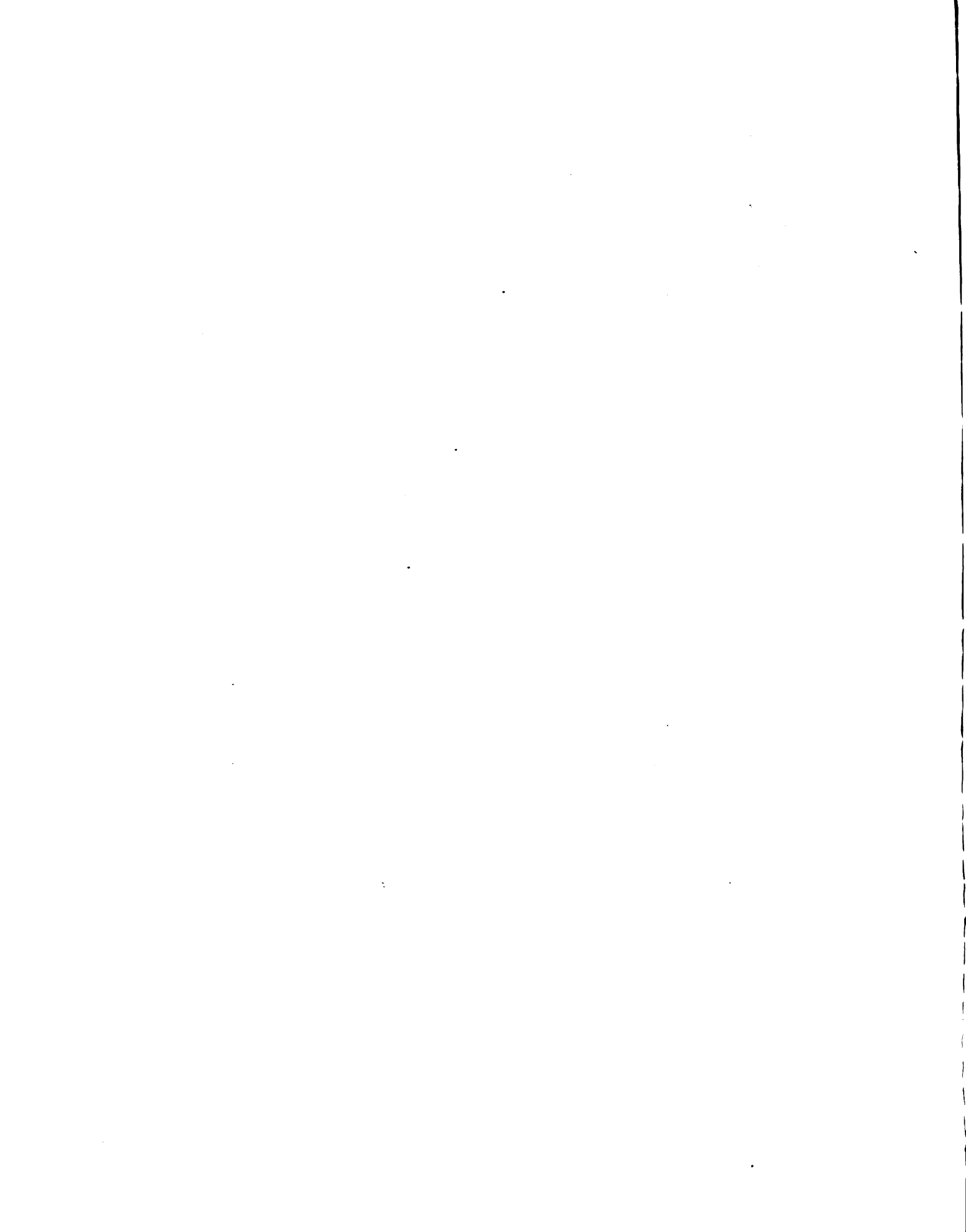
- 2) the recognition of the right of the employee to representation at step one as well as later steps,

- 3) the requirement of a written grievance statement and answer at each step after informal, initial discussion fails to resolve the problem,

- 4) the requirement that recognized employee organizations have the right to confer with the departments in developing the procedures, and,

- 5) that recognized employee organization requests for changes in working conditions must be processed by

¹ Unpublished mimeographed paper "The Grievance Procedure", undated.



departments under a commission conference procedure rather than under the grievance procedure.

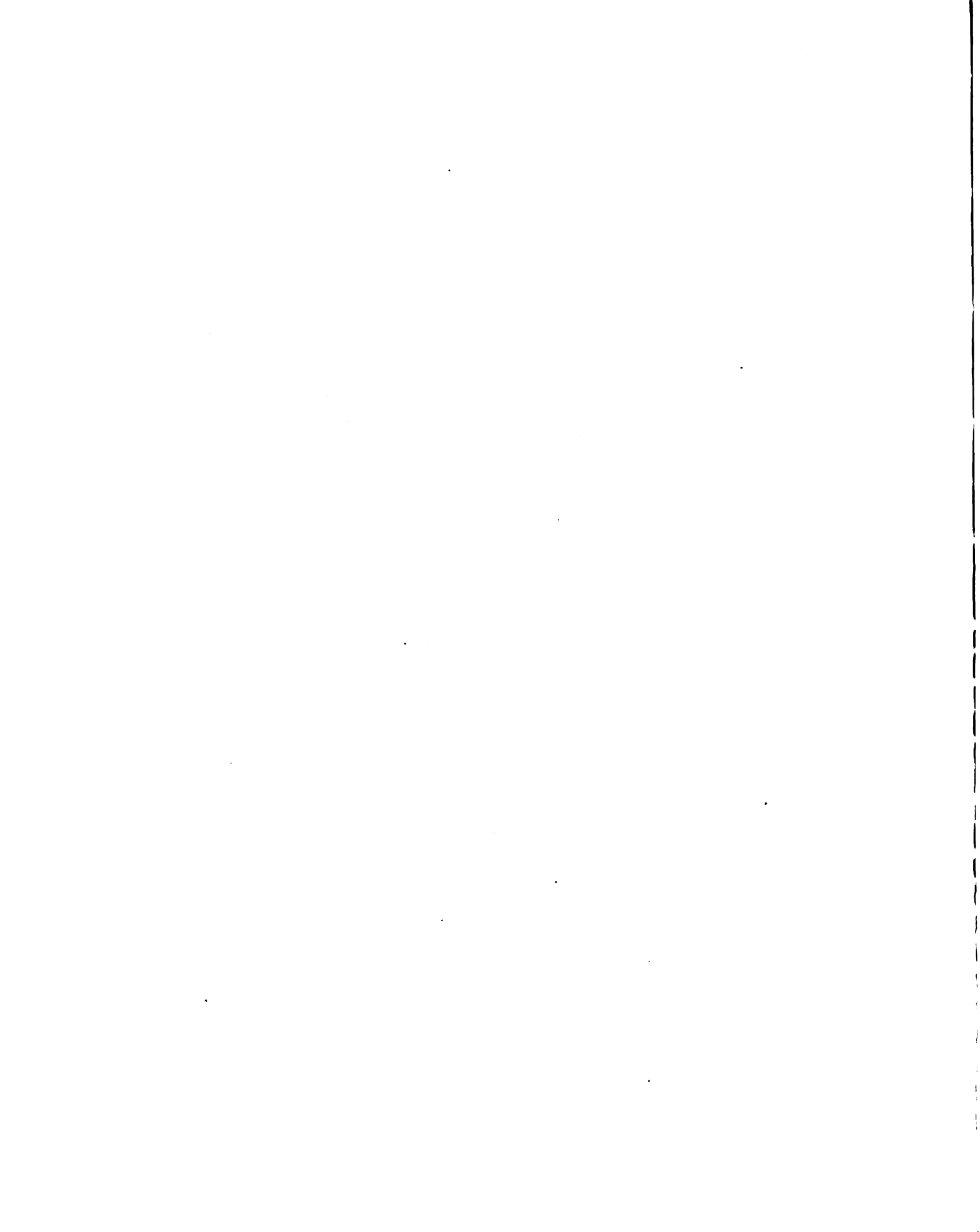
Additional plans have been developed for a reduction in hearing board actions by the expedient of submitting grievance cases by brief when the facts are undisputed but the reasonableness and fairness of the department are contested.

SUMMARY

The procedures involved in the grievance processes of the various governmental agencies discussed in this chapter present a considerably more diversified and variant framework than those previously cited in the chapter on labor-management procedures. A brief summation of the features of the civil service framework follows:

1) Written procedures are commonly used but not universal in their application to the various steps of the process. The Tennessee Valley Authority approach emphasizes the use of oral procedures in grievance processing up to the director of personnel. Several other agencies whose practices have been reviewed require written procedures at the first step, without regard as to whether outside representation of the employee is available or utilized.

2) A multi-level approach to the grievance process is in general use. A system of appeals is provided throughout,



generally following the labor-management principles of industry that authority increases with each successive step of the process.

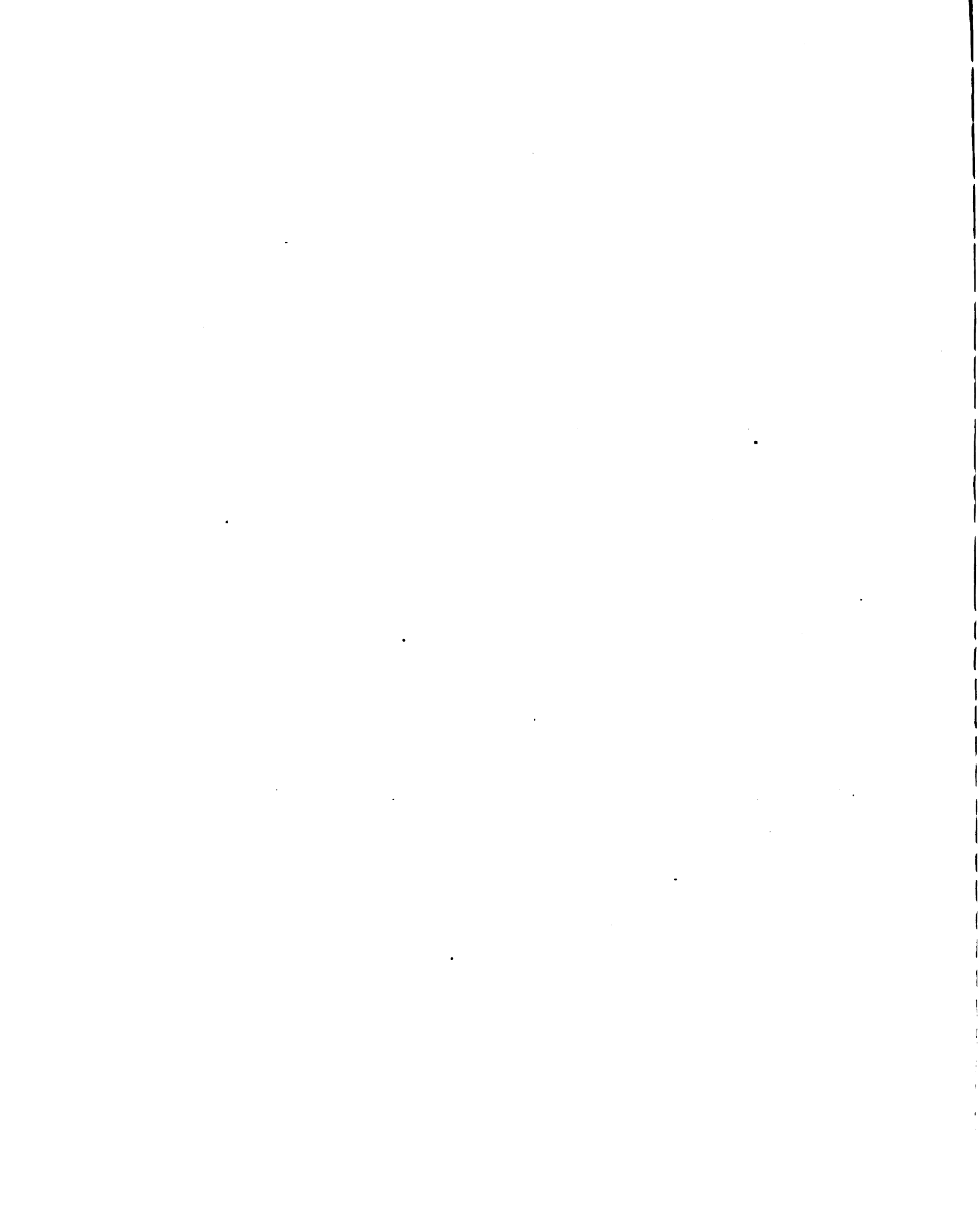
3) Settlement at the lowest possible level is emphasized with numerous exhortations to supervisors in use to support this emphasis. Settlement at the lowest levels appears to be slightly less likely in government frameworks than in industry. The reason for this difference can probably be found in the complexity and number of regulations, policy dictates, and, statutory limitations inherent in government personnel procedures, which limit actions by supervisors and provide a wealth of matter for interpretation on which disputes may be based. Paradoxically, this structure also appears to reduce the number of complaints initiated, since the guidelines contained in these documents often obviate the need for complaints, or the probability of successful prosecution of a complaint.

4) Formal procedures are initiated at the lowest level possible. In all cases reviewed, the formal procedure is initiated with the immediate supervisor. Even where the oral pursuit of a grievance is initiated with the supervisor, requirements exist for written procedures to be initiated at this same level. The author's experience with the military grievance procedure is confirmed by interview data obtained from the Michigan Civil Service Commission, in that informal

reference to higher authority by either the employee or his immediate supervisor (without complying with formal grievance procedures) often result in settlements of complaints without formal proceedings or records. TVA procedures in this area are indicative of the high degree of success available to this technique, however the TVA example is unique in its comparative freedom from legislation requiring compliance with specific governmental dictates.

5) The right to appeal is usually uni-lateral and granted only to the employee in normal situations. The structure of laws and regulations as well as the highly authoritarian aspects of the governmental structure obviates the need for mutual appeals provisions. Even where appeals by the employees are taken before such agencies as the Civil Rights Commission, or, litigated in the courts, it must be recognized that the employee is simply dealing with still another agency of government, albeit at a higher level of authority in matters of interpretation of statutes and regulations.

6) The point of final appeal varies from disinterested parties to governmental executives. Where disinterested boards or commissions are established in the appeals process



their decisions or findings are only advisory in nature with power only to recommend actions by governmental agencies. Only in the example of the TVA is the final appeal to a disinterested party who has authority to make a final decision which is binding on the disputants. This exception is possible only due to the unique stature of TVA in its comparative freedom from governmental regulation. Philadelphia approaches a process for final appeals to a disinterested party, but even here limitations on types of decisions are imposed. As a practical matter, government executives empowered to decide grievance appeals usually adhere to the recommendations made by the impartial boards established.

7) Records of written grievances and responses are maintained by the government agency, with copies furnished to the employee. Minutes and reports of board meetings, hearings by commissions and arbitrators are similarly made a matter of record. Again, the exception to the rule is TVA to the extent that grievance procedures are handled orally up to the level of the director of personnel for TVA. Records are maintained from the point where oral discussion of the grievance with the director has failed to achieve a mutually satisfactory solution. All of the other agencies cited in this review require

written records from the first step of the grievance procedure onward.

8) Policies towards litigation vary. No general prohibition of litigation was encountered in the review of agencies cited in this investigation. The wording of regulations to the effect that decisions at a certain level were "final" might be construed as limiting. Records of litigations of grievances may be found for most agencies and those involving the Civil Service Commission (and its components) in Michigan are cited in the text. Where litigation is encountered, it is found to rest primarily on the basis of stare decisis, where current decisions deviate from established practices of the past. No effective bar exists other than the general concept that the government need not permit itself to become a defendant in certain civil cases involving torts, and, this factor has apparently not found itself resorted to in grievance situations.

