

2016

Grievance Handling Course Handbook



Public Service Alliance of Canada
Alliance de la Fonction publique du Canada

PSAC

Education Program

THANK YOU!

Stewards are the driving force of our Union. You play a key role in protecting our members' rights and being the face of the union in our workplaces.

We believe that your commitment in accepting this position speaks to the trust and credibility your Local has in you.

This Course Handbook—which accompanies the PSAC Grievance Handling course, provides an additional reference to assist you in your daily tasks as a union representative at the worksite.

In addition to union education and this handbook, there are other resources available to you. The PSAC has produced the "PSAC Shop Steward Tool Kit" which is available at one of our PSAC Regional Offices. The PSAC e-learning campus, where you can learn at your own pace in the location of your choice, has a variety of short modules which can be of help. You can also contact your Chief Shop Steward, your Local Executive, your Component and/or your Regional PSAC office.

Thank you for the work you do on behalf of our members.

In Solidarity,



Regional Executive Vice-President (add Region)

Table of Contents

<i>COURSE MATERIALS</i>	6
Course Objectives	7
Course Agenda.....	8
Thoughts About Grievances	10
Things to Know About the Grievance Process	12
Grievance Mediation	14
The Grievance Procedure – How Does it Work?.....	23
Grievance Process – Canada Post.....	29
Grievance Process – Canada Revenue Agency	30
Grievance Process – Canadian Food Inspection Agency	31
Grievance Process – Parks Canada	32
Grievance Process – Treasury Board	33
Roles, Responsibilities and Legal Rights	34
Our Rights Under The Law	37
Discipline - Rights to Union Representation	44
Unfair Labour Practices	48
Grievances under the PSLRA.....	61
Grievances and Complaints Involving Human Rights.....	63
Workplace Problem Solving Routes for PSAC Members	74
PSAC Policy on Union Representation: Workplace Harassment.....	86
Sample Q & A’s Policy on Representation Workplace Harassment for Locals	89
The Organizing Model of Grievance Handling.....	93

Applying the Organizing Model Scenario	95
Using the 7 “Ws” to Gather Facts... Some Examples	96
PSAC Steward Factsheet	100
Interviewing The Member	104
PSAC Grievance Form	106
PSAC Grievance Transmittal Form.....	107
Exercise: Wording a Grievance.....	108
Sample Grievance Wording	109
Representing The Member	113
Discipline – Mitigating Factors	114
Operational Requirements – Some Principles.....	118
Exercise: Grievance Case File.....	120
PSAC Grievance File Checklist.....	121
The Rayonier Canada Quote	123
Arbitrary, Discriminatory, Bad Faith.....	124
Duty Of Fair Representation	126
<i>USEFUL FACT SHEETS</i>	137
Acting Pay – Some Principles	138
Electronic Communications	145
Filing Job Description and Classification Grievances	148
Freedom of Speech in the Union Context: Speaking Freely, but Truthfully, and not Maliciously	159
Sick Leave, Medical Certificates, Medical Examinations and Related Issues - Some Principles	165
Speaking Out on Cuts to Federal Public Services: Guidelines for Union Representatives and Members	174

Special Leave with Pay – Snowstorms /Inclement Weather – Some Principles	179
The National Joint Council of the Public Service of Canada (NJC)	184
Union Representative Immunity	187
Union Activity in the Workplace: the Real Rules	191
Wearing Union Buttons At Work	193
STEWARD TOOLS	199
Steward Tools.....	200
What Stewards Need to Know	202
Steward’s Dictionary	204
PSAC Online Learning.....	215
Useful Web Resources for Stewards	216
The Joint Learning Program.....	221
NOTES	222

COURSE MATERIALS



Course Objectives

By the end of the course, participants will:

- Know what a grievance is and where the right to grieve comes from;
- Understand their legal and contractual rights and obligations as union representatives in the grievance process;
- Understand how the grievance process works;
- Know how to write a grievance;
- Be able to fully prepare for a grievance hearing;
- Be able to motivate and involve members in the grievance process;
- Be able to effectively present a grievance to management;
- Be able to prepare a grievance file that can be used at all stages of the grievance process.

Course Agenda

Day 1

1. Welcome, Introductions, Course overview, etc.
2. The Grievance: What is it and why is it important?

BREAK

3. The Grievance Procedure
4. The Griever's Union Representative: Role, Responsibilities and Legal Protections

LUNCH

5. Listening to and Advising a Member with a Problem
6. Types of Grievances

BREAK

7. An Organizing Approach to Grievance Handling
8. The Systemic Approach to Problem Solving

Day 2

1. Welcome & Check-in
2. Interviewing the Member

BREAK

3. Wording the Grievance
4. Framing the Arguments/Building the Case

LUNCH

Framing the Arguments/Building the Case continued...

5. Representing the Grievor

BREAK

6. The Case File
7. Duty of Fair Representation (DFR)—What is it?
8. Wrap-up

Thoughts About Grievances

Think about the following statements.

Assign a rating such as:

1 = “strongly disagree”,

5 = “strongly agree”

or somewhere in between.

1. The union loses credibility when it goes forward with grievances of questionable validity.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

2. Winning a member’s grievance is one of the most satisfying experiences for a steward.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

3. For a grievance procedure to serve its intended purpose, there has to be _____ . (Complete the sentence)

4. Effective use of the grievance procedure improves the union management relationship.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

5. Filing grievances is seen as a “career breaker” by most employees.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
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6. Grievances provide an effective tool to talk to management about workplace problems.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

7. The PSAC is obliged to provide representation on all grievances filed by PSAC members.

1 Strongly disagree	2 Disagree	3 Neither disagree or agree	4 Agree	5 Strongly agree
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8. The union doesn't have to represent grievances of "RANDS".

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

9. Mediation is way more effective than grievances for resolving workplace problems.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
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10. Grievances strengthen the collective agreement.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

11. We owe a debt to the many grievors who have come before us.

1 Strongly disagree	2 Disagree	3 Neither agree nor disagree	4 Agree	5 Strongly agree
------------------------	---------------	---------------------------------	------------	---------------------

Things to Know About the Grievance Process

The grievance procedure is set out in your collective agreement.

These provisions set out:

- The types of grievances which can be filed
- The number of steps or levels in the grievance process
- The time limits to initiate a grievance
- The time limits for the employer to respond
- What happens with the grievance if the matter is not resolved at each step

When the grievance cannot be resolved:

Most jurisdictions provide for a third party to hear the case and make a decision. This third party process is known as a grievance adjudication or arbitration.

- The PSLRA (**Public Service Labour Relations Act**) sets out what can be referred to adjudication (Section 209). In a nutshell, a grievance which has been presented up to and including the final level and which has not been resolved can be referred to adjudication if it deals with the interpretation or application in respect of the employee of a provision of a collective agreement and the union agrees with the referral to adjudication. (Please consult Section 209 of the PSLRA for a complete explanation about what can be referred to adjudication.)
- The **Canada Labour Code** sets out that all collective agreements governed by Part I (Industrial Relations) of the Canada Labour Code must contain a provision for the final settlement, without work stoppage, of any differences which relate to the interpretation, application, administration or alleged violation of the agreement. This usually involves referral of the grievance to arbitration.
- Provincial and Territorial labour legislation contain similar grievance provisions.

Stewards and Adjudication/Arbitration:

Stewards do the initial intake of the grievance and provide representation at the first step of the grievance process.

Representation at other steps of the grievance process will likely involve different union representatives. Stewards are not responsible for handling cases which are brought to adjudication/arbitration. Each Component and Directly Chartered Local determines how it structures the representation of grievances filed by their members. However, the grievance file that stewards will have completed will be essential in any adjudication/arbitration hearing.

Grievance Mediation

Many of our members' workplaces provide for an informal problem solving mechanism which workers are encouraged to use before continuing with the grievance process. The Public Service Labour Relations Act sets out an Informal Conflict Management System (ICMS) since 2005. In other workplaces or jurisdictions, these systems are known Alternative Dispute Resolution (ADR) Systems.

WHAT IS GRIEVANCE MEDIATION?

- An impartial third party—the mediator—facilitates communication between the parties involved in a dispute and works constructively with them, in a flexible and creative way, to assist them in reaching a resolution.
- The purpose is to reach a mutually satisfactory resolution to a dispute that is sustainable. In the process, the mediator helps the parties realistically evaluate alternatives for settlement.
- The purpose of mediation is not to determine who is right or wrong. A mediator helps shift the focus from one of blame to a creative exchange between the parties. The mediator also helps the parties shift the focus from the past to the future.
- The mediator encourages the parties to communicate with each other so they understand each other's point of view.
- The entire process is voluntary—no party can be coerced into entering, continuing or returning to mediation.
- The mediator does not have the power to render a decision, or to force the parties to reach a settlement.
- The parties agree on the mediator, as each party needs to be personally comfortable with that person and his/her credentials.
- There are no minutes taken of the proceedings. If there is a report issued by the mediator, it is limited to the fact that a settlement was or was not reached. If a mediator takes notes for the purpose of the mediation, they

are confidential and protected from disclosure. If an agreement is reached, the terms of settlement are recorded and signed by the parties. At the beginning of mediation, everyone (i.e., mediator, the parties and their representatives/accompanying persons) signs an Agreement to Mediate that sets out some basic rules governing the process.

- The terms of the settlement are binding on the parties. Once a settlement has been reached, there is no longer a dispute between the parties and therefore no matter to be determined by an arbitrator. Labour boards have recognized that it is in the best interests of good labour relations that binding mediation agreements be honoured.
- Use of mediation never prevents a party from using the grievance procedure (or another formal process where one exists) should mediation fail. A participant may switch between mediation and a formal process at any time. Mediation can be used at any stage of the grievance process.
- When the mediator has previous experience as an arbitrator, with the parties' agreement, s/he can help them assess their cases by indicating what arbitrators have decided in similar cases in the past and how an arbitrator might look at their situation. This is sometimes referred to as the evaluative model of mediation. (See below under the title, *what are the disadvantages of grievance mediation?* for comments on this model.) Some jurisdictions follow a facilitative model, such as the PSLRB sessions where PSLRB mediators are used. This allows the PSLRB to draw a fairly clear line between mediation and adjudication. It ensures that when parties take part in mediation, they are participating in an assisted negotiation, and that when they appear before the board in an adjudicative hearing, they will receive a third party decision on the merits of their case.
- Time taken to use mediation does not count against the time limits of formal processes as long as the parties ensure that time limit issues are protected. A grievance, for example, can, upon mutual agreement, be held in abeyance pending the outcome of mediation. For *PSLRA* units, the *PSLRB Regulations* provide for a suspension of time limits.

- Each party may be accompanied or represented by a person (or persons) of their choosing. A person (or persons) who accompanies or represents a party has the right to speak.
- If the issues in dispute revolve around the interpretation or application of a collective agreement, a representative of the bargaining agent must be involved.
- Usually, the parties to a conflict are at the table. It is preferable that individuals responsible for making decisions concerning the settlement also be at the table.
- Anything discussed during mediation is privileged. Any verbal or written communication with the mediator is confidential. Confidentiality is an important factor that influences the participants' trust and confidence in the integrity of the process. Being able to say and do things without prejudice is an important element of open communication and exploring settlement options. Otherwise, the parties would unlikely make offers that are much different from their initial positions. Participants must agree not to use any information gained when using mediation outside of the mediation process. The terms of the settlement are also confidential. The mediator cannot be involved in subsequent formal proceedings should mediation fail, including being compelled to testify.
- An employee can't be subjected to any retaliation or reprisal for having participated in, or withdrawn from, mediation.
- Mediation requires a solid systemic foundation in order to be effective. There must be clearly articulated principles and procedures, and adequate training in conflict management for employees. Union involvement in developing and participating in conflict management systems is a necessity.

WHAT ARE THE ADVANTAGES OF GRIEVANCE MEDIATION?

- Mediation gives the parties greater control and flexibility to actively shape a settlement to both the immediate crisis and its underlying causes in a way that best addresses the interests of both parties. At the various levels in the grievance procedure, it is the employer who renders a decision and if the grievance goes before an arbitrator, a binding settlement is imposed.
- The union has the right to consult with the employer with respect to a grievance at each level of the grievance procedure. To “consult” means to seek and provide information, exchange views, listen to each other’s opinions, observations and recommendations, prior to a decision being rendered—by the employer. Mediation is a process that offers structured direct negotiation with the employer, prior to a decision being made—by the parties themselves.
- It provides individual grievors with greater involvement in the process and greater input into the outcome. This can result in increased empowerment over their situation.
- The settlement does not set a precedent, so a solution can be crafted to meet the unique circumstances of the situation. The parties will be more comfortable with making commitments and concessions in mediation, if they know these will not damage their case if mediation fails, or be publicized if mediation succeeds.
- Unlike arbitration, mediation can address the issues and interests surrounding and underlying the matter in dispute. It can help to identify and resolve situations that could produce future grievances. Mediation allows the parties to look beyond the symptoms to see problems in a broader perspective than is possible at arbitration, where the emphasis is on the arbitration of rights and the answers to relatively narrow questions. It can result in practical workplace solutions which may lay the foundation for better working relationships.
- A mediated settlement has the potential to include remedies not available at arbitration—e.g., collaborative skills training for union and

management representatives; development of a workplace communications policy; agreeing to the text of a revised job description; agreement to market an employee to another organization or agency, or to transfer an employee between departments; agreement to a job classification review; agreement concerning early retirement; retroactivity (for example an agreement to pay back pay); facilitation of a more comfortable work environment until retirement on full pension.

- While a mediated settlement might not be achieved, mediation has the potential to clarify the issues in dispute and enhance the parties' understanding of what lies behind the conflict.
- Mediation is informal and permits people to simply tell their own stories. The parties are encouraged to speak freely and openly with each other. Unlike arbitration, they are not bound by procedural rules or rules of evidence.
- It teaches people to resolve their own issues, and increase confidence in their ability to do so. When union and management are involved, it improves the ability of those parties to settle grievances or other disputes.
- Mediation encourages face-to-face communication (instead of communicating through their representatives) which can contribute to building and enhancing ongoing and long-term relationships. When union and management are involved, it can foster better union management relationships.
- Mediation can be arranged relatively quickly. The process attempts to resolve issues in a short time frame. The longer a dispute lasts, relationships can become worse and morale can suffer.
- Statistics generally tend to demonstrate high levels of satisfaction with the process. Even in cases where a settlement is not reached, the parties rate the process as fair in the vast majority of cases.
- Mediation avoids the adversarial atmosphere and “win-lose” outcome associated with grievance arbitration.

- Over time, as conflict resolution systems evolve and improve, it may result in more issues to surface, especially those rooted in abuse and discrimination, and therefore contribute to healthier workplaces.

WHAT ARE THE DISADVANTAGES OF GRIEVANCE MEDIATION?

- Mediation may not be suitable where there are substantial or systemic power imbalances, especially in situations of harassment, abuse or discrimination. The facilitative influence and competencies of the mediator may be inadequate to address the imbalance, ensure the safety of both parties and protect the integrity of the process.
- The skills, experience and impartiality of the mediator are crucial. A mediator is responsible for protecting the parties and ensuring that they are heard. S/he needs to understand all of the issues that must be addressed, including those related to culture, violence and oppression that might be outside his/her realm of experience. A mediator must ensure that the parties know the options that are available, and have thoroughly considered the risks and advantages of each option. S/he needs to ask hard questions of the parties and probe and check their understanding in pursuit of a resilient, durable agreement. The mediator must make sure that neither party is being taken advantage of and that their decisions are informed and well considered. It requires a high level of competence and many mediators are inadequate for the task.
- Because mediation takes place in private, it is tantamount to a private justice system that might not best serve and protect the public interest. As such, it may fail to bring to light issues that concern and advance those interests. Had *Robichaud*¹ and *Meiorin*² been settled in private, society would have been denied the benefits of these landmark cases.
- The confidentiality of the proceedings limits the ability of the union to sensitize and mobilize other members who might be interested or otherwise affected by the issue. It limits the “organizing model” approach to only the member(s) directly involved in the dispute.

- While not a disadvantage per se, the success of mediation may be attributable, in part, to the way the parties have approached the grievance procedure. After all, the procedure is designed for the parties to consult on grievances and attempt to settle them at the lowest possible level. Grievances, and the formal grievance procedure, should be treated as opportunities to solve problems and enhance relationships.
- Employees and their union representatives, without appropriate advice from their advisors, may agree to a mediated settlement that compromises collective rights where entitlements clearly exist, in the interests of maintaining or furthering relationships. This is not a flaw of grievance mediation, but part and parcel of its allure.
- The power dynamics of the employment relationship produce a difference in perceptions between grievors and employers regarding the nature and substance of conflict, and expectations regarding outcomes of mediation. There are many more day-to-day consequences for employees in uncomfortable or hostile relationships with the employer. This may reflect the tendency for grievors to go into mediation with higher expectations than employers, especially in the area of personal relationships. Also, grievors are more likely than employers to see outstanding, unresolved issues following mediation, including concerns about going back into a workplace without a formal change in their circumstances.
- The evaluative model of mediation (i.e., when a mediator provides an opinion on the likely outcome of the dispute at arbitration) can undermine the parties' ability to reach a negotiated settlement. It may also influence one party or the other to focus only on the narrow issues that will be determined by an arbitrator. It can also create a perception of mediator bias.

WHEN MIGHT GRIEVANCE MEDIATION BE APPROPRIATE?

- The parties are willing to try to settle the issue(s) in a cooperative manner.

- An informal and flexible process is preferred over the more formal options.
- A formal process is unlikely to achieve the desired outcomes or a particular remedy.
- Ignoring the problem is not viable.
- There is interest in maintaining or rebuilding the relationship.
- A case is complex and requires a creative solution.
- A rights-based process can't address the fundamental issues.
- The parties prefer to resolve their dispute in private and do not want a public record.

WHEN MIGHT GRIEVANCE MEDIATION NOT BE APPROPRIATE?

- The parties in dispute do not have the authority required to resolve the problem.
- The parties are unwilling to work toward a resolution. Or a grievor wants the union to resolve the problem without his/her direct involvement.
- Either party wants to be declared right, or see blame assigned to the other party. Either party wants to punish the other. Either party wants to obtain information to use in a formal process.
- There is an absence of good faith.
- A lack of credibility of one party is an issue and integral to the dispute.
- Either party is unable to rationally participate in the mediation.
- A party is challenging the validity of a law, policy or collective agreement provision.
- Expectations of the process and outcomes are unrealistic.
- The parties are clear about their respective interests and positions and one or both parties believe that the matter should be pursued or arbitrated using a rights-based process.
- There is a need to set a precedent with regards to the issue of law or its application.

- The issue is one that should be debated in the public eye.
- There is a physical danger to any persons involved in the process.

¹ *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

² *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3.

Sources:

Birken, Mitchell S. *Grievance Mediation: The Impact of the Process and Outcomes on the Interests of the Parties*. Industrial Relations Centre, Queen's University. 2000.

Department of Justice Canada. *Summative Evaluation of the Dispute Resolution Fund*. June 2002.

Directive on Informal Conflict Management Systems (Treasury Board Secretariat).

Informal Conflict Management Systems (ICMS Resource Guide).

Macfarlane, Julie; Manwaring, John and Zweibel, Ellen. *Negotiating Solutions to Workplace Conflict: an Evaluation of the Public Service Staff Relations Board Pilot Grievance Mediation Project*. Final Report. March 2001.

Miscellaneous pamphlets from the websites of provincial and federal labour boards, as well as the Federal Mediation and Conciliation Service.

Skandharajah v. Treasury Board (Employment and Immigration Canada), [2000] PSSRB 114 (166-2-24127)

The Grievance Procedure—How Does it Work?

Please complete the questionnaire. Mark the correct response(s). Some questions may have more than one correct response.

1. A grievance

- (a) is presented by the grievor to the grievor's immediate supervisor;
- (b) can be presented by the union on behalf of the union;
- (c) can be signed by the grievor but presented by the union representative;
- (d) can be signed by a union representative on behalf of an employee (who doesn't want to sign or file his/her own grievance).

Answer:	Ref:

2. The collective agreement obliges an employee or the union to first discuss the matter with the supervisor before filing a grievance. Is this statement true or false?

Answer:	Ref:

3. A grievance is not valid unless it is on the appropriate grievance form. Is this statement true or false?

Answer:	Ref:

4. A representative of the union must sign each and every grievance that is presented to the employer. Is this statement true or false?

Answer:	Ref:

5. A grievance must be filed within ___ days of

- (a) the alleged violation of the collective agreement;
- (b) the date of the employer's written notification of the situation giving rise to the grievance;
- (c) the grievor first becoming aware of the circumstances giving rise to the grievance;
- (d) receiving an unsatisfactory decision of the employer.

Answer:	Ref:

6. A “day” is defined as

- (a) a working day;
- (b) any day between Monday and Friday;
- (c) any day excluding Saturday, Sunday and designated paid holidays.

Answer:	Ref:

7. Information on the number of levels and the titles of the employer’s representatives at each level of the grievance procedure is to be found

- (a) in the collective agreement;
- (b) on notices posted by the employer;
- (c) by asking the immediate supervisor.

Answer:	Ref:

8. It is the grievor who must present the grievance to the immediate supervisor. Is this statement true or false?

Answer:	Ref:

9. The union has the right to a hearing at each level of the grievance procedure.

Answer:	Ref:

10. A copy of the employer's decision at each level of the grievance procedure will be provided to

- (a) the steward;
- (b) the grievor;
- (c) the appropriate representative.

Answer:	Ref:

11. When the employer does not respond to the grievance within the time limits, the steward should

- (a) conclude that the employer has allowed the grievance;
- (b) ensure that the grievance is presented to the next level within ____ days.

Answer:	Ref:

12. A grievance against an employee's discharge shall be presented directly to the final level of the grievance procedure. Is this true or false?

Answer:	Ref:

13. A grievance is considered abandoned when

- (a) time limits are not respected;
- (b) an employee so notifies the employer in writing.

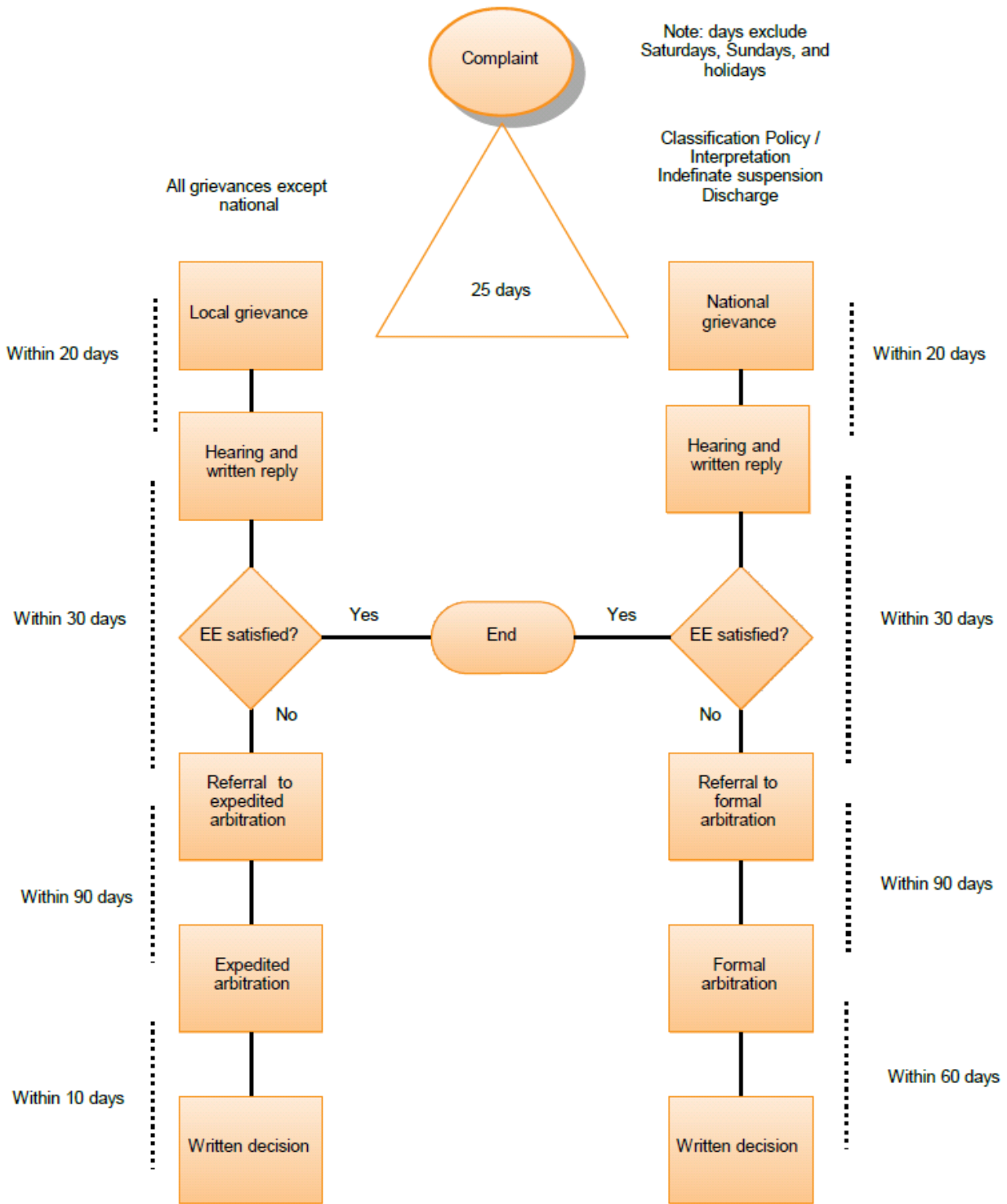
Answer:	Ref:

14. Time limits may be extended by mutual agreement of

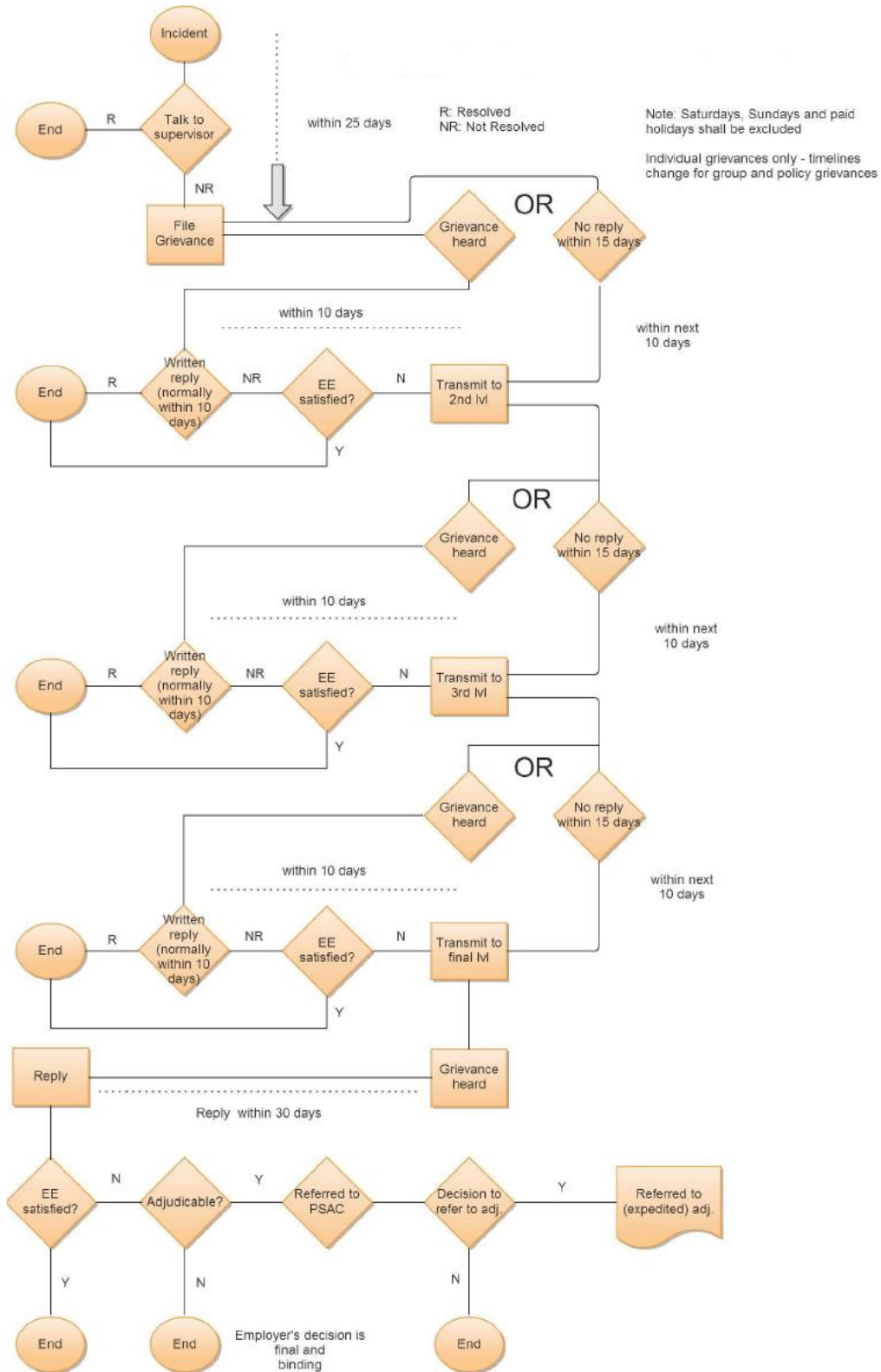
- (a) the employer and the employee;
- (b) the employer, the employee and where appropriate, the union representative;
- (c) the union and the employer.