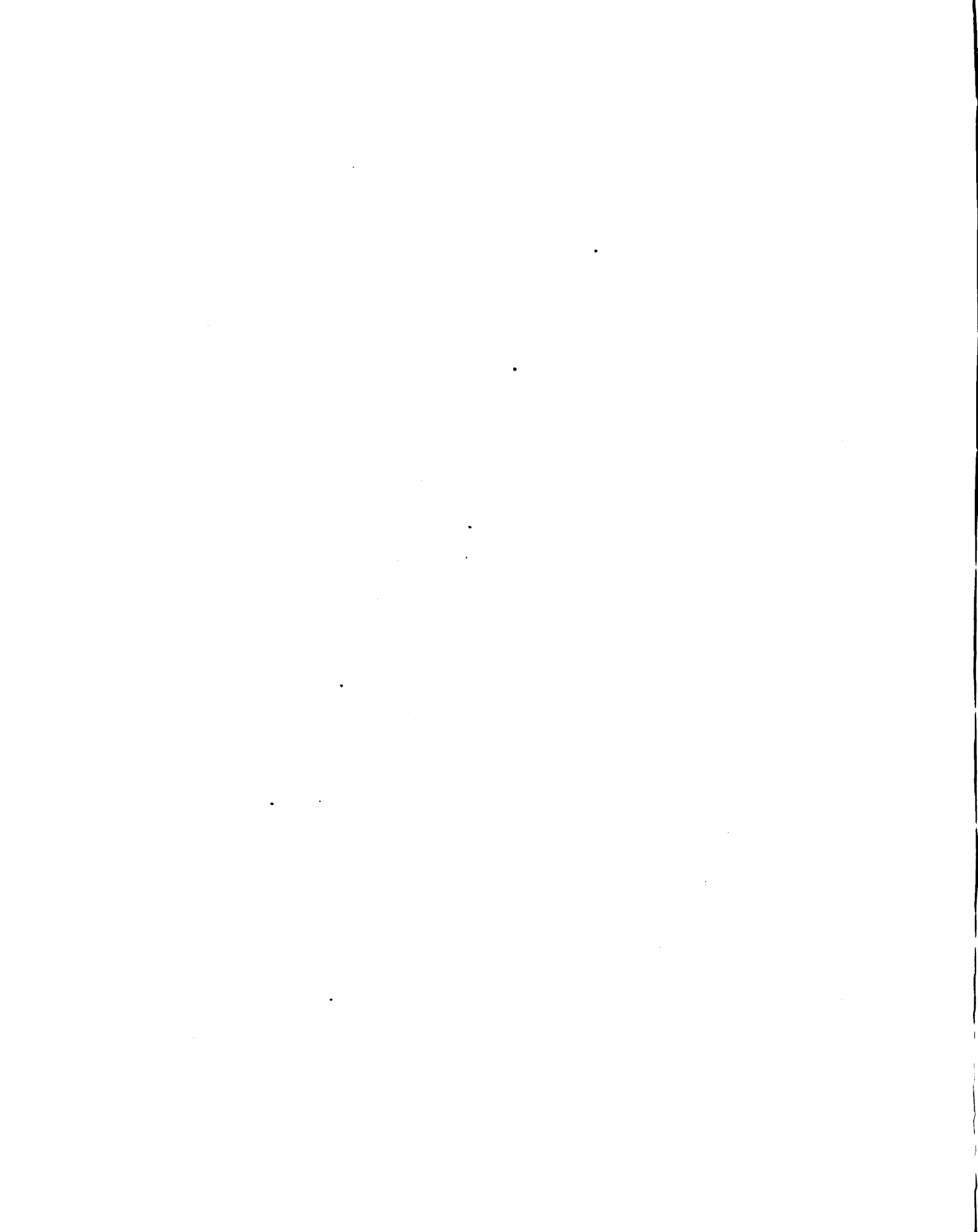
9) Time limits are established within which each step of the grievance procedure must be completed. These are generally more liberal than those found in industry-labor agreements from the point of view of the employee in that more time is granted (in some cases up to a year) for the employee to initiate his action or enter an appeal. Time

limitations for completion of action by the supervisor in responding to a grievance are almost universal, and are generally comparable to the time limits imposed by agreements in industry. Provisions for waiver of these time limits are made on a showing of necessity for such purposes as extending an investigation, personal hardship to the employee, and the like.

The forgoing outline of procedures for processing grievances in the civil service must be considered in the light of numerous factors, affecting the process, and, peculiar to governmental agencies. A brief discussion of some of these salient factors follows:

1) The grievance procedure envisioned by the government is one which is promulgated unilaterally by government and its executive representatives. There exist only isolated instances where provisions are made for discussion of policies with the employee with the intent of adjusting those policies to mutual satisfaction. Where such provisions exist, they are usually on the lower levels of government, ie city government, and are the result of initiatives by unions or other employee organizations serving the same general purpose and having similar functions, where such organizations have been recognized.

2) The authority of the government representative



to negotiate is considerably hampered by a body of statutory and regulatory restrictions on the functions of his position and the accompanying authority to effect change within the agency. These restrictions are based on a considerably more formal and inflexible concept and "chain of command" than those of industry. The ability of employee organizations to effect change in this formalized structure is also hampered by provisions limiting the right to strike, and, in some areas limiting the point of access of union representation into the grievance process.

3) Provisions are made for orienting the new employee in the nature of the grievance process, and regarding subsequent changes by formal procedures which usually include furnishing copies of the grievance procedural regulations to the employee and requiring that he receipt for same. Unfortunately the wording and structure of government regulations are often unintelligible to the average person who has not had the benefit of some training and experience in the "gobbledygook" phraseology of government. Thus channels and procedures of the grievance procedure will not always be understood by the employee despite elaborate efforts to keep him informed.

4) As in the case of the labor-management dispute in industry, grievances in government employment are usually based on differences in interpretation of the written

directives and rules pertaining to employment practices and procedures. In the governmental structure these interpretations of rules often become quite complex, primarily as the result of the applicability of several regulations to a particular question. In the military structure, situations where direct conflict between the wording of two regulations exists, are not unheard of.

5) The structure of departments of the government service and the job ratings scales of civil service are such as to induce a more authoritarian relationship between supervisors and subordinates. The practice of assigning numerical scales to job positions leaves little doubt as to the relative standings of employees in the hierarchy of civil service. The statutory powers of executives and detailed description of job functions as to supervisorial roles tends to further enhance the class distinctions inherent in civil service, with its inherent implications for more formalized relationships between supervisors and members of their department.

6) The emphasis on compliance with existing rules and regulations inherent in government service tends to create an aura of adjudication to the grievance process. The tendency is to explore WHO is wrong rather than WHAT is wrong, since existing rules prescribe what is right for the situation, and rules are difficult to change.

In a broad sense, one may conceive of the civil service grievance procedure as having a greater relation to the police problem than that of industry. The quasi-military structure of the police, together with their inherent connections and relationships with government at various levels, tend to establish conditions which closely parallel many of those found in civil service structures. A detailed discussion of these factors follows in later chapters.

CHAPTER IV

THE INSPECTOR - GENERAL AND THE OMBUDSMAN

The military inspector general and the ombudsman are considered jointly since their functions correspond to a considerable degree. The subsequent discussion will show that these functionaries are both, in a sense, outside the scope of the grievance procedures which have been considered thus far.

The title inspector general is particularly apt since it describes one of the main functions of the office, to wit, inspection. The following discussion of the office of the inspector general and his functions is limited to the Army application in the United States military.¹ Applications of the concept to the other armed forces parallel this structure very closely, and therefore, a discussion of the separate service operations of the office would serve no practical purpose here.

The designation of an inspector general position within the Army is specified by Tables of Organization and

¹ The discussion of the Inspector General in the Army is based on the author's experience as an investigating officer for a command inspector general, participation in numerous inspections by inspectors-general and involvement in the accompanying "complaint sessions" described in the discussion.

and Equipment, and, Tables of Distribution which establish various units and installations. These tables are promulgated by the Department of the Army, subject to approval by the Department of Defense. The position is normally found at the staff level of divisional types of units and higher, with provisions for furnishing an inspector general for each installation operated by the army. In the case of extremely small organizations which are operating separately from their parent headquarters, and in some small installations where the office is not provided, regulations require the appointment of an "acting inspector-general" for purposes of receiving complaints. The complaint function of an inspector-general of some type is therefore available to personnel on an almost universal basis.

One of the major roles of the inspector general in the Army is that of conducting inspections. The staff of his office is manned to meet this specific need by including specialists in the fields of administration, signal communications, ordnance, and, a secretarial staff.

The continuing and specific requirements for this inspection function (all activities of the army are subject to at least annual inspection by an inspector general) serve to generate a considerable familiarity with the internal functions of most of the units and activities of the

jurisdiction. Inspectors general are normally selected from the higher military echelons (ranks of Lieutenant Colonel are most frequently required, with Majors serving a few of the smaller activities). Personnel in these ranks have usually served for more than fifteen years of active duty and have acquired a considerable experience in most phases of the military service.

All U. S. Army personnel (including civilian employees) have a right to register complaints directly with an inspector general rather than take them up with their supervisor.¹ As a matter of actual practice, local regulations and policies, as well as the nature of the office, usually require that complainants exhaust remedies available in the chain of command before action is initiated by the inspector general. The work load generated by direct access to the inspector-general in all cases would be prohibitive, and, solutions to routine problems are normally found within the complainants immediate chain of command.

The grievance procedures envisioned in the oral complaint process through command channels are quite idealized and some segment of the procedure is frequently skipped over when a pragmatic rather than dogmatic approach is used. The essentials of the system are as follows:

- 1) The military member discusses his complaint with his immediate supervisor and requests corrective action.

¹ Army Regulations 20-1 (Washington, D.C., July 16, 1958)

(In the case of an enlisted complainant, this first step involves two supervisors at the same level, ie the enlisted supervisor (platoon sergeant) and commissioned supervisor (platoon commander).)

2) Failing acceptable settlement of the complaint at this level, the complainant takes up his problem with the next level of the chain of command. The dual enlisted/officer aspect of the grievance process continues at this level, eg first sergeant and company commander.

3) The process continues through the chain of command, normally until an administrative headquarters is reached in the chain of command. (An administrative headquarters for purposes of complaint procedures is usually construed as a headquarters where individual personnel records are maintained and a specialized staff of officer personnel is available to the commander.) Local policies may dictate some variations in the chain of command structures which must be followed in the grievance process before a referral to the inspector general is permissible.

The entire proceeding in the command structure of complaints is normally handled on an oral basis. Complaints as well as replies are made orally and briefings as to the status of the complaint are usually given orally to the

next higher echelon of command by the commander whose decision is being appealed. The procedure throughout this oral process is quite flexible and techniques for investigations, informal hearings, questioning of witnesses, and examination of documents at this level of the proceedings is variable and depends to a considerable extent on the personalities involved and the degree to which local ground rules dictate procedure. In any case, these procedures are completely separate from the inspector general functions and constitute required preliminaries to making a complaint known to the inspector general. (As a matter of actual practice, some personnel do present complaints directly to the inspector general without reference to the procedures cited. These are normally referred back to command channels without action by the inspector general other than to make informal notification to the local commander that a member of his command has a complaint which should be processed by the command.)

Complaint procedures are usually stressed to a sufficient degree within a command to insure familiarity with the procedures by all personnel. Instructions as to the complaint process are usually required to be posted on unit bulletin boards with a requirement that the bulletin be read by all personnel of the unit. Indirect and direct sanctions available to the commander in enforcing these

procedures are usually sufficient to deter attempts to make direct appeals to the inspector general.

A written complaint procedure is initiated at the office of the inspector general when the individual presents his complaint at that office. Normally, an oral interview is conducted by the inspector-general or a member of his staff, and the elements of the complaint are reduced to writing in the form of a letter to the commander of the complainant setting forth the details of the complaint, and, requiring a response as to actions taken to remedy the situation complained of or a statement as to why no remedial action is deemed necessary. A specific time limit is established wherein the commander must make his reply. This time limit is determined by the inspector general based on his evaluation of the problem, and, is normally less than ten days although periods up to thirty days are sometimes allowed.

It should be noted that not all complaints presented are within the capability of the commander's remedial action. Pay complaints are an oft occurring example. The oral chain in this circumstance includes the finance officer of the command, and, if action is required by the finance officer or his representatives to remedy the situation, the letter described is directed to that office by the inspector general in a form similar to that described above.

Successive actions by the inspector general are dictated by the general circumstances of the complaint in question. Frequently a determination of the disposition of the complaint is based on the response of the commander, or other responsible officer to the initial letter of inquiry. Where the complexity of the matter, or, the nature of the allegations of the complaint require such action, investigating officers or boards of officers may be appointed by the inspector general to adduce additional information regarding the complaint. The investigators are selected from officers assigned to the command on the basis of specific experience in the area complained of and impartiality. Sanctions against misrepresentations on the part of an investigating officer are sufficiently extreme to preclude "overly liberal" interpretation of the facts even where close friends are involved. An understanding of the military officer's code of ethics provides a valuable insight into this aspect of the procedure. There are no doubt exceptions to any rule, but, they are few and far between in cases of this nature. The elements of the complaint are judged on the merits of the individual allegation as viewed in the light of applicable regulations. In a system where almost every human action is regulated, in writing, the latitude available in the investigation and recommendation

process is negligible.

The final result of the investigation is a recommendation to the inspector general supported by statements of witnesses and such other evidence as is available. The inspector general is not bound by the recommendation and may decide that additional investigation is necessary. In extreme circumstances he may obtain the appointment of a new investigating officer or board and disregard the recommendations and findings of the initial investigators.

The authority of the inspector general is basically that of the commander he serves. His orders as to disposition of a complaint are normally conveyed in the name of that commander. This he does in cases of complaints where specific regulations are deemed applicable. Quite often he uses his considerable powers of persuasion to influence commanders to reconsider their previous determinations. This is usually done orally with follow-up correspondence indicating that the matter is to be resolved "per conversation of date _____".

An unusual facet of the inspector general in the military community is that he has access to higher levels of command without the requirement of following normal military channels. Thus when problems arise, which in his estimation involve the commander on whose staff he serves, or where in his judgment prejudices exist at that level, he

has access to higher authority through inspector general channels. In the experience of this author this occurs on extremely rare occasions under highly singular circumstances.

One other interesting facet of the inspector general complaint process remains. The inspection function of the inspector general and his staff has already been referred to. In conjunction with these inspections, complaint sessions are held at the unit or activity being inspected. A room is set aside where the inspector general remains available for a specified period of time to receive complaints directly from members of the unit or activity. The complaint session is confidential and avails the members of the command direct access to the inspector general without a requirement for first observing the chain of command process. Complaints received at such sessions are usually minor in nature and commonly deal with the general living conditions and atmosphere of the unit or activity being inspected. The results of the interviews conducted during this complaint session, and, the results of inspector general conversations with unit personnel during his inspection are used in assessing and evaluating the over-all status of such intangibles as the morale of the unit. Such observations are recorded in the inspection report completed by the inspector general staff, and, in

combination with other aspects of his report may have serious implications for the unit commander's evaluation by his superiors. In this manner the complaint session may be viewed as a preventive measure in the grievance process. The effectiveness of this measure is extremely difficult to assess and varies considerably with the degree of compliance with the spirit as well as the letter of the regulations by the unit commander and his staff.