Answer:	Ref:

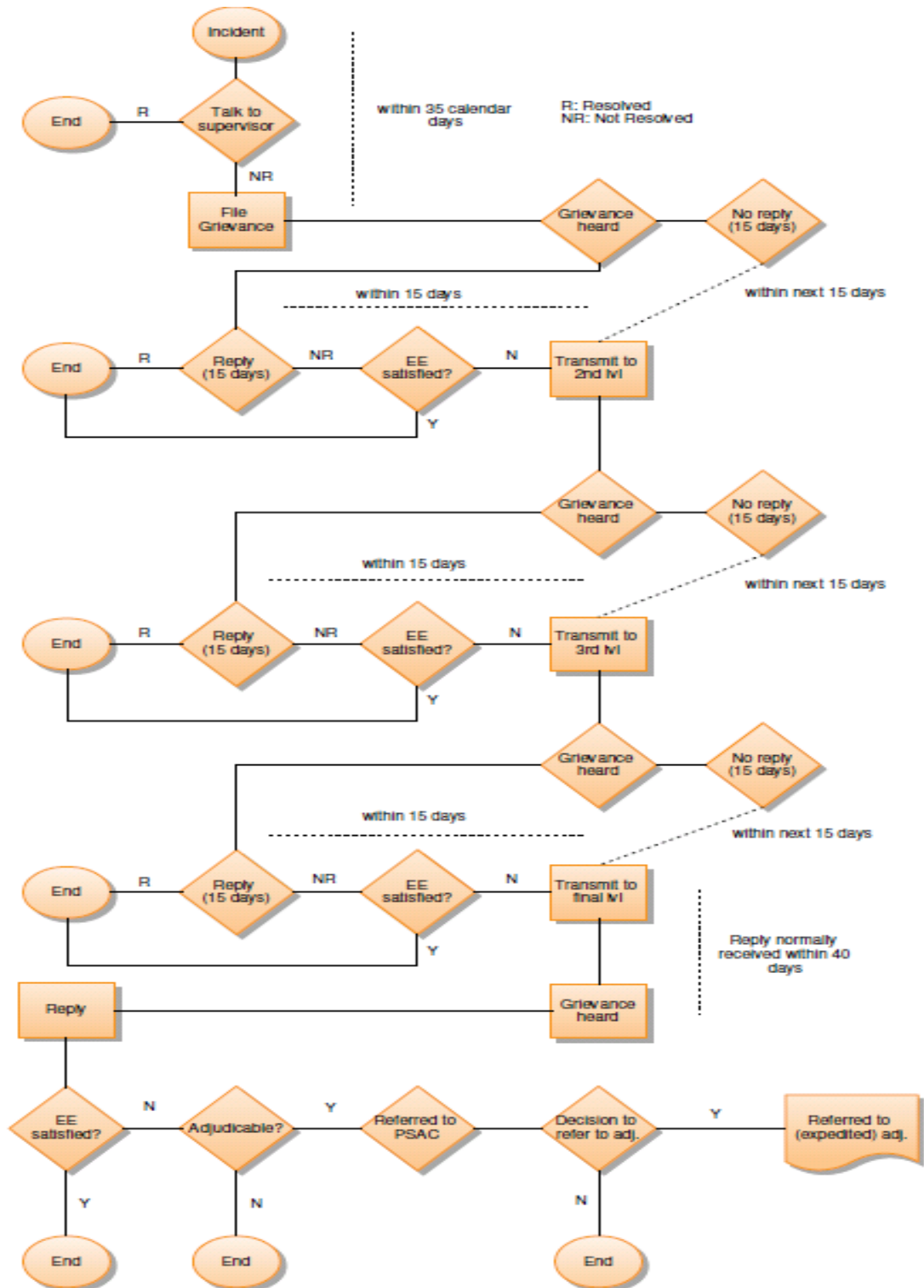
Grievance Process—Canada Post



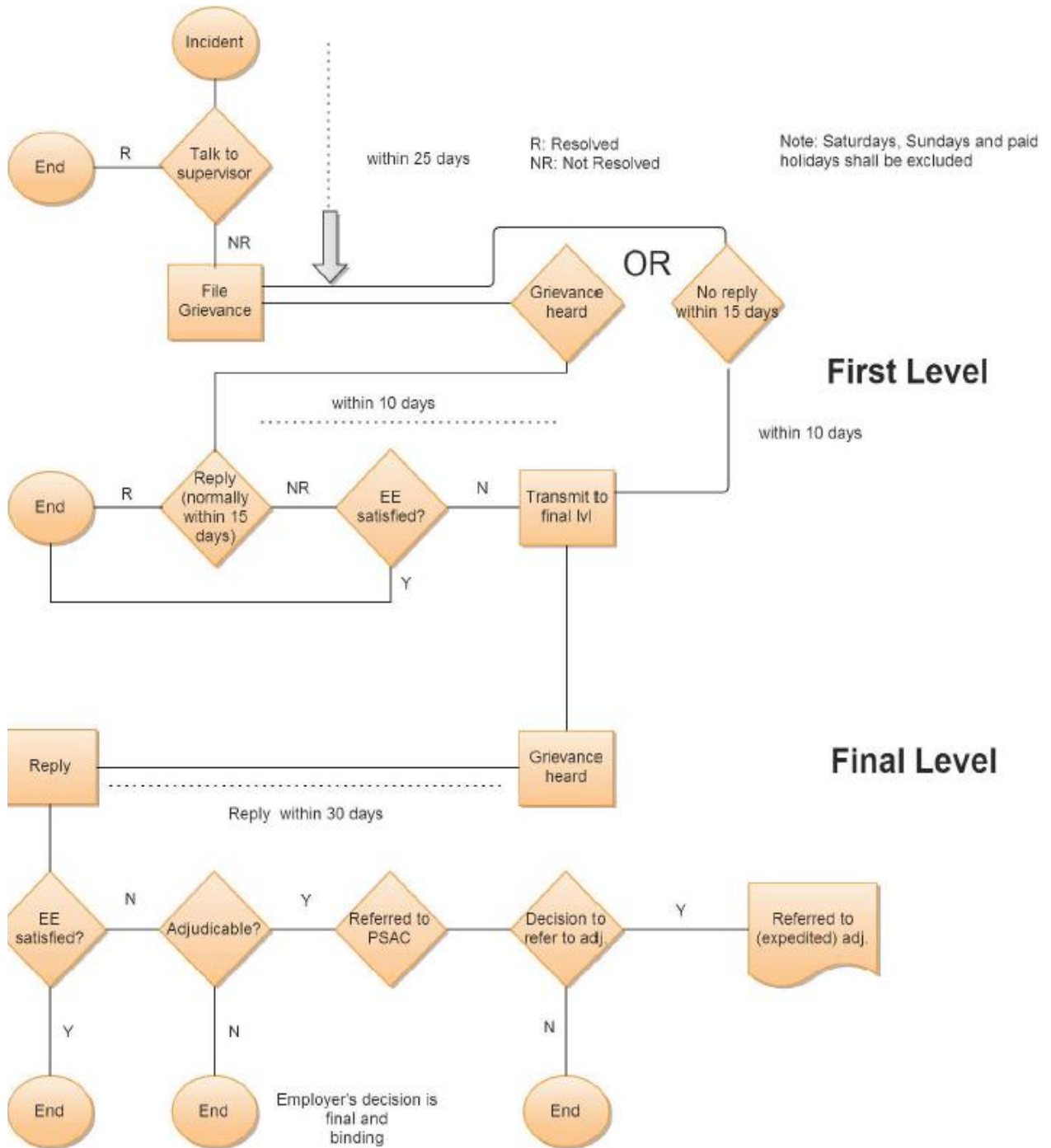
Grievance Process — Canada Revenue Agency



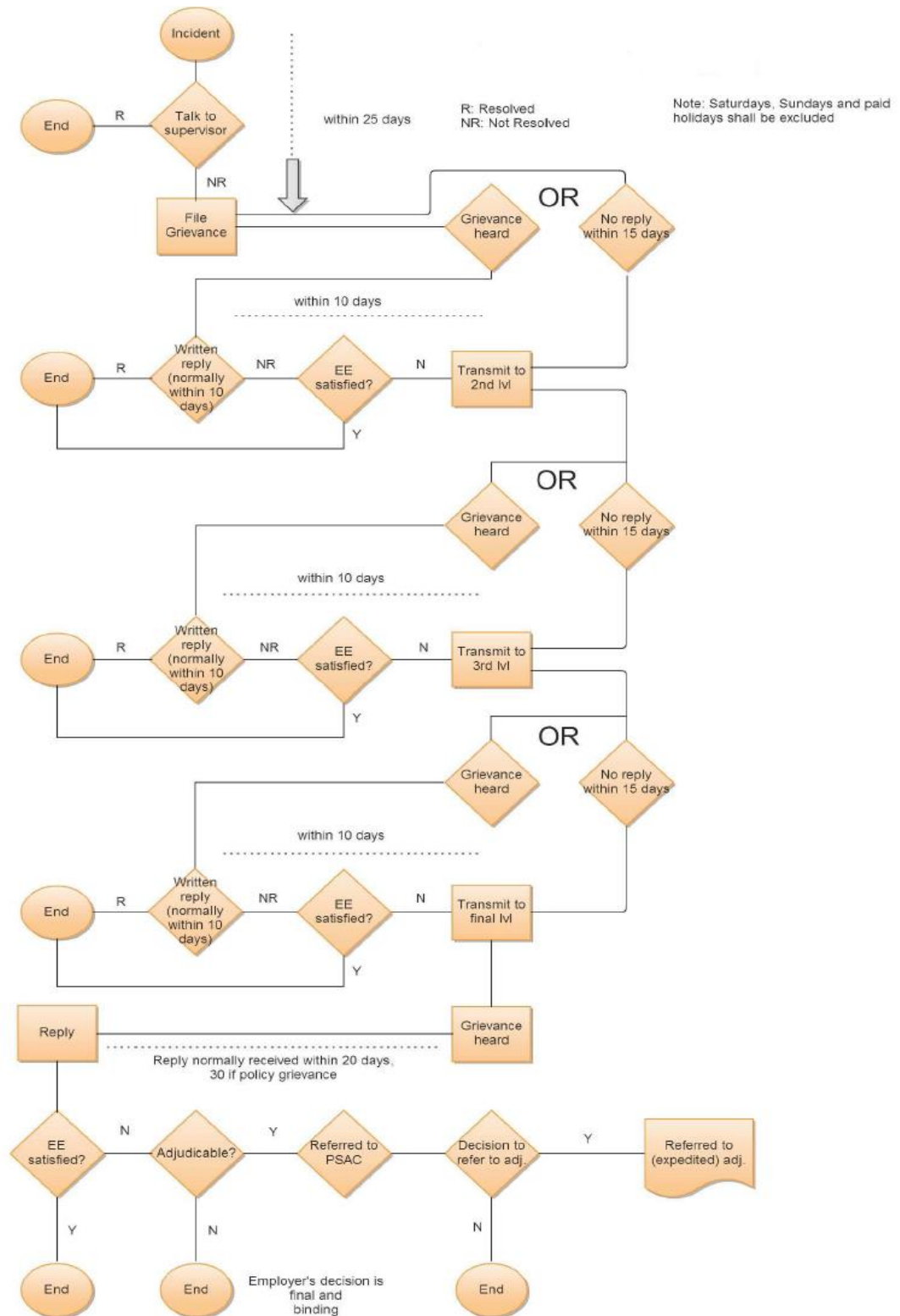
Grievance Process—Canadian Food Inspection Agency



Grievance Process—Parks Canada



Grievance Process—Treasury Board



NOTE: There is a one-year time limit to file an individual human rights grievance.

Roles, Responsibilities and Legal Rights

SCENARIOS

Examine the scenario(s) assigned to your group. Try to identify the Steward's role, responsibilities and legal rights/obligations in this case. Be prepared to report back with key discussion points.



1. You have just received a phone call from a member who has been ordered to attend a disciplinary meeting in 10 minutes. The member was given no notice and you are the only union representative on-site. He has no choice but to attend the meeting and wants you to come as his union representative. Your Supervisor is out of the office and you cannot reach her by phone. You are the only one in the office at this time.
2. You received notice from Human Resources that a grievance filed by a member that you are the union representative for, was withdrawn. The grievance had been put in abeyance pending the outcome of mediation. You followed up with the member who explained that her supervisor suggested it would be an act of good faith to withdraw the grievance and would likely ensure a better outcome at mediation.

3. A member, who is also a good friend of yours, comes to you with a problem and wants to grieve. He has been reassigned from a project he enjoys to one he doesn't want to work on. You have discussed the issue with the Chief Steward and you both agree that the member really doesn't have a case. The member disagrees and wants you to represent him anyway.
4. You received a response from the employer for the first level grievance hearing. The grievance was denied. In their response, the employer raises an issue that requires follow-up on your part. You need to meet with the grievor and some of the witnesses to prepare your case for the second-level hearing. You requested 2 hours leave to prepare the case and it was denied by your Supervisor.
5. Your manager calls you aside to discuss a promotional opportunity. He says that you do great work and that you are being considered for an upcoming acting appointment. He thinks it would be a great opportunity for you and that something more long-term could develop from it in future. The manager suggests that you would be more likely to get the position if you back-off from union activity for a while.
6. You presented a member's grievance at first-level hearing. You are waiting for first-level response from the employer. The grievor approaches you to say that she talked to her manager about the grievance earlier that day. The manager presented the grievor with some suggestions for resolving the grievance at first level and wants a response from her by the end of the day.

7. Last week, you spoke at a public meeting as a representative of your Local. You were part of a panel on contracting out. You spoke against measures being introduced in your workplace to contract out property management. When you returned to work, you were disciplined. In your discipline hearing, the employer said that as an employee, you must adhere to the policy that compels all employees to ensure a positive public image of the organization.

8. A member has just come to you asking for your assistance to file a grievance. This member is being fired. You know that there have been issues with this member's work performance. He is regularly late, does not complete his work, takes longer lunches and has tried to blame co-workers for incomplete tasks. Other members have come to you in the past complaining about this member's incompetence. You know that co-workers are secretly relieved that management has finally dealt with a problematic employee.

Our Rights Under The Law

Verified 2013



Depending on where they work, PSAC members may be covered under one of a number of different labour laws. Members who work in federal government departments and agencies are covered by *the Public Service Labour Relations Act (PSLRA)*. PSAC members who are employed elsewhere in the federal sector, including non-public service employers in the three Territories, fall under the *Canada Labour Code*. Still other PSAC members work in employment situations that come under the jurisdiction of provincial private sector or territorial public service labour legislation.

Despite the different labour laws that apply to PSAC members, the same basic union rights are recognized and protected in each piece of legislation. Following are brief descriptions of these important rights.

THE RIGHT TO JOIN A UNION

Under the law, the right of an employee to join a union is guaranteed. Here are some examples of how this right is spelled out in law:

Canada Labour Code, Part 1, Section 8 (1)

Every employee is free to join the trade union of their choice and to participate in its lawful activities.

Ontario Labour Relations Act, Section 5

5. Every person is free to join a trade union of the person's own choice and to participate in its lawful activities. 1995, c. 1, Sched. A, s. 5.

Québec Labour Code

3. Every employee has the right to belong to the association of employees of his choice, and to participate in the formation, activities and management of such association. R. S. 1964, c. 141, s. 3; 1977, c. 41, s. 3.

In summary, each employee has the right:

- a) to be a member of a union
- b) to participate to union activities and
- c) to participate in the formation of a union

THE RIGHT TO PARTICIPATE IN UNION ACTIVITIES

The previous examples show that the law not only protects a worker's right to join a union, but also recognizes the worker's right to be an active union member.

Many of us have probably met or known members who do not want to get involved in the union. Some of the reasons why they do not want to be active include:

- fear that their employer, or manager, might prevent them in some way from being promoted;
- fear of presenting a grievance because they might be fired;
- fear they might get a reputation as a complainer; or
- fear of disturbing a friendly relationship with management.

These are some of the major fears and concerns members have about active union involvement. At one time, these were legitimate. Management could retaliate against union activity without fear of any legal restrictions. Today, however, the law protects employees from employer interference by prohibiting “unfair labour practices” on the part of management. Some examples of these outlawed practices include:

- (i) interference in the formation or administration of a union Local;
- (ii) interference with the union representing its members;
- (iii) discrimination because of union activity.
- (iv) intimidation, threats, or penalties meant to discourage union activity.

Most labour laws contain similar provisions. Here is an example from the *Public Service Labour Relations Act*.

Unfair labour practice—employer

186 (1) Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall

(a) participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or

(b) discriminate against an employee organization.

(2) Neither the employer nor a person acting on behalf of the employer, nor a person who occupies a managerial or confidential position, whether or not that person is acting on behalf of the employer, shall

(a) refuse to employ or to continue to employ, or suspend, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or

intimidate, threaten or otherwise discipline any person, because the person

- (i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,*
 - (ii) has testified or otherwise participated, or may testify or otherwise participate, in a proceeding under this Part or Part 2,*
 - (iii) has made an application or filed a complaint under this Part or presented a grievance under Part 2, or*
 - (iv) has exercised any right under this Part or Part 2;*
- (b) impose, or propose the imposition of, any condition on an appointment, or in an employee's terms and conditions of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Part or Part 2; or*
- (c) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from*
- (i) testifying or otherwise participating in a proceeding under this Part or Part 2,*
 - (ii) making a disclosure that the person may be required to make in a proceeding under this Part or Part 2, or*
 - (iii) making an application or filing a complaint under this Part or presenting a grievance under Part 2.*

These are the major prohibitions relating to employers that are specified, in one form or another, in most labour laws. Some laws not only contain these basic restrictions, but also identify other types of activities that are to be considered unfair labour practices. The *Canada Labour Code*, for example, makes it an unfair labour practice for an employer, or manager, to take disciplinary action against an employee, because s/he refuses to perform all or some of the duties of another employee who is participating in a legal strike.

The following kinds of actions might be leading indicators of a pattern of discrimination:

- assigning you more than your fair share of dirty work;
- taking away the more interesting parts of your job;
- suddenly hassling you about how long you take for lunch while continuing to be flexible about other people's lunch breaks;
- suddenly giving you too much work;
- suddenly giving you too little work;
- deciding that your job performance is no longer satisfactory even though it hasn't changed;
- refusing to promote you because you spend too much time on union business;
- complaining that you file too many grievances;
- threatening to discipline you if you continue to be involved in the union;
- noting in your personal evaluation that your job performance is affected by your union involvement.

We all want to have a good working relationship with our managers. However, if the price of that relationship is to deny our rights or refuse to exercise them for fear of upsetting the boss, then surely we are not getting a fair deal.

Well-trained, competent managers recognize that employees have certain union rights. They do not feel personally threatened by the existence of the union. Also, they know better than to waste their time trying to stop employees from being active in the union, and instead, channel positive energy into developing respectful relations with union representatives.

THE RIGHT TO GRIEVE

The end result of collective bargaining is a new or revised collective agreement which sets out employees' rights on the job. This is not the end of the collective bargaining process, however. Now the employees have to make sure the collective agreement works!

Having a collective agreement does not mean that the employer will always abide by it. In fact, it is not uncommon for management to completely ignore provisions of the collective agreement or to interpret those provisions in such a manner as to effectively deny employees their rights. Management, for example, may decide an employee is not entitled to overtime pay under the terms of the collective agreement. When this happens, i.e., when the union and management disagree about how the collective agreement is to be interpreted or applied, then there is cause for a grievance. Simply stated, a grievance is a complaint in writing against the actions or lack of action of the employer in matters respecting employees' terms and conditions of employment. The grievance is the means by which we protect our rights under the collective agreement. It is the redress available to us when the employer "breaks" the contract.

The right to grieve is a legal right. Different labour laws, though, may define the right in different terms. The *PSLRA*, for example, explicitly defines the right to grieve and the different types of grievances. It also specifically describes the circumstances under which the right to grieve may be legally exercised and the circumstances where grievances cannot be presented. This has the effect of placing limitations on the right to grieve. The *Canada Labour Code*, on the other hand, contains a general provision requiring the parties to a collective agreement to negotiate a provision for final settlement, without stoppage of work, of all differences between the parties during the term of a collective agreement. The negotiated provision is in fact a grievance procedure.

Union members sometimes hesitate to make effective use of the right to grieve. They may view the grievance process as being something that nice people don't do or as being unfair to management. Neither concern has much basis in fact. The grievance procedure is designed so that decisions can be

challenged based on objective facts, not on personalities. Challenging decisions is a healthy and normal activity in our democratic society. It is a check on the system to ensure that decisions are just and fair. To preserve our democratic principles we are obliged to challenge decisions whenever these result in unfair or unequal treatment.

Management itself is well served by the grievance procedure. First of all, management has the initial right to make the decision on how they will apply the collective agreement. If the union, or the employee, does not agree with this decision, a grievance can be filed. Before grieving, however, the employee first must comply with management's decision. Once the grievance is submitted, at each step in the grievance process both parties have equal opportunity to explain the reasons for their actions. Should the grievance end up at arbitration/adjudication for final and binding settlement by a neutral third party, then again each party has equal opportunity to represent their case. The whole system of grievances and arbitration/adjudication reflects our wider system of justice. The parties concerned are entitled to the same rights to a fair hearing. These facts dispel the notion that the grievance process is unfair to management. It is more than fair!

When employees challenge violations of the collective agreement or violations of other job rights, they act positively to protect their rights. They stop management in any attempt to bypass or break the contract. They take control of their working lives.

Discipline—Rights to Union Representation

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DUE PROCESS

The principle of due process underlies our justice system and is well established in the area of administrative law. It has been imported into the workplace, with the collective agreement giving meaning and substance to the right. The concept of due process has been described as penetrating “to the heart of the relationship of the employer and the employee.”¹ The employer’s methods of collecting evidence and dealing with an employee accused of misconduct must be consistent with notions of fairness. Unfairness may compromise the process and lead to the discipline being overturned, as described in the leading case of *Hickeson-Langs Supply Co.*,² where Arbitrator Burkett stated:

“These safeguards are in the nature of contractual due process. While it may seem unfair to the employer to have its actions found to have been null and void, the due process provisions are central to the representation provided under the collective agreement and, in our view, there is no other way to give real meaning to them.”

This means that the employer must take an employee’s rights to union representation seriously. Ultimately, the overturning of any disciplinary sanction will depend on two things—the particular circumstances surrounding a claim of abuse of representational rights, and what the parties to the collective agreement have negotiated.

NEGOTIATED REPRESENTATIONAL RIGHTS

Collective agreement language describing rights to union representation in matters of discipline varies in its strength and scope. Most collective agreements covering PSAC members contain a provision providing an

employee with the right to union representation at the time s/he is interviewed regarding allegations of misconduct, or alternatively, at the time discipline is imposed. Some agreements oblige the employer to remind the employee of his/her rights to representation. Or an employer may be required to notify both the union and the employee in advance of the meeting, and to indicate its purpose. The employer may be required to furnish grounds to an employee prior to imposing a disciplinary measure. Other language refers to time limits for placing items of a disciplinary nature on an employee's file, and notifying the employee of whether or not the file will be used at the meeting.

The scope of representational rights is found in the precise wording of the collective agreement.

In December 2013, the Conservative government introduced major changes to the Public Service Labour Relations Act (PSLRA) through its Budget Implementation Act (C-4). C-4 created the Public Service Labour and Employment Board (PSLREB) through the merger of the PSLRB (Public Service Labour Relations Board) with the PSST (Public Service Staffing Tribunal).

TRENDS IN ARBITRAL JURISPRUDENCE

Brown and Beatty, *Canadian Labour Arbitration* (Third Edition), at pp. 7-8, 7:2100, notes that arbitrators in more recent cases are inquiring into the purpose and importance of the obligation, rather than focusing on details such as whether the word "shall" was used, or whether the consequences of non-compliance were expressly described in the agreement. This has been described as the "purposive approach."

According to Arbitrator Mervin Chertkow ³:

"The purposive approach to interpretation of union representational rights has now gained wide recognition... The Industrial Relations Council of British Columbia in Fording Coal Ltd.⁴ characterized

representational rights as ‘substantive, mandatory and fundamental.’ In Highland Valley Copper,⁵ I adopted the reasoning of the Council in Fording Coal:

Where there are provisions in a collective agreement granting such representational rights, they are substantive. They ought to be given a broad, purposeful interpretation. I agree that the purpose of such representational rights is to give the employee advice and support that is akin to and which, in other circumstances, would be found between a lawyer and his client. That is so, in my view, both before the actual decision to discipline an employee is made as well as at the time discipline is imposed. Simply put, where the contract language so provides, an employee is entitled to have a union representative present to assist him in explaining the circumstances surrounding the incident, to plead on his behalf that either an employment offence did not occur or if it has occurred, to argue for a quantum of discipline as minimal as the company would be prepared to accept. That is the purpose for granting such representational rights. For the reasons set out in the Fording⁴ decision, such rights serve a constructive and useful purpose for both parties in furthering a harmonious relationship between an employer and a union.”