THE OMBUDSMAN

"The Ombudsman is an officer of Parliament who investigates complaints from citizens that they have been unfairly dealt with by government departments, and who, if he finds that a complaint is justified, seeks a remedy."¹ The Ombudsman is essentially of Scandinavian origin finding its inception in Sweden, and subsequently being adopted by Finland and Denmark, with later innovation into a "Parliamentary Commissioner for Investigations" in far-flung New Zealand.²

It bears repeating that the structure of the Ombudsman's office is such as to require that administrative appeals

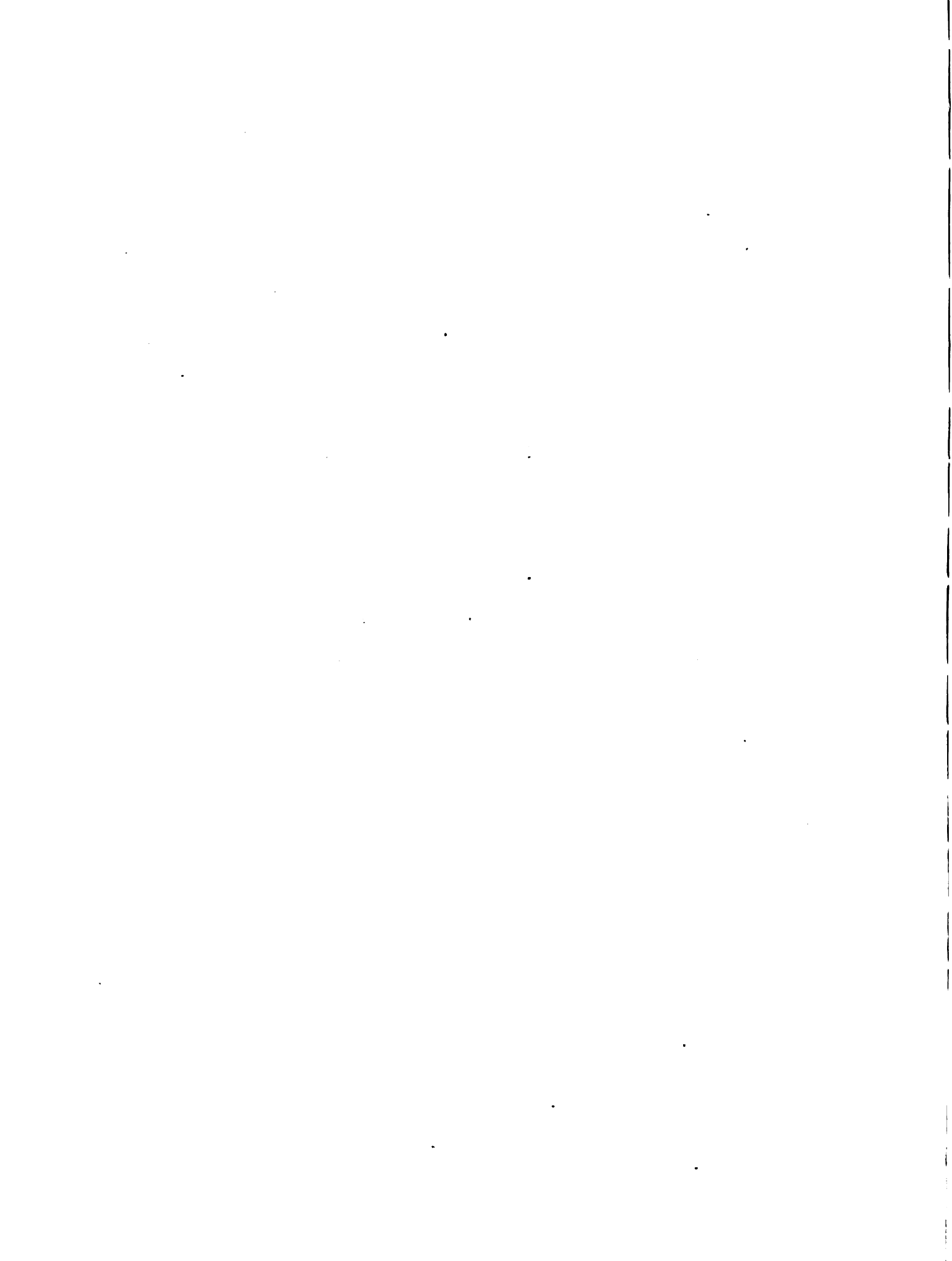
¹ Donald C. Rowat (Ed), The Ombudsman (London: Unwin Brothers, Ltd., 1965) p.7.

² A detailed discussion of the Ombudsman, the nature of the office in various nations, and, the extent of acceptance is contained in Walter Gellhorn, The Ombudsman and Others (Cambridge, Mass., Harvard University Press, 1966)

appeals processes available to the citizen must be exhausted before his complaint will be acted upon by the Ombudsman. A detailed discussion of the various administrative procedures envisioned in the Ombudsman's functions throughout the various countries in which he functions is beyond the scope of this investigation. Primary emphasis here will be limited to the office as it exists in Denmark. This selection was made since the personality and efforts of the Danish Ombudsman, Dr. Stephan Hurwitz, have been largely responsible for the considerable amount of attention directed towards this institution in the United States as well as in other nations. The extent of this public education effort on the part of Dr. Hurwitz, and a listing of interviews, articles, and appearances relative to this effort is contained in Gellhorn's text, The Ombudsman and Others.¹

The position of the Ombudsman is the answer supplied by some nations to the question: How best can we quickly and fairly inquire into allegations of unfair dealings or improprieties by public agencies and officials? In Denmark the position is one created by the constitution, and calls for the election of an Ombudsman by the Parliament.

¹ Ibid. All data pertinent to the Danish Ombudsman reported in this investigation is derived from this source, which appears to be the most recent and authoritative study of the field available. Information relative to the Danish Constitution and statutory rules applicable to it are similarly derived from this text. Exceptions are separately identified.



The election is held after each general election but the Ombudsman may be replaced by a new election whenever he no longer has the confidence of the Folketing (Parliament). The office as amended by statute creates a single Parliamentary Commissioner (Ombudsman) with authority to deal with both civil and military administration.

The internal procedures of the various departments of the Danish government provide for the administrative handling of complaints, with only broad guidance by statutes prescribing that full review of documentary materials and evidence bearing on the case be made before a decision is rendered. This Act,¹ passed in 1964, supplanted a period almost entirely free from statutory procedural requirements. Judicial review of administrative complaints is available in the courts, however, the process is quite slow and costly, with the result that litigation is infrequent.

The extent of the jurisdiction of the Ombudsman has expanded over the years. The 1954 statute which created the Ombudsman was subsequently amended to award jurisdiction over all civil and military central government administration exclusive of the courts. His jurisdiction extends to all ministers, civil servants and other persons acting in the service of the state (all those on the national pay-roll, which includes university professors, museum curators,

¹ Administrative Procedure Act, No. 141, May 13, 1964.

clergymen and ballet directors) except those engaged in judicial administration. In 1962 this authority and jurisdiction was expanded to include local governments in cases where recourse to a central government authority was available.

One of the features of the Ombudsman in Denmark is that he is not required to act on complaint alone but may proceed on his own initiative. This factor in combination with his jurisdictional scope would allow investigation of almost any arm of government at the local and national levels.

The Ombudsman's formal powers include the ordering of investigations by public prosecutors, or, criminal court proceedings in the ordinary law courts; or, he may order that disciplinary proceedings be initiated by the proper authority. Gellhorn points out that the Ombudsman has not once during eleven years of activity ordered either a prosecution or a disciplinary proceeding, though in a number of cases he has ordered the prosecutor to carry on investigations. The primary techniques utilized by Dr. Hurwitz in his performance of the Ombudsman role have been those of passing on the merits of a specific decision and suggesting methodological improvements. He has expressed criticism in cases even where the outcome of the question was not at stake. The powers of persuasion attributed to the inspector general in the preceding discussion are apparently also used

with considerable effect by the Ombudsman.

The authority of the Ombudsman permits him to proceed upon the basis of complaint, upon his own initiative or by direct inspection of official operations. In this respect the Ombudsman's authority parallels that of the inspector general, however the proportionate involvement in these types of activities vary considerably. The Ombudsman does not spend any great portion of his time in inspections (unlike the inspector general). To a degree this reflects Dr. Hurwitz's skepticism about the value of routine inspections. (The Ombudsmen of Sweden and Finland favor inspection trips, and, make wide use of this method. Gellhorn apparently shares Dr. Hurwitz's skepticism in this area.)

The apparent result of this disinclination towards inspection trips is a commensurately low number of investigations based on initiative. The greatest amount of action generated by the office of the Danish Ombudsman is based on complaints. Specific requirements must be met before the Ombudsman will undertake an investigation of a complaint. Statutory requirements exist which stipulate that a complainant must identify himself; must lodge his complaint within a year after his grievance arose; must have exhausted all available administrative remedies; and the Ombudsman must determine whether the complaint gives sufficient grounds

for investigation. Complaints must ordinarily be accompanied by evidence and must be in writing. The Ombudsman may refuse to act on a complaint if he believes that the complaint is unfounded, or that its subject matter is insignificant. Of a total of 5,745 matters registered with the Ombudsman's office during 1960-1964, only 856 cases were taken up for investigation (14.9% of those submitted). Perhaps half of those not considered were either outside the jurisdiction of the Ombudsman, or, were dismissed because administrative remedies had not been exhausted.

Gellhorn's investigation revealed that a great majority of complaints submitted to the Ombudsman were not against individuals but rather against organizations generally. The process of investigating the complaints was quite slow, ranging from two weeks to two months in 25% of the cases, and two to four months in most of the remaining cases. Some of the investigations took as much as a year to complete.

The Ombudsman's staff consists of seven lawyers and five clerical employees. The lawyers are in dual employment status and ostensibly work part-time. The Ombudsman does have the final word in all cases investigated by his office but the staff described renders valuable assistance to him in his preparations. Complaints are received by the Ombudsman personally, reviewed and passed on to a member of his staff

for development of facts pertinent to the case. The individual staff members work with a considerable degree of independence, with considerably more freedom to take initiative than their counterparts in other Scandinavian Ombudsman's offices. The final product of the work by the staff member is subject to final review and approval by the Ombudsman. Delays are often encountered in eliciting replies from government agencies which have been queried by the Ombudsman or his staff regarding complaints. Usual procedure is to follow up such delays with another letter if a reply has not been forthcoming within a period of two months. In view of this time lapse, which is apparently not infrequent, it appears somewhat paradoxical that one of the Ombudsman functions is to investigate delays in actions by government agencies. Exceptions to the rules requiring exhaustion of administrative remedies are made when an agency of the government has been tardy in completing a requested action, and a complaint is made by a citizen alleging such delay as being unreasonable or unnecessary.

The impression conveyed to this author by the length of procedures encompassed by the Ombudsman in his function is that such procedures would not be generally acceptable as remedies to complaint problems in the United States, simply by virtue of the time elapsed in arriving at decisions. Gellhorn's conclusions regarding the office of the Ombudsman

is that "no panacea for the cure of government ills exists. The greatest injustice to the ombudsman would be to regard him as the possessor of a cure-all."

In recent years there has been considerable discussion of the advisability of instituting an ombudsman in the United States. Messrs. Reuss and Munsey liken the position of the senator and the representative in the United States government to that of the Ombudsman.¹ The authors refer specifically to the complaint receiving and processing functions performed by congressmen and members of their staff. Reference is made to the advisability of appointing an administrative counsel to the congress who would perform the role of Ombudsman, receiving complaints from citizens through their congressmen, thereby relieving the congressman of the burden of complaint investigations.

Other writers support the institution of an Ombudsman at the state level, citing the complexities of state government as it has evolved over the years as indicative of the need for this action.² The role envisioned for this state Ombudsman consists primarily of a "watchdog" function, designed to curb wrong-doing within the various departments of state government. The recent controversy in New York City

¹ Henry S. Reuss and Everard Munsey, "The United States" in Donald C. Rowat (Ed) The Ombudsman Op.Cit.pp.194-200.

² Ralph Nader, "Ombudsman for State Government" Ibid.pp.240-6.

over a Civilian Police Review Board resulted in the defeat of the review board in a public referendum and considerable subsequent publicity in the New York press regarding the advisability of instituting an Ombudsman to fill the void created by the review board defeat. (A police instituted review board process was actually substituted with no further action on the Ombudsman proposals made by the news media.) Rowat includes an appendix in his text The Ombudsman which lists proposed bills which would institute Ombudsmen in Connecticut, the United States federal government, and, lists data pertinent to similar proposals in Canada and Great Britain. Tables outlining the activities of Ombudsmen in Finland, Norway and Sweden are also included in this appendix.¹

SUMMARY

The various similarities between the Ombudsman and the Inspector General lend themselves to joint discussion and comparison. Some of these similarities have resulted from interpretation and usage of the statutes and regulations initiating these institutions but are nevertheless real.

¹ Ibid. pp. 305-321.

In actual practice, both offices may be described as a sort "court of last resort" in the grievance procedure rather than as a function of the grievance system itself. The Ombudsman will investigate only those complaints where all administrative remedies available have been exhausted, and, this limitation on his functions is imposed by statute. Despite regulatory prescription indicating that complaints may be referred directly to an inspector general, usage and interpretation have resulted in a situation very similar to that of the ombudsman. Normal military channels must normally be explored before a formal proceeding by an inspector general is initiated. The nature and stature of both offices dictate that such a procedure be followed. The work load inherent in attempts to process all complaints without other prior reference would be such as to severely over-tax the capabilities of such an office unless it were expanded to the stature of a separate bureaucracy. Both functionaries can perhaps best be compared with the arbitrator or umpire systems utilized in the grievance systems of industry. An evaluation of the features discussed in the summaries of the chapters on grievance procedures in industry and civil service will serve to point out the various similarities and differences between these offices and the procedures referred to earlier.

1) Written procedures are used in the investigations of complaints by both the Ombudsman and the Inspector General. Whereas the ombudsman regulations require that complaints be in writing, the inspector general may often receive complaints orally, and, assist in reducing the facts of the complaint to a writing which is used in subsequent investigations and actions. Written correspondences with the agencies complained against are features of both systems.

2) A multi-level approach is provided by regulations pertinent to the inspector general which visualize successive channels of inspector general where complaints are not satisfactorily resolved by the level appealed to. In actual practice this is seldom done, although the machinery exists and may be utilized. The ombudsman as utilized in Denmark is essentially a one step facility, although little imagination would be required to visualize the effect of installation of ombudsmen at the local levels of government and the ultimate relationship with a national ombudsman. When visualized in this context the two positions are remarkably similar.

3) Settlement at the lowest possible level does not come into play in these concepts to the degree that exhaustion or reference to lower level administrative (or command) remedies are required by both systems. Even where complaints referred to either the Ombudsman or the Inspector General, actions to correct or remedy the situation

complained of are often obtained by using powers of persuasion on the lower echelons of administration and command to effect a solution.

4) There is no stipulation as to the level at which procedures must be initiated. In essence the procedures for both the inspector general and the ombudsman are one-level in nature and both have the authority for access to any level of the administration required by the circumstances of a particular complaint. Actual practice as to the level of administration which these functionaries contact to initiate investigations or corrections of complaints are quite flexible and to a great degree will vary with the personality, experience, and, familiarity with the organization of the individual conducting the investigation.