RESULTS OF NON-COMPLIANCE

Where supported by the collective agreement, an abuse of an employee’s rights to representation will likely result in the disciplinary measure being overturned. In *Wendy Evans*⁶, where the collective agreement provided for representation “when an employee is required to attend a meeting, the purpose of which is to render a disciplinary decision...”, Adjudicator Tarte found that the employer’s actions violated the grievor’s representational rights. In ruling the discharge null and void, he stated:

“The right to representation in such circumstances is a substantive one whose breach cannot be cured at some later date by a hearing de novo. Unlike Tipple (Federal Court of Appeal A-66-85), this case is involved with

more than simple procedural fairness. Given the nature and purpose of such rights, they ought to be interpreted liberally for the benefit and protection of the employee.

The weight of arbitral authority in situations such as this is to declare the discipline imposed ‘void ab initio’. Employees who must attend meetings concerning the imposition of disciplinary sanctions are extremely vulnerable and in many cases incapable, in those trying moments, of properly representing themselves. Unfairness must not be allowed to be part of the disciplinary process. An employer must ensure strict compliance with a clause such as 34.03. Failure to observe its edicts must of necessity vitiate and render null the disciplinary sanction imposed.”*

* void *ab initio* is a Latin phrase meaning to render meaningless *from the beginning*.

References:

1. *York University* (Day Grievance), unreported, December 3, 1974 (O’Shea)
2. *Hickeson-Langs Supply Co.* (1985), 19 L.A.C. (3d)379 (Burkett)
3. *Mandatory Union Representation at Discipline: An Arbitrator’s Perspective* (1993 Labour Arbitration Yearbook)
4. *Fording Coal Ltd.*, unreported, I.R.C. No. C39/88, February 11, 1988, at 12 of the award
5. *Highland Valley Copper*, unreported, April 19, 1988 (Chertkow)
6. *Wendy Evans v. Treasury Board*, PSSRB file 166-2-25641, October 21, 1994 (Tarte)
7. *Government of Province of British Columbia (Personnel Services Division)* (1991) 21 L.A.C. (4th) 325 (Bird)
8. *Fording Coal Limited* (Burton arbitration), unreported decision of September 12, 1988, at page 47 (Hope)
9. *Valdi Foods and United Food and Commercial Workers, Local 175* (1991), 19 L.A.C. (4th) 114 (Kirkwood)
10. *Schneidman v. Canada Customs and Revenue Agency*, File 166—3432591 (Henry), citation 2004 PSSRB 133

Unfair Labour Practices

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Unfair labour practices interfere with workers' rights to join and participate in the union, or in the union's right to represent its members. Unfair labour practices target union representatives or union members for discriminatory treatment because they exercise their union rights. Federal, provincial and territorial labour laws describe unfair labour practices as prohibited conduct, and provide a complaint mechanism to have the matter reviewed. If the labour board agrees that the conduct has violated the law, it can intervene and order that the practice stop.

Before the first labour laws were enacted in Canada, workers had exercised their rights to strike, form unions and bargain collectively before it became "legal" to do so. When these fundamental rights found their place in the early labour laws, they came with protections. Legislators early on decided that legislative provisions were needed to prohibit an employer from abusing its power to circumvent or undermine these rights. Without the protections, it was thought that employers could basically buy the type of union or union representative that served their needs, or use coercion and intimidation to prevent workers from joining or participating in the union or otherwise exercising their rights. These first "unfair labour practice" provisions were the precursors of our modern versions. Today, in every jurisdiction, each labour code outlines in detail those "unfair labour practices" prohibited under the statute.

The law provides a framework to protect union representatives and the members they represent from these illegal practices. Over time, there have been many labour board decisions that have sent a strong message to employers that these rights must be observed and taken seriously. By the same token, an equally strong message has been conveyed to unions that only serious allegations should be brought as unfair labour practice complaints.

Therefore, to protect and promote the effectiveness of the union at the workplace, we need to consider the unfair labour practice complaint as but one option among a variety of tools and strategies.

PROHIBITIONS

Unfair labour practices vary from statute to statute. Generally speaking, unfair labour practices are those employer actions or conduct that interfere with union rights. In addition, the union's failure to fairly represent its members can be considered such a practice. Prohibited employer practices, in general terms, mean that:

- management can't interfere in the formation or administration of a union;
- management can't interfere with a union's representation of its members;
- management can't prevent an employee from joining the union;
- management can't stop an employee from participating in a union's lawful activities;
- an employee cannot be discriminated against, threatened, intimidated or restrained from exercising union rights.

In practical terms, here is a brief description of some actual examples of employer conduct that has been found to constitute unfair labour practices.

- belittling and intimidating an employee who files a grievance ¹;
- making intimidating and threatening comments with respect to the lost career advancement prospects of an employee because he files grievances ²;
- threatening to remove certain benefits from employees unless grievances are withdrawn ³;
- threatening to document the activities and performance of a union representative, who files and provides representation on grievances, for

the purpose of taking appropriate action to curb the number of “unwarranted grievances”⁴;

- withdrawing an offer of assignment because an employee indicated she would file a grievance with respect to one of the conditions regarding the assignment⁵;
- withdrawing an acting appointment because an employee had submitted a grievance⁶;
- retaliating against an employee for testifying at an arbitration hearing⁷;
- making critical comments on the performance appraisal of an employee that referred to her conduct while interacting with the employer in her capacity as a union representative⁸;
- disciplining an employee for using an alleged commanding and disrespectful tone of voice to a manager while she was acting in the capacity of a union representative⁹;
- threatening disciplinary action against a union representative if he provided representation on an Employment Insurance (EI) appeal of one of his members because it contravened his employer’s policy stating that employees (of that particular government department) could not act in an advocacy role on behalf of a client of that department¹⁰;
- threatening to discipline an employee if he didn’t withdraw as the union nominee on a community board because it allegedly placed him in a conflict of interest situation given his particular job for the employer¹¹;
- taking disciplinary action against a federal public service employee for having publicly criticized the proposed federal free trade agreement in his capacity as a union representative¹²;
- chastising a union representative and reminding her that her rights to publicly criticize her employer, to whom she owed loyalty and fidelity, did not extend to condemning job cuts in a meeting with MPs¹³;
- conducting focus group meetings of employees where bargaining issues were sometimes discussed¹⁴;

- paying the legal fees of a suspended member who brought damages for libel and defamation against union representatives ¹⁵.

LIMITATIONS OF UNFAIR LABOUR PRACTICE COMPLAINTS

As can be seen from the above references, unfair labour practice complaints have resulted in many important decisions that have helped us protect and further define our union rights. These in turn have been used successfully by other union representatives and members to demand fair treatment and practices. This is how it is with “good case law”. It becomes a template for defining how the law must be applied. It has meaning when it is used through individual and collective action to preserve and enhance these rights.

It is therefore in our collective interests to have supportive case law. That is why the Alliance carefully reviews each and every request to support an unfair labour practice complaint. The costs of unfavourable decisions and “bad case law” are too high for individual complainants, their union locals and the membership as a whole. Even a “neutral” denial of an unfair labour practice complaint can have negative consequences, as it very often puts the stamp of approval on employer actions that were the subject of the complaint. The outcome is that the employer’s conduct is judged “lawful”. Some union representatives in very difficult situations feel they have nothing to lose by filing an unfair labour practice complaint when indeed, they (and all of us) have something to lose. Therefore, we must proceed with caution. From an examination of the case law, we can draw certain conclusions about how some labour boards view unfair labour practice complaints.

1. Serious matters

As expressed by one Board member,

I wish to comment that the accusations ... are most serious. Allegations should not be made lightly and complainants have the duty and obligation to submit appropriate evidence to support their allegations. Respondents have a right to defend themselves. ¹⁶

As it has already been decided in other Board decisions, complaints ... are serious procedures which should not be raised in an uncaring and flippant manner. In all legal procedures and, in particular, in matters subject to a complaint ..., the parties should proceed carefully and with regard to the consequences of their actions. ¹⁷

Both the *Canada Labour Code* and the *Public Service Labour Relations Act* provide for fines to be imposed upon summary conviction of an offence with respect to an unfair labour practice.

2. Clear proof

Because unfair labour practice allegations are regarded as very serious matters, they generally demand a higher standard of proof than in other kinds of cases. For example, in the case of the Public Service Labour Relations Board (PSLRB), we must establish a *prima facie** case of a violation of the Act and present clear and compelling evidence in support of the allegations. Mere suspicions and loose, circumstantial evidence will not suffice. The burden of proof is akin to a “quasi-criminal” proceeding. Otherwise, the Board is likely to interpret the prohibitions very narrowly in favour of the respondent. For example, a general conversation between a supervisor and an employee suggesting the employee curb his involvement with the union did not amount to a violation because it did not involve direct threats or clear intimidating statements. ¹⁶

3. Serious Transgressions

Frivolous submissions can be harshly dealt with by a Board. Only serious issues or breaches should be the subject of an unfair labour practice complaint, and be those that are clearly prohibited by the legislation. In other words, the conduct must be more than simply “unfair” in a general sense; it must fit within the specific legal framework. Only clear and blatant violations generally succeed.

4. Complainant must have “clean hands”**

It is not unknown for complainants to be harshly treated by a Board. When the evidence is mixed, that is, where the complainant’s own conduct is open to criticism, a Board may well cast the facts in the worst possible light for the complainant.¹⁸

* *prima facie* is a Latin term meaning “on the face of it” or “at first appearance”.

** “clean hands” is a legal term meaning that someone initiating a proceeding must be in a position free of unfair or questionable conduct.

TIPS FOR UNION REPRESENTATIVES

Therefore, we must be strategic in how we use the unfair labour practice complaint, and be exploring as many options as possible to preserve and enhance our union rights. We offer the following suggestions from our experience with unfair labour practice complaints.

- 1. Your work habits and communication style should be a model.**
Always try to conduct yourself in a manner that does not invite warranted criticism, or a reaction from the employer that can be explained on sufficient or reasonable grounds. This doesn't mean to say that you can't make mistakes, but if your work habits are being questioned or your communication style with management is being challenged, it lessens your effectiveness as a union representative. It leaves you open to criticism or an employer action that might be successfully argued as unrelated to your union activities.
- 2. You have obligations to the employer as well as to the union.**
Finding just the right balance between discharging your responsibilities as both an employee and a union representative will be a constant challenge. Labour boards consistently refer to the fact that an employee has obligations to the employer whether or not s/he is a union representative.¹⁹ Try to establish a good working relationship with your supervisor. Recognize the employer's rights and responsibilities to set and expect reasonable work standards. Acknowledge the right of the employer to grant or not grant leave or permission to leave work for union activity, subject of course to the requirements set out in the collective agreement. Respect the need of your supervisor to know such things as when s/he can expect you back from a meeting with management or with a member.
- 3. Be proactive in identifying possible "pressure points" that might contribute to strained union/management relationships.**
Notwithstanding the previous comments, if the price of good working relationships is at the expense of our union rights, then it's not a cost we should be willing to pay. We have a right to expect knowledgeable and

well-trained managers and supervisors who recognize the value of the union and know better than to waste their time interfering with union representatives' pursuing the legitimate rights and responsibilities of the union, or members' exercising their legal rights. However, working relationships sometimes deteriorate, not because of anti-union animus or conscious attempts to restrain or discriminate against union representatives, but because supervisors and managers are also trying to balance their responsibilities of "getting the work done" and respecting union rights. We have learned a lot from past experience with the result that union and management in many workplaces have negotiated tangible supports for the exercising of union rights. Management, in many cases, recognize the value of well trained and accessible union representatives and is providing material support in the form or paid leave for union representatives to work full-time on union activity, office space and equipment, union training at the workplace and union meetings during working hours. Be proactive in identifying possible "pressure points" that might contribute to placing a strain on relationships within your workplace or work unit. Work with others in the local to identify preventative measures and strategies.

4. **You have equal status.** As a union representative, always conduct yourself with the knowledge and confidence that you have a right to be treated by the employer as an equal when you are acting in the capacity of a union representative. You should not be treated as an "employee" in those situations or be expected to conform to the normal rules governing the employer-employee relationship. Your responsibilities at that time are to the union membership. The law recognizes the adversarial nature inherent in the union management relationship and that as such, union representatives enjoy substantial immunity vis-à-vis the employer. If union and management could meet as unequals, then the role of the union representative would be severely compromised. Management could dictate how a union representative could behave. Management could muzzle a union representative into quiet complacency. In effect, there would be no union at the workplace.

5. **Be a strategic problem solver.** As a general practice, try to resolve problems at source. In other words, try to resolve them “at the lowest possible level” and as early as possible. Get to know the respective managers and supervisors and generally try to provide them with the opportunity to resolve problems within their area of jurisdiction. The same holds true for various workplace committees with problem solving mandates. Get to know the various committees and whether or not a particular problem rightfully belongs with a particular committee.
6. **Avoid divisions within the membership.** Try to avoid any situation that could pit a union member against a union representative in relationship to the employer. When representing a member’s concerns or interests, be clear about the objective and the process, and that you have the member’s support. Plan the approach together, and report back to the member as soon as possible if s/he was not present when the matter was being discussed with the employer. As a general rule, do not use the Union Management Consultation Committee table to discuss matters affecting an individual employee. Find out all you can about the “organizing model” way of working and look for ways to involve members in solving workplace problems.

The same holds true for collective action or on issues where the local takes a stand with the employer. Lay the necessary groundwork to mobilize membership support or otherwise ensure that members are supporting union representatives. Division within the membership has the potential to lead to some kind of employer reaction or intervention that may or may not constitute an unfair labour practice.

7. **Don’t tolerate anti-union behaviour.** As early as possible, deal with anti-union statements or conduct on the part of employer representatives. Separate those that are motivated by anti-union animus or malice from those that are not. Distinguish those that are intimidating or threatening from those that aren’t. Differentiate between those made by supervisors who are members of the union from those made by managers who are not. This isn’t to say that they all shouldn’t be dealt with, but statements

based on honest mistakes, “fair comment” or the right of union members to criticize union practices need to be treated differently from direct threats. However, be strategic in how you go about it.

8. **Keep a written record.** Always record the exact statements and a full description of the circumstances. Include how you felt and its impact on you, especially if you felt threatened or intimidated. Ask yourself if a “reasonable person” would feel threatened or intimidated if faced with the same situation. Sign it and date it. Identify any witnesses and get them to write down what they observed. Or, write down what they told you and then ask them if it is correct. Ask them to sign it and date it. Any statements should be written legibly, signed and dated. These statements will be used by grievance Adjudication Officers to help members remember what happened. The more detail the better.

DOCUMENT! DOCUMENT! DOCUMENT!

Contact another union representative without delay and talk about what happened. Discuss possible strategies to effectively deal with the problem.

9. **Plan your approach.** Don’t confront the person alone, unless you’ve made a conscious decision that this is likely the best approach under the circumstances. Consider involving another union representative, or it may be that the situation warrants a meeting between the entire executive and one or more appropriate management representatives. Stick together. Be clear about your objectives. Plan who will say what and what your options are if you cannot secure the desired commitment. Keep a record of what happened at the meeting.
10. **Work on your communication style ... especially in difficult circumstances.** Do your utmost to engage in respectful communications at all times. There are times when this will be extremely difficult. Try not to be easily provoked, react with anger or respond with a personal attack. Try to remain cool, objective and focussed on the issue at hand.

11. **Develop a working knowledge of unfair labour practices.** Get to know the legislation that applies to the bargaining units you represent and keep abreast of amendments that are made from time to time. Become familiar with the section on unfair labour practices. It usually specifies what constitutes prohibited conduct. It often specifies what is not an unfair practice. For example, the *Public Service Labour Relations Act* has an employer “free speech” provision saying that an employer doesn’t commit an unfair labour practice where it expresses its opinion, as long as there is no coercion, intimidation, threats, promises or undue influence. Find the section that describes the complaint mechanism, especially whether or not there are time limits for filing a complaint. All labour boards now have a website and many have information bulletins, forms and decisions on-line. Consider organizing a workshop for all local representatives on these rights and protections and what they mean in practical terms.
12. **Get advice.** Get sound advice on whether or not particular comments or conduct are practices prohibited by the legislation, and the likelihood of a successful unfair labour practice complaint. Carefully weigh the consequences of filing a complaint and assess whether or not the desired outcome will likely be achieved. Consider what other options there are to achieve the desired outcome. Investigate whether or not the labour board has a requirement that other avenues must be pursued prior to filing a complaint. Never consider filing a complaint solely as a “tactic”—a complaint must be rooted in substance with sound evidence to back it up. Never “threaten” the employer with a complaint, especially if you don’t yet have Alliance agreement to provide representation.
13. **Never file a complaint directly with the Board** without first asking for a review of the case by the Alliance. Filing without the endorsement of the union is very risky. The outcome may be that the Alliance will not agree to provide representation and possibly cause embarrassment and perhaps weaken your position. The quality of the review will depend on the quality of the evidence. Provide a complete file with clear details describing each and every incident and all supporting documentation. The case will be analyzed and reasons provided on why the Alliance supports or does not

support proceeding with a complaint. If a decision is made to not support a complaint, the consequences of proceeding alone need to be very carefully weighed.

14. **Find out about the relationship between the rights and protections in the legislation and those in the collective agreement.** Most PSAC collective agreements have a “no discrimination” provision listing “membership or activity in the Alliance” as a prohibited ground of discrimination. This could mean that in the case of *Canada Labour Code* (Part 1) units, the Canada Industrial Relations Board may refuse to hear a complaint if it can be the subject of a grievance. In the case of *Public Service Labour Relations Act* units, because the legislation specifies that an individual or group grievance cannot be filed when an administrative procedure for redress is provided under any Act of Parliament, the employer may refuse to accept a grievance because the matter can be the subject of a complaint elsewhere. If considering a grievance or complaint, get advice.
15. **Consider mediation.** If a dispute clearly exists and the union’s ability to effectively represent members is compromised, consider mediation as a means to negotiate a settlement that addresses the underlying causes of the conflict. Using this process, union representatives have achieved outcomes that were unavailable through the formal complaint mechanism. Settlements have included practical workplace solutions that have laid the foundation for better working relationships.
16. **Local development is your best protection!** Invest time and energy in local development. It’s key! Get help from the Regional Vice President and PSAC Regional Representative. A local development plan should result in all executive positions being filled, enough stewards and functioning joint and local committees. Build in a training plan for all local representatives. Identify tangible forms of employer support for union representatives’ being able to perform their union duties, and a strategy to put them in place. Invite the employer to join the local in jointly

supported training sessions on topics such as the collective agreement and union management consultation.

17. A union local under the leadership of just one or two hard-working union representatives is not in the best interests of the union. Besides, it can set the stage for allegations of unfair labour practices if the employer tries to balance its obligations of respecting union rights with its legitimate interests of insisting on reasonable work standards for employees who are also union representatives. Our aim should be to involve more members, spread the union work around, and develop a strong union presence through a team of knowledgeable and effective representatives.

References:

- ¹ Joanne Hébert, PSSRB file 161- 2- 336
- ² Rock Lalancette, PSSRB file 161-2-251
- ³ Roger Vaillancourt, PSSRB file 161- 2- 351
- ⁴ Jacob DeGroot, PSSRB file 161-2-311
- ⁵ Lorena Connick, PSSRB file 161-2-329
- ⁶ Raymond Tremblay, PSSRB File 161-2-455
- ⁷ Richard Marken, PSSRB file 161-2-605
- ⁸ Hella Prante, PSSRB File: 161-2-388 to 393
- ⁹ Brenda Scruby, PSSRB file 161-2-420
- ¹⁰ Harvey Linetsky, PSSRB file 161-2-316; FCA file A-1482-84
- ¹¹ Rex Gilbert, PSSRB file 161-2-712
- ¹² Mike Clough, PSSRB file 161-2-511
- ¹³ Donna Willan, PSSRB file 161-2- 834
- ¹⁴ PIPSC and Treasury Board, PSSRB file 161-2-1104
- ¹⁵ Gary Smith, PSSRB file 161-2-344
- ¹⁶ Felix Hanzek, PSSRB file 161-2-334
- ¹⁷ Gwen Jackson, PSSRB file 161-2-399
- ¹⁸ Corina Tobin, PSSRB file 161-2-438; Nathan Godfrey, PSSRB file 161-2-518
- ¹⁹ Lynn Fairall, PSSRB file 161-2-368

Grievances under the PSLRA

November 2016

Background About C-4

The 2013 Budget Implementation Act (C-4) brought sweeping changes to the Public Service Labour Relations Act (PSLRA). For example, the PSLRB and the Public Service Staffing Tribunal (PSST) were merged for administrative purposes and became the Public Service Labour Relations and Employment Board (PSLREB).

There were also other changes, mainly in Division 17 of the same Act, affecting the representation process (including both grievances and adjudication) but they didn't come into full force because the associated regulations and policies were never developed. The Liberal Government, elected in October 2015, promised to repeal many of these changes however, it hasn't passed the legislation needed to do so yet.

The Public Service Labour Relations Act (PSLRA) provides for three different types of grievances: individual grievances, group grievances and policy grievances. However, you should always remember that not all grievances may be referred to adjudication.

There are other key points that you should also know about grievances under the PSLRA:

- Employees can file individual grievances alleging discrimination contrary to the *Canadian Human Rights Act (CHRA)* AND adjudicators can interpret and apply the *CHRA* and award damages for pain and suffering (maximum of \$20,000) and punitive damages (maximum of \$20,000);
- When a **human-rights related grievance** is referred to adjudication, the Canadian Human Rights Commission must be given notice and it can decide to intervene in the case on issues relating to the interpretation of the Act;

- **Deployments** can be grieved. However, the only issue that can go to adjudication is an allegation that the individual deployed didn't consent. This will occur in two key situations: where the offer of employment did not contain a right to deploy or where the deployment is imposed as a result of finding that the employee was guilty of harassment and was being moved out of the workplace. In this latter case, the adjudicator can determine whether harassment even occurred (duplicating the investigation process) in dealing with the issue of consent to the deployment;
- In addition to individual grievances, sometimes the PSAC may decide to file **policy grievances**. This is a grievance filed in the Union's name with PSAC's approval that goes directly to the final level concerning the interpretation or application of the collective agreement. The Union is no longer limited to its own rights under the agreement but can now also grieve the application or interpretation of individual rights set out in the agreement but, when it does so, the remedies are more limited;
- The Union can also file **group grievances** on behalf of groups of employees relating to the interpretation or application of the collective agreement. Here, the Union has full carriage of the grievance but any individual, who wants to have a remedy for the violation that is the basis for the grievance, must sign a consent;
- Adjudicators now have the authority to **award interest** in the case of grievances involving terminations, demotions, suspensions or financial penalties;
- The legislation prevents any employee from filing an action in the Court where they could have filed a grievance—regardless of whether a grievance was actually filed or not. This bar does not apply to employees of separate agencies who are terminated for non-disciplinary reasons;
- **In cases of termination or demotion** for unsatisfactory performance, an Adjudicator, in determining whether there was "cause", can only rule on whether the deputy head's decision was "reasonable".

Grievances and Complaints Involving Human Rights

Updated 2014



The PSAC's human rights policy statement and Constitution clearly outlines that we do not condone discrimination and that we will be vigilant in challenging discrimination in our workplaces.

Human rights are protected in law—through human rights legislation, labour legislation and health and safety legislation to some extent. Human rights laws are quasi-constitutional which means that other laws or agreements that violate human rights laws are invalid.

Collective agreements also protect and promote human rights.

There may also be workplace policies specifically related to human rights issues such as discrimination, harassment or duty to accommodate that deal with the implementation of human rights protections.

More generally, workplace rules, policies, contract language or practices may not appear discriminatory—but may still have a discriminatory impact on an individual or group of individuals. The Supreme Court, in its 1999 Meiorin decision, has set out the requirements for employers and service providers to build conceptions of equality into workplace standards. This places a two prong on the employer:

- 1) A positive obligation on employers to design workplace standards and requirements so that they do not discriminate (i.e., the employer must take proactive action to ensure these standards and requirements are not discriminatory).
- 2) A reactive obligation to address specific discriminatory impact on individuals on a case-by-case basis.

Should a negotiated arrangement or a collective agreement provision have a discriminatory impact, unions have a joint responsibility with the employer to proactively eliminate that discrimination.

However, even if the Union was not involved in negotiating or implementing a discriminatory provision, it must cooperate with the efforts of the employer to accommodate the worker.

There is case law that now sets out that unions need to be vigilant and ensure they provide thorough representation in human rights cases.

If a discriminatory act or practice occurs in the workplace, the grievance route is the route of preference for dealing with these human rights violations. The Union is entitled to and has a duty to ensure that discrimination is addressed.

Stewards and Locals should not wait for human rights complaints and grievances to be filed before eradicating discrimination in their workplaces. Many proactive measures such as human rights training, work culture surveys, employment equity programs, anti-harassment training and measures to create inclusive workplaces can go a long way in ensuring that discriminatory practices do not occur. Unfortunately workplace discrimination may occur even when the union is vigilant in ensuring that proactive measures have been implemented.

WHAT IS A HUMAN RIGHTS VIOLATION?

In simple terms, a discriminatory act or practice;

- results in a **denial of rights**, e.g., a denial of employment, promotion, etc.;
- which occurs either in **employment** or in the provision of goods, services, facilities or accommodation;
- is based on or motivated by a **prohibited ground** for discrimination.

The manner in which discrimination occurs in the workplace may be subtle.

Stewards should remember that harassment based on a prohibited ground is a form of discrimination as is the refusal to accommodate a worker either related to their disability, family status, religion, ethnicity, etc.

PROHIBITED GROUNDS

Prohibited grounds of discrimination are found in human rights legislation. Anti-discrimination provisions in collective agreements also list prohibited grounds.

The grounds currently listed in the Canadian Human Rights Act include:

- race;
- national or ethnic origin;
- colour;
- religion;
- age;
- sex (including pregnancy and childbirth);
- sexual orientation;
- marital status;
- family status;
- disability (including mental conditions, alcohol or drug dependency), and;
- a pardon for criminal conviction.

It is important to check the specific grounds in the relevant human rights legislation since they vary from jurisdiction to jurisdiction.

The PSAC has supported the inclusion of “Gender Identity” and “Gender Expression” in human rights legislation.

GRIEVANCES

Most if not all PSAC collective agreements contain an anti-discrimination article. Here are a few examples of these:

Table 1 (PA Group)

“19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practised with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status or a conviction for which a pardon has been granted.”

The Canadian Museum of Civilization

“14.01 The Corporation and the Alliance agree that there shall be no discrimination or harassment exercised in the workplace with respect to an employee by reason of age, marital status, family status, race, creed, colour, national or ethnic origin, political or religious affiliation, sex, sexual orientation, mental or physical disability, membership or activity in the Union or conviction for which a pardon has been granted.”