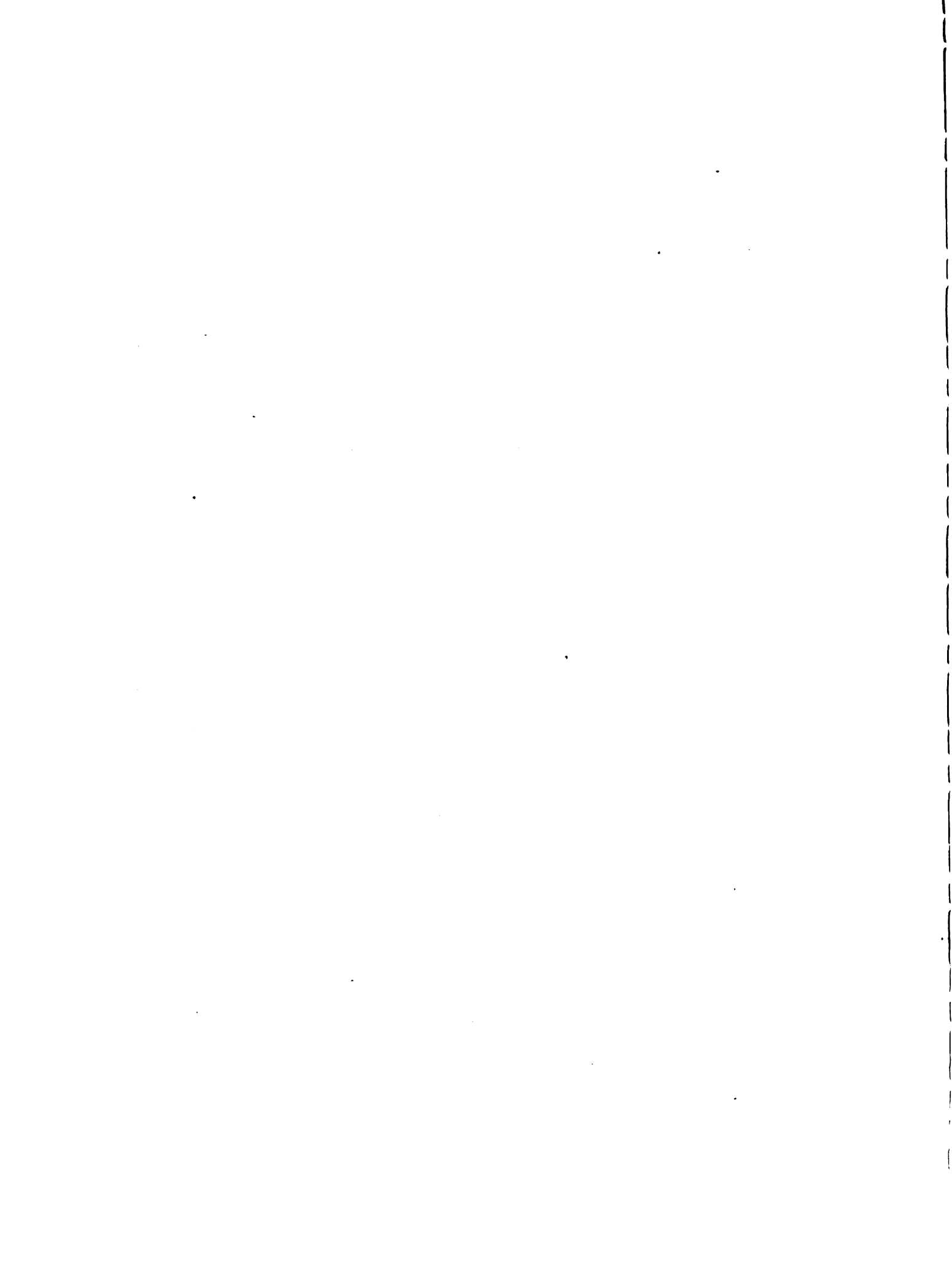
5) A right to appeal to higher channels is provided in the inspector general concept. The ombudsman is the final point of appeal in his system. Further recourse to the courts is available in both systems. Court actions may be based on criminal allegations or civil actions alleging damages.

6) Records of grievances and their disposition are maintained in both systems. Both envision written, formal procedures in the recording of complaints and responses as well as intermediate correspondence, investigation reports, and, evidence adduced, all maintained as a matter of record.

7) Time limits in both systems are extremely flexible. Under the Danish system, complaints must be registered with the Ombudsman within a year of the cause for complaint. Personal knowledge of the author and subsequent investigation reveal no time limit stipulation for making complaints known under the inspector general system. No specific time requirements wherein complaints must be adjusted or rejected are found in either system. Time elapsed from receipt to adjudication of complaints is based on the particular situation and difficulties inherent in it. Barring repeated assessments of inefficiency in the handling of complaints which could lead to removal from office, no limitations to time are imposed in either system on the complaint adjudicator.

A discussion of the more obvious advantages and limitations of these two functionaries would necessarily include the following:

1) Both offices provide a point of appeal from administrative decisions to persons who might otherwise be faced with a *fait accompli*. The availability of such an office may (depending on its administration and actions) provide a deterrent to unfair practices. Such a deterrent must obviously rest on the ability of the office to impose effective sanctions, a feature incorporated into both systems.



2) Effective functioning of the office requires access to files, records and personnel of the activities under scrutiny. A primary consideration of this requirement for access is security. The approach in both systems has been to grant necessary security clearances to personnel attached to the office, as well as the functionary, to permit access to information affecting the national security.

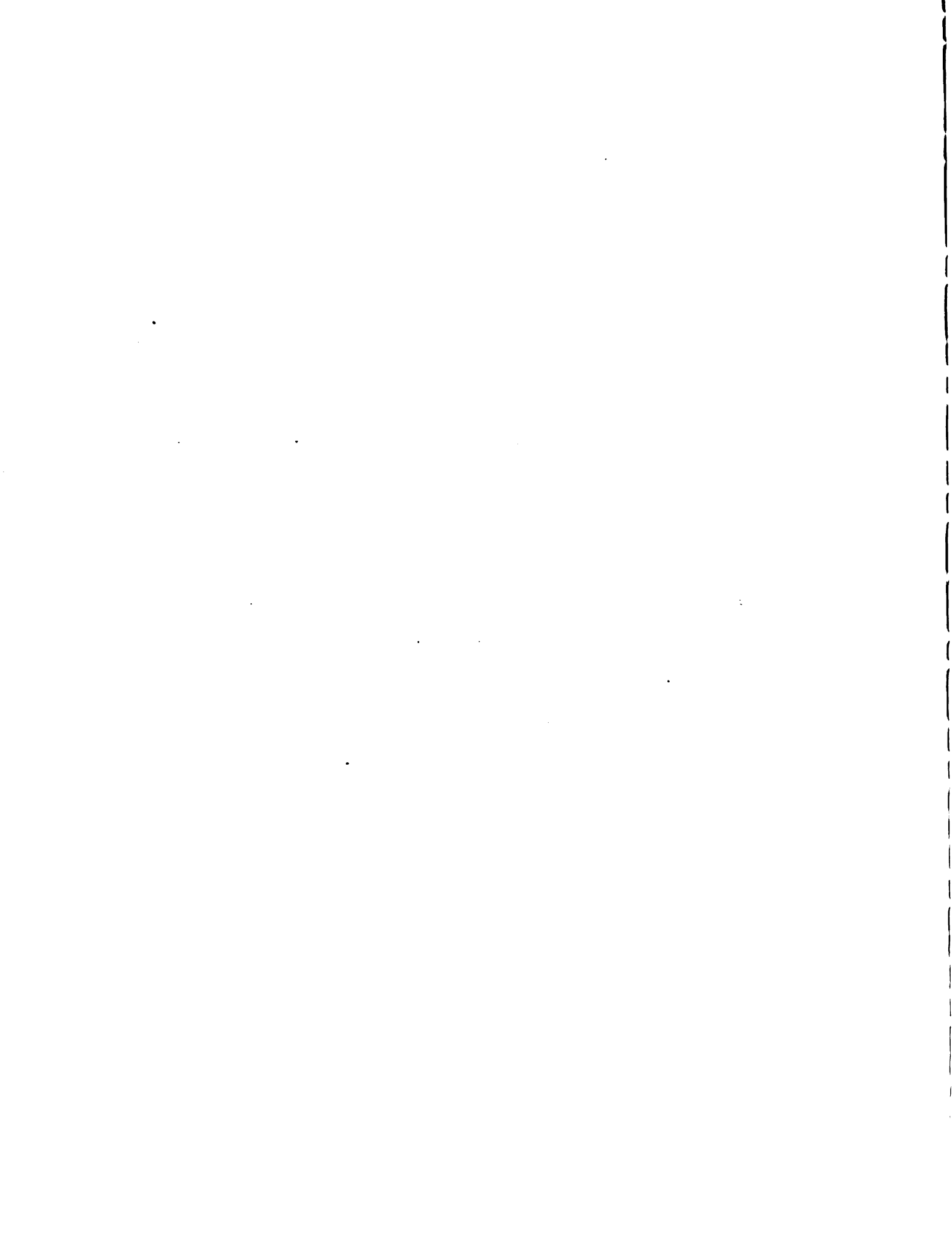
3) Effective operation of these offices requires a wide range of expertise. Complaints can be and are received regarding the operations of a wide variety of administrative and technical agencies of the systems wherein jurisdiction is exercised. Qualified personnel with suitable education and experience to meet the needs of these offices may often be hard to find. The problem is particularly difficult in the case of the ombudsman where the range of activities encompasses the activities and functions of an entire governmental system.

4) The ideal of unbiased, non-partisan, objective judges of complaints is difficult of realization. The inspector general and the ombudsman are appointed or elected officials, and to some degree must invariably be swayed by this source of their power (the commander of the legislature). Gellhorn makes reference to the "political tact" exercised by the Danish ombudsman in his dealings with local groups.¹

¹ Gellhorn, Cb.Cit. p.11.

The military career officer, appointed to the post of inspector general, could hardly be expected to be enthusiastic about criticizing the actions or decisions of the commander responsible for his appointment (who normally plays an important role in the completion of efficiency reports which may seriously affect the officers career).

5) The over-all effectiveness of either program depends to a considerable degree on the attitudes of prospective complainants towards the office. In brief, the willingness of persons to register complaints with either of these functionaries depends on the amount of confidence in the particular personality holding the office, known experiences of other complainants, varying degrees of fear of reprisal, and, general acceptance of the function. An attitude of "what's the use?" on the part of the general public could easily dissuade an individual from registering a complaint.



CHAPTER V

A COMPARATIVE STUDY

The forgoing chapters have presented an overview of some of the better known, more widely used, grievance procedures in use in industry, government, and the military. It should be noted that these discussions have hinged on the actual manner of operation of the systems. Where these operations deviated from the prescribed (or regulatory) procedures this factor was specifically pointed out. It cannot be inferred that other similar structures will deviate in identical ways from the established rules, or for that matter, that they will deviate at all. The local policies under which systems operate vary considerably according to location and circumstance, and, varying concepts of a particular system may be formulated.

The method employed in this comparison will follow the general structure shown below:

- 1) a step by step comparison of the characteristics of each system as discussed in the summaries of the preceding chapters, eg time limits, multi-level processing, requirement for written procedures, etc.

- 2) a comparison of the deviations from regulations in existence in administering the process and the reasons for

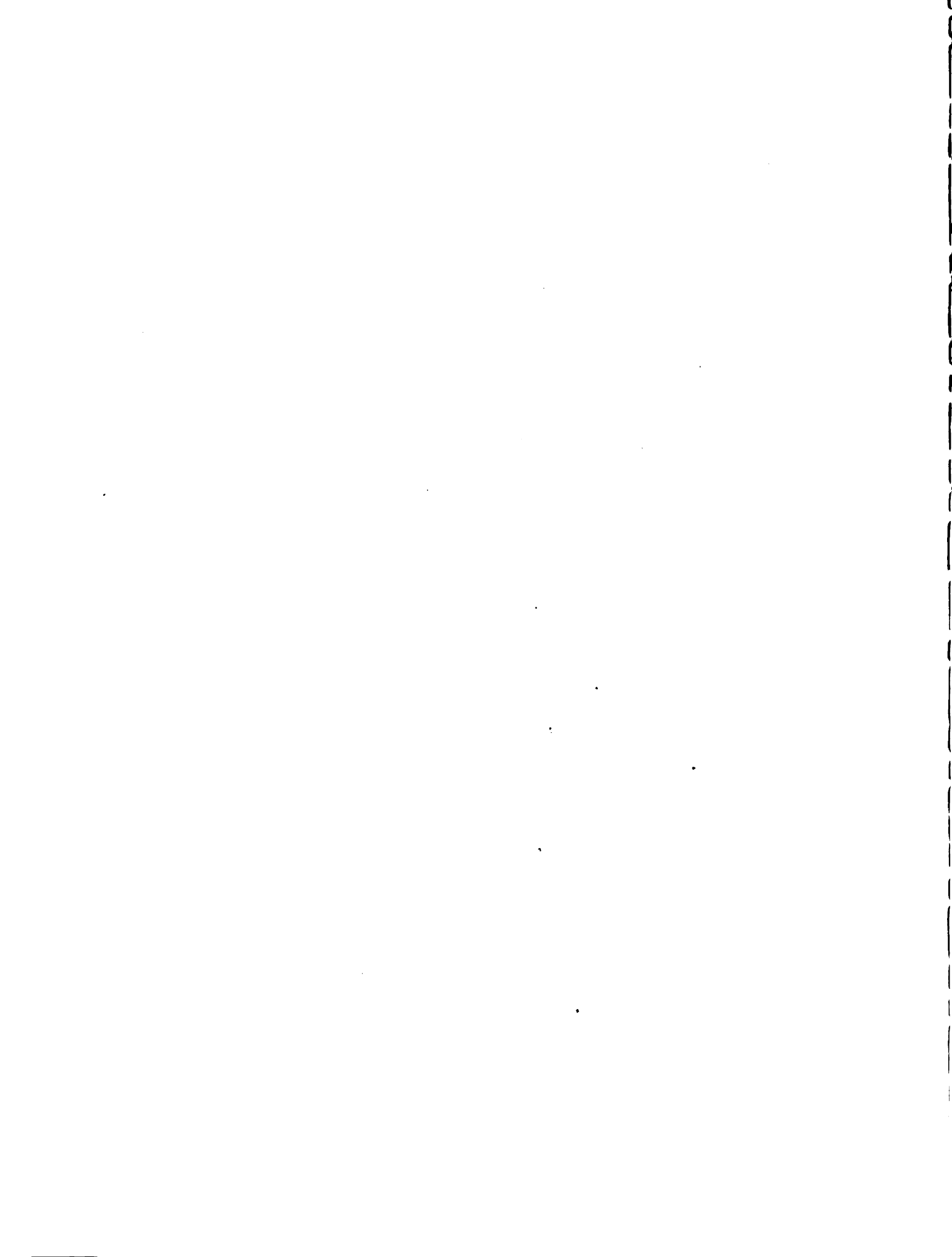
these deviations as inferred from a study of the process, and,

3) a comparison of the persons to whom the procedures are available, from the standpoint of job tenure, contractual agreements, types of representation afforded and the necessity for same in the light of the individuals education, training and experience; relationship of the individual to the system to which he is directing his complaint; and, probable attitudes of the individual towards the position which he holds in the grievance system.