HUMAN RIGHTS COMPLAINT

In most jurisdictions, if a member believes he/she has been discriminated against based on one or more of the prohibited grounds, a complaint can be filed with the applicable human rights commission.

It is important to note that **at the federal level**, employees are covered by the Public Service Labour Relations Act (PSLRA) and in addition to the right to file a grievance under the applicable collective agreement, they also have the right to file a human rights complaint with the Canadian Human Rights Commission.

For other jurisdictions where it is possible to file a human rights complaint, it may still be useful to do this while filing a human rights grievance in order to protect the timelines under human rights legislation (which may vary across jurisdictions). In most cases, the human rights will place the complaint in abeyance until the human rights grievance has been dealt with. It is also important to note that human rights agencies are very reluctant to deal with a human rights complaint if the issue has already been dealt with through the grievance process. Therefore, it is important to emphasize that the grievance process should be exhausted fully and that in very few circumstances will the human rights agency deal with a human rights complaint that has already been dealt with through the grievance process. Although arbitrators have the authority to interpret human rights legislation, a human rights complaint provides protection in the event of an error in the grievance process.

HUMAN RIGHTS COMMISSIONS

Yukon Human Rights Commission

<http://www.yhrc.yk.ca/>

Northwest Territories Human Rights Commission

<http://www.nwthumanrights.ca>

Nunavut Human Rights Tribunal
<http://www.nhrt.ca/splash.html>

British Columbia Human Rights Tribunal
<http://www.bchrt.bc.ca/>

Alberta Human Rights and Citizenship Commission
<http://www.albertahumanrights.ab.ca/>

Saskatchewan Human Rights Commission
<http://saskatchewanhumanrights.ca>

Manitoba Human Rights Commission
<http://www.manitobahumanrights.ca/>

Ontario Human Rights Commission / Commission des droits de la personne
de l'Ontario
<http://www.ohrc.on.ca/>

Québec. La Commission des droits de la personne et des droits de la
jeunesse
English <http://www.cdpcj.qc.ca/en>

New Brunswick Human Rights Commission
<http://www.gnb.ca/hrc-cdp/index-e.asp>

Nova Scotia Human Rights Commission
<http://humanrights.gov.ns.ca/>

Prince Edward Island Human Rights Commission
<http://www.gov.pe.ca/humanrights/>

Newfoundland Human Rights Commission
<http://www.justice.gov.nl.ca/hrc/>

Canadian Human Rights Commission
<http://www.chrc-ccdp.ca/>

EMPLOYER POLICY

Employers may have human rights related policies that set out the principles and processes which must be undertaken by the employer in order to meet its human rights obligations. Employers are required, since the *Bonnie Robichaud* Supreme Court Decision, to have a process to address harassment. Many employers have duty to accommodate policies. These policies usually outline a complaint process for employees who feel the policy has not been respected.

It should be noted that cases of personal harassment which are not linked to a ground of discrimination cannot be adjudicated through the grievance process (unless the collective agreement contains an article on personal harassment) nor can they be the basis of a human rights complaint. Cases of personal harassment can be dealt with via the employer's policy.

HEALTH AND SAFETY

Federal Public Sector Employers are legally required under *Canada Labour Code (CLC) Part II* and *Part XX-Violence Prevention in the Work Place* of the *Canada Occupational Health and Safety Regulations (COHSR)* to provide employees with a safe and healthy work environment free of all types of violence including harassment and bullying.

While there are many definitions of harassment, traditionally, harassment has been defined as:

"Any improper conduct by an individual that is directed at and offensive to another person or persons in the work place and which the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, or any act of intimidation or threat. It includes harassment within the meaning of the Canadian Human Rights Act (CHRA)."

Part XX requires Employers to develop and post a Work Place Violence Prevention Policy which sets out specific obligations of the employer which include providing a safe, healthy and violence-free work place, establishing emergency notification procedures to respond to work place violence as well as assisting employees who have been exposed to work place violence.

It is important to note that the remedies for human rights related violations under the grievance process is different from the health and safety process since the purpose of each process is very different. Therefore, it is important to determine which route is the most appropriate under the circumstances. Both can be utilized at the same time.

When using health and safety recourse, it is important that the complaint explicitly state this.

DEALING WITH A GRIEVANCE INVOLVING HUMAN RIGHTS

The person experiencing the discrimination may not articulate her or his experience as discrimination but as an unfair practice or experience. Stewards should assess whether the situation is related to a discriminatory practice.

In addition, persons who belong to groups protected by human rights legislation may have had to deal with prior situations of exclusion or discrimination in other aspects of their lives. A person experiencing discrimination in the workplace may require support from others, including union representatives, due to the emotional, physical and psychological impact of the discrimination. Stewards should be familiar with support mechanisms available to the person experience discrimination (i.e. EAP, counselling, advocacy groups, PSAC equity committees etc.).

GATHERING EVIDENCE

The key issue in analyzing a human rights complaint or grievance is the question of **evidence**. It is important to have evidence to establish that the employer's action, policy or practice is discriminatory and linked to a prohibited ground of discrimination. Stewards play an important role in gathering the evidence.

Here are additional tips on gathering human rights related evidence:

- Information or evidence will be required from the person experiencing the discrimination.
- Information or evidence may also be required from witnesses and experts (i.e. medical experts, experts on organizational health or safety).
- Each case will be unique and different evidence may be required but in essence, the evidence should show that: a) the person(s) who is experiencing the discrimination falls within the prohibited grounds; b) the discriminatory practice is linked to the prohibited ground (i.e. a racialized person is denied an employment opportunity due to her or his race) and c) the impact of the discriminatory practice (i.e. person had to take leave of absence due to the discriminatory practice).
- Victims of discrimination or harassment may be isolated in the workplace. This may make it more difficult to find witnesses. Remind witnesses that you are not asking them to decide if harassment/discrimination has taken place. You simply want them to share what they have seen or heard.
- Look for patterns and for differential treatment (a comparison with how others are being treated) and document this evidence.
- It is not necessary to prove intent. In human rights investigations, intent does not affect whether or not an action is deemed discriminatory.
- Ensure members keep track of any leave taken or other benefits used as a direct result of the harassment/discrimination.

- Advise the member to alert their health care professional that they are being harassed.
- Determine if medical evidence is necessary and if so, how to best gather it.

OTHER USEFUL NOTES:

- Retaliation against members who file human rights complaints or grievances is a violation of their rights. The sad reality is that members who file human rights related complaints or grievances are often belittled or ostracized. Stewards should be vigilant about challenging and recording these incidents on the case file and forward these details up the line. This could support the union's demand for punitive damages.
- It is a discriminatory practice to refuse to renew a temporary worker or to terminate their contract sooner because they have requested accommodation, are pregnant, have complained about racism, etc.
- In cases of harassment involving allegations against other members, stewards are to guide their interventions according to the PSAC Policy on Union Representative: Workplace Harassment

PSAC RESOURCES:

The PSAC has several publications and documents which may assist you in representing human rights related complaints:

- PSAC Policy on Union Representation: Workplace Harassment
- Duty to Accommodate a PSAC Guide for Local Representatives
- Accommodating Mental Health Disabilities in the Workplace: A Tool for Union Representatives

Workplace Problem Solving Routes for PSAC Members

Problem 1	Interpretation or Application of C.A. Discipline resulting in financial penalty including termination	
Jurisdiction	All	
Right	Collective agreement PSLRA Canada Labour Code Provincial- territorial codes	
Method of Resolution	Grievance	ICMS or ADR (alternate dispute resolution)
Process	Adjudication—arbitration	
Notes	Appeal to the Federal Court of Appeal possible only when there is a question of law.	Mediation is not always an appropriate tool when dealing with conflict over interpretation of the collective agreement.
Problem 2	Labour Relations Problems (employer action or inaction) on issues not covered by the collective agreement	

Jurisdiction	All		
Right	PSLRA Provincial Labour Codes (Ontario & Québec)		
Method of Resolution	ICMS — Informal conflict management system (for FPS) UMC (Union Management Consultation)	Grievance process	Complaint to Provincial Labour Board
Process	ICMS process	Grievance process	
Notes	Members are not limited to grievances on items covered in the collective agreement. They can also grieve employer actions or inactions on other workplace issues but these grievances do not necessarily go to adjudication or arbitration.		

Problem 3	Employer Policy (not covered by the collective agreement)	
Jurisdiction	All	
Right	Related to working conditions that are not covered in the collective agreement	
Method of Resolution	Consultation	Grievance
Process	UMC	Grievance
Notes	For PSLRA Units, union approval and representation is required to file a grievance on these matters. These grievances are not usually referred to adjudication.	

Problem 4	Discrimination (Harassment linked to a prohibited ground)		
Jurisdiction	All jurisdictions		
Right	<ul style="list-style-type: none"> • Human rights legislation • Collective agreement (no discrimination article) • Employer policy (e.g. Duty to Accommodate) 		
Method of Resolution	Mediation	Complaint (with applicable human rights commissions)	Grievance
Process	Mediation	See applicable Human Rights Commission websites for complaint process details.	Grievance Arbitration & Adjudication
Notes		<p>PSLRA Units have the right to file a human rights complaint with the CHCR.</p>	<p>Grievance should be directed against the employer for failure to provide an environment free from harassment & discrimination.</p> <p>Consult the PSAC Policy on Union Representation: Workplace Harassment.</p> <p>Most Human Rights Commissions will put the complaint in abeyance until the grievance process is exhausted.</p> <p>There is a higher onus on the duty of fair representation when dealing with a disability involving addictions or mental health.</p>

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Problem 5	Personal or Psychological Harassment/Violence in the Workplace	
Jurisdiction	Canada Labour Code Part II and Part XX of the Canada OSH Regulations)	Québec: Labour legislation
Right	Canada Labour Code and Part XX of the Canada OHS Regulations)	<ul style="list-style-type: none"> • Québec: protection against psychological harassment included in labour standards • Employer Harassment Policy • Collective agreement (if there is provision for personal harassment in the CA)
Method of Resolution	Complaint to a “competent person” as defined in Part XX of the Canada OHS Regulations	Grievance (related to leave provisions)
Process	<p>Right to refuse unsafe work (under very limited circumstances)</p> <p>Absence of a specific investigative process in the workplace is a violation of Part II of the Canada Labour Code and subject to a complaint under section 127.1 of the Code.</p>	<p>Québec: complaint to the Labour Standards Commission</p> <p>Employer investigation of allegation of personal harassment</p>
Notes	Part XX of the Regulations requires employers to develop a violence prevention policy; identify and assess contributing factors to workplace violence; establish controls and prevention measures; establish an investigation process;	

	ensure employee education and have an Occupational Safety and Health Committee (OSH)
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Problem 6	Staffing
Jurisdiction	TB
Right	PSEA
Method of Resolution	Informal Discussions Complaint to PSST (Public Service Staffing Tribunal)
Process	Mediation or PSST tribunal hearing
Notes	Abuse of authority is the only ground on which to challenge staffing under the PSEA Note: C-4 has merged the PSLRB and the PSST (for administrative purposes) into the PSLREB (Public Service Labour Relations and Employment Board).

Problem 7	Staffing
Jurisdiction	All other
Right	Employer policy Collective agreement if staffing is negotiated (e.g. Canada Post)

Method of Resolution	Complaint UMC	Grievance
Process	ICMS or ADR Process	Grievance Process
Notes		

Problem 8	Classification		
Jurisdiction	TBS	Other employers if staffing is negotiated	Employers who have staffing policies
Right	FAA (Financial Administration Act) PSEA	Collective agreement job description article	UMC Mediation
Method of Resolution	Classification grievance		
Process	<ul style="list-style-type: none"> • Update of job description and grievance of not provided • Job evaluation with 		

	classification standard		
	<ul style="list-style-type: none">Grievance		
Notes	Employer has the final decision in classification disputes		

Problem 9	Workforce Adjustment		
Jurisdiction	TB		
Right	<ul style="list-style-type: none"> • Right for Union to be consulted • Rehiring of a non-indeterminate employee during a WFA process 	<ul style="list-style-type: none"> • Employer refusal to offer retraining opportunities • Employer failure to explain why no guarantee of a reasonable job offer • Employer refusal to consider alternations 	<ul style="list-style-type: none"> • Abuse of authority or favoritism in the SERLO (merit assessment process)
Method of Resolution	UMC Policy Grievance	Individual Grievance	Complaint to the Public Service Staffing Tribunal
Process			
Notes	<p>The PSAC won a policy grievance in April 2013 before the Public Service Labour Relations Board. The decision strengthens the obligations of the employer to establish an effective alternation system.</p> <p>The PSST has been merged with the PSLRB to form the PSLREB (Public Service Labour Relations and Employment Board).</p>		

Problem 10	Work injury
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Jurisdiction	Provincial	
Right	Ontario: WSIB (Workplace Safety and Insurance Board)	Québec: CSST (Commission de la santé et de la sécurité au travail du Québec)
Method of Resolution	Filing a claim	Filing a claim
Process	<ol style="list-style-type: none"> 1. Revision by a eligibility adjudicator 2. Oral or written submission at appeals resolution officer level 3. Appeals tribunal 	<ol style="list-style-type: none"> 1. Revision of initial decision 2. Administrative review — Commission des lésions professionnelles (CLP)
Notes	<ul style="list-style-type: none"> • Notice of objection must be in writing • Six (6) month time limit for the 2 levels of appeal 	<ul style="list-style-type: none"> • Written letter to CSST • 30 days to appeal initial decision • 45 days to the CLP

Problem 11	Return to work
Jurisdiction	All
Right	<ul style="list-style-type: none"> • Federal: GECA (Government Employees Compensation Act) • WSIB or CSST • CHRA • Collective Agreement (under no discrimination article)
Method of Resolution	<ul style="list-style-type: none"> • May require return to work mediation • Grievance • Complaint
Process	<ul style="list-style-type: none"> • Duty to accommodate process • Return to work committee • Occupational Safety & Health Committee (OSH) • Human Rights related grievance or complaint if accommodation denied
Notes	

Problem 12	Dental/Travel/Clothing Policy/Allowance and other items covered by the National Joint Council
Jurisdiction	For employers under the NJC (National Joint Council)
Right	Negotiated NJC Policy (these are listed in the collective agreement)
Method of Resolution	NJC grievance procedure
Process	Grievance heard by Departmental NJC Representative or the final level of the NJC Committee for some topics
Notes	This only applies to NJC negotiated policies

PSAC Policy on Union Representation: Workplace Harassment

Adopted by the PSAC National Board of Directors—February 2008

The PSAC believes that every individual has the right to dignity and respect, both within the union and in the workplace.

Harassment based on a prohibited ground of discrimination, as well as personal harassment, are totally inconsistent with the principles of union solidarity, dignity and respect. As such, the PSAC does not condone any form of harassment or discrimination.

This Policy deals with harassment that occurs in the workplace. It is the employer's responsibility to create and maintain a workplace free of harassment. Your Union has a role in making sure the employer meets that important responsibility.

This Policy helps clarify what role the Union can play where a workplace harassment complaint or grievance is filed. There are three basic principles that support this Policy:

- (1) the Union's role in providing representation to employees in the context of workplace harassment should be consistent with its condemnation of harassment;
- (2) you can request and obtain Union representation unless it is clear that the allegations—on their face—do not meet the definition of harassment that applies to your workplace. Depending on where you work, the definition of harassment can be found either in your collective agreement or in an employer policy; and

(3) If an allegation of harassment has been made against you, the Union can help provide you with information about the process you can expect. If a finding has been made that you did harass someone, and you are subject to corrective measures such as discipline or a deployment to another position, the Union may provide you with representation where it reasonably believes that the measures taken are too severe or unwarranted in the circumstances.

To help you understand how workplace harassment allegations are usually dealt with, here are some general things to keep in mind:

- It is the employer that is responsible for providing a workplace free from harassment. The employer, therefore, must assess the validity of a complaint, decide whether to investigate it, and, if so, render a decision;
- the definition of harassment that will apply under this Policy will be the definition in either the employer's policy or your collective agreement;
- the process used to investigate allegations of harassment will either be those set out in your collective agreement or, where no such provision exists, those set out in the employer's policy;
- the person alleging harassment, and the person against whom the allegations are made, have a right to be heard. This doesn't mean the investigation process looks like a trial, but you need to be given a reasonable opportunity to put relevant information in front of the employer or investigator and to respond to any evidence or allegations made against you.

In addition to the Union's role in the context of individual complaints or grievances, the PSAC continues to work hard at the negotiating table and in the workplace to hold the employer to its duty to ensure that allegations of

harassment are dealt with fairly, transparently and expeditiously. The Union will also continue to work with the employer to support the necessary education and training that is required to raise the awareness necessary to achieve and maintain the harassment-free workplace that each of you is entitled to work in.

Sample Q & A's Policy on Representation Workplace Harassment for Locals

To provide representation, I need to decide whether there was harassment. How do I do that?

Under this policy, you should provide representation unless you consider that no harassment has occurred. This is the same question that human rights commissions ask when they are deciding whether to investigate a complaint as well.

You are not required to conduct a full investigation into the complaint—that is the employer's job. Read the allegations, look at the definition of harassment, and talk to the complainant/grievor. If, taken as true, these allegations *could* constitute harassment, the Union can represent and—in so doing—make sure that the employer fully and fairly investigates the allegations.

If you decide that the allegations, if taken as true, would not meet the definition of harassment, you should communicate your reasons to the complainant/grievor—preferably in writing. For example, if someone alleges that a manager is monitoring his/her work performance, and there is no reasonable information that would suggest that this is motivated by discrimination or harassment, you need not provide representation.

What do I do if allegations of harassment are made against one or more PSAC-represented employees?

The employer is responsible for maintaining a harassment-free workplace and is responsible for investigating a complaint. The person(s) alleged to have engaged in harassment (Respondent(s)) will be advised by the employer as a result of the filing of a grievance or complaint.

A Respondent may seek assistance and advice from the Union with respect to the process in place in the workplace for addressing allegations of harassment.

For example, the Union will provide the Respondent with information outlining the grievance or complaint process and employer contact information. It will remain available to answer questions related to process and may step into making general representations where a fair and thorough process is not being followed by the employer.

If the Respondent receives discipline as a result of the grievance/complaint, then he or she can approach the Union with a request for representation. The Union will consider whether any resulting discipline was warranted or was excessive, or whether any other resulting corrective measures were reasonable in deciding whether it will provide representation.

For employees employed in the Federal Public Service, where a Respondent has been found guilty of harassment and the disciplinary measure is an involuntary deployment, the Union will not provide representation where it believes the deployment was reasonably necessary to address the harassment.

What do I do if there are Cross-Complaints?

This happens when person A files a harassment complaint against person B, and person B files a harassment complaint against person A.

Where a series of cross-complaints are filed, it becomes difficult for the Union to take a representational role, particularly where the allegations could—on their face—meet the definition of harassment. These situations are extremely complex and divisive. It makes the most sense for the Union to play a role that ensures that the employer deals with the allegations in a timely and fair

manner. The Union's role, therefore, is to monitor the process rather than to adopt the role of full representative for one side or the other.

When the process is concluded and the result is disciplinary action or other corrective measures, an employee can approach the Union but the Union needs to decide whether the measures are excessive before deciding to represent the affected employee.

What do I do if I feel I am being harassed?

Any employee in a PSAC-represented bargaining unit who believes he or she is experiencing harassment in the workplace (the Complainant) can approach his or her Local Union Representative for information and/or assistance.

A grievance may be filed by an employee experiencing harassment or, if the employer has a harassment policy, a complaint may be filed.

I have been named the Respondent in a harassment complaint. What do I do?

Approach your Local to ask questions if you are unsure about what to expect. Co-operate with the investigation and provide as much relevant information as you can. If you receive a disciplinary sanction as a result of a finding of harassment, then you can approach your Local for appropriate representation. The Union can provide you with representation if it believes that the sanctions are excessive or unreasonable in the circumstances.

Why do I not receive full representation as the Respondent?

The Union cannot argue both sides of the harassment equation. If a set of allegations could constitute harassment, then the employer has a responsibility to deal with it effectively. The Union's ability to hold the employer to that important responsibility is most effective where we provide

representation to a complainant. We cannot, on the one hand, say that the allegations constitute harassment, while on the other hand, we say they do not. At the end of the day, the grievance/complaint process is a fact-gathering exercise to determine if the allegations are supported. Because of this, we can still play a role for you by giving you information about the process and to monitor the employer while it investigates the allegations.

The Organizing Model of Grievance Handling

Stewards do more than process grievances. You play an important role in strengthening the union in your workplace. Here are ideas for making the grievance experience a positive one for your Local

1. What opportunities does this create to educate and involve the member?
2. What is the likely outcome of the grievance? Can mobilizing around the issue resolve the problem?
3. How can the grievor's involvement in the process be maximized?
4. What specifically can the grievor do to:
 - help solve the problem/contribute to a satisfactory outcome?
 - help build the union in the process?
5. Is this an issue requiring confidentiality and discretion? Why/why not?
6. Do we have the grievor's consent to involve others?
7. Who else might be affected by this issue? How do we know/how will we find out? In what ways are they affected or connected to this issue?
8. How important is it to these members?
9. How can they be involved?
10. Who else needs to be involved?

11. Has this been an issue in the past? Who was involved and what was the outcome?
12. What would be the specific goal(s) and/or objective(s)?
13. What actions could be considered? For what purpose?
14. What are the specific educational opportunities this issue creates? (e.g., one-to-one with the grievor, newsletter/bulletin, information session, steward contact system with membership, PSAC seminar/course, joint training with the employer)
15. How can this issue contribute to additional stewards/better trained stewards and what specific activities do we need to consider in order achieving this?
16. Who will do what by when?
17. What follow up is required?
18. How and when will we evaluate the results?

Applying the Organizing Model Scenario

Euphrasia is an administrative assistant working in a busy department. Month end is always a hectic time as reports must be finalized and forwarded by deadline. It is Friday and Euphrasia and her colleague France are in the office alone. The month-end report is due by the end of the day but it is not finished at quitting time. France leaves, indicating she has to pick up her son from childcare. Euphrasia phones and e-mails her supervisor for approval to work overtime, but gets no response. She decides to stay late to finish the report and puts in an overtime claim the Monday following. The claim is denied because Euphrasia did not have prior approval to work the overtime. She contacts you to file a grievance.

As Steward for the area, you have heard talk from others about how stressed staff are working in this department. You suspect some staff are working overtime without pay in order to finish up work on time. On two occasions in past, staff have taken time off for stress-related illness.

Using the 7 “Ws” to Gather Facts... Some Examples

WHO	<ul style="list-style-type: none">• Who are the grievors (and contact information)?• Who are the protagonists?• Who caused/contributed to the problem?• Who are the supervisors/managers?• Who are the witnesses?• Who will provide signed statements, testify?• Who did the grievor tell?• Who else has this problem, now or in the past?• Who will be affected by the outcome?• Who has information you need?• Who will investigate?• Who will provide representation?• Who will set up the hearing?• Who will be at the hearing?• Who will “hurt” the grievor?• Who will “help” the grievor?• Who do you need to consult with?• Who can you get advice from?• Who will provide representation at next levels?
------------	---

WHAT

- **What** is the problem, issues to be resolved?
- **What** are the facts?
- **What** is the position of the employer?
- **What** has been said in relation to the problem?
- **What** is the background to this issue?
- **What** were the contributing factors?
- **What** are the consequences of doing nothing?
- **What** meetings, communications have taken place?
- **What** has the grievor done?
- **What** documents does the grievor have?
- **What** evidence is required?
- **What** is needed from the employer?
- **What** collective agreement, policy is relevant?
- **What** union policies are relevant?
- **What** is being violated?
- **What** are the precedents?
- **What** is the past practice of the employer?
- **What** are the mitigating factors?
- **What** is the position of the local, membership?
- **What** will be the impact of the grievance on the grievor, membership, union?
- **What** is the style of the manager hearing the grievance?
- **What** are the options to solve this problem and the consequences of choosing each one?
- **What** can be done to prevent a reoccurrence?
- **What** safeguards can be built in?

WHEN	<ul style="list-style-type: none"> • When did the problem occur? • When did the grievor first start trying to address this problem ... ongoing communications? • When did the grievor begin employment? • When did meetings, communications take place? • When will the time limits expire? • When should/will the hearing take place? • When should the grievance be presented, transmitted?
WHERE	<ul style="list-style-type: none"> • Where exactly did this take place? • Where was the grievor at that time? • Where were others ... supervisor, witnesses? • Where was furniture, vehicles ... distances? • Where does the employee work? • Where can I get corroboration of the grievor's version? • Where are the grievance forms?
WHY	<ul style="list-style-type: none"> • Why is this a problem? • Why did the employer take action/not act? • Why did this occur? • Why did this happen to this particular employee? • Why did the grievor do what s/he did? • Why is a grievance necessary? • Why is this being pursued? • Why do people think the grievor is innocent/guilty? • Why are people supporting/not supporting the grievor/grievor's version?

WANT

- **Wants** redress in full including ...;
- **Wants** a hearing at each level.
- **Wants** documents removed from files and destroyed.
- **Wants** training for respondent, unit, workplace.
- **Wants** harassment-free environment.
- **Wants** a declaration collective agreement violated.
- **Wants** reinstatement effective date of ... with no loss of pay and benefits.
- **Wants** reinstatement of sick leave credits.
- **Wants** memorandum of understanding outlining commitments and agreements.

WHOA

- Have I correctly identified the problem?
- Have I treated this as an organizing/educational opportunity—how will this contribute to membership education and involvement?
- Have I analyzed the case and developed arguments and counterarguments? Am I well prepared for the hearing?
- Have I organized the file and completed the PSAC Grievance File Checklist?
- Have I obtained all the documents as listed?
- Are all the statements signed and witnessed?
- Is the Steward Fact sheet completed?
- Are all my notes legible, signed and dated?
- Are copies of the grievance and transmittal forms legible?
- When do I need to forward the complete file to the representative at the next level?

PSAC Steward Factsheet

PSAC STEWARD FACTSHEET

2008

The PSAC encourages, when possible, resolving an issue at the source – with the affected parties and as early as possible.

Should an early resolution not be achieved, a complete case file is required in order to facilitate effective representation. Please use this fact sheet to collect information on the issue or problem. This will help you ensure that the grievance process and timeframes have been respected.

A. THE PARTIES

1. Union Representative (Who completed the fact sheet)

Name: _____

Home Address: _____

Work Address: _____

Phone Home: _____ Work: _____

Fax:* _____ Email:* _____

Component/DCL: _____ Local: _____

2. Grievor(s)/Complainant(s) (If more than one, attach list with name, address, etc for each)

Name: _____

Home Address: _____

Work Address: _____

Phone Home: _____ Work: _____

Fax:* _____ Email:* _____

Bargaining Unit: _____ Classification: _____

Employer or Department: _____ Branch or Section: _____

** Please note that the employer can access your communications, whether by email or fax. Also, email traffic might fall under the "use of employer facilities" policies and could be disclosed through an access to information request.*



A. THE PARTIES

3. Employer Representative or Immediate Supervisor

Name: _____ Title: _____

Telephone: _____ Email: _____

What is relation to grievor/complainant?: _____

B. FACTS OF THE COMPLAINT OR GRIEVANCE

Why is this considered to be a complaint or grievance? Include the article of the collective agreement or section of the legislation, if applicable.