CHARACTERISTICS OF THE SYSTEM

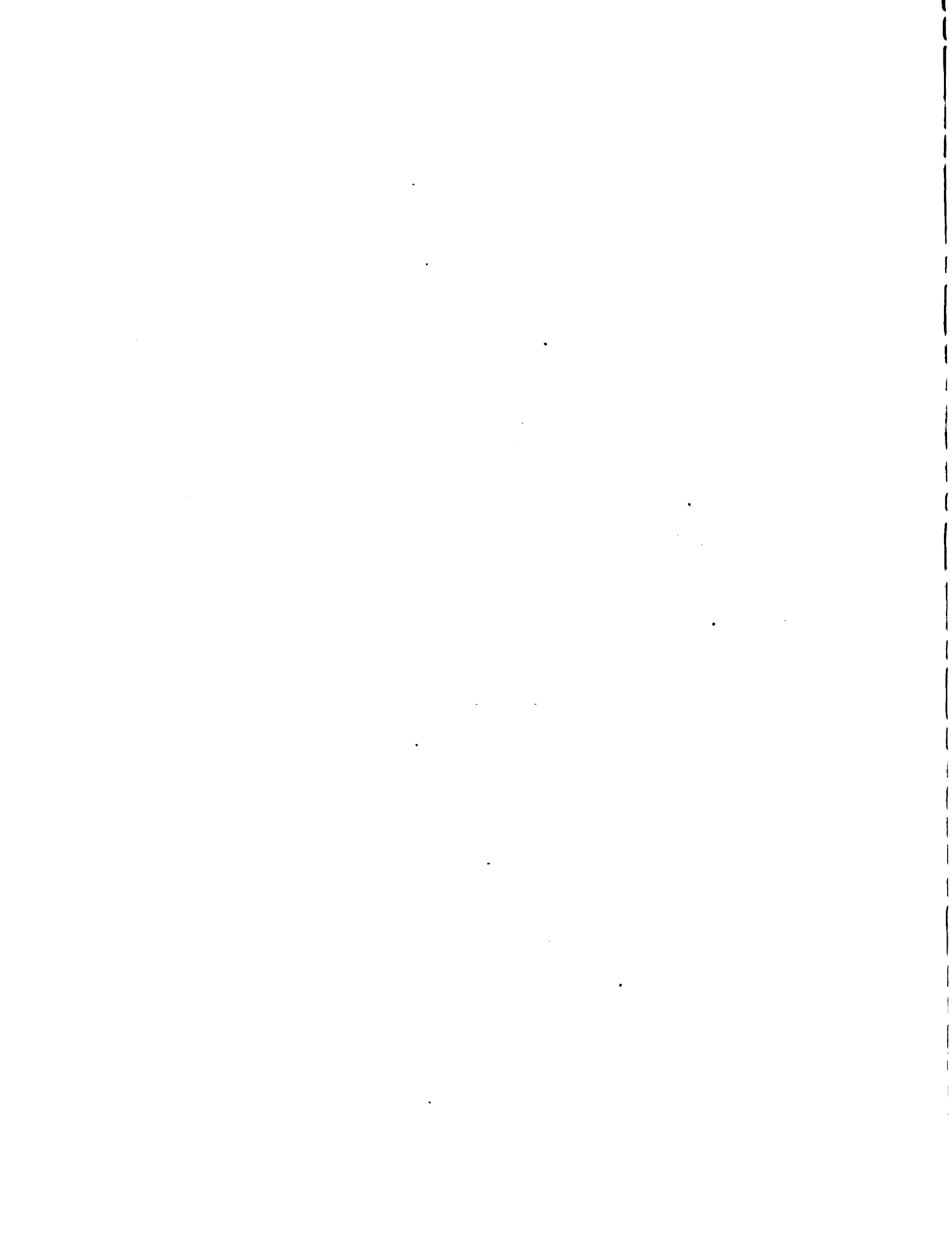
Written Procedures. General acceptance of the need for written procedures at some level of the grievance procedure prevails. Such procedures are usually dictated by contract agreements, internal regulations or statutory provisions. The level where such writings are required varies from system to system and these variances are worthy of consideration.

In the typical labor-industry agreement, stipulations are made that grievances be reduced to writing after oral contact at the lowest supervisory level has failed to achieve a settlement. Civil service regulations establish a similar requirement but unofficial procedures usually



carry the process one step higher before reverting to the written techniques prescribed. (It seems likely that a similar process takes place informally in the labor-management relationship, however, persons interviewed regarding this matter would not commit themselves to any degree on this subject.) In the practical functions of the inspector general system (as opposed to purely regulatory requirements), the oral system of interviews follows two or three supervisory steps prior to reduction to writing. Considering only these three types of grievance processes, it appears that the more authoritarian the system, the more levels of oral grievance procedures are actually followed. Another factor accompanying this phenomenon is the increase in the number and specificity of written rules and regulations applied, and, a decreasing degree of flexibility in altering the rules. Taking another perspective there is greater emphasis on written records in the system where greater possibilities for effecting change are present (the labor-industry system).

It would appear that a greater need for original writings by the complainant would exist in a system where adjudicatory processes follow. The fact finding process of determining WHAT is wrong, as opposed to WHO is wrong, would tend to emphasize the actual functions surrounding the complaint rather than the complaint itself.



Multi-level approach. All of the processes studied envision a multi-level approach in some aspect of the grievance system. The pragmatic considerations apparent in such a multi-level technique are fairly straightforward and include:

1) conservation of time and money by providing direct, informal procedures for settling minor problems at the lowest level possible.

2) provision for settling problems at a level where misunderstandings are less likely to occur,

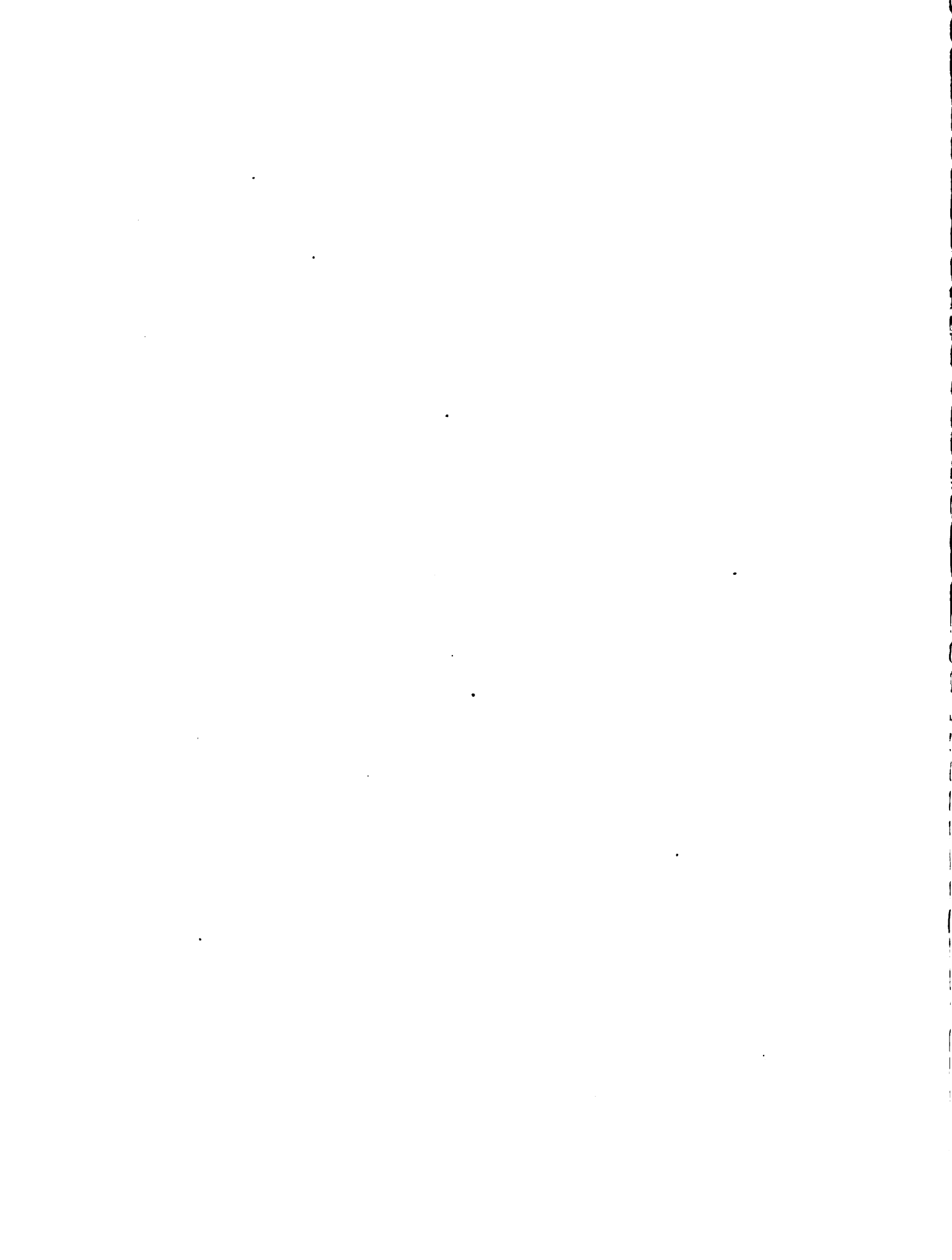
3) reinforcing authority of supervisors at various levels of the supervisory chain, and,

4) providing a consensus of opinion and judgment in problems sufficiently serious or complex to warrant consideration by higher authority, as well as providing an appellate procedure consistent with the nature of the problem.

The need for appropriate controls and supervision of the process varies with the nature of the system and its application. Some possible considerations include misinterpretation or usurpation of power of superiors at lower levels, loss of understanding in written processes, and the numerous additional factors cited in Chapter II of this text.

Settlement at the lowest level. Actual practices reveal a concerted agreement on this principle. The preceding discussion of the multi-level approach outlines many of the advantages of such settlement. The major problem attendant to the practical applications of this principle lies in the question of whether or not a written record of grievances should be made at the lowest level, and, if so, of what grievances. Decisions in this aspect vary and appear to be based primarily on pragmatic considerations of the value of the written record and the possible hazards involved in not maintaining such a record. The primary purpose of the complaint system may again be seen as having a bearing; whether the determination is based on WHO or WHAT is wrong, will often have serious implications for the process.

Level at which the procedure must be initiated. In the general application of the system, requirements exist for initiating procedures at the lowest possible level of supervision. Exceptional cases provide for initiation of procedures "at the level of authority competent and authorized to take the corrective action requested". This latter provision assumes an ability on the part of the complainant to make a determination of where this authority lies, and should rest on a well publicized and defined chain of authority. It is generally well established that



where complaints are received by high levels of authority, eg congressmen, the ombudsman, that usual practice is referral to a subordinate authority for action. The nature of the relationship between the personnel involved at the initiating level would appear to be an important factor in arriving at a decision in this matter.

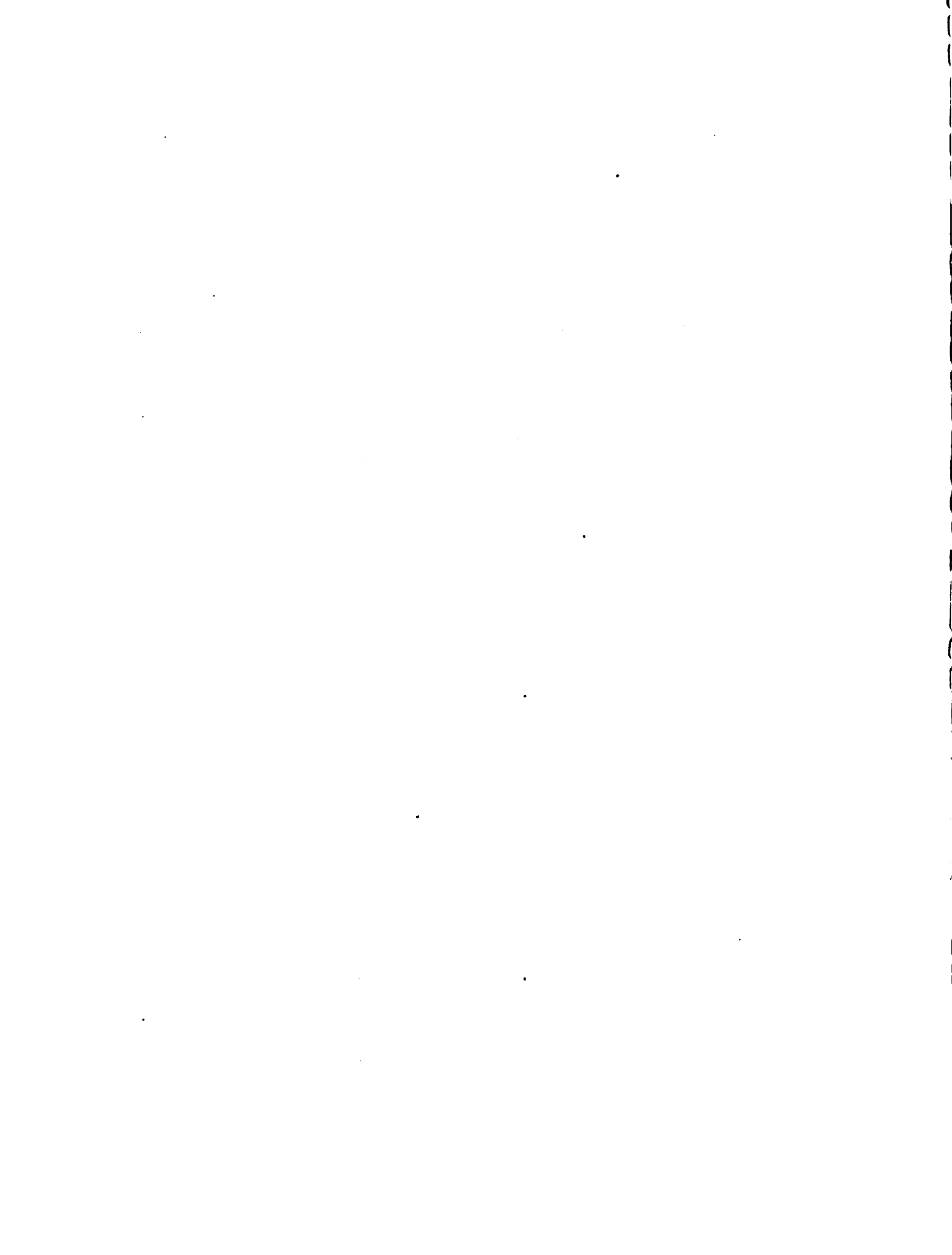
Right to appeal. The right to appeal is presented as being unilateral or bilateral depending on the agency involved. In any case, a right to appeal is inherent in each of the systems discussed except the ombudsman, who is himself a final point of appeal. The right to appeal tends to take on a more bilateral aspect where the circumstances are such as to generate bilateral formulation of the rules pertinent to an operation, eg labor and management. The question of the right to appeal appears to be primarily one of degree, and is at least partially dependent on the structure of the organizations involved and their resultant capability to afford successive levels of appeal within those structures.

Written records of grievance procedures. Policies in this matter correspond largely to those discussed under the heading of written procedures earlier in this chapter. Other considerations not previously mentioned include questions of gathering statistical data, establishment of precedents, possibility of litigation, statutory requirements

for data, and general internal management requirements.

Time limits. Excepting the cases of the inspector general and the ombudsman, the concept of establishing time limits for the completion of the various phases of the grievance procedure appears generally accepted. Even in the exceptional cases cited, the pressures for efficiency and the possibility of loss of tenure appear to present formidable pressures for timely completion of procedures. A degree of flexibility is required in administering such time limitations and these are normally provided for by waiver stipulations. Though time is an important factor, proper and equitable disposition of the complaint remains the primary purpose of the process in its conception as a tool for maintaining satisfactory relationships with prospective complainants. Time limits become longer and generally more flexible as a higher level of authority (and presumably a greater degree of complexity in the nature of the problem) is reached. The structure of the grievance system must provide sufficient personnel and facilities to maintain the time limits imposed by the system.

Litigation policies. By and large, no effective bars to litigation are imposed by any of the systems reviewed. In the view of this author, bars against litigation on



reaching specified levels of the grievance process would serve a practical purpose. It has been emphasized throughout this text that the grievance procedure should concern itself with WHAT not WHO is wrong in the system. The adjudication of complaints alleging a violation of statute or specific losses alleged to be the result of breaches of contract are areas best disposed of by personnel trained in the law via judicial proceedings in a court of law. The removal of such complaints from the grievance system should serve to support an inclination towards objective evaluation of the functional procedures involved in a dispute. Obviously the road must be left open to removal of such inherently legal disputes within the system, but, once an appropriate level of management or supervision has denied a claim for money damages, etc., reference should be to an adjudicatory process, not a grievance process. Violations of statute alleged by a complainant similarly have no place in the grievance procedure except where such violations are of a very minor nature.