Details Please. Please provide details of the complaint or grievance and attach a chronology of events if necessary.

a) **What** occurred?

b) **When** did the act or omission occur (times and dates)?

c) **Where** did it occur (location, department and section)?

d) **Who** is involved (other than witnesses)?

e) **Any related documents** (provide title, source, when received)?

Want (Corrective action requested)

This should place the complainant(s) or grievor(s) in the same position in which they would have been, had the incident not occurred. (Do not forget to request that the grievor(s) be made whole).

If there are human rights related grounds associated with this complaint or grievance, please ensure you provide details.

C. WITNESS(ES)

(If more than one, attach a list with details for each)

Name: _____

Address: _____

Phone: _____ Email:* _____

Union Witness Employer Witness | Provided Statement |

Willing to testify: Yes No Unknown

D. TIME LIMITS

1. Date of incident: _____

2. Deadline for filing grievance/complaint: _____

3. Date filed: _____

4. Deadline for reply: _____

5. Date reply received: _____

6. Deadline for transmittal to next level: _____

7. Date transmitted to next level: _____

E. EXTENSION OF TIME

Please provide details if extensions were requested/received at any level of the grievance procedure and attach supporting documentation.

F. COMMUNICATION WITH COMPONENT/DIRECTLY CHARTERED LOCAL (DCL)

COMPONENT LOCALS must ensure they provide details regarding replies to grievances and transmittals to their Component.

DIRECTLY CHARTERED LOCALS (DCLS) must ensure they provide details regarding replies to grievances and transmittals to their PSAC Regional Office.

G. GRIEVANCE FILE CHECKLIST

ATTACHMENTS	YES	NO	N/A
Copy of legible grievance form (retype wording and attach if not legible)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of legible transmittal form (level 2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of legible transmittal form (other levels)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Agreement(s) to extend time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appropriate referral notice or form (arbitration/adjudication).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (level 1).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (level 2).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (other levels)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at all levels of the grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
List of jurisprudence cited at all grievance hearings.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Completed Steward Fact sheet.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy/summary of any settlement offers.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contact with grievor (dates and brief summary)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of all pertinent documents in chronological order (attach a list).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXPLANATIONS FOR BOXES CHECKED "NO" OR COMMENTS: _____

Interviewing the Member

Role Play Instructions

Steward

Information given to steward describes all you know about the problem. You should use the **Steward Fact sheet** as a guide in this process. To the interview with the member, you are bringing both your human relations skills and your problem solving skills.

Member

Information given to steward is what the steward already knows about your problem. *Information the steward must obtain from the member* contains details the steward needs to find out about before s/he can advise you on how to proceed. Adopt a character—either yourself as you would likely behave in this situation, or someone you know. Be realistic. If your problem sheet does not provide sufficient information for you to respond to the steward's questions, improvise.

Observer

Make a note of any techniques or approaches of the steward that you found effective, and suggestions on what the steward could try differently another time.

During the feedback, everyone should share:

- (i) how you felt when you played the role of the member—e.g., how you felt about the steward; what you liked about the steward's approach/attitude; what suggestions you might have for things the steward could try differently another time;
- (ii) how you felt in the role of the steward—e.g., how you felt about the member; what you found particularly challenging and how you addressed that challenge; what you felt were your strong points; what you saw as your weak points and how you think you can improve upon your skills; and
- (iii) your observations, as described above in the observer's role.

PSAC Grievance Transmittal Form



EMPLOYER'S GRIEVANCE NO. / N° DE GRIEF DE L'EMPLOYEUR : _____

SECTION 1

Level 2 - Palier 2	Level 3 - Palier 3	Other Levels - Autres paliers
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**SECTION 2
TO BE COMPLETED BY EMPLOYEE
À REMPLIR PAR L'EMPLOYÉ (E)**

Surname - Nom de famille	Given name - Prénoms	Telephone no. - N° de téléphone
Employer, Department or agency - Employeur, ministère ou organisme	Branch/division/section - Direction/direction/section	Work location - Lieu de travail
_____ Employee signature - Signature de l'employé(e) Date		

**SECTION 3
TO BE COMPLETED BY BARGAINING AGENT REPRESENTATIVE
À REMPLIR PAR LE REPRÉSENTANT DE L'AGENT NÉGOCIATEUR**

Approval for presentation of grievance and agreement to represent employee are hereby given
Par la présente, j'autorise la présentation du grief et j'accepte de représenter l'employé(e)

 Signature of bargaining agent representative / Signature du représentant de l'agent négociateur Date

Bargaining agent - Agent négociateur	Bargaining unit/component - Unité de négociation/département	
Name of local bargaining agent representative - Nom du représentant local de l'agent négociateur	Telephone no. - N° de téléphone	Facsimile no. - N° de télécopieur
Address for contact - Adresse aux fins de communication		E-mail address - Adresse électronique

**SECTION 4
TO BE COMPLETED BY IMMEDIATE SUPERVISOR OR LOCAL OFFICER IN CHARGE
À REMPLIR PAR LE SUPERVISEUR IMMÉDIAT OU LE RESPONSABLE LOCAL**

Name and title of management representative - Nom et titre du représentant de la direction	Date transmittal received - Date de réception de la transmission
Signature	

Once completed and signed by all parties copies to be distributed as follows: copy to Employee, copy to Bargaining Agent, copy to the Employer/copie au employeur

Une fois que le formulaire est rempli et signé par toutes les parties, en remettre une copie à la partie plaignante, au représentant de l'agent négociateur et au représentant de l'employeur.



WWW.PSAC-AFPC.ORG

Exercise: Wording a Grievance

GRIEVANCE FORM		Reference No
SECTION 1—TO BE COMPLETED BY EMPLOYEE		
Surname	Given Names	Telephone
Home Address		Job Classification
Department or Agency		Work Location
<p>Statement of Grievance (Quote collective agreement reference where applicable) I am grieving the unfair treatment I have received from our Administrative Officer—Mrs. White.</p> <p>I would like to know why I was not paid overtime for the extra hours I worked June 15th. I started work at 8:30 a.m. and only took my usual lunch and coffee breaks. I did not leave the office until 8:00 p.m. I have witnesses to prove it, and am willing to supply their names if necessary. When I approached my supervisor she told me to take up the matter with the Administrative Officer. When I spoke to Mrs. White about it she was very rude and told me there was nothing she could do about it.</p>		
<p>Corrective Action Requested I request a complete review of the situation, a full explanation and an apology in writing from the Administrative Officer.</p>		
Signature:		Date:
SECTION 2—TO BE COMPLETED BY REPRESENTATIVE OF BARGAINING AGENT		
Approval for presentation of grievance and agreement to represent employee are hereby given		
Signature:		Date:
Name of Local Representative of Bargaining Agent		Telephone
Address for Contact		
SECTION 3—TO BE COMPLETED BY IMMEDIATE SUPERVISOR OR LOCAL OFFICER IN CHARGE		
Title of Management Representative		Date Received
Signature:		

Sample Grievance Wording

LANGUAGE FOR A STATEMENT OF DUTIES GRIEVANCE

Details of Grievance:

I grieve the employer's failure to provide me with a complete and current statement of duties and responsibilities of my position. This violates my collective agreement.

Corrective Action:

That I be provided with a complete and current statement of the duties and responsibilities, including point rating by factor of my position effective from ***** date.

LANGUAGE FOR A CLASSIFICATION GRIEVANCE

Details of Grievance:

My position is incorrectly classified at present.

Corrective Action:

That my position be reclassified to a higher classification level effective X date.

LANGUAGE FOR ACTING PAY GRIEVANCE

Details of Grievance:

I grieve that the employer is not paying me appropriately for the duties I am performing. I am asked to perform the duties of a higher position. As a result, the employer is not following the provision of my collective agreement.

Corrective Action:

That I be paid in accordance with my collective agreement for the performance of the duties mentioned above, retroactive to the date on which performance of these duties began (specify date—or, if the acting was for a specified period indicate from and to dates).

LANGUAGE FOR DISCIPLINARY GRIEVANCE

Details of Grievance:

I grieve the employer's decision to impose *****

Corrective Action:

I want the decision rescinded. I want all money owed to be reimbursed. I want to be made whole. I want all documentation in relation to this action to be stricken from my file.

LANGUAGE FOR TERMINATION/DEMOTION GRIEVANCE

Details of Grievance:

I grieve the employer's decision to terminate/demote me.

Corrective Action:

I want to be reinstated to my former group and classification level. I want all money and benefits owed to be reimbursed. I want to be made whole. I want all documentation in relation to this action to be stricken from my file.

LANGUAGE FOR REJECTION ON PROBATION GRIEVANCE

Details of Grievance:

I grieve the employer's decision to terminate me.

Corrective Action:

I want to be reinstated to my former group and classification level. I want all money owed to be reimbursed. I want to be made whole. I want all documentation in relation to this action to be stricken from my file.

Grievances on rejection on probation have to go through all levels of the grievance procedure unless both parties agree to bypass a level.

LANGUAGE FOR DUTY TO ACCOMMODATE GRIEVANCE

Details of Grievance:

I grieve the employer has discriminated against me and/or has failed to accommodate me to the point of undue hardship which contravenes Article (note relevant Article for your collective agreement)—No Discrimination of my collective agreement and the Canadian Human Rights Act as well as the Employer Policy on the Duty to Accommodate.

I rely on this and all other relevant provisions of my collective agreement, applicable employer policies and directives as well as applicable legislation and regulations.

Corrective Action:

I request:

1. that the employer cease discriminating against me on the basis of (identify human rights ground or grounds);
2. that the employer fulfill its duty to accommodate by accommodating my medical restrictions (or identify type of restrictions; could be as a result of family or religious status);
3. any and all salaries, monies, leave and benefits lost as a result of the employer's decision be reimbursed to me retroactive to the date the action occurred with interest;
4. damages and interest (**absolutely** required);
5. any and all other remedies deemed just in the circumstances; and
6. to be made whole.

Representing the Member

Role Play Debriefing

Provide the first opportunity for the steward to comment—e.g.

- What were your goals going into the hearing (re: the case; the grievor; your own approach; ...)? Did you achieve your goals? How did you recognize this?
- What worked particularly well for you during the hearing (e.g., arguments; style; tactics; etc.)? How could you tell you were being effective?
- What might you do differently another time? Why?

Then, allow other group members to share their observations/feedback: e.g.

- In what ways was the steward effective in the presentation of the case? How did you recognize this?
- What might you suggest the steward try differently another time and why?
- If you were the member whose case the steward just represented, what would you say to him/her at the end of this hearing?
- What might you now do as a result of this experience?

Discipline—Mitigating Factors

Verified 2013

Mitigating factors are considered in determining an appropriate disciplinary penalty. They may be taken into account by an employer at the time a disciplinary measure is being decided. Or they may be raised by the union during representation.

In cases of discipline, representation is usually concerned with two areas. The first concerns whether or not the wrongdoing occurred as alleged, or whether or not the employer can prove that some measure of discipline is warranted. Sometimes, the union may concede that an employee's misconduct constitutes grounds for some form of discipline. The second area relates to the penalty and its appropriateness in the circumstances. There may be factors that warrant reducing a disciplinary penalty. These are called "mitigating factors."

The burden of proof in disciplinary cases rests with the employer but the responsibility for raising mitigating factors lies with the union. The burden of proving mitigating factors also rests with the union. However, the onus is on the employer to rebut or explain why such factors should not affect the penalty imposed.

Arbitrators weigh the presence, or absence, of mitigating factors in deciding whether to uphold, reduce or rescind a disciplinary sanction. If an arbitrator does not receive evidence from the union, s/he has no basis on which to substitute a lesser penalty.

Though by no means exhaustive or comprehensive, the following will provide stewards with a basic list of mitigating factors.

1. The most commonly cited factors relate to an employee's length of service and disciplinary record. When an arbitrator places a relatively isolated incident in the context of a long and unblemished work history, s/he may well conclude that the employee will respond positively to a reduced disciplinary sanction and correct the behaviour or problem that contributed to the misconduct.
2. Intentional, planned and premeditated misconduct is generally viewed more seriously than a momentary lapse in judgment, a spur of the moment reaction, a response to provocation or when an employee acts on an emotional impulse.
3. Arbitrators have modified disciplinary sanctions when presented with evidence relating to the employee's state of mind at the time of the infraction. These have included domestic and emotional problems, alcohol and gambling addictions, physical pain or physical conditions, or a supervisor's wrongful instructions or treatment. In the case of fraud or theft, the existence of a sympathetic, personal motive such as family need will be looked upon more favourably than dishonesty rooted in hardened criminality.
4. Is the misconduct the result of an honest mistake or misunderstanding? Perhaps there was confusion on the part of the employee that s/he was entitled to take the measures s/he did.
5. The employer's own conduct may be a pertinent factor. For example, was there a lax atmosphere at the workplace where similar misconduct was condoned by the employer? Have the employer's policies and work rules been consistently communicated, applied and enforced? Have employees who have engaged in similar misconduct been treated more leniently? Have there been clear and sufficient warnings that certain conduct will not be tolerated, and the employee advised of the consequences if the behaviour persists?

6. The employee's attitude and actions during an employer's investigation into alleged wrongdoing will invariably influence the disciplinary measure. Has the employee been honest and forthright? Did s/he advise the employer of the wrongdoing or was there an attempted cover up or unwarranted shifting of blame to another person?
7. What is the "rehabilitative potential" of the employee? In other words, what are the employee's future prospects in conforming to acceptable and expected standards of behaviour? Did the employee admit wrongdoing and show remorse? Did the employee make a frank and honest apology, or make an offer of restitution? Has the employer attempted earlier and more moderate forms of corrective discipline to which the employee responded positively by correcting the problem? It may well be that the employee's actions between the imposition of the disciplinary measure and the grievance or arbitration hearing weigh heavily on whether or not the penalty should be reduced. This is particularly relevant in cases of alcohol and gambling addiction, and may apply to situations involving theft or assault, where the employee has taken steps to deal with the underlying problems contributing to the misconduct.
8. The penalty may impose a special economic hardship in light of the particular circumstances of the grievor. Arbitrators have invoked this factor in the case of mature workers, women and members of minority groups who have had otherwise long and exemplary service records. It has also been considered in situations when termination would result in limited employment prospects because of the specialized nature of the employee's occupation. Or it could be argued that discharge is too harsh a penalty if the employee lives in a remote location or in what might be referred to as a "one-employer town."
9. The appropriateness of the penalty will be measured against the seriousness of the misconduct. The nature of the misconduct will be placed in the context of the employee's responsibilities and the

employer's business, and whether or not the employer's reputation has been tainted or public confidence in the employer's operation has been undermined.

When dealing with disciplinary issues, a steward needs to keep in mind what could be called this "second area" of representation, and fully explore the presence or absence of mitigating factors.

First level Stewards should always sign off on these types of grievances so as to protect the member's rights and ensure she/he has the chance of correcting facts that might have been missed in the process leading up to the termination. Discipline/termination cases are almost always referred to a higher level for representation purposes.

Operational Requirements—Some Principles

Verified 2013

1. Operational requirements must be based on the work itself to be performed, not on administrative or economic criteria.
2. Consideration of overtime costs are not proper concerns in determining whether or not operational requirements exist.
3. Operational requirements are a question of fact to be determined in each case.
4. The initial onus rests with the grievor to demonstrate that operational requirements were not a valid reason on the part of the employer to deny a benefit of the collective agreement (e.g., leave). Once that burden is discharged, the onus of demonstrating that operational requirements were valid reasons for denying the benefit will then rest with the employer. Of the two burdens, the employer's burden is more onerous. The reasons are twofold:
 - Knowledge of operating requirements is in the hands of the employer.
 - More importantly, the employer has undertaken an obligation, the release from which is contemplated only in special circumstances. To not impose the onus on the employer to establish the exceptions to the right granted under the relevant provision in the collective agreement could undermine its intent.
5. It has been held that the employer must consider the real alternatives available regarding the use of other staff. That said, the employer's refusal to consider the use of other staff does not necessarily mean that denial of leave is unreasonable.

6. The employer must organize its operations and the service so that employees can exercise their rights under the collective agreement. The employer cannot hide behind staff shortages and operational demands such as training. These are not acceptable excuses to relieve the employer of its obligations.
7. There may be unusual operational requirements of a temporary nature when an employer may block out periods of time in which leave will not be granted because of anticipated needs (e.g. new plants, increase in cross-border traffic). When the employer plans the operations and clearly knows its operational requirements, it has been held that the employer can rightly refuse a request for, for example, compensatory leave.

References:

1. *Sumanik* (166-2-395); *Lee & Coulter* (166-2-741, 742)
2. *Gray* (166-2-457); *Savage* (166-2-9734)
3. *Gray* (166-2-457); *D.R. Lawes* (166-2-6437)
4. *Morton* (166-2-14208)
5. *West* (166-2-13823); *Dufresne* (166-2-14582)
6. *Noakes* (166-2-9688); *D.R. Lawes* (166-2-6437); *Lefebvre* (166-2-16101); *Tremblay* (166-2-17538); *Whyte* (166-2-17992); *Medford* (166-2-22035); *MacDonald & Kelly* (166-2-20526 & 20527); *MacGregor* (166-2-22489)
7. *Dawe* (166-2-15468); *Payette* (166-2-13824).

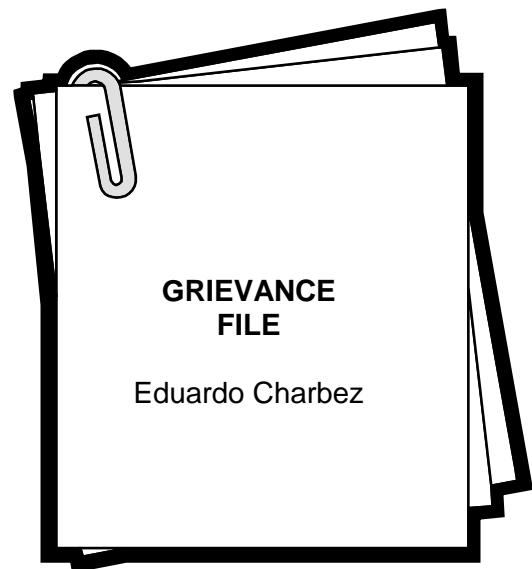
Exercise: Grievance Case File

Eduardo has grieved a two-day suspension. He was given the suspension because he copied a work colleague on an e-mail response to his supervisor. Eduardo's supervisor sent him an email directing him to obtain information from the section his colleague works in, for a confidential report. He felt it would be easiest to include his colleague in the discussion, as a means of ensuring he obtained the correct information requested. Eduardo's supervisor is disciplining him for a breach of confidentiality.

Eduardo intends to file a grievance. One of your tasks is to start the file.

1) What will you include?

2) What are some of your specific approaches to organizing the file?



PSAC Grievance File Checklist

PSAC GRIEVANCE FILE CHECKLIST

GRIEVOR'S NAME: _____

ADDRESS: _____

Town/City

Province

Postal Code

PHONE (w): _____ (h): _____

APPLICABLE COLLECTIVE AGREEMENT OR BARGAINING UNIT:

SUBJECT OF GRIEVANCE: _____

(If insufficient space, please attach appendix)

ATTACHMENTS

YES NO N/A

Copy of legible grievance form (retype wording and attach if not	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of legible transmittal form (level 2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of legible transmittal form (level 3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Agreement(s) to extend time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appropriate referral notice or form (arbitration/adjudication)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Names & addresses of other parties to be advised of arbitration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (level 1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (level 2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (level 3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at level 1 grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at level 2 grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at level 3 grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
List of jurisprudence cited at all grievance hearings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Completed Steward Factsheet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy/summary of any settlement offers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contact with grievor (dates and brief summary)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of all pertinent documents in chronological order (attach a list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appendices (attach a list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXPLANATIONS FOR BOXES CHECKED "NO" OR COMMENTS

(If insufficient space, please attach appendix)

PSAC Grievance File Checklist (page 2)

TIME LIMITS	DEADLINE DATE	DATE PRESENTED	DATE RECEIVED (by employee)
Presentation of grievance			x
Response at Level 1		x	
Transmittal to Level 2			x
Response at Level 2		x	
Transmittal to Level 3			x
Response at Level 3		x	
Referral to arbitration/adjudication			x

NAME OF UNION REPRESENTATIVE (LEVEL 1): _____

ADDRESS: _____

_____ FAX: _____

TELEPHONE: _____ E-MAIL: _____

SIGNATURE: _____

NAME OF UNION REPRESENTATIVE (LEVEL 2): _____

ADDRESS: _____

_____ FAX: _____

TELEPHONE: _____ E-MAIL: _____

SIGNATURE: _____

NAME OF UNION REPRESENTATIVE (LEVEL 3): _____

ADDRESS: _____

_____ FAX: _____

TELEPHONE: _____ E-MAIL: _____

SIGNATURE: _____

09/2001

The Rayonier Canada Quote



“First, while arbitration is the ultimate mode of settlement of grievances, it is expensive, takes time and consumes the energy and attention of the parties. For that reason, it is preceded by a grievance procedure which is designed to clear up as many claims as possible without need for arbitration. The grievance, as it is taken through the various stages, is carefully considered by representatives of union and management at ascending levels of authority. Experience shows that this procedure resolves informally the vast majority of disputes arising under the agreement and in doing so plays a major role in securing the benefits of collective bargaining for the employees. But the institution can function successfully only if the union has the power to settle or drop those cases which it believes have little merit, even if the individual claimant disagrees. This permits the union to ration its own limited resources by arbitrating only those cases which have a reasonable prospect of success.... It is important as a matter of industrial relations policy that a union must be able to assume the responsibility of saying to an employee that his grievance has no merit and will be dropped.”

RAYONIER CANADA LTD., BCLRB No. 40/75, [1975] 2 Can LRBR 196

Arbitrary, Discriminatory, Bad Faith

Black's Law dictionary, Fifth Edition

Arbitrary

Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; *Cornell v. Swisher County*, Tex.Civ.App., 78 S.W.2d 1072, 1074. Without fair, solid, and substantial cause based upon the law, *U.S. v. Lotempio*, D.C.N.Y., 58 F.2d 358, 359; not governed by any fixed rules or standard. Ordinarily, "arbitrary" is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in nature of things. *Huey v. Davis*, Tex.Civ.App., 556 S.W.2d 860 865.

Discrimination

In constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favoured no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured. *Baker v. California Land Title Co.*, D.C.Cal., 349 F.Supp. 235, 238, 239.

Bad Faith

The opposite of “good faith,” generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. Term “bad faith” is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will. *Stath v. Williams*, Ind.App., 367 N.E.2d 1120, 1124.

Duty of Fair Representation

Verified 2014

WHAT THE LAW SAYS

The Canada Labour Code, Part 1, the Public Service Labour Relations Act (PSLRA), and most provincial and territorial labour laws address a union's duty of fair representation (DFR).

The language varies from statute to statute, but essentially, the duty of fair representation requires a union to treat bargaining unit members fairly and honestly, in a manner that is not arbitrary, discriminatory or in bad faith. Part 1 of the Canada Labour Code (Sec. 37) and Sec. 187 of the PSLRA describe it as follows:

DUTY OF FAIR REPRESENTATION

“37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.”

UNFAIR REPRESENTATION BY BARGAINING AGENT

“187. No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.”

LEGAL PRINCIPLES

In *Canadian Merchant Service Guild v. Gagnon* [1984] 1 S.C.R. 509, the Supreme Court of Canada determined:

“The following principles concerning a union’s duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.

1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and its consequences for the employee on one hand and the legitimate interests of the union on the other.
4. The union’s decision must not be arbitrary, capricious, discriminatory or wrongful.
5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.”

From these and other case law principles, we know that:

- (i) The duty of fair representation applies to issues between an individual bargaining unit member and the union concerning representation of the employee in relation to the employer.
- (ii) The duty of fair representation does not normally apply to internal union matters, whether or not they relate to representation. Generally speaking, a DFR complaint cannot be used as a vehicle to review the internal affairs of the union on issues such as union procedures with respect to determining union representatives or union decisions on the payment of representation expenses.

- (iii) It should be noted that both the Canada Labour Code and the Public Service Labour Relations Act specifically prohibit a trade union from exercising union rules concerning membership or applying standards of discipline in a discriminatory manner.
- (iv) The duty of fair representation in most labour jurisdictions covers matters with respect to a union's administration of the collective agreement (i.e., the grievance and arbitration process). The duty may also apply, depending on the jurisdiction, to the negotiation of the collective agreement itself. In the case of PSLRA units, the duty may extend beyond those matters specified in the Act, and apply to, for example, complaints under the Public Service Employment Act.
- (v) The duty of fair representation applies to all members of the bargaining unit. This means members in good standing, Rand Deductees, suspended members, employees exempted from paying dues as a result of a religious exemption provision in the collective agreement or statute, and members on leave without pay status. It is irrelevant if the member of the bargaining unit is, or is not, paying union dues. In the case of someone who changes bargaining units (or has been occupying a position excluded from the bargaining unit), the duty exists if the matter at issue arose at the time the person was a member of a PSAC bargaining unit.
- (vi) The duty of fair representation does not guarantee that a union will represent a member of the bargaining unit in all cases. DFR recognizes that a union must balance the needs of the individual with the needs of the membership as a whole, and in doing so, the union may find that it is in the best interests of the membership as a whole to not support a particular grievance. The duty of fair representation requires simply that the decision be made honestly, in a manner that is not arbitrary, discriminatory or in bad faith.
- (vii) The interests of the membership as a whole should not be confused with the "interests of the majority." The duty of fair representation is in addition to our responsibilities under the respective human rights legislation. While our conduct may satisfy the statutory requirements of the duty of fair representation, it may not meet the standards demanded

by human rights legislation if there is a discriminatory impact of our actions on one or more persons from a protected group.

- (viii) Unions have been held to a higher standard of care in discharging DFR obligations when human rights principles are at issue. This includes the duty to accommodate. It has been established that a union must provide accommodations within the grievance and arbitration process. This may mean exercising greater sensitivity than would normally be necessary, being more proactive or attentive than usual, or taking an extra measure of care or assertiveness. It may also mean taking different approaches to advocating on the member's behalf or in the processing of a grievance. For example, in the case of a person with a mental health disability or someone observing a period of no contact for religious reasons, a union would need to provide more generous time limits for receipt of documents.
- (ix) The particular circumstances will dictate whether or not treatment is found to be arbitrary, discriminatory or in bad faith. Conduct is "arbitrary" if it is superficial, indifferent or in reckless disregard of an individual's interests. "Discriminatory" practices are when members of the bargaining unit are dealt with unequally on account of factors such as race or sex or through simple personal favoritism, unless there are valid reasons for doing so. "Bad faith" decisions are those based on ill-will, hostility, revenge or dishonesty.