Admittedly, the circumstances of each separate grievance might warrant special consideration, but it appears that a general stipulation that on reaching a specified step of the grievance machinery, further appeals in the grievance process constitute a waiver of rights to litigation, would be generally beneficial, and, would serve to preclude what

is essentially a "double jeopardy" situation. Such a procedure could have considerable effect on the work load imposed on the grievance machinery with attendant savings in time, money and effort, maintenance of records, and policy formulation, as well as help provide a more objective atmosphere in the cases reviewed by the grievance machinery.

The number of cases which have received favorable or unfavorable action in the grievance process solely because "we don't want to go to court", or, "if he feels strongly enough about it, let him go to court" is open to conjecture. No doubt these feelings have had some influence on decisions in some cases acted on in the grievance system.

A table, summarizing the practices and policies of the various agencies discussed towards the forgoing characteristics, is contained on the following page of the text.

DEVIATIONS FROM PROCEDURES

During the comparisons of the characteristics of the various systems, and the preceding chapters devoted to discussion of these characteristics, several deviations from the requirements of written regulations were noted. These came to light primarily in the more authoritarian systems where the regulations regarding the grievance

COMPARISON OF THE SYSTEMS

	<u>Industry</u>	<u>Civil Service</u>	<u>Inspector General</u>	<u>Ombudsman</u>
Written Procedures	Yes	Yes	Yes (by IG)	Yes
Multi-level	Yes	Yes	Yes (rarely used)	No
Settlement at Lowest Level	Yes	Yes	Yes	Yes
Right to Appeal	Yes	Yes	Yes	No
Written Record Maintained	Yes	Yes	Yes	Yes
Time Limits	Yes	Yes	No	No
Right to Litigate	Yes ¹	Yes	Yes	Yes
Level of Initiation	Immediate Supervisor	Immediate Supervisor ²	At IG	Ombudsman

¹ Some prohibitions against litigation are included in union agreements.

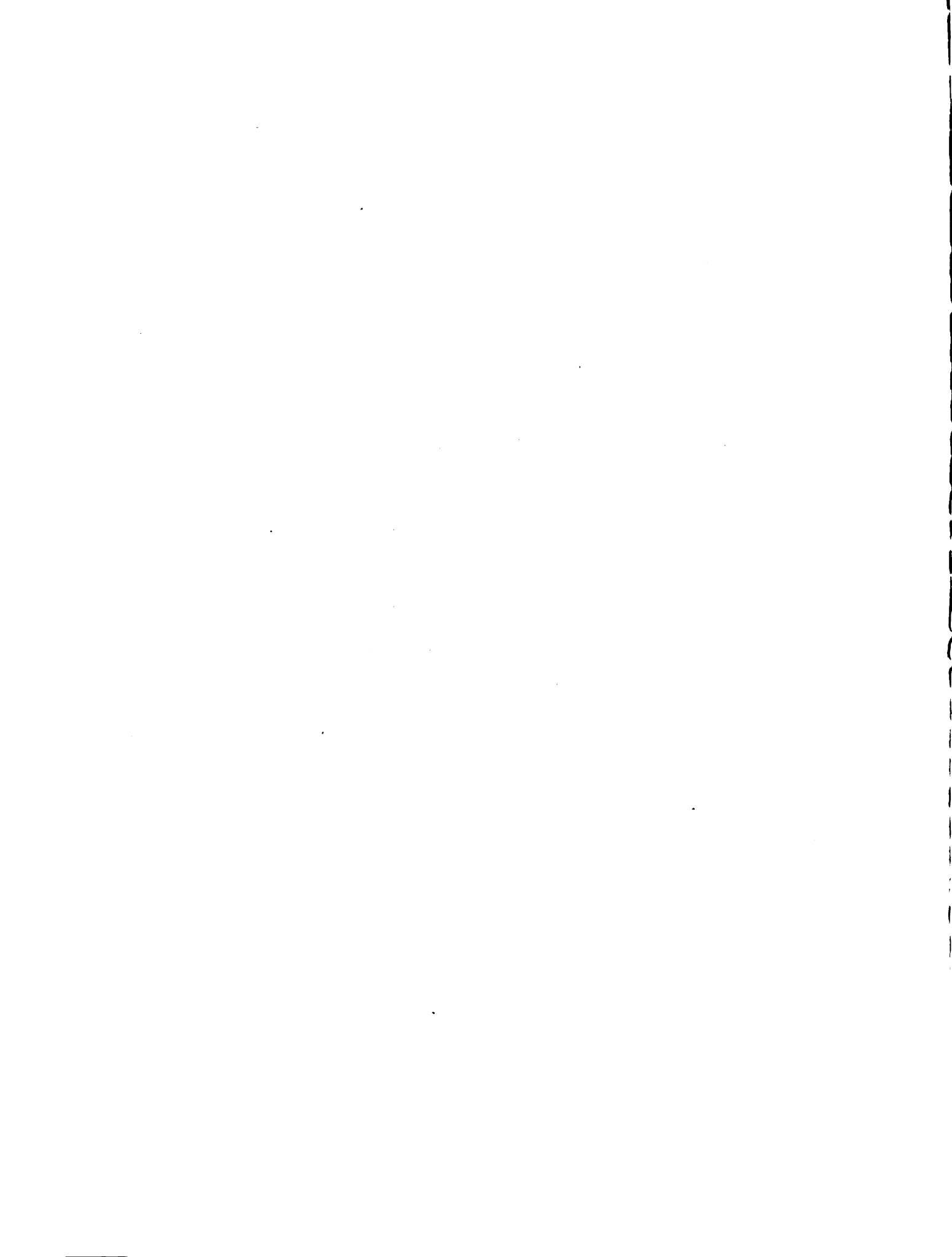
² Some provisions in exceptional instances to initiate action at level of authority empowered to take corrective action being sought by complainant.

system were promulgated as the result of a uni-lateral action rather than agreement between representatives of complainants and those acting on them.

In the civil service system procedures described, it was noted that attempts to resolve grievances informally without reference to the established grievance procedures were quite frequent. In this author's experience such attempts usually resulted from a mutual desire to establish further, whether or not the problem at hand could be resolved without reference to the written proceedings and associated board action required by the grievance system.

The administrative problems inherent in effecting change often preclude appropriate alterations of systems established within a bureaucracy, and, this is illustrated by numerous circumstances within government and its legislation, eg the large number of unenforced, "undesireable", laws which remain "on the books" despite public and official opposition. The fact that the system continues to operate to the mutual satisfaction of both the supervisory and employee group involved, is in itself an indication that formalized rules pertaining to this segment of the system could be revised to provide an added degree of correlation of the rules to actual practices.

The functions of the inspector general provide another

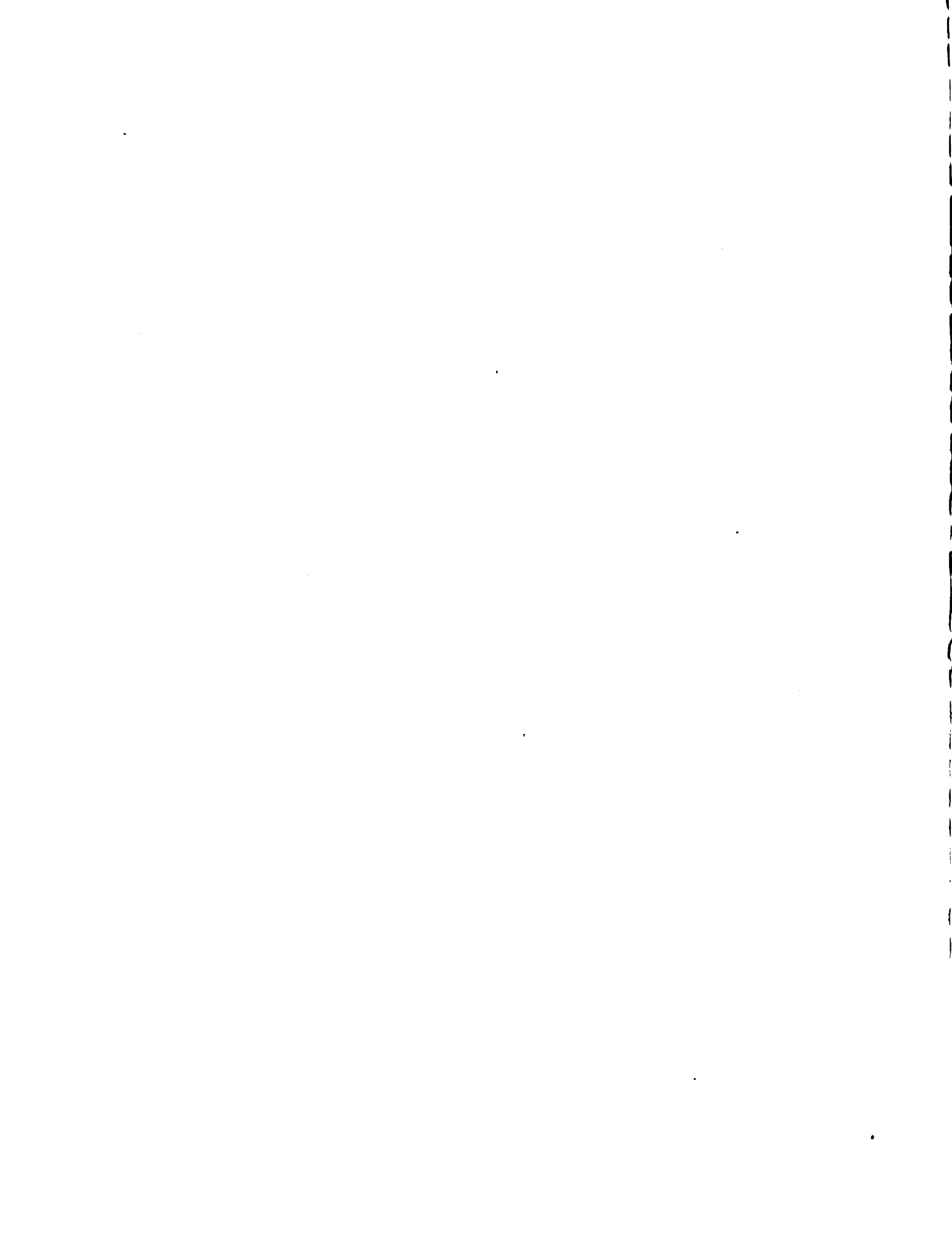


example of local usage altering written decree procedures. Obviously if all the complaints which are presently settled at lower levels of command without reference to the inspector general, were suddenly brought to the direct attention of that office, it would have to be expanded considerably in terms of both staff and facilities to meet the increase in complaints to be processed.

Arguments can be made for retention of both the civil service and inspector general regulations, despite the deviation from these regulations which is in widespread effect. Neither group of rules prohibit the practices engaged in by supervisors and subordinates, thus permitting the use of the less formal procedures, without the effect of removing the "club" of formal action from over the heads of individuals who might otherwise take arbitrary actions in the complaint process.

THE COMPLAINANT

The discussion to this point has been limited to the structure of the various systems under consideration and the functioning of the various components of the system without regard to the similarities and differences between complainants in the various systems. There are differences in the complaint procedures afforded to personnel with varying status within the system.



A salaried employee in industry does not have available to him all the resources inherent in union membership, and subsequently the grievance system established for the hourly wage-scale worker is not open to him. He must usually resort to direct contacts with supervisors and rely on favorable findings from these supervisors to correct a problem or complaint.

It can be logically inferred that the higher a position an individual holds within a structure, the more involved he becomes in formulating policy and procedure of that structure, and, the less disposed he becomes toward making formal complaints within, or regarding that structure. The president of a company, the head of a government agency, a general commanding a post, very few if any of these officials would find a need for making a complaint through some form of grievance machinery. We can thus perceive a continuum of complaints ranging from the most frequent near the bottom of the structure to the least frequent near the top.

SUMMARY

The general conclusions and assumptions made in this chapter regarding attitudes, position relationships, comparative characteristics of systems and the nature of the

source of complaints have been derived from a hopefully logical appraisal of the various elements involved. Exceptions to the general presumptions and deductions made here no doubt abound in innumerable other examples of a similar nature. Since the element of human nature and human relationships play an important part in the grievance system, such variances should not be surprising.

In the following chapter these conclusions will be related to the police complaint function. Emphasis there will be on evaluating the various aspects of the systems compared, in the light of the general philosophies, needs, and practices in handling complaints by a police department. An effort will be made to integrate the methods utilized in the various systems evaluated, into a single entity with application to the peculiarities of the problems inherent in a police complaint system.

CHAPTER VI

DEVELOPING A POLICE COMPLAINT PROCEDURE

The need for a means of reciprocal communications between the police and the community they serve has been pointed out earlier. A wide variety of techniques in maintaining such communications via a complaint system are presently in effect. Departmental rules prescribing the nature and form of the system vary from place to place over a continuum which ranges from the non-existent to the highly complex.

The general tendency of any group to take for granted the efforts of leaders who provide them with a satisfactory establishment, and, to complain loudly when the system is less than satisfactory, is generally accepted as a fact of life. It follows that the majority of communications from individual citizens to any department of government will consist of requests for assistance and complaints. The requests for assistance should not ordinarily take on an adversarial nature, except as the handling of such requests results in additional complaints. The complaint aspect of communications therefore takes on considerable significance when considered in terms of probable proportions of communications.

The relationship envisioned in the communications between the public and personnel involved in the administration of justice is complicated by the fact that personnel engaged in the administration of justice are "not overly socially acceptable to the general public, and ... work for salaries usually lower than comparable salaries in other employment."¹ This hypothesis indicates something of the general nature of relationships which can be expected in the operations of a police complaint system.

Another consideration lies in the fact that the complaint and resultant procedures may culminate in disciplinary measures against members of the police. Germann has aptly stated that "Probably the most delicate internal control problem facing the police executive is that of discipline."² Another authority in the field emphasizes the need for early recognition of misconduct by members of the police force, and, the need for early remedial action.³

It becomes readily apparent that a police complaint procedure envisions a process of receiving complaints from a highly critical group, with little faith in the police;

¹ Paul B. Weston, Supervision in the Administration of Police, Courts, Corrections (Springfield, Ill: Charles C Thomas, 1965) p.4-5.

² A. C. Germann, Police Personnel Management (Springfield, Ill: Charles C Thomas, 1963) p.164.

³ R. Dean Smith, "Inspection and Control" in The Police Chief, July, 1964. p.10.

a determination of the validity of the complaint by personnel who are sympathetic towards the actions of the individual or system complained against (if police process the complaints); and, where possible, preclude further complaints of a similar nature by taking action which will satisfy the complainant, and, be consistent with current efforts of the department in the fields of policy making, public, and, community relations. Such a procedure should have available to it assistance and cooperation from the research, personnel, community relations, legal, internal investigation, and, command organizations of the department. Subsequent implications for training of personnel operating in the complaint field are obvious.

The forgoing assumes a complaint procedure which lies within the police department and which is administered solely by police personnel or their civilian employees. The need for a point of final appeal or review outside the police department has been frequently stressed by the United States Commission on Civil Rights. A California Advisory Committee to this commission has stressed this point and recommended greater publicity to the methods of complaint and redress available to the public.¹ The advantages accruing to both

¹ California Advisory Committee to the United States Civil Rights Commission. "Report on California - Police Minority Group Relations" August 1963. p.39.

parties if they can "be big enough" to resolve their own problems without resorting to a third agency have been previously cited¹ however the need for arbitration by an impartial party has been apparent in the systems thus far developed.

Before continuing a discussion of the construction and functions of a police complaint system, it would appear beneficial to establish an outline of the objectives of such a system.

OBJECTIVES OF POLICE COMPLAINT PROCEDURES

It is somewhat of an over-simplification to state that the objectives of a police complaint system are the improvement of services, better mutual understanding, improvement of internal investigation procedures, development of improved policies and procedures, etc., etc., etc. All of these considerably subjective goals must necessarily be considered in terms of how they are to be achieved, and specifically, not in terms of glowing generalities.