ORIGINS OF THE DUTY OF FAIR REPRESENTATION

For some stewards, the notion of providing representation to a scab, or someone who has refused to sign a union card, runs counter to principles they hold in high esteem. For others, the thought of not providing representation on a member's grievance is just as unprincipled. Therefore, some awareness of how DFR evolved may lead to a better understanding of how it attempts to balance a number of important principles.

The term, "duty of fair representation" was first used in the United States in the 1940s. In 1944, the U.S. Supreme Court dealt with the refusal of a union to admit African Americans as fully equal bargaining unit members in the case of *Steel v. Louisville & Nashville Railroad Co.* 323 U.S. 192. The court ruled that the union's exclusive right to represent all employees in the

bargaining unit included the accompanying obligation to represent all employees without hostile discrimination, fairly, impartially and in good faith.

The development of Canadian law was influenced, in part, by the views of Archibald Cox. In his 1957 article, Individual Enforcement of Collective Bargaining Agreements, Professor Cox argued that permitting individuals to advance claims to arbitration would impede the development of good labour relations in four ways.

- (i) The pursuit of ad hoc individual claims would lead to divergent rulings.
- (ii) If some individuals could secure better settlements through their own efforts, it would undermine the effectiveness of the union. This could lead to dissenting groups and competition with the union, and lead to labour relations instability.
- (iii) The possibility of competition and dissension could result in a reluctance of union representatives to settle issues early in the grievance process, and lead to more arbitrations.
- (iv) It would be difficult to distinguish between those claims that could be legitimately brought by individuals and those that could only be brought by a union.

While agreeing that permitting individuals access to the arbitration process would provide the best protection against incompetent or arbitrary union representatives, Professor Cox argued that the cost of such an arrangement would be too high. Ultimately, he called for the development of a duty of fair representation, rather than giving individuals access to arbitration*.

[*Unless the collective agreement or a statute so provides, an employee cannot refer a grievance to arbitration without the union's approval. For example, the PSLRA provides for individual access to adjudication in cases of disciplinary action resulting in termination, demotion, suspension or financial penalties, and certain types of non-disciplinary termination, demotion or deployment. It should be noted that the right of the employee to proceed to adjudication does not absolve the union of its duty of fair representation. In addition, when a union declines referral and

representation at adjudication, it is incumbent on the union to notify the person of his/her right to proceed without union support.]

IT'S ABOUT A UNION'S RIGHT TO CHOOSE

The exclusive power of a union to choose whether or not to provide representation is a necessity. The right of a union to make a choice is vital.

To suggest we must represent on every grievance is to remove our ability to choose to further certain causes or to promote certain fundamental interests. How, for example, can we protect and extend workers' rights to a harassment-free workplace if we are forced to provide representation in the case of every member of the bargaining unit accused of harassment? How, for example, can the union promote the accommodation of persons with disabilities or the employment of underrepresented equity group members if we must process the grievance of every member of the bargaining unit who perceives a lost opportunity for themselves as a result? How can we protect and expand collective rights if we must proceed with a grievance with no chance of success and the knowledge that "bad facts make bad case law"? How can the union remain fiscally viable if we must shoulder the huge costs of arbitrating each and every case that an individual member of the bargaining unit believes has merit?

It is true that the pursuit of individual claims, in many cases, advances the interests of the collective. However, that is not always the situation. There are times when individual and collective rights and interests are in conflict, and the union must make a choice. The duty of fair representation recognizes that reality. The duty of fair representation provides the necessary checks and balances to ensure that unions are not motivated by improper considerations in their decision-making. It is the quid pro quo* for a union's right to make choices.

If the union could refuse to represent a scab or someone who refuses to sign a union card, based on those grounds, it would stand to reason that those persons should have the ability to seek representation elsewhere (or represent themselves). This would surely place collective interests in jeopardy. The possibilities of private deals with the employer would undermine the principles of collective bargaining. The risks of conflicting

case law and bad precedent would become unacceptably high. The opportunities to advance social principles and causes would be threatened.

The Supreme Court of Canada recognizes that a union must be free to pursue its legitimate goals and protect its legitimate interests. Protecting and advancing collective interests and rights will mean that the union will have to make some tough decisions. Some will negatively impact on individual members. The care that we take in exercising our duty of fair representation will undoubtedly contribute to building the necessary understanding, analysis and support within a membership that cares about collective interests, and values the union's role as an important vehicle of social change.

[* *quid pro quo* is a Latin term meaning “something in exchange for something” or “one thing for another.”]

DISCHARGING THE DUTY

The reality is that unions provide levels of representation that exceed the minimum standards under the duty of fair representation in an overwhelming majority of cases. The following guidelines will assist representatives in discharging our obligations, and indeed, in meeting the high standards to which we hold ourselves.

TIPS FOR LOCAL OFFICERS

1. Encourage democratic processes for the identification of stewards. Ideally, this means members from a particular work area choosing an effective steward to represent them.
2. Require all stewards and other workplace representatives to obtain the necessary union training. Consider adding such a requirement to the local by-laws.
3. Develop a working knowledge of DFR. Consider organizing a workshop for all local representatives. Become familiar with the legislation covering bargaining unit members and what it says about the duty of fair

representation. If the legislation is silent on the subject, our DFR obligations may be implicit or derive from “common law.” Get advice on the precise nature of that duty.

4. Harassment can be one of the most damaging and potentially divisive issues facing a local. Ensure all local representatives, be they executive members or stewards, have a good knowledge and understanding of the union’s anti-harassment policies. Ensure there is a Local Harassment Complaint Steward, and that the local is organized to deal with harassment complaints in a manner that is fully consistent with PSAC Anti-Harassment Policy: The Workplace (#23A).
5. Set up an appeal procedure where members of the bargaining unit(s) can have decisions relating to representation reviewed by the local.
6. Set up a stewards’ network coordinated by the local’s chief steward or vice-president to coordinate representation and promote regular communications and opportunities for training among stewards.
7. Take complaints about representation seriously. Investigate without delay and keep meticulous records. Get advice from the respective component or PSAC representative.
8. If there has been an error on the part of the union, we will want to take immediate steps to correct it. As quickly as possible, get advice from the respective component or PSAC representative.

TIPS FOR STEWARDS

1. Communicate regularly with other stewards and the chief steward on issues of representation. Gather materials and actively pursue training opportunities to update your knowledge and skills.
2. Develop a working knowledge of DFR. Become familiar with the legislation and the precise nature of our obligations. Read a number of decisions on DFR complaints. Visit the website of the labour board administering the legislation that applies to your local (e.g., Canada Industrial Relations Board (CIRB); Provincial or Territorial Labour Relations Boards or the newly created Public Service Labour Relations and Employment Board (PSLREB)).
3. When looking for advice, always start with local representatives (other stewards, chief steward or a member of the local executive). Also, find out who within the union is your local's "technical advisor" and the normal procedures to contact that person. Every local has access to a Component Service Officer and Regional Vice President (job and position titles vary), or in the case of Directly Chartered Locals, a PSAC Regional Representative. These representatives have further access to a wide range of technical resources and expertise within the PSAC.
4. Become thoroughly familiar with PSAC Anti-Harassment Policy: The Workplace (#23A). Should you be contacted by a member of the bargaining unit concerning harassment issues, carefully review it again and follow it stringently. If in doubt, get advice.
5. While there is considerable uncertainty about how far the duty of fair representation extends, it is always wise to conduct ourselves as if it did. Before telling a member of the bargaining unit we don't provide representation on a particular issue or in particular circumstances, get advice.
6. Talk about settlement possibilities with the member before filing a grievance, while paying attention to the time limits built into the grievance procedure. Try to resolve the matter with the employer as early as possible, keeping in mind that a good settlement is one that is better or as good as one achieved through arbitration. Throughout the entire

process, discuss all settlement proposals and offers with the member/grievor and record a summary for the file.

7. Evaluate the consequences of proceeding, or not, with each and every grievance. Thoroughly examine whether or not the grievance has merit. Carefully weigh the interests of the individual with those of the collective. If a decision is made to not proceed with a grievance, it may be wise to obtain an opinion from the appropriate Component or PSAC representative within the time frames established by the grievance procedure. Obtain extensions if necessary. Ensure that the reasons for not proceeding with a grievance are communicated to the grievor in writing and provide information on what possible next steps they can take on their own. If there is an internal appeal process, advise them of how to access that process. Obtain time limit extensions to allow them to appeal the decision.
8. If you find yourself in a conflict of interest situation, take the necessary steps to ensure another steward is assigned. Approach all representation with objectivity, free of any personal bias, hostility or favoritism.
9. Always obtain the grievor's complete version of events and where possible, ask the grievor to describe the incidents and outline the issues in writing. Thoroughly investigate, as early as possible. Never rely solely on the employer's version or conclusions. Interview all available witnesses and ask them for written statements or keep notes of what they tell you. Expect the grievor to be cooperative, straightforward and forthcoming with information. Record all contact with the grievor with a date and brief summary, and place it in the file.
10. Don't make promises you can't control or keep. It is the employer or an arbitrator who decides a grievance, not the union. All we can do is provide the best possible representation, and challenge those decisions we consider unsatisfactory.
11. Never make a commitment to pursue the grievance at each and every level, including arbitration. A decision to present a grievance at one level does not presuppose agreement to proceed to the next level.

12. Approach file management with due diligence. Obtain a copy of the PSAC Grievance File Checklist for the front of the file. Include the grievance presentation and transmittal forms, completed Steward Fact sheet and a list of all documents. Note time limits. Ensure the original file is forwarded promptly to the union representative responsible for representation at the next level in the grievance procedure. Document everything that you do with regard to that file.
13. Keep the grievor informed at each stage of the grievance procedure, even if you are not the representative at a higher level. Provide full details of the status of the grievance, and be candid about its chances of success.
14. Where the treatment of a grievor or grievance differs from past practice, ensure it is for valid reasons and note them in the file.
15. If for some reason, time limits specified in the collective agreement have been missed, proceed anyway. The employer may fail to object, or may agree to extend the time limits (or, the labour board may extend the time limits).
16. The more serious the consequences the employer's actions are for the grievor (e.g., termination of employment), the more rigorously we will be held to our statutory obligations. As a matter of practice, a steward should approach all representation with diligence and thoroughness.

A final comment about the duty of fair representation is that a representative is required to always take a reasonable and objective view of the problem and its relevant and conflicting factors, and arrive at a thoughtful judgment about what to do. The union will not be held to account if a mistake or simple error in judgment is made. A union's conduct must be more than just wrong. It must be arbitrary, discriminatory or in bad faith.

USEFUL FACT SHEETS



Acting Pay—Some Principles

Verified 2013

With the elimination of positions and staff cuts, employees may find themselves assigned additional duties. With financial constraints, managers may be under increased pressure to stay within existing budgets or cut costs. As employers meet their employment equity obligations, employees may receive a variety of developmental opportunities. In these kinds of circumstances, employees may be entitled to acting pay.

The conditions under which entitlement to acting pay exists are determined by collective bargaining. The following is from the collective agreement between PSAC and Treasury Board for the Program and Administrative Services Group (expiry date of 20 June 2014):

64.07

- (a) *When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*
- (b) *When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period.*

When interpreting collective agreement language, it is important to break down the provision by **conditions** and **obligations**. Then, it is easier to separate what the provision does say, from what it does not say.

For the entitlement to acting pay to take effect, there are 3 **conditions** to be satisfied:

- (i) the employee is required by the employer to substantially perform duties of a higher classification level in an acting capacity; and
- (ii) the employee performs the duties; and
- (iii) the employee performs the duties for at least the qualifying period of three consecutive working days or shifts.

If all 3 conditions are met, the employer has a contractual **obligation** to:

- pay acting pay; and
- calculate the acting pay from the date on which the employee commenced to act; and
- pay acting pay for the period in which the employee acts.

Once that has been done, it is then just as important to think of collective agreement language in terms of what is not there. For example, the clause does not speak of “position.” It does not refer to replacing another employee. It does not speak of the duties of another employee. It does not specify that the higher classification level must be within the bargaining unit or a particular hierarchy of positions. It does not refer to how well the employee must perform the duties. It does not require an employee to possess the necessary qualifications to perform the duties. It does not speak of developmental or training initiatives. It does not refer to an assignment. It does not speak of a formal appointment. It does not speak to employer-initiated nor employee-initiated requests that lead to the acting situation. It does not make the entitlement subject to the availability of funds. In other words, there are not additional requirements beyond the three conditions referred to above.

When differences arise with respect to collective agreement interpretation, the grievance procedure has been used to resolve those differences. As a result, case law has been created by adjudicators/arbitrators and the courts. This has been the experience with acting pay.

Here are some principles extracted from the case law. Consult the cases listed below for further information.

1. An employee doesn't need to perform each and every job function of the higher classification level during the acting period. An employee doesn't need be capable of performing each and every job function of the higher classification level. One interpretation of "substantially performs" has been likened to the situation when an employee "stands in the shoes" of another. For example, it may be that an employee "stands in the shoes" of an absent supervisor and deals with those functions that would have been dealt with by the supervisor had s/he not been absent. Or an employee works alongside another employee of a higher classification level "co-performing" those duties that the other employee would normally perform during the period in question. Or an employee performs his/her part of the duties assigned to a team and participates in team decisions and team activities where the positions of other members of the team are classified at a higher classification level. Or, as it was held in a specific case (*Bégin et al.*), performs approximately 70% of the duties of the higher classification level.
2. A situation may exist where an employee believes her/his position is incorrectly classified. Normally, a classification review and/or classification grievance is the means to seek redress. An adjudicator cannot take on the role of a classification officer and determine whether or not a position is correctly classified. However, an adjudicator can determine an employee's entitlement to acting pay. Therefore, an adjudicator will carefully examine the facts and surrounding circumstances to determine if, in essence, the dispute is about acting pay or classification. So, depending on the circumstances, an adjudicator may or may not seize jurisdiction. One adjudicator identified some of the indicators that a grievance is a classification grievance and not an acting pay grievance:
 - the claim for acting pay is an ongoing claim and not for a specified period;

- the grievor has sought a reclassification, either informally or through a classification grievance;
 - the grievor continues to perform the duties s/he has always performed and only the classification levels in the workplace have changed; and
 - the acting pay grievance is based, in part, on a comparison with similar positions in other work areas.
3. For employees of Public Service Labour Relations Act (PSLRA) units, Section 7 of the PSLRA stipulates that the employer has exclusive jurisdiction with respect to classification. In departments such as National Defence (DND) and Royal Canadian Mounted Police (RCMP), where an employee might assume the duties of a military or RCMP member on an acting basis, the employer might convert a position to a public service classification (e.g., RCMP Sergeant to AS-02; Major to EG-06) and decide to pay acting pay based on the converted classification. There have been cases where employees have challenged the decision of the employer not to pay acting pay at the higher salaried level of the military or RCMP member. Despite previous judgments and subsequent changes in collective agreement language, the outcome of similar grievances based on the revised collective agreements is yet to be determined.
 4. The employer might remove certain duties from a job description and assign an intermediate classification and determine acting pay accordingly. The payment of acting pay at the intermediate classification level may or may not be a violation of the collective agreement. The test to be met is whether or not the employee is substantially performing the duties of the higher (original) classification level.
 5. The fact that an employee volunteers for an assignment, such as asking to be considered for developmental opportunities for the purpose of enhancing training, career development or opportunity for

promotion, does not necessarily affect an employee's eligibility for acting pay. The test to be met is whether the employee was required by the employer to substantially perform the duties of a higher classification level.

6. "Required" is not synonymous with "requested." Being "required" may be explicitly or implicitly communicated or understood. "Required" is capable of two meanings, one being the equivalent of "demand" and the other being the equivalent of "need." For example, an employee could be required by circumstances, with the employer's knowledge and consent, as opposed to being formally required by express verbal or written instructions. However, if there is a request, when an employee is asked by the employer, the employer is, in reality, requiring the employee to do the thing requested.
7. During a period of training, an employee may or may not be entitled to acting pay. Entitlement would depend upon whether or not, during the period in question, the employee is required by the employer to substantially perform the duties of the higher classification level.
8. To "substantially perform the duties of a higher classification level" does not depend on reaching a certain level of proficiency; to require such a condition would likely have the effect of rendering the qualifying period meaningless.
9. An employee is entitled to acting pay even if s/he is absent from work or does not work for a number of days, provided s/he performs the duties of the higher classification level for the minimum period required by the collective agreement.
10. Benefits such as cash liquidation of leave, maternity allowance, and severance pay are to be based on the salary of the position the employee occupies at the time the employee claims the entitlement. An employee " ... is entitled to enjoy the benefits accruing through his deemed appointment to the acting position, as though he were formally

appointed to it, for the duration of the period of such employment” (*Gowers*). (However, for Treasury Board employees, for entitlement to the maternity allowance based on the acting rate, the employee must have been in the acting position for a continuous period of more than four months. This is as a result of a 1993 agreement between the employer and the PSAC during conciliation of human rights complaints on this issue.)

11. Negotiations with individual employees violate the principles of collective bargaining. Jurisprudence has made it clear that the presence of a collective bargaining relationship excludes “private” negotiations, thus depriving individual employees of their rights secured under a collective agreement. A signature of an employee on a signed agreement (e.g., an assignment agreement), or an employee’s acceptance of the understanding there will be no acting pay, does not prevent an employee from claiming his/her rights under the collective agreement.
12. Retroactivity as a result of an acting pay grievance is limited to 25 days prior to the filing of the grievance, unless it can be demonstrated there had been ongoing communications with the employer concerning the acting pay prior to the filing of the grievance.

References:

1. *Shanley* (166-2-3044); *Cuthill* (166-2-12640 & 12641); *Vanier* (166-2-23562); *Bégin et al.* (166-2-18911 to 18917).
2. *Bégin et al.* (166-2-18911 to 18917); *Charpentier & Trudeau* (166-2-26197 & 26198); *Macri* (166-2-15319); *Her Majesty the Queen in right of Canada and Lenda Macri*, [1988] F.C.J. No. 581); *Stagg v. Canada* [1993] F.C.J. No. 1393; *Chadwick* (166-32-31227; 2003 PSSRB 38); *Tousignant & Paradis* (166-2-31814 & 31815; 2005 PSSRB 13); *Bungay, LeClair & Cleveland* (166-2-32703, 32704 & 32705; 2005 PSLRB 40).

3. *Frey* (166-2-28985; 2000 PSSRB 73); *Francoeur* (Attorney General of Canada and Julie A. Francoeur, A-224-96 and 166-2-25922), *Cleary* (166-2-26108; T1533-96)
4. *Forster* (166-2-16436).
5. *Vanier* (166-2-23562); *Cuthill* (166-2-12640 & 12641).
6. *Leclerc* (166-2-570); *Shanley* (166-2-3044); *Reiner* (166-2-13808); *Cuthill* (166-2-12640 & 12641).
7. *Few* (166-2-17441); *Trempe* (166-2-14978); *Beauregard, Dupere and Bourgon* (166-2-26956 to 26958).
8. *Vanier* (166-2-23562); *Beauregard, Dupere and Bourgon* (166-2-26956 to 26958).
9. *Manseau* (166-2-20722); *Maskeri* (166-2-16892); *Bachewich and Prokopchuk* (166-2-19101 and 19102); *Parnham* (166-2-13998).
10. *Robert* (166-2-17653); *Allaire* (166-2-19134); *McLean* (166-2-21049); *Parent* (166-2-27675); *The Queen v. W. Gowers* [1980] 2 F.C. 411; TB Circular dated December 14, 1993.
11. *Maritime Telegraph Co. and IBEW, Local 1030*, 12 LAC (3d) 90; *Syndicat catholique des employés de magasins de Québec. Inc. v. Compagnie Paquet Ltée.* 18 D.L.R. (2d) 346 at pp. 353-4 [1959] S.C.R. 206.
12. *Coallier* (FCA File A-405-83).

Electronic Communications

October 2013

(The information in this section was based on the recent Lancaster House Audio Conference *Cyberslackers and Cybertrackers: Status Update on Internet Use and Privacy in the Workplace* which was held on June 7, 2012.)

Communications have changed dramatically with the arrival of social media and e-mail. Social media can be a wonderful tool for organizing, communicating and advancing union issues. E-mail enables us to quickly communicate with as many people as we choose. However there are increasing workplace challenges concerning what can be said using these tools, who can access these messages and what employers can do with this information.

Privacy

Generally, arbitrators will look at factors such as whether it is a safety-sensitive situation, the limit on how much information can be accessed, and whether the information actually needs to be accessed when dealing with cases involving privacy rights of workers.

In a 2012 decision (*R. v. Cole*) the Supreme Court of Canada has declared that employees have an expectation of privacy with regard to personal information contained on workplace computers where personal use of the computers is permitted or reasonably expected.

Also in 2012, the Ontario Court of Appeal recognized a new right to sue for invasion of privacy (*Jones vs. Tsige*) when a co-worker accessed a colleague's personal information held by the employer.

In the *Teamsters Canada Rail Conference v. Canadian Pacific Railway Company* case, it was decided that the employer was entitled to employee cell phone records for specific period of time after a workplace accident. In another case, it was determined that the employer's audit of employee's personal internet use at work did not violate provincial privacy legislation (BC case *HSA v Fraser Health Authority*).

E-mail

Employers are not entitled to access an employee's personal account even if the employee uses their employer provided computer to retrieve and send personal e-mails.

The Public Service Labour Relations Board rendered a decision in a 2013 case involving PAFSO (Professional Association of Foreign Service Officers) against the Department of Foreign Affairs, Trade and Development related to the use of e-mails. Striking PAFSO members had set up an out-of-office message alerting recipients to a breakdown in negotiations as the cause for the delay in their e-mail replies. The board ruled that the employer must give notice to the union before blocking workplace e-mail addresses. The Board also ruled that the employer was entitled to order its staff to remove their e-mail alert message. The Board said, "there is a significant difference between using the out-of-office reply and wearing union buttons in the workplace to carry a labour relations message related to difficulties or issues at the bargaining table."

Facebook

Employers cannot demand Facebook passwords under most circumstances.

Information on the internet is considered "public" and access to it is not restricted. Employers can use comments you post on Facebook if they

have access to them even if these were posted using your own personal computer on your own time (Canada Post v CUPW—Discharge for Facebook Postings Grievance and Air Line Pilots Association Intl v Wasaya Airways LP). However, any information they collect and use is subject to the applicable privacy legislation.

There is no reasonable expectation of privacy for Facebook users. There is no control on what happens to information posted and anyone can copy the information or comment.

Things to Keep in Mind about Electronic Media and the Workplace:

The standards used to assess what is said using electronic media are the same as those used to assess what an individual says in person. If you would refrain from making a comment in person to someone else, you should not post it on social media.

When in doubt, before posting or sending a message—wait. Get a second opinion and take the time to cool down and reflect.

Don't keep personal information on your employer-provided smart phone or laptop unless you are okay with the employer seeing it.

Although social media may be new, adjudicators and arbitrators will apply the same kind of analysis in arriving at their decisions here as they do for any other issue before them.

Filing Job Description and Classification Grievances

Updated October 2014

This fact sheet covers:

1. Statement of duties/job content grievances (including “effective date”)
2. Classification grievances

OVERVIEW

When members have questions about whether or not they are being properly compensated for the work they are performing, these two separate, yet often interrelated grievance processes are potential routes to redress.

If a member feels that their job is not appropriately classified, they should request a complete and accurate work description (statement of duties). The addition of missing duties of significance **may** prompt a reclassification of their job.

A member’s right to grieve the classification of their position is triggered when there has been a recent classification action affecting their position (such as a cyclical review). Going through the statement of duties grievance process will create a trigger to file a classification grievance.

WHEN YOU FEEL IT, FILE IT

The most important message to convey to our members is that they must not put their rights under the collective agreement on hold based on management promises to address problems outside the grievance process.

Nobody likes to file a grievance, but it is a right, and the Union needs its members to exercise that right. Filing grievances promptly is necessary since it is only when the grievance is filed that a defence of any rights under the collective agreement is activated and the employer is officially put on notice.

It is important to note that the date that a statement of duties grievance is filed can play a major role in the determination of any potential retroactive pay that may result from a reclassification. That's because when there is a delay in filing the statement of duties grievance, the employer can use the (later) date that the grievance was filed—as opposed to the date that the member assumed extra duties—to limit retroactivity. So, with that in mind, members should always file their grievances at the earliest opportunity.

STATEMENT OF DUTIES (JOB CONTENT) GRIEVANCES

The “Statement of Duties” clause common to most PSAC collective agreements gives members the right, upon request, to be provided with a complete and current statement of their duties and responsibilities.

Depending on the circumstances, it may be appropriate for a member to file a statement of duties grievance when either: (1) the duties they are performing are not accurately reflected in the work description for the position; or (2) when a member has never seen his or her work description and wants to see it.

While in the latter case it might seem to make sense for the member to ask to see his or her work description before filing a grievance, remember our advice: “when you feel it, file it,” because the member’s rights are only triggered once the grievance has been filed.

If the member feels that the received work description does not accurately reflect the duties that they are performing, or that duties and responsibilities have been overlooked or omitted, the member should file a grievance. Make

sure the grievance is filed within the time limits set out in the collective agreement and that the grievance is worded properly:

Recommended grievance wording:

Details of Grievance:

I grieve the employer's failure to provide me with a complete and current statement of duties and responsibilities. This violates Article _____ (Statement of Duties) of my collective agreement.

Corrective action requested:

That I be provided with a complete and current statement of the duties of my position, effective from X date.

Building an effective case for changes in a job description

Job description and classification grievances are one of the most common types of grievances filed by PSAC members, reflecting the important role that a position's classification plays in determining the member's rate of pay. At the same time, these can be some of the most difficult grievances to win, because of the employer's broad rights to assign and organize work, and because of the unique challenges of the classification grievance process. Because it takes a strong case to succeed, the process can be very frustrating for members, particularly when it takes a long time to resolve. We believe it is important for stewards to start working with grievors **as soon as a grievance is filed**, to develop an understanding of what it takes to build an effective case for changes in a job description and classification. This will help establish realistic expectations and engage members in the grievance process.

Truly missing duties

In order for a job description grievance to be successful, the union must establish that there is clear evidence that the employer has left duties out of the job description. Over the years, the PSAC has taken many job description grievances all the way to adjudication in front of the Public Service Labour Relations Board, or to private arbitrators under other jurisdictions. The accumulated decisions made by those adjudicators—also known as “the jurisprudence”—affect what we can reasonably expect to achieve through the grievance process.

The following quote (from a case called Jennings and Myers, 2011 PSLRB 20) sums up how arbitrators rule on job description grievances:

(52). What is a complete and current statement of the duties and responsibilities of an employee? The parties and the arbitral authorities on which they rely agree that a work description must contain enough information to accurately reflect what the employee does. It must not omit a “ ... reference to a particular duty or responsibility which the employee is otherwise required to perform”; see *Taylor v. Treasury Board (Revenue Canada—Customs & Excise)*, PSSRB File No. 166-02-20396 (19901221). A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement. In *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69, at para 26, the adjudicator wrote the following: “A job description need not contain a detailed listing of all activities performed under a specific duty. Nor should it necessarily list at length the manner in which those activities are accomplished.” See also *Currie et al. v. Canada Revenue Agency*, 2008 PSLRB 69, at para 164; *Jaremy et al. v. Treasury Board (Revenue Canada - Customs, Excise & Taxation)*, 2000 PSSRB 59, at para 24; and *Barnes et al. v. Canada Customs and Revenue Agency*, 2003 PSSRB 13. The employer is not required to use any particular form of wording to describe the duties and responsibilities of an employee and “ ... it is not the adjudicator’s role to correct the wording

or the expressions that are used,” so long as they broadly describe the responsibilities and the duties being performed (see *Jarvis et al. v. Treasury Board (Industry Canada)*, 2001 PSSRB 84, at para 95; and see *Barnes*, at para 24.