A complaint program must be directed at the causative factors of disharmony if it is to be effective in bringing about better relationships and communications with the public. This hypothesis has been set forth in other portions of the broad field of police community relations and appears equally

¹ Labor and Industrial Relations Center, Cn. Cit. pp.53-55.

pertinent in the field of complaint procedures.¹ Emphasis should be placed on WHAT is wrong, not WHO is wrong, and efforts directed at rectifying the offending what.

Within this basic frame of reference we may then consider the basic objectives of a police complaint procedure as being the following:

1. To provide for an orderly means of registering complaints. Such means should be simple and lend themselves to ready availability to the public. Procedures requiring initiation in writing, at specific centrally located points (often quite distant from the place where the action complained of took place) requiring considerable travel and loss of time to the complainant, should be limited, if not eliminated completely. Procedures must be well known to the general public if they are to be effective in achieving broader goals.

2. Administrative channels of processing should be simple. Referral of complaints should be to the lowest authority capable of resolving the complaint satisfactorily. Subsequent channels for review and appeal action should parallel established administrative and command channels. There should be no need for the complainant to follow each step in the process via personal interviews, written statements, and quasi-judicial proceedings.

¹ Paul B. Weston, Op.Cit., p.127.

3. Definite methods for administration of complaints are necessary. The handling of each separate complaint on an ad hoc basis can generate confusion and dissatisfaction on the part of both the police and the public. As in the case of the means for registering complaints, such methods should be well known to the public.

4. Definite means for insuring compliance with the laws and proper adjudication should be provided. The laws are the basis for police action, and, where violation of law is alleged in a complaint, eg assault, unlawful arrest or detention, such violations should be handled by means other than a grievance procedure. Preferably such actions should result in referral to the courts for subsequent legal proceedings commensurate with the charge.

5. Should provide for means of publication of results of complaints processed. Public airing of problems brought to light by a complaint system should serve to engender a greater degree of understanding and confidence by the public in their police department.

6. The procedure should provide for centralized record maintenance. The development of a central group of records pertaining to the number of complaints by type can provide valuable information for use in developing policy, training requirements, and general assessment of the status

of the police department. It also provides control over the disposition of complaints made by various levels of authority within the department.

7. Specific procedures for appeals of decisions to an impartial arbitrator should be provided. There will no doubt be instances where agreement on disposition of complaints is lacking and some point of final decision is required. Specific designation of an individual or agency to whom such appeals will be referred should serve to reduce disagreement on the question of appeal.

DEFINITIONS OF COMPLAINTS AGAINST POLICE

The gamut of types of complaints against police is virtually infinite and may range from a complaint regarding the officers parked in a patrol car conversing while they should perhaps be elsewhere, to the allegations of assault (police brutality) which appear to have become quite in vogue.

For our purposes here we need discuss only two types of complaints, ie those which allege a criminal act by police, and, those which charge malfeasance or abuse of authority, eg harassment, ethnic slurs, etc.

Where an allegation of criminal action is made, it would appear that a complaint proceeding would take on the nature of a preliminary investigation to determine whether there is probable cause for arrest and subsequent action through the courts. Such preliminary proceedings should

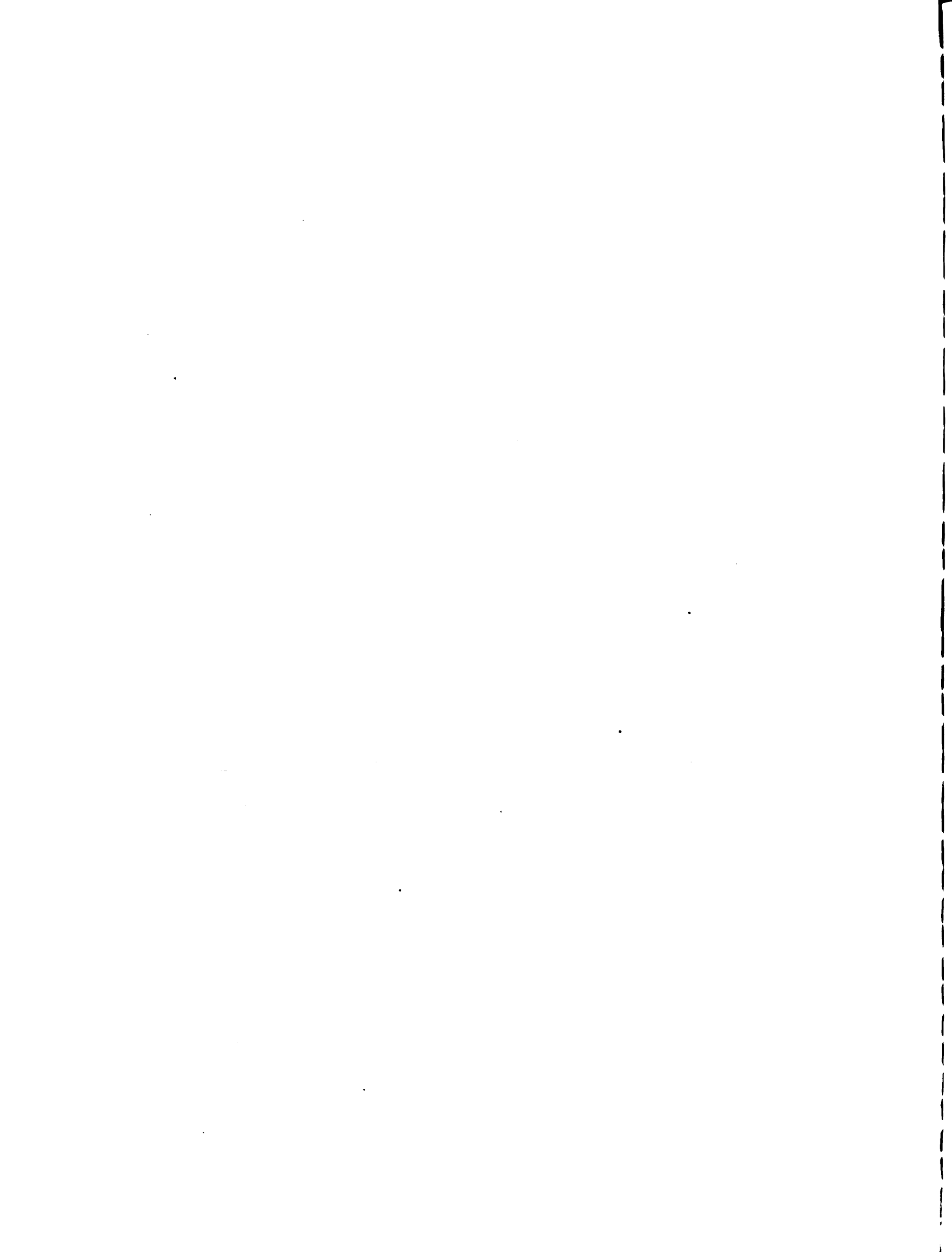
normally be handled via an investigation by the appropriate division or bureau of the police department in much the same manner as any other criminal complaint. Criminal allegations have no place in a complaint procedure which is basically an administrative function, and, serve only to complicate the system while maintaining the adjudicatory aspects already prevalent in too many complaint systems. The judicial systems provides for compliance with statutes and laws of the community (which the police are not above, or should not be) and also provides penalties for perjured testimony and false accusations which should provide an effective deterrent to false charges and "nuisance" complaints.

The non-criminal allegations or complaints are the type which should remain the rightful province of a complaint system. The determination of whether or not the complaint should fall into the criminal or non-criminal category may often be difficult and should give preference to the non-criminal categorization until the information adduced shows otherwise.

A TENTATIVE SYSTEM

"Grievance procedures should be as uncomplicated as possible with a minimum of formality consistent with providing a clearly outlined procedure."¹

¹ International Labour Conference, Op.Cit. p.17.



The labor and management relations discussed in an earlier chapter provide simple and relatively clear cut procedures with a minimum of involvement by the aggrieved employee. The complaint is made and forwarded, and, determination of further action is made within the organization, usually without further recourse to the employee, except as to notification of final disposition of the complaint.

Records are maintained of the complaint and its disposition by both labor and management for their respective utilization. Civil service procedures function similarly in this respect.

A simple, centrally located and controlled, supervision oriented method of complaints receipt would seem to meet police needs for control, as well as combining several of the features of the complaint systems reviewed previously. Thomas Rushworth cites a method of short-hand typists taking details of crime by telephone or radio from police officers in the field as being a method of keeping officers in the field rather than writing reports.¹ A similar arrangement utilizing tape recordings of conversations with complainants by a specially trained staff of police officers, via telephone, could serve to provide a record of a complaint with necessary information to initiate an investigation. The funneling of all complaints through

¹ Thomas Rushworth, "Bradford C.I.D. - Reorganization" in The Police Review No. 2927, London, February 11, 1949.

such a telephone-tape recorder system could serve to provide information for a central file of complaints, elicit necessary information from complainants for use in initial investigations, and, by using a telephone call back or tracer system, confirm identification of the complainant.

Information relative to the complaint could then be extracted by the receiving officer for distribution to the appropriate departmental agencies. Administrative complaints could in many cases be completed without further referral to the complainant other than notifications of disposition. Preliminary investigations of criminal complaints could be made prior to obtaining written statements from the complainant. Copies of the tape recording could be furnished to the investigators, thereby retaining the original tone of the complaint which is often lost in reducing the verbage to writing.

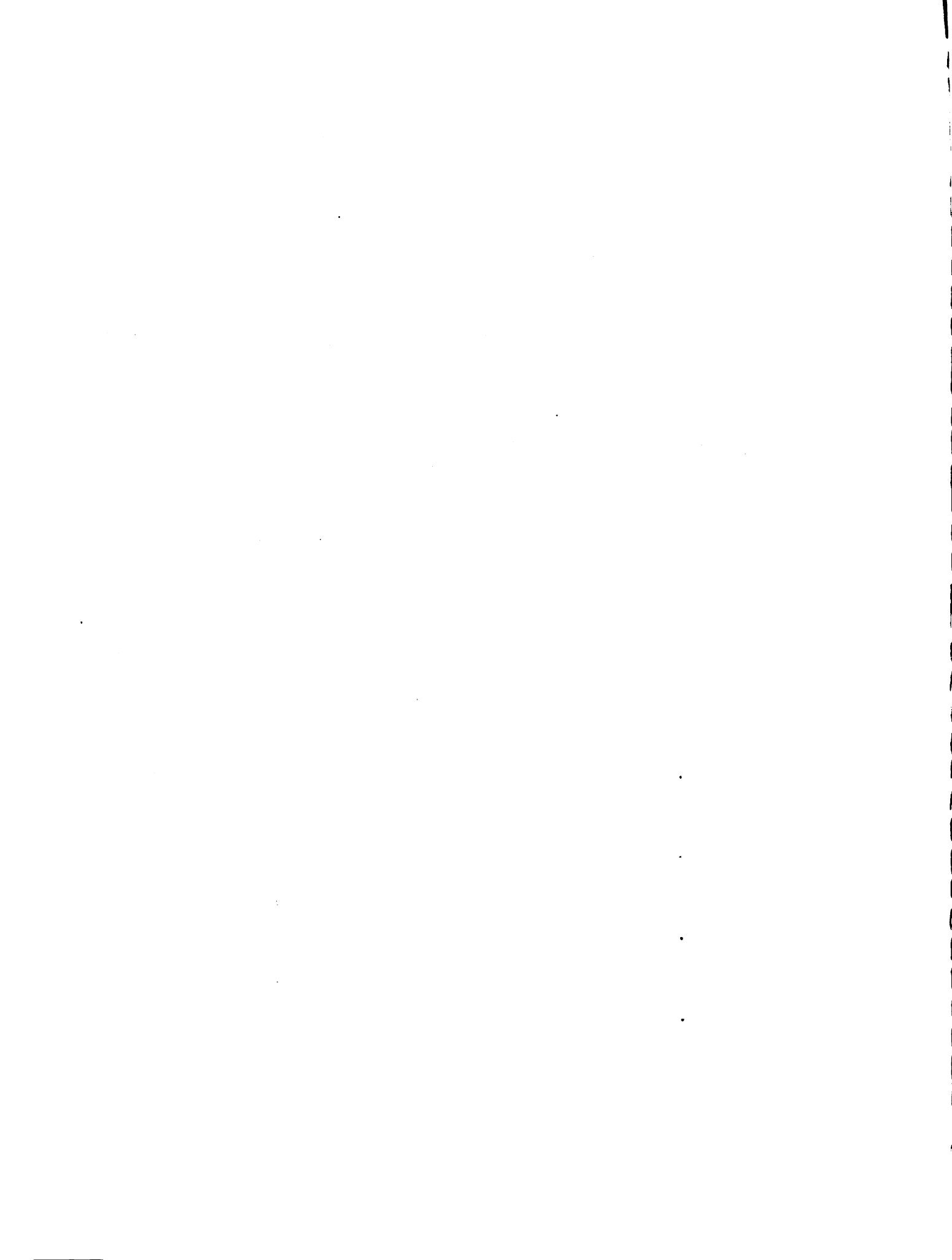
Consistent with the wide support and emphasis on obtaining action at the lowest level of authority, it would appear that referral of the complaint to the precinct commander of a municipal force, or barracks commander of a state police force would be appropriate. Commanders at these levels usually have adequate personnel with which to conduct investigations of the type envisioned. Departmental policies might vary as to the level of command

which should constitute the first step in the complaint investigation, dependent on the structure and authority of the various levels of the department. The level of investigation should be that of the closest supervisory authority over the complaint action, who has adequate personnel for investigation, and authority to take corrective action or recommend corrective action with a reasonable degree of reliability.

Additional review of the corrective action or recommendation by the next higher level of supervision would provide a built-in appeal procedure, and, could be completed without further reference to the complainant and prior to his notification of disposition of the complaint.

From the foregoing discussion we can adduce the following functions of the Complaint Bureau, the staff designated to receive complaints:

1. Provide personnel and equipment for receiving complaints from the public,
2. Insure that adequate information is obtained in the oral complaint to permit investigation,
3. Record information regarding the complaint on voice tape recordings of initial complaint,
4. Reduce information received in 2 and 3 to written forms for use within the department,



5. Make copies of tape recordings of complaints for use by investigators, thereby insuring retention of record copy at the complaint bureau,

6. Make an initial determination of which agency or bureau of the department the complaint will be referred to for investigation,

7. Receive and record completed investigations of complaints and make final determination as to approval of recommended actions cited in the investigation (except in those cases where higher authority retains final approval authority),

8. Provide copies of completed investigations and approvals to designated agencies of the department,

9. Conduct or direct additional investigations in cases not approved,

10. Represent the department in cases appealed to an impartial arbitrator, and,

11. Coordinate departmental actions and representation in cases referred to criminal proceedings.

From the forgoing functions we can establish a basis for general personnel requirements and staffing of the Complaint Bureau. The head of the bureau must be an officer of command rank, thereby retaining a position from which he can justifiably be expected to pass on the actions of commanders designated to conduct and review investigations

of complaints referred by his bureau. He must have available to him qualified personnel to receive complaints over a twenty-four hour day on a full time basis. Department staffing guides may vary in this aspect but a minimum of five such personnel should be assigned. Clerical personnel for filing, reproduction of records and tapes, compilation of statistical data, and similar functions may be necessary although in small departments the personnel receiving complaints may perform these functions as well.

Provisions for additional investigative functions may vary depending on the over-all structure of the department. Those departments which have an internal investigation unit should utilize those personnel in conducting additional investigation of complaints, and, in exceptional cases may conduct the initial investigation. Legal representations and opinions should also be available to the complaint bureau, and, should normally come from the departments legal bureau on an as needed basis.