In summary:

- Broad and generic descriptions are acceptable as long as they include all of duties or responsibilities the employee is required to perform;
- Job descriptions do not need to include in detail all activities of an employee’s work;
- Adjudicators are not going to change the wording or expressions used as long as the job description broadly describes the responsibilities;
- Even if we succeed in altering a job description through the grievance process, this will not necessarily lead to a higher classification.

In short, the burden of proof lies with the grievor and her/his union to prove that there are duties and responsibilities required by the employer which are missing from the job description.

Documentation:

Key to an effective job description grievance is thorough documentation. The following are the kinds of documents which the steward must work with the member to collect prior to arguing the grievance:

- Current approved work description, preferably signed by Management
- An itemized, clear and concise list of the duties that are missing
- Examples of these missing duties
- Proof that these duties are being performed and have been assigned by Management (work statements, work objectives and/or performance appraisals, emails)
- Organization chart

- Point rating and rationale
- Supervisor's work description

The member will be required to specify the duties and responsibilities he or she feels are missing from the statement of duties. This list should be given to the Union Representative. It is NOT to be attached to the grievance form.

Remember, a work description is not simply a list of tasks. The work description should describe the various functions that the member performs in the course of his or her job. The information filed in support of the grievance should be simple, clear and concise. The member will also have to provide evidence that the additional functions being performed are being performed on a regular basis and at the request or under the direction of the employer.

Analyzing the grievance

From the start, the local steward should work with the member to discuss what it takes to make a successful job description and classification grievance. Steps to follow:

- Read the current approved work description to get an understanding of the nature of the work within the organizational structure. What are the overall responsibilities and accountability of the position? What limitations are likely to be imposed by the place the position holds in the organizational structure?
- Look at the organization chart, determine if there is room for the position to move upward within the organizational structure.
- Unless the department got it totally wrong, then a PM-3 position reporting to a PM-4 is unlikely to attain a higher classification level regardless of what changes are made to the work description.
- Remember, responsibly can be delegated, accountability cannot. For example, a supervisor can delegate responsibility for budget monitoring to a subordinate position but the accountability still rests with the supervisor.

- Compare the itemized list of missing duties, to the current duties. Ask yourself whether the missing duties are included (subsumed) in the current description.
- Remember to focus on the duties and not the words.
- Statements of Qualifications are not relevant. Many of our members have academic qualifications that are not required to do the work of the position they hold. Remember to separate the person from the position.
- Job Postings do not provide helpful information. Job posting are used for an entirely different purpose: filling positions. This is an area where the manager is given a lot of discretion (in the search for candidates).
- Similar work descriptions that the member may provide as examples of work done by others in comparable positions or as examples of wording they would like, have limited value as they are often presented out of context.
- Copying and pasting from other job descriptions is not a good practice as the grievance moves through the process. Often the pasted wording does not fit with the position or is taken out of context. Develop your arguments for missing duties from the evidence collected by the member.

Special considerations for generic work descriptions:

In the PSAC's view, a national generic work description must capture all of the functions of positions listed under it. We want to avoid the necessity of creating addendums that only apply to certain regions or centres. If a particular region or centre is required to perform unique job functions, those functions should be reflected in the body of the generic work description itself. We feel this is the best and only way to protect our members' long-term interests.

Campaign grievances:

- If a decision has been made to file group grievances, the reasons should be clearly stated and the members' expectations should be managed from the outset by the Component.
- Traditionally these campaigns are orchestrated to bring attention to a matter or create a nuisance. Experience has shown they are useful only for demonstrating general member's frustration with the classification system, but NOT in getting a change in classification and level through the grievance process.

Mediation:

We recommend that statement of duties grievances be handled through the mediation process. Therefore, we strongly recommend engaging the departmental Informal Conflict Management System (ICMS) processor any other Alternate Dispute Resolution Process, preferably at the final level of the grievance procedure. Experience has proven that ICMS/mediation achieves better results than adjudication.

Mediation is also the best forum to deal with "effective date" issues. If a mediated settlement on job content is reached, the effective date should be included as part of the Memorandum of Agreement (MOA).

Adjudication:

Experience shows that seeking to resolve statement of duties grievances at adjudication is very difficult and rarely achieved. Adjudicators are not interested in developing a nuanced understanding of a grievor's job. Instead they are looking for clear, concise evidence of a problem with the job description. In addition, Adjudicators are reluctant to impose an effective date beyond 25 days before the date the grievance was filed.

CLASSIFICATION GRIEVANCES

Having duties added to a job description is one step in the process, but does not guarantee that the position will be reclassified upwards. It is important to have members understand that upward reclassifications are difficult to achieve.

Once the job content grievance process has been completed, the work description must be reviewed and a new classification decision rendered whether or not any changes were made to the work description.

Receipt of that written notification constitutes notice of a classification action on the member's position and serves as the trigger to file a classification grievance. Members under the *Public Service Labour Relations Act (PSLRA)* have 35 calendar days from the date they receive the notification to submit a classification grievance. Classification grievances under the *PSLRA* follow a separate process from the regular grievance process. See for example, Classification Grievance Procedure, Part IV A.5.

<http://www.tbs-sct.gc.ca/gui/prog-eng.asp>.

To file a classification grievance, there has to be a classification "action" on the position. As noted above, for members who went through the job content process, the trigger for a grievance is the receipt of the written notification of a classification decision. However, if job content is not an issue, the trigger to grieve is when the member gets notice from the employer of a classification review affecting his or her position.

Recommended grievance wording:

Details of Grievance:

I grieve the classification of my position.

Corrective action requested:

That my position be reclassified upwards effective X date.

While we believe that effective date should be dealt with through the job content grievance process where applicable, we continue to recommend that the effective date be repeated in the classification grievance wording on corrective action.

For members of bargaining units certified under the PSLRA (e.g. Treasury Board, Agencies), hearings for classification grievances are conducted by Classification Grievance Committees (CGC). The CGC is made up of three employer representatives. Their decision is final and binding and is not adjudicable. There are three possible outcomes from the CGC:

1. The rating is confirmed (no change)
2. Reclassification upwards (including a change in group and/or level)
3. Reclassification downwards (including a change in group and/or level)

PSAC provides representation in cases where plausible, defensible arguments can be made for an upwards reclassification. In the absence of these, the PSAC declines to provide representation, but employees may continue with the case on their own. The assessment of and representation is undertaken by Grievance and Adjudication Officers specialized in classification. It is important to remember that the classification standards used to evaluate positions were developed by the employer and we are restricted to making arguments based on those standards. As a union we have pushed to have the Classification Standards updated and made relevant to the work of the members. For more information visit www.psaunion.ca

Under many non-PSLRA collective agreements, classification grievances can go before a third party. Once again, in these cases the PSAC will assess each file on its merit and will refer those grievances where we believe there is a reasonable chance at upward reclassification.

Connecting the job content and classification grievances

In the federal government, historically members have filed a job content and classification grievances **at the same time**. Past practice has been for the

classification grievance to be held into abeyance pending the outcome of the job content grievance process. Some departments (**per the advice provided to them by Treasury Board**) are now rejecting the classification grievance as “inadmissible” on the basis that it is premature. While technically this is true (since a work description will likely have changes made to it during the job content grievance process and no one knows what the end result will look like until that process is complete), it is a new approach.

If/when changes are made to a work description during the job content grievance process, departmental classification officers must review the new work description and a new classification decision will be issued. **That notification is the trigger for the right to grieve the classification.**

Since this right to grieve **will occur at a much later date** than when the initial job content grievance was filed, in order to protect any potential retroactivity (should the position be reclassified upwards), we must re-emphasize the importance for members/representatives to address the effective date of the new work description during the job content process.

We continue to advise members to grieve both the job content and classification grievances at the same time. However, we are warning members in advance that their classification grievance MAY be rejected as “inadmissible” or “premature,” and that new grievance rights will be triggered once a new work description is reviewed by classification and the notification is issued.

All union representatives should be reminded to address effective date issues during the job content grievance process.

Freedom of Speech in the Union Context: Speaking Freely, but Truthfully, and not Maliciously

Verified 2013

A recent Ontario Court (General Division) case and a recent labour arbitration case have reaffirmed some basic legal principles about freedom of speech within the union, in the workplace and in public.

A) FREEDOM OF SPEECH WITHIN THE LOCAL UNION ABOUT FELLOW UNION MEMBERS

In Haas v Davis (1998) 37 O.R. (3d) 529, the plaintiff (person suing) and the defendants (people being sued) were all motion picture projectionists and members of the same union local. The defendants falsely accused the plaintiff of sabotaging workplace equipment. Those false accusations were set out in an affidavit read at a local union meeting. As a result, the employer removed the plaintiff from his chief projectionist job and denied him compassionate leave (which he needed to look after his ill parents). A union trial board dealt with the accusations and found the plaintiff not guilty. He was eventually reinstated as chief projectionist after being absent for six months. The plaintiff sued for damages for being libelled. He was successful and was awarded \$20,000 for loss of reputation and mental distress and six months lost wages.

The trial judge was asked to consider a defence from the defendants that is commonly raised, namely “qualified privilege.” “A privileged occasion is ... an occasion where the person who makes a communication has an interest or a duty to make it.... and the person to whom it is made has a corresponding interest or duty to receive it.” A privileged occasion would be a union meeting and the privilege would cover the discussion of union business. Union activists have a duty to speak to members about issues, and union members have an interest in hearing the information.

When a statement is made on an occasion of qualified privilege, a person can make statements which are both negative and untrue and still escape any legal liability. “The privilege is not absolute, however, and may be defeated in two ways. First, the privilege is lost if the dominant motive for publishing is actual or express malice.” “Malice is commonly understood as ill will toward someone.” You can make statements about someone you hate but your main reason for speaking must not be to get back to him or her. Your main reason for speaking has to be a legitimate reason, like protecting the local union’s interests. The second way to lose the privilege is to be deliberately lying or not care if you are telling a lie. Your factual statements don’t have to be true but you have to believe them to be true and not be reckless about that.

To put it another way, a defendant is not liable merely because he is “ ... irrational, impulsive, stupid, hasty or obstinate”, but he is liable when primarily motivated by ill will, or when he is lying, or when he really doesn’t care about the falsehood of his statement.

In this case of the projectionist, the libellous statements were found to have been made on an occasion of qualified privilege, i.e., the local union meeting. It was an occasion where everyone had an interest or duty to hear and consider allegations of inappropriate conduct by a unionist. In that setting, false statements could be made provided they were thought to be true and they were not being made maliciously. In this case, that test wasn’t met. The statements were found to be both malicious and knowingly false.

How does the Hamilton scab libel case fit into this? The jury decided there was ill will towards Kelly and/or that the local didn’t care if it had accurately identified Kelly as a scab. The evidence of that may have been thin, but juries are entitled to weigh evidence.

These court rulings can be summarized positively by saying that unionists can speak freely to each other concerning union issues and that certainly

includes speaking negatively about others. However, when speaking negatively about fellow members, it's necessary to be both 1) honest, not reckless, with the facts, and 2) not primarily motivated by personal malice. As long as those conditions are met, the speaker runs little risk of legal liability, even if it turns out later he was mistaken.

B) FREEDOM OF SPEECH ABOUT MANAGEMENT IN THE WORKPLACE

In Municipality of Metropolitan Toronto and CUPE Local 79 (1998) 68 LAC (4th) 224, a local union steward was given a five-day suspension for distributing a leaflet about a contentious workplace issue, namely the disciplining of a union activist. In the leaflet, the steward said the activist had received more than 12 suspensions and all of them had been found by an arbitrator to be without cause. The number of suspensions was wrong but the steward had honestly believed it to be true. The description of the outcome at arbitration was also wrong, but the steward had deliberately lied about this issue in order to mobilize the membership. The arbitrator found that the five-day suspension was justified for the publication of the knowingly untrue statements.

The core of the arbitrator's reasoning was as follows:

Arbitrators have held that inherent in the role of Union Steward is the right to represent employees and the union in the workplace, and that this representation often requires that the Steward forcefully challenge the decisions of management.

Arbitrators have generally accorded Stewards a wide range of latitude in order that they may carry out their duties free from fear of discipline or sanction. Given the adversarial nature of labour relations in this province, it is sometimes inherent in the responsibilities of Stewards to criticize the actions of management, in an effort to inform the membership or to improve labour management relations.

Arbitrators have held that Union Stewards are the front line advocates on behalf of bargaining unit members, and that they must be able to fully discharge their responsibilities, and “they must not be muzzled into quiet complacency by the threat of discipline at the hands of their employer”.

Such protection on the activities and statements of Stewards is not, however, unlimited. The concomitant obligations on Stewards is that they not use this broad right to make statements or act in a manner which is knowingly false, or which is a reckless disregard for the truth, or which is malicious in nature.

The arbitrator also cautioned that the distribution of leaflets should not be done in a way that disrupts work.

Once again, union activists are free to speak negatively in the workplace about management but they should do so honestly and without malice and for the purpose of dealing with workplace issues.

C) COMMUNICATIONS WITH THE PUBLIC

In Municipality of Metropolitan Toronto and CUPE Local 79, the grievor also participated in a public media campaign against the employer wherein he made a series of very negative statements about the management of his workplace. None of those statements were knowingly false. The arbitrator found that this was legitimate union activity.

Arbitrators and Labour Boards have also held that Union Stewards are able to raise concerns about management in a public forum or through the media.

Arbitrators have held that this is particularly relevant in the public sector where public pressure is a means by which to educate, inform

and persuade decision makers, politicians, and the public on specific issues, particularly where the concerns of the union are closely aligned with the public interest.

In such cases, arbitrators have applied the same criteria, that the statements must not be malicious, or knowingly or recklessly false.

The courts have a tendency to be somewhat more restrictive than arbitrators when it comes to public statements. The courts apply the concept of “fair comment.” When persons with a legitimate concern about the issue, like union spokespeople, speak on a matter of public interest, like union-management issues in OPS (Ontario Public Service) and BPS (Broader Public Service) workplaces, then they have the right to make “fair comment.” This means they can certainly make comments that are very strongly and negatively worded, but they should:

- 1) set out the main facts they are relying on;
- 2) make sure those facts are true and can be proven to a court to be true (not just thought to be true); and
- 3) make sure the predominant purpose is not malice.

The courts will require public comments to be based on true facts, and will not likely accept the argument that the person thought the facts to be true. The courts require people to check their facts more carefully when they make public comments than when they make comments on an occasion of “qualified privilege.”

Examples:

- As said at a Progressive Conservative Convention: Mike Harris personally fired employees for union activity [which is false, but was thought by the foolish isolated Red Tory who said it to be true]. He is an anti-union thug.” Protected by the defence of “qualified privilege.”

- As said in public: Mike Harris personally fired employees for union activity [which is false, but was thought by the activist who said it to be true]. He is an anti-union thug.” Libellous.
- Mike Harris has passed laws that cut back union rights. He is an anti-union thug.” Fair comment.

When speaking publicly, it is more important to make quite sure the facts you are relying on are correct.

In the Ontario Public Service, there is an added concern. Public servants have obligations to honour their oaths of secrecy, to maintain confidentiality of information and avoid conflicts of interest (including public criticism of the government related to their job duties). However, they also have a full and unfettered right to engage in union activity. The Union’s position is always that the right to engage in union activity includes the right to be publicly critical of management. Such public criticism is preferably done as a union spokesperson, and becomes more of an issue if done simply as an individual public servant.

In summary, when speaking in public, it is best to:

- a) make sure your facts are accurate;
- b) not violate the confidentiality of sensitive or personal information;
- c) ensure you are speaking as a union spokesperson about workplace issues.

Ontario Public Service Employees Union, 1998

www.opseu.org

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Sick Leave, Medical Certificates, Medical Examinations and Related Issues—Some Principles

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From a current examination of the case law on sick leave, medical certificates and medical examinations, the following principles will serve as a guide.

1. An employee's right to privacy must be balanced with the employer's right to ensure entitlement to the benefit being claimed under the collective agreement (such as sick leave with pay) or an employer's obligations under the relevant statute (such as health and safety or human rights legislation).
2. We should begin with the basic premise that the employer has the right to insist on a medical certificate as a condition of granting sick leave. In the case of most collective agreements, the employer's right to impose such a requirement is explicit. Where a collective agreement is silent on this point, the employer could successfully argue that its residual management rights (i.e., all rights not modified by collective agreement language) permit it to require proof of sickness. If a collective agreement specifies (as some do), that the employer could only require a medical certificate after so many days of absence in a given year, then the employer's right would be restricted.
3. To claim an entitlement to sick leave, many collective agreements require an employee to satisfy the employer "... of this condition in such manner and at such time as may be determined by the employer." This establishes an unfettered right of the employer to require certification of any and all sick leave (assuming good faith), unless there is additional language modifying this right under certain conditions. Notwithstanding

these broad powers, each application for leave must be considered on its own merits.

4. Many collective agreements contain a provision to the effect that a statement signed by the employee stating that because of illness or injury s/he was unable to perform his/her duties shall be sufficient to satisfy the employer, unless otherwise informed by the employer that other proof or additional information is required. If the employer fails to notify the employee of the requirement for other information, the employer is obliged to accept the statement (unless the signed statement can be proven to be fraudulent).
5. When required, a medical certificate would normally be sufficient to support a request for sick leave with pay. However, a medical certificate does not guarantee an automatic right to the leave, unless the collective agreement is explicit on this point. As it has been stated in numerous cases, especially those involving concerted job action, a medical certificate is not “Holy Writ” because their authors are fallible and can be misled.
6. The usual response of an employer in cases of alleged illegal strike activity is to impose discipline, despite a claim of illness and a request for sick leave with pay. A medical certificate will likely hold little or no weight in these circumstances. If the employer can make a case of illegal strike activity, the onus then shifts to the employee to provide clear and convincing proof of illness. Usually, there is a requirement that the attending physician was informed there was a strike or labour dispute in effect and s/he was able to determine the illness on one or more objective tests, and not solely on the basis of statements made by the employee.
7. The employer’s discretion to reject a medical certificate must be reasonably exercised. The employer may determine that a medical certificate is deficient, incomplete, contains errors, contradicts other

evidence or was completed in bad faith and that there is a reasonable connection between the flawed medical certificate and a decision to withhold an entitlement to sick leave.

8. The employer's decision to declare a medical certificate valid for part of a period of leave but invalid for another portion covering the same illness may not be defensible before an arbitrator but will depend on the individual circumstances of each case.
9. Unless the collective agreement indicates otherwise, the employer has the right to require further information to determine an entitlement to sick leave with pay. This is especially so in the case of a provision that speaks of " ... satisfying the employer of this condition in such manner and at such time as may be determined by the employer." However, such requests for additional information must be timely, practical and reasonable. The employer must make a request at a time that permits a medical practitioner to certify an employee's condition during the period the leave is required, or to provide an employee with sufficient time to comply with the specific request. The employer must specify what kind of proof it requires. The employer must set reasonable limits on the type of information required so an employee's privacy is not unreasonably invaded. The employer must reasonably consider the information it receives or otherwise has at its disposal when determining whether or not an entitlement for sick leave with pay exists.
10. An employee's right to privacy and confidentiality of sensitive medical information is recognized at common law. The employer's right to insist on a medical certificate or request additional information is restricted insofar as it cannot require information that truly breaches an employee's privacy/confidentiality rights (such as a specific diagnosis or normally confidential details). It is reasonable for the employer to want to know how long the employee will be away from work and the expected date of return, the specific date(s) or period of time the medical practitioner attended the employee, or information concerning restrictions on work

activities or necessary accommodations. These are legitimate employer concerns and do not breach privacy/confidentiality rights.

11. There is an obligation on employers to protect the health and safety of their employees. For example, the Canada Labour Code states that “every employer shall ensure that the safety and health at work of every person employed by the employer is protected.” Many collective agreements also contain similar provisions. As a result, an employer has the right to assure itself that an employee does not represent an unacceptable risk to her/his own safety or that of other employees.
12. Furthermore, under human rights law, an employer has a “duty to accommodate.” As a result, an employer may be justified in requiring medical information or corroboration from a health-care practitioner relating to an employee’s request for accommodation (information on functional limitations as opposed to diagnosis).
13. Notwithstanding the framework established by legislation and the collective agreement, there are restrictions on the type of information an employer has the right to receive, and the methods used to obtain it.
14. General arbitral jurisprudence suggests that an employer has a limited right and duty to demand that an employee undergo a medical examination if the employer has reasonable and probable grounds for suspecting that the employee is a source of danger to himself/herself or other employees or is unfit to perform her/his duties. The employer has an obligation to provide an employee with sufficient and detailed information concerning the reasons for the requested medical examination.
15. However, there is a general reluctance among arbitrators to require employees to undergo a medical examination by physicians not of their own choosing, except in rare circumstances or as a last resort. Arbitrators have also placed limits on the extent to which an employer

can demand medical information be divulged from an employee's own physician, even to a third party medical practitioner.

16. What if an employee refuses to submit to an independent medical examination (or to agree to disclose medical information to a third party)? Some case law supports the view that such refusal may be an acceptable exception to the "obey now, grieve later" rule because breaches of an employee's right to privacy and confidentiality of medical information cannot be remedied through the grievance procedure. However, an employee needs to carefully consider how s/he will respond to a direction of this nature as a likely response of an employer would be to deny the benefit being claimed or take administrative action such as relieving an employee of his/her duties.
17. Despite the strong precedents protecting an employee's privacy, there are no guarantees that a grievance challenging the subsequent action of the employer would succeed. In any case, an employee should clearly state their concerns in writing which include reference to the privacy interest and the impossibility of having the breach of privacy remedied at a later date.
18. A physician or other licensed health-care professional should not provide information about a patient to an employer or a third-party health care practitioner without the patient's consent (unless s/he is compelled by law to do so). Disclosure without consent would violate the employee's common law right to privacy and confidentiality of medical information, as well as the statutory and regulatory requirements of the respective health care professions. In such cases, a complaint should be made to the professional regulatory body. Should the employer utilize information secured without the patient's consent, the employee should attempt to have the decision nullified through the grievance procedure if the information so obtained was used in whole or in part.

19. The opinion of an employee's own physician is generally given more weight by an arbitrator because of the doctor's knowledge of the patient and the condition over a longer period of time. This assumes that the employee's doctor's opinion is clear, s/he is available to testify and can confirm an employee's state of health for the period in question.
20. A medical certificate from any health care practitioner may be accepted by the employer. Indeed, with changes in health care certification and delivery, this would appear to be the case in practice. However, to date there is an absence of case law that requires an employer to accept, for example, a chiropractor's certificate without supporting language in the collective agreement. In addition, a recognized authority (Palmer, *Collective Agreement Arbitration in Canada*, 2nd Edition), at page 667, states: "Generally ... [certification] will mean [certification by] a medical practitioner qualified under the relevant legislation, and not a nurse or chiropractor."
21. Leave for an employee's medical and dental appointments may be supported by explicit language in the collective agreement. Or, depending on the nature of the illness or medical condition at the time the leave for the appointment was required, the request may fall under the sick leave provision. Where the agreement is silent with respect to an employee's medical or dental appointments, access to leave may fall under a general "other leaves with or without pay" provision. In most cases, the application of such a clause is at the employer's discretion.
22. Leave for medical and dental appointments of Treasury Board employees falls under the employer's Leave With Pay Policy. As such, it does not form part of the collective agreement and is not a matter that can be contested at arbitration/adjudication. It should be noted that prior to 1971, the collective agreement provided for employees to earn a bank of special leave credits up to a maximum of 25 days to be utilized for marriage leave, bereavement leave, leave for the birth of a child and leave "for other reasons" (including illness in the immediate family and

medical and dental appointments). When this provision was deleted from the collective agreement, the employer indicated that it would continue to allow employees to take time off for appointments and this is reflected in the employer's Leave With Pay Policy.

23. Most collective agreements provide for an advance of sick leave credits when an employee has insufficient or no credits to cover the granting of sick leave with pay. When the provision states that it is "at the discretion of the employer" and does not qualify how the discretion is to be exercised, the employer's discretionary powers are considerable. To interfere with an employer's decision, an arbitrator would need to find evidence of bad faith on the employer's part, or an absence of rationality so blatant and obvious that it can only be attributed to bad faith. When the agreement contains this kind of discretionary language, there is no acquired right to an advance of sick leave credits based on past practice, the employer is not required to provide prior notice of future denials of advances and evidence of differential treatment between employees may not be sufficient to meet the test of "bad faith."

Sources:

1. Lajoie and Treasury Board (Transport), PSSRB File 166-2-16411, (1987) (Brown); Viau and Treasury Board (National Research Council), PSSRB File 166-2-16811, (1987) (Cantin); Trevethan and Treasury Board (Communications), PSSRB File 166-2-16391, (1987) (Nisbet); Trépanier and Treasury Board (Agriculture Canada), PSSRB File 166-2-16082, (1987) (Cantin); Watt and Treasury Board (Transport), PSSRB File 166-2-13952, (1983) (Pyle); Serniak & Bueckert and Treasury Board (Solicitor General), PSSRB File 166-2-26708 to 10 and 166-2-26715 to 17, (1992) (Korngold Wexler); Roberge and Treasury Board (National Defence), PSSRB File 166-2-15444, (1988) (Korngold Wexler).
2. Kuderian and Treasury Board (Revenue Canada - Customs & Excise), PSSRB File 166-2-18982, (1990) (Lowden)/FCA File A-71-90; Martin and

- Treasury Board (Employment & Immigration Canada), PSSRB File 166-2-18959, (1990) (Lowden).
3. Pendrigh & Stephens and Treasury Board (Transport Canada), PSSRB File 166-2-11445/46, (1982) (Steward); Morkin and Treasury Board (Revenue Canada - Customs and Excise), PSSRB File 166-2-25580/82/83, (1995) (Turner).
 4. Strasser v. Roberge (1979) 103 D.L.R., (3d) 193; Jones et al. and Treasury Board (Transport), PSSRB File 166-2-9010, (1981) (Kates); Richards et al. and Treasury Board (Transport), PSSRB File 166-2-10242 (1982) (Frankel); Morrissey and Treasury Board (Customs and Excise), PSSRB File 166-2-25574, (1994) (Deans); Morkin and Treasury Board (Revenue Canada - Customs and Excise), PSSRB File 166-2-25580/82/83, (1995) (Turner); Barker and Treasury Board (Solicitor General), PSSRB File 166-2-13902, (1984) (Brown).
 5. Gobeil and Treasury Board (National Defence), PSSRB File 166-2-15433 & 15726, (1988) (Galipeault); Roberge and Treasury Board (National Defence), PSSRB File 166-2-15444, (1988) (Korngold Wexler); Hanna and Treasury Board (Environment), PSSRB File 166-2-20717, (1991) (Galipeault); Long and Treasury Board (National Defence), PSSRB File 166-2-17139, (1988) (Galipeault); Fontaine and Canadian Food Inspection Agency, PSSRB File 166-32-30979, (2002) (Taylor).
 6. Hollander-Boutin and Treasury Board (Public Service Commission), PSSRB File 166-2-16872, (1989) (Galipeault); Breukers and Treasury Board (Employment and Immigration), PSSRB File 166-2-25201, (1994) (Simpson).
 7. Smith and Treasury Board (Transport), PSSRB File 166-2-16877, (1988) (Galipeault); Serniak & Bueckert and Treasury Board (Solicitor General), PSSRB Files 166-2-26708 to 10 & 166-2-26715 to 17) (1992) (Korngold Wexler); Poulin and Treasury Board (Solicitor General), PSSRB File 166-2-15354, (1987) (Korngold Wexler); Arnfinson and Treasury Board

(Revenue Canada - Customs and Excise), PSSRB File 166-2-13851, (1983) (Williams).