Investigative efforts within the various bureaus or agencies of the police department should be utilized on a "business as usual" basis and normally conducted, making full use of the facilities and personnel available. The added requirement of approval and possible additional investigation by the complaint bureau should provide the necessary impetus to insure complete reporting of the facts.

The status of the Complaint Bureau must necessarily be that of an arm of the chief or commissioner, with his full support and authority reinforcing the actions of the bureau. The chief of the Complaint Bureau should serve as a member of the special staff of the chief (commissioner).

The question of an impartial arbitrator of appeals from decisions by the police department is one which must be settled on a local basis. It is possible that in the foreseeable future some cities and states in the United States may establish an ombudsman. The designation of selected personnel by the mayor or city council to serve as an arbitrator or impartial finder of fact would seem to constitute an appropriate solution. The structure of such an office would impose requirements for clerical assistance, authority for investigative functions, and, investigative assistance from governmental agencies of the jurisdiction. The qualifications of the arbitrator should include experience in the field of administration of justice, education in the social sciences or related areas, and, in general parallel those cited in the chapter relating to the ombudsman. The functions of the office should parallel those of the ombudsmen closely, although in an obviously more limited field. The practice of labor and management of selecting persons from local industry, bar associations, educational

institutions, and similar sources could be applied to selection of the arbitrator for police complaints as well.

A COMPARISON OF CHARACTERISTICS

A comparison of the characteristics and procedures of the systems reviewed in the preceding chapters will serve to introduce a specific complaint procedure for police which will incorporate the salient features of these systems. A step by step analysis utilizing the chart on page 99 of this text as a guide follows:

Written procedures. Complaints will be initiated orally (by telephone) with tape recording of the conversation. Extracts of the conversation are prepared by personnel of the Complaint Bureau for use in preliminaries. Written statements by the complainant may follow if necessary to the completion of a particular investigation. These would be obtained by the investigating officer in a routine manner.

Multi-level process. The processes initiated by the Complaint Bureau would parallel in many ways those of the Inspector General. The central agency receives the complaint and routes it to an appropriate level of command for investigation, evaluation, review and reply. Command echelons reviewing the actions taken provide additional levels of review. The added feature of availability of an arbitrator outside the department provides an additional

level of appeals action. The function of the Complaint Bureau (similarly to the Ombudsman and Inspector General) should provide sufficient motivation to accuracy and objectivity in its functions. The effectiveness of the multi-level procedure thus envisioned is reasonably well assured by a need for self-justification as well as any external controls which may be imposed.

Settlement at lowest level should normally result from referral of the complaint to the appropriate command level of the department. Command structures have been designated rather than desk officers, primarily because of the need for authority to take action, and, since most departmental procedures require notification of the commander in cases of complaints as a matter of course. The commander may in turn designate members of his command to perform the investigation on which he will base his actions or recommendations.

Right to appeal is inherent in the system since it requires review by higher echelons of command, and, if the complainant is not willing to accept the decision rendered by the first levels of command, additional levels of command are available for appeal through the Complaint Bureau. The bureau itself constitutes a point of further

appeal and the availability of an arbitrator completes the appeals channels of the system.

Written records of the proceedings will consist of standard reports of investigation with supporting statements, copies of extracts of the complaint itself, a copy of the tape recorded complaint, and, reports of action taken, recommendations and concurrences by commanders in the chain of review. Such records would be maintained by the Complaint Bureau and utilized in assessing needs for policy changes, revisions of regulations, and, provide records for personnel actions and such other statistical purposes as the department might envision.

Time limits. Time limits were not defined in the earlier discussion of the Complaint Bureau, and, such time limits as might be imposed would depend on the structure and extent of departmental operations, the nature of the complaint, and a myriad of other subjective considerations. Referral to the Commander by the Complaint Bureau should in any case take place within twenty-four hours, and advance oral notification could be completed prior to that. A five day period for investigation of complaints does not seem unreasonable, and a lesser period of time may be feasible in certain jurisdictions. Briefly, time limits will vary with departmental structures and policies but should be

defined in the procedural regulations pertaining to the complaint system of the department. Emphasis should be on notification to the complainant of delays and reasons therefore.

Right to litigate. By providing for an immediate separation of criminal from non-criminal complaints by the Complaint Bureau, the need for litigation of a complaint processed within the complaint system should be minimal. An outright prohibition against litigation would serve little practical purpose, and, would probably encounter considerable criticism in the courts and from the public. The results of a well handled complaint investigation should provide sufficient data to meet any court action initiated by a complainant. Litigation in the systems examined heretofore has been relatively infrequent, and, there is no reason to believe that police complaints systems should reflect any great changes on this experience.

Level for initiating procedures. The tentative proposals made here provide for initiation of the processes at a central authority. This approach is consistent with the operations of the inspector general and is well suited to the need for central controls in the authoritarian structure of a police department. "Off the record"

settlement of complaints and the tendency to "pigeon-hole" complaints at lower levels are also avoided by this technique.

Right to counsel is not listed on the chart of comparisons cited but is worthy of some consideration here. The tentative procedures thus far outlined envision the role of counsel being played by the Complaint Bureau and the chief of police in their efforts to improve communications and relations with the public in general. The availability of an impartial arbitrator or umpire for further appeal should provide additional motivation in this role-playing function.

The procedures which have been evolved from these analyses and discussions are presented in a chart form on the following page and constitute the conclusions of this thesis, a model police complaint system. Subsequent discussion will review the advantages and disadvantages of such a system. The model described will require modification in its application to a particular department and extensive incorporation of departmental policies as to authority to take action, levels of command, and, internal structure.

The major advantage of the model outlined lies in its simplicity and adaptability to departments of various sizes

A COMPLAINT CONTROL SYSTEM

- Step One Oral presentation of complaint to complaint bureau
- Step Two Determination by complaint bureau as to nature of the complaint
- | <u>Non-criminal</u> | <u>Criminal</u> |
|--|--|
| Continues in complaint process to step three | Referral to internal investigation unit for subsequent court action if appropriate |
- Step Three Referral to unit commander for investigation and action. Contacts complainant regarding action taken or proposed and determines whether complaint action is satisfactory to the complainant.
- | <u>Complainant not satisfied</u> | <u>Satisfied</u> |
|---|---|
| Informs complainant of next step of review and forwards for further action in process | Obtains statement of acceptance of disposition and forwards |
- Step Four * Review by next command supervisor. Forwarder to complaint bureau for statistical and record purposes if satisfaction of complainant achieved at step three. If not, further investigation and attempt to achieve agreement on complaint with complainant based on additional data secured.
- Step Five Review of actions and status of complaint by complaint bureau. Further investigation and evaluation of complaint, with renewed contact with complainant in attempt to reach settlement.
- Step Six Referral to an arbitrator. Information as to procedures related by complaint bureau to complainant. Local procedures established for this function will vary. Final point of appeal or complaint.

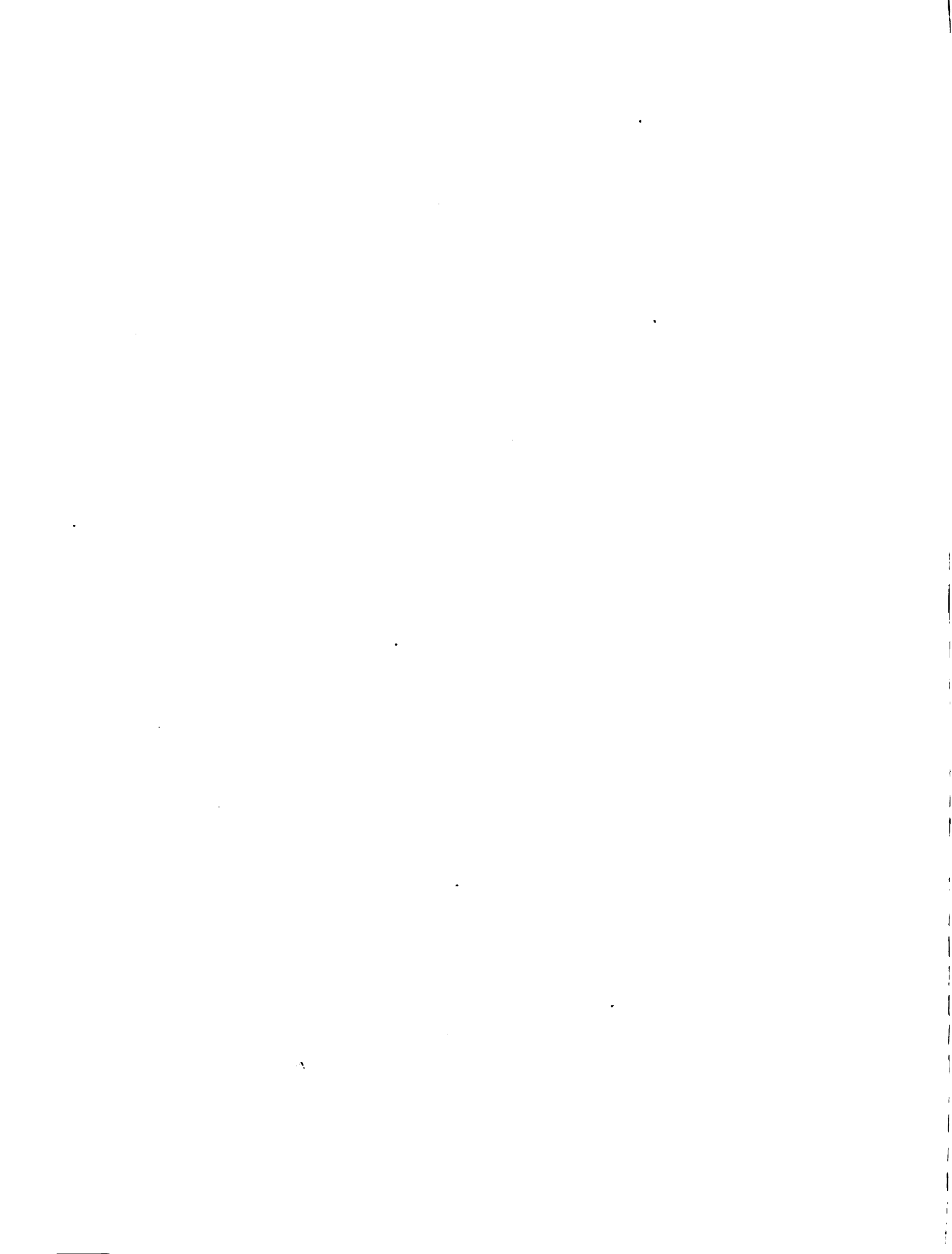
Administrative Procedures on closing of complaint file will vary with organization of department. Include record maintenance, statistical tabulation, research as to policy and regulatory implications, analysis of causes of complaint and actions to be recommended to preclude recurrence. Publication of results via news media to be included. Administrative procedures may be initiated after step five or six as appropriate to the case under consideration.

* Reviews by successive commands may be desirable depending on departmental structure and functions. These may be injected at this level of the proceedings, however, should be kept at a minimum.

and structures. Minor innovations in the personnel staffing of the Complaint Bureau proposed lend this concept practical applications in small departments while combinations with the functions of internal investigation units of larger departments is also practical and comparatively simple. The procedures envisioned are those inherent in the day to day operations of a department, with perhaps added emphasis on courteous treatment of complainants, interviews at the complainants convenience where at all possible, and, maximum use of oral proceedings utilizing tape recordings to provide accurate records of the proceedings.

Compliance with the procedures outlined can be easily controlled by the operations of the complaint bureau in combination with adequate publicity. Complaints made to local precinct stations in person or by telephone can be easily channeled into the complaint system by telephone.

The system provides for settlement at lower levels of command while providing for a system of reviews, whether or not the complainant states his satisfaction with the actions taken by the commander. A point of central control is provided by the complaint bureau which may also serve as a distributor of selected data for use by other agencies of the department. The availability of appeal outside the police provides an added media for building public confidence while the primarily police complaint system provides for the



acknowledgment of the "peculiarities" of police operations and ensures understanding of the police problems often inherent in such complaints. In brief it can be said to be a compromise between a civilian review board and a police complaint system which excludes any civilian participation.

Elimination of criminal complaints from the system should eliminate, or at least reduce the tendency to accusations of "whitewash" which often follow criminal complaints against police where the police are not prosecuted for lack of evidence, or are found not guilty of the charges without resort to legal proceedings.

Additional forms and publications required to put such a procedure into operation need consist only of a "complaint sheet" onto which essentials of the telephone complaint are transcribed by the members of the complaint bureau on receipt, and which provides space for routing information, dates of receipt and dispatch, and, signatures of commanders and reviewers in the system. The cover sheet can further serve to identify the nature of correspondence and/or investigation attached on completion of each set. Color coding and the like may be helpful but not essential. Numerous departmental forms already in existence may be converted to this use with minor modifications.

The tape recordings of conversations with the complainant and the officers involved in a complaint provide a complete and less likely to be misinterpreted presentation of the complaint and the facts and circumstances surrounding it than would the normally encountered written procedures alone. Notification of the complainant and others interviewed that the conversation is being tape recorded and their acknowledgment of such notification should serve to preclude legal difficulties. The extent to which tape recordings alone can be used to initiate and complete the resolution of a complaint depend only on the training and ability of complaint bureau personnel and departmental policies evolved to cover such procedures.

Critics of this system may avow that it makes it "too easy to complain", and in a sense this is true, however, if the purpose of the police complaint system is to improve communications with the public, such a criticism would not appear to be valid. Perhaps the greatest problem inherent in this system is the selection of the arbitrator. To a large degree the effectiveness of the system will depend on public confidence in the arbitrator selected. The ability of the arbitrator to "get things done" will similarly have great effect on his overall effectiveness and acceptance. His authority to investigate and make further recommendations

pertinent to police and governmental procedures should be considerably broad to permit complete exploitation of his somewhat unique position. The discussion of the ombudsman contained in texts cited in this study gives many implications for the stature and capacity of such an office.

In the final analysis, whether a police complaint system is effective depends on the attitudes of the personnel involved in its administration. The desire to arrive at the truth, no matter who is hurt, and straightforward emphasis on self-improvement together with a spirit of public service can make even a mediocre system workable in terms of public relations and ultimate benefit to the department. Conversely, a defensive reaction to criticism coupled with a desire for self-justification, can make a shambles of even the most effective techniques. The key to these attitudes lies in the leadership and administration, not only of the police, but also of local government.

The system proposed can also serve as an "inspector general" for complaints within the department made by its members. Normal departmental procedures usually call for presentation of grievances by members to their immediate supervisors. There are occasions when it is not practical for the member to follow these procedures, eg in a complaint against the supervisor. The availability of the procedures

described to departmental members could provide a system wherein grievances may be presented to an agency which has access to all levels of the departmental structure. Where the complaint bureau and internal investigation units are integrated or closely related, the system would be especially well suited to this function.

Again, it must be reiterated that the attitudes of the command echelons of the department must be oriented toward improvement in order to make such a system effective. The system itself provides only a methodology which is dependent on human factors for efficiency and effectiveness. The numerous checks on actions by members in the investigative processes should serve to decrease the effects of individual prejudice and bias, but, by no means present a panacea. The relationships between the police and their community are sufficiently complex and variable to preclude an one ideal method providing an unswerving path to universal solutions of problems within that relationship.

THE NEED FOR FURTHER RESEARCH

The model presented in this study is simply that - a model. It has been derived from a study of unrelated (to the police) grievance studies via logical deductions and inference. This study represents only a beginning in the

process of completing a workable, tested and reliable police complaint system. In brief, it presents a logically developed hypothesis for further testing. The tape recording technique cited, selection and training of complaint bureau personnel, development of supervisorial policy pertaining to the operations of the complaint bureau, and, analysis of statistical data to be developed and maintained by the bureau, are only a few of the additional studies needed prior to field testing of the system.

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