8. Pacific Press Ltd., (1977), 15 L.A.C. (2d) 113 (Thompson).
9. Canada Labour Code Part 2: Occupational Health and Safety— Source: <http://laws.justice.gc.ca/en/L-2/17061.html> (updated to August 31, 2001); Lorrain and Treasury Board (Solicitor General), PSSRB File 166-2-14709, (1985) (Galipeault).
10. Fraser Valley Milk Producers Co-operative Association (Dairyland Foods) (1989), 9 L.A.C. (4th) 276 (Munroe); Tobin and Treasury Board (Fisheries and Oceans), PSSRB File 166-2-18410 to 18412, (1990) (Galipeault); Hébert and Treasury Board (External Affairs and International Trade), PSSRB File 166-2-21575 and 166-2-21666, (1992) (Galipeault).
11. Brown and Beatty, Canadian Labour Arbitration, 3rd Edition (7:3230); NavCanada and the Canadian Air Traffic Control Association (2000) 86 L.A.C. (4th) 370 (Swan).
12. Riverdale Hospital and C.U.P.E. Local 79 (1985), 19 L.A.C. (3d) 396 (Burkett); Shell Canada Products Ltd. and C.A.I.M.A.W., Local 12 (1990), 14 L.A.C. (4th) 75 (Larson).
13. MacMillan Bloedel Ltd. and C.E.P. Local 76, (1997) 67 L.A.C. (4th) 443 (Taylor).
14. Treasury Board of Canada Secretariat Directive on Leave and Special Working Arrangements <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15774>
15. Leclerc and Treasury Board (Revenue Canada—Customs and Excise), PSSRB File 166-2-10204) (1982) (Galipeault).

Speaking Out on Cuts to Federal Public Services: Guidelines for Union Representatives and Members

The PSAC has been working to provide Canadians with details about the cuts to federal public services and their impact on the public and local economies. Canadians have a right to this information.

Every public service worker has the right to freedom of expression and other civil and political rights which are enshrined in the *Canadian Charter of Rights and Freedoms*. The Constitutional rights of every public service worker are also a central tenet of the *Public Service Employment Act*.

Our union officers have a right to speak out when they speak on behalf of our members.

However, for members in the federal public service there are some limitations on these rights.

Rights of union representatives—local, regional and national

Members who hold union positions have considerable latitude to comment on cuts to public services and the impact of these cuts in their capacity as union representatives. They are constrained only in that their comments cannot be reckless, such as telling untruths, or malicious, such as making slanderous or libelous comments about individuals, e.g. managers.

Rights of members

Members who do not hold union positions have more limitations on their ability to speak out. They must balance their right of freedom of speech with their duty of loyalty to the employer as neutral and impartial public servants.

There is a federal Values and Ethics Code and there are departmental-specific codes that members must adhere to as a condition of employment. These codes include obligations to avoid potential conflicts of interest and protect confidentiality. The objective is a neutral and impartial public service.

Members generally have the right to speak out as whistle-blowers. They can also speak out if they have proof that the government is engaged in illegal acts or if the health and safety of the Canadian public may be at risk.

However, members could be putting themselves in jeopardy if they comment publicly on policies they administer or on policy decisions (such as the decision to cut certain services) that affect them directly. If they comment publicly, they could expose themselves to possible discipline if their comments are perceived to affect their impartiality or the public's perception of their impartiality.

Members may provide factual information about the work they do and what cuts are taking place.

How to help members speak out

The media are anxious to speak to actual members performing the jobs that are being cut and some of our members are prepared to do this. They need to be aware of the possible consequences. They also need to know that their union can make the comments on their behalf. For example, a Local President can speak out that food inspection services are being cut and the impact this will have on the public, based on information provided by members but without identifying them.

If at all possible, members should contact their union first for guidance before agreeing to be interviewed by the media.

Cautions about speaking out anonymously

In some cases, PSAC can arrange for members to do “protected” (i.e. anonymous) interviews with the media. Members should still contact their union before agreeing to such an interview. One of the concerns with anonymous interviews is that if the workplace can be identified through the interview there could be repercussions on co-workers.

Members should also exercise caution if commenting on websites or on radio shows even if they are not identifying themselves. Members should not use employer computers to post comments on websites, even anonymously. Comments on Facebook and on Twitter are also considered public and could put members at risk.

What happens in the event of employer retaliation and discipline?

PSAC is committed to protecting the rights of our members and will vigorously defend members and union officers in the event of retaliation or discipline.

Any member who has been asked to meet with management or has been warned about speaking out should contact their union right away—their Steward or Local President, their Component or the nearest PSAC regional office.

Case law references

PSAC has been successful in expanding the rights of our members as public service workers.

Wearing union material in the workplace:

The Board determined that the employer violated the collective agreement and section 5 of the *Public Service Labour Relations Act* when it prohibited CBSA border officers from wearing union bracelets with the message,

“support the bargaining team / support à l’équipe de négociation.” Employers can order employees not to wear union material that is derogatory, damaging or detrimental to the employer. In this case, wearing a union bracelet was considered a legitimate union activity since there was nothing illegal or abusive in the content of the bracelet’s message.

Bartlett et al. v. Treasury Board (Canada Border Services Agency), 2012 PSLRB 21

Stickers and petitions in the workplace:

The Union filed a policy grievance after employees were prevented from distributing petitions or wearing stickers in the workplace to promote PSAC’s “Hands off our pensions” campaign. The Board determined that the employer violated the no-discrimination clause of the collective agreement when it prevented employees from wearing these union stickers or posting petitions on bulletin boards. There was nothing derogatory or detrimental to the employer in the content of these materials. However, the employer did not violate the collective agreement by preventing the use of its electronic network to circulate the petition since the employer had the right to restrict the use of its property.

Public Service Alliance of Canada v. Treasury Board, 2011 PSLRB 106

Right to participate in political activities:

An employee at Canadian Heritage was terminated after she refused to step down as president of a Québec sovereigntist organization and made statements in the media supporting her organization’s objectives. The Board acknowledged that public servants have the right to participate in political activities but must also preserve the reality and perception of an impartial and effective public service. The Board concluded that termination was excessive. It ordered the employer to reinstate the grievor and offer her an equivalent position which would not present a conflict of interest.

Gendron v. Treasury Board (Department of Canadian Heritage) 2006 PSLRB 27—*decision available on PSLRB website*

Publicly criticizing government policy:

A Health Canada employee was disciplined for publicly criticizing a governmental policy to ban Brazilian beef. The grievor's suspension was reduced as it was deemed excessive. The Board admonished the grievor for failing to use the employer's internal recourse mechanism before going public. The grievor's comments did not fall within the exception to the duty of loyalty rule as they were not considered to be legitimate whistleblowing.

Haydon v. Treasury Board (Health Canada) 2002 PSSRB 10—*decision available on PSLRB website*

Defining an impartial public service

A Revenue Canada employee was fired after openly criticizing the government's plan to adopt a metrification policy and the *Canadian Charter of Rights and Freedoms*. The termination was upheld. This pre-Charter case set the framework for balancing the right to freedom of expression with the employee's duty of loyalty. The Court acknowledged that some speech by public servants about public issues is allowed but emphasized that public servants must exercise a degree of restraint to ensure that the public service is perceived as impartial and effective at fulfilling its duties. In cases where the government has committed an illegal act or a policy may jeopardize the life, health or safety of the Canadian public, freedom of speech prevails over an employee's duty of loyalty.

Fraser v. P.S.S.R.B [1985] 2 S.C.R. 455—*see paragraphs 41-43 and 50—decision available on website of the Supreme Court of Canada*

Special Leave with Pay—Snowstorms/Inclement Weather—Some Principles

Verified 2013

Most collective agreements covering PSAC members contain a provision similar, if not identical, to the following:

At its discretion, the employer may grant:

(a) leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty; such leave shall not be unreasonably withheld;

The following principles outline what we have learned from arbitrators' decisions on the many grievances on denial of "special leave." While the above provision can also apply to a variety of other circumstances that prevent an employee's reporting for work, the following references apply to snow storms and other weather-related conditions. The references represent a sample of arbitrators' decisions.

1. The main thrust of the provision is to provide for the exceptional treatment of particular employees under certain kinds of circumstances. This is why one speaks of "special leave." Ultimately, each case must turn on its own particular facts.
2. The first issue to be decided is whether the circumstances preventing the employee from reporting for duty were or were not directly attributable to the employee. The conclusion must be arrived at reasonably on the basis of the information obtained after a due and diligent enquiry by the employer.
3. The second issue to be decided is whether the employer, in the exercise of its discretion, is acting reasonably. This includes reviewing the merits of the situation, not taking into account irrelevant considerations or failing

to consider relevant matters, nor forming the opinion on the basis of insufficient evidence. The employer must make a serious and diligent inquiry. The manner in which a decision is made, as well as the basis for it, may be a key factor in determining that the special leave was unreasonably withheld.

4. The decision of the employer may be modified by an arbitrator where the arbitrator finds the decision is unreasonable. However, an arbitrator must not substitute his/her judgment where the employer's decision is reasonable, even though the arbitrator might have reached a different conclusion on the same set of facts. In other words, it is not for an arbitrator to step into the shoes of the employer and ask what s/he would have decided in the circumstances.
5. The fact that other employees who live in the same area reported for work in no way weakens the validity of a claim for special leave. The employer needs to consider the particular situation of each employee to determine whether the circumstances in which other employees who reported for work were the same as, or similar to, those of the employees who did not make it into work.
6. If an employee seeks to have the employer exercise discretion in her/his favour, s/he is well advised, if not under an obligation, to report all relevant facts to the employer concerning the situation which prevents the employee from reporting for duty. It is up to the employee to try to satisfy the employer, and to attempt to convince the employer of the justice of the claim.
7. Reporting for duty means reporting on time and doing what is reasonable in order to do so. It also means making as many attempts as are appropriate and reasonable in the circumstances. The responsibility to get to work ends at the end of the working day or shift, even though only a portion of the working day may remain.

8. An employee has an ongoing obligation and responsibility to continue to closely observe weather conditions and to keep trying to get in to work (as is prudent and reasonable under the circumstances). This includes attempting alternate routes or alternative means of transportation, as are reasonable under the circumstances.
9. An employee who is away from the geographical area (e.g., travelling, fishing, at a cottage) has a responsibility to check and/or monitor weather forecasts or conditions which may impede her/his ability to report for work. While the weather conditions may be the factor that is not directly attributable to the employee, there may be other factors that are attributable to the employee that contribute to his/her being prevented from reporting for duty.
10. On the other hand, efforts taken by the employee to allow for and accommodate the unexpected must be reasonably considered by the employer. Delays caused by adverse weather cannot be used by the employer in such a way as to raise a strict and rigid bar to the special leave benefits negotiated by the parties.
11. A denial of special leave solely on the basis that an employee had requested special leave contiguous to a day of other leave is a direct violation of the special leave provision. The employer must make inquiries into the reasons (e.g., snowstorm, weather and road conditions) that prevented an employee from reporting for duty, and the efforts the employee made, including planning for contingencies in the event of the unexpected.
12. An employee's choice of residence is not sufficient justification, in and of itself, to deny leave with pay. While a small number of earlier decisions of arbitrators identified distance or "remoteness" as sufficient cause in themselves for denying leave, the majority of decisions clearly require an employer to objectively analyze and assess the circumstances as a whole. The location of an employee's residence is but one of several

causally relevant factors. Arbitrators seem to agree that the record of absences due to weather conditions is a factor that cannot be ignored in deciding whether a location is so remote or isolated that an employee must bear some of the risk of inaccessibility.

Every situation is different, but generally speaking, there are a number of factors that tend to support an employee's entitlement to special leave with pay. These include an employee's not relying solely on radio reports but making serious, but reasonable, efforts to get to work; maintaining contact with the employer to provide updates to the circumstances that are preventing reporting for duty; exploring alternative means of transportation; taking reasonable precautions or steps such as getting up earlier than usual or parking the vehicle needed to travel to work in an accessible place if the storm and its effects can be anticipated.

The standard used to measure effort is affected by the severity of the storm or weather conditions and is one of reasonableness. Employees are not required to make heroic or reckless efforts to get to work, and there is room for the exercising of an employee's judgment which must be assessed according to a standard of reasonableness. One attempt, and turning back after a short distance may be sufficient under the circumstances. Several attempts throughout the day may be required under another set of circumstances. Or the weather conditions may be so severe or extreme that making no physical attempt at all may be a reasonable and prudent exercise of judgment.

Listed below are a number of decisions that provide guidance on the case law on this issue:

1. Hunter (166-2-5387).
2. McDougall (166-2-6157); Meldrum (166-2-9156).
3. Benson et al. (166-2-1557 to 1565); Hunter (166-2-5387); McDougall (166-2-6157); Meldrum (166-2-9156); Ryan and Ryan (166-2-11431 and 42); Critch (166-2-13526).

4. Villeneuve (166-2-629); Benson et al. (166-2-1557); Rosario (166-2-2443).
5. Cloutier et al. (166-2-21838, 21839 and 21840); Britton (166-2-19593).
6. Strickland (166-2-14697).
7. Ryan (166-2-13828); Strickland (166-2-14697); Martin and Hamel (166-2-14835 & 14836); Dorais (166-2-18311); Britton (166-2-19593); Thomas (166-2- 21965).
8. Johnston (166-2-21750); Thomas (166-2-21965); Wall (166-34-31536 (Citation: 2003 PSSRB 86))*; Leblanc (166-2-27837 (Citation: 2001 PSSRB 19))*.
9. Chrétien (166-2- 5280); Smith (166-2-14632); Martin and Hamel (166-2-14835 & 14836); Segouin and Spatt (166-2-21024 and 21025).
10. Barrett (166-2-7738); House (166-2-10320).
11. Segouin and Spatt (166-2-21024 and 21025).
12. Townsend (166-2-3460); Charbonneau and Brisebois (166-2-4825 and 4826); Dollar (166-2-5024); Hunter (166-2- 5387); Richmond (166-2-6909); Meldrum (166-2-9156); Warford (166-2-15306).

*Referenced are two more recent decisions. Although they are expedited adjudication decisions, they nevertheless provide insights on how adjudicators deal with these cases.

The National Joint Council of the Public Service of Canada (NJC)

The National Joint Council of the Public Service of Canada is the Forum of Choice for co-development, consultation and information sharing between the government as employer and public service bargaining agents.

Through the National Joint Council (NJC), the parties work together to resolve problems and establish terms of employment that apply across the public service. NJC subjects include government travel, relocation, commuting assistance, isolated posts and government housing, foreign service directives, work force adjustment, safety and health, the bilingual bonus and public service health plans.

NJC GRIEVANCE PROCEDURE:

The National Joint Council grievance procedure is a grievance procedure within the meaning of the Public Service Labour Relations Act (PSLRA). The parties to Council have agreed that any employee who feels aggrieved by the interpretation or application of an NJC directive or policy must process his/her grievance through the NJC procedure.

Grievances must be supported by the bargaining agent concerned. If a grievance is not resolved through the NJC process, the employee, with the agreement and support of his/her bargaining agent, may proceed to adjudication under the PSLRA.

Employees in excluded positions do not have the right to grieve through the NJC procedure.

The NJC procedure differs from the normal grievance procedure in three ways:

1. The NJC procedure involves only three steps regardless of the department or agency of the grievor.
2. The third step of the procedure is the NJC Executive Committee. The Executive Committee consists of three Employer Side members and three Bargaining Agent side members.
3. Grievances are decided on the basis of the intent of the directive or policy concerned and are not decided by strict consideration of the wording of the directive or policy.

GRIEVANCE LEVELS

The **first level** of the procedure is the representative of the employer authorized to deal with grievances at the first level.

The **second level** of the procedure is the Departmental Liaison Officer (DLO) or Agency Liaison Officer, who is appointed by the deputy head.

Grievances processed to the **final level** of the procedure are submitted to the National Joint Council General Secretary. The General Secretary is responsible to the Executive Committee for the administration of the procedure.

The General Secretary has a number of options in processing a grievance at the final level depending upon the grievance. Those options are:

1. Recommend denial of jurisdiction to the Executive Committee should the grievance be on a matter not contained in an NJC directive or policy, or where the grievance has not been submitted within the required time limits.
2. Recommend to the Executive Committee that it respond directly to the grievance on the basis of previous precedent decisions.

3. Refer the grievance, in the name of the Executive Committee, to the working committee of Council responsible for the directive or policy, for a statement of intent.

In the majority of cases, grievances are referred to a working committee. The working committee then holds an informal hearing where representatives of the grievor's bargaining agent and the department or agency are invited to make representations. The working committee then reports to the Executive Committee through the General Secretary as to whether the grievor has been treated within the intent of the directive or policy. The Executive Committee considers the recommendation and makes a decision which becomes the **final level** reply given to the employee through the employing department or agency.

Union Representative Immunity

Updated 2016

WHAT IS IT?

Union representative “immunity” refers to the latitude a representative enjoys in dealing with management. It means that a union representative can vigorously advocate on behalf of the membership with actions or words that might otherwise attract discipline or some other kind of penalty. As one arbitrator put it, “when acting in his representative capacity a union steward stands in a position of equality with management.” However, the immunity is not absolute. There are limits.

LIMITS

The union representative must be acting in his or her official capacity. S/he must be engaging in lawful activity. The representative’s conduct must not cross the boundary between forceful advocacy and rude, aggressive conduct that genuinely threatens or intimidates another individual. The boundary is also crossed when a union representative makes statements that are malicious in the sense that they are knowingly or recklessly false, or that amount to a deliberate campaign to harass, or publicly denounce or attack a member of management.

SOME LEADING CASES

Arbitrators have generally agreed on the need for protection for union representatives in the discharge of their responsibilities:

In our view, the question of whether a union official is entitled to immunity from discipline must depend on the facts of each case. The starting point must be that there must be a recognition that once an employee is elected to union office his status in the workplace changes substantially. He has a dual role. As an employee, he must conform to the same rules and policies as his

co-workers. However, when acting in his union capacity he is an integral part of the collective bargaining regime that governs the workplace on a day-to-day basis. He is then on an equal footing with members of management when carrying out his union duties. He must be free to police the collective agreement for compliance, and enforce it with vigour. In so doing, it is unavoidable that he will be required to take a higher profile than his fellow workers. Inevitably from time to time he will encounter areas of conflict with members of management. Regardless of the individual's degree of tact and diplomacy, it comes with the territory that on occasion he will be bordering the line between vigorously representing his fellow workers and engaging in insubordination towards members of management. Given this difficult role undertaken, the right of a union official to properly carry out his duties must be strictly protected except in the most extreme cases. Mere militancy or overzealousness should not result in penalties. A union official must be able to press his point of view with as much vigour and emotion as he wishes, even though it may turn out in the end that his point of view was wrong.¹

While the parties might wish for an idealized world of civil and respectful communications, the emotional nature of the adversarial relationship does not always make this possible. Arbitrators have readily acknowledged the role of immunity in facilitating a free and frank exchange between union and management representatives to resolve disputes:

Union officials or stewards, in their representative capacities, are to be accorded substantial and broad protection when they express their bona fide views or disagreements with management on issues of legitimate concern and these views may be expressed, when required, in a forceful and open manner. This is true of labour management meetings, collective bargaining or when processing grievances through the grievance procedure. At times, tempers will be lost and emotional outbursts will

undoubtedly occur. This is a reality of the workplace. But the arbitral authorities draw the line when a person attacks or vilifies a member of management or another person by a statement which is knowingly false or is made in such a reckless or careless manner as to have no regard for the truth of the statement or the consequences that may flow from it. ²

One of the important PSAC cases dealt with negative comments in a union representative's performance appraisal describing the representative's exchange with management. In ordering the comments to be removed:

It has long been recognized that a union official, in the course of his duties, may engage with impunity in certain types of conduct which would normally attract disciplinary action by the employer. Union officials, in the performance of their duties, enjoy a certain degree of immunity vis-à-vis their employer. There are limits, of course. However, I have no doubt that speaking in a demanding or aggressive manner—assuming, for the moment, that the complainant did behave in that manner—does not fall beyond those limits.

*... Thus, the question posed in the penultimate paragraph above comes down to the following: Can the employer make it a condition of future advancement or of continued employment that a union officer conduct union business in a manner that is acceptable to the employer? It is sufficient merely to state the question in this form for the answer to be obvious. That answer is, resoundingly, in the negative.*³

IN SUMMARY

All this means that stewards and other union officers can vigorously represent their members' interests. They can do so with confidence, protected by the cloak of immunity from employer sanctions, as long as they

are acting in their official capacity and do not exceed the limits of that immunity.

¹ *Bell Canada*, 57 L.A.C. (4th) 289 (Dissanayake, 1996).

² *Canadian Anglo Machine & Ironworks Inc.*, 119 L.A.C. (4th) 316 (Hamilton, 2003).

³ *Hella Prante*, PSSRB File 161-2-388 to 393 (Kwavnick, 1987)

Union Activity in the Workplace: the Real Rules

PSAC members have the right to promote and build our union in the workplace. Members have the right to be kept informed on the employer's premises during non-work time, before or after shifts and during paid or unpaid breaks and lunch periods. This is the law.

Members have the right to:

- **Read union literature.** Members can also sign petitions and share information about the union's campaigns during non-working time.
- **Talk union.** Members can talk to co-workers about the union at work as they would any other subject—and help keep everyone informed about PSAC activities.
- **Hand out leaflets before and after work.** Members can distribute materials outside or inside the workplace. Even if the entrance is in a commercial area, members have a legal right to engage in this activity. The employer is prohibited from interfering with these lawful union activities.
- **Desk drops.** Members can “drop” information at members' work stations, providing they have permission from the employer. With the employer's permission, the union may distribute publications that reflect the union's perspective on workplace issues, as long as the information is accurate and non-defamatory. This is a great way to invite members to information sessions, provide updates on union business and recruit new volunteers.
- **Post information on union bulletin boards.** Collective agreements generally allow members to use workplace bulletin boards for union purposes. Make these boards “communication central” for the union by keeping them up to date. Remember to include contact information for local representatives.
- **Wear the union message.** Members can wear buttons, lanyards, stickers, t-shirts and other items that communicate the union's message.

Even if members wear a uniform, there are ways of wearing a union message!

- If management interferes with the rights of members or discourages them from participating in our union in any way, stewards must take action:
 - Get information from the affected member(s)
 - contact their supervisor to resolve the issue
 - if there is no satisfactory response, file a grievance
 - if management insists on interfering, advise the member to comply and then grieve.

If you need assistance through the grievance process, please contact your Component or PSAC regional office.

PSAC wants to track any employer interference with your rights and what you did to resolve the problem. You can help us by sending that information to unionrights@psac-afpc.com.

Wearing Union Buttons at Work

Verified 2013

When is it acceptable to wear a union button in the workplace? When can the employer legitimately direct employees to remove union buttons?

LAWFUL UNION ACTIVITY

Wearing a union button during working hours is, within certain limits, a lawful union activity. The right is enshrined in legislation and the collective agreement. For example, a collective agreement usually contains a “no discrimination” article that protects membership or activity in the union. In addition, federal, provincial and territorial labour relations statutes contain similar protections. For example, the *Canada Labour Code*, Part 1, Section 8 (1) states:

Every employee is free to join the trade union of their choice and to participate in its lawful activities.

The fundamental importance of an employee’s right to union activity was recognized by the former Public Service Staff Relations Board (now the Public Service Labour Relations Board) in the early decision *M.M. Stonehouse and Treasury Board* (Board file 161-2-137) at paragraph 40 in reference to section 6 (now section 5) of the *Public Service Staff Relations Act* (now the *Public Service Labour Relations Act*):

The words contained in section 6 are fundamental to the object of the Act. They are the statutory Magna Carta of the rights conferred on every employee within the jurisdiction of the P.S.S.R. Act. In simple, concise language, it provides that every employee may be a member of an employee organization and may participate in the lawful activities thereof. They are rights to be exercised by any and every employee without any fear or restraint whatsoever from or by any person. In the absence of these rights, the balance of the provisions of the P.S.S.R. Act regarding

certification of a bargaining agent, collective bargaining, mediation, and resolution of disputes and grievances would be a mere mockery.

SOME LEADING CASES

In *Hamilton-Wentworth District School Board*, [2002] OLRB Rep. July/Aug 652 (Ont. L.R.B.), members of the teachers' federation wore buttons in their classes with the message "Fair Deal or No Deal." Ruling in their favour, after reviewing the jurisprudence in Canada and the United States, the Ontario Board held that "the message itself, though critical, was not offensive, nor insulting," and stated, at paragraphs 58 and 59:

The courts have also said that wearing a union button is legitimate unless "the employer can demonstrate a detrimental effect on its capacity to manage or its reputation." The limitation is similar to that expressed in Canada: wearing the button should not be disruptive of the employer's operation and it should not cause economic loss. There must be actual evidence of disruption and economic loss to justify denying employees the right to wear a union button.

In *Quan v. Canada* [1990] 2 F.C. 191, PSAC members wore buttons that said: "I'm on strike alert" to promote union solidarity in protesting employer delays at the bargaining table. The Federal Court of Appeal held that wearing such a button does not impinge on the employer's authority or damage the employer's reputation. It was not insulting nor critical of the employer, rather it was a statement of fact that the union was contemplating the possibility of a legal strike.

In *National Steel Car Ltd.* (1998), 76 L.A.C. (4th) 176 (Craven), the company prohibited the wearing of union T-shirts on its property and the union grieved. The front of the shirt was plain except for the words "USWA Local 7135" and the back contained a drawing of a cobra, coiled with its head erect and the accompanying statement "If provoked will strike." Unlike the PSAC case, the union was in the mid-term of a collective agreement and not in a legal strike position. The arbitrator held that the message was

provocative and gave the employer reasonable grounds for concern that its legitimate interests may be adversely affected. The arbitrator suggested there would have been a different result if the T-shirt said: “If Provoked will Grieve” or if the union had been in a legal strike position.

In *Convention Centre Corp* 63 LAC (4th) 390, the employer operated the Winnipeg Convention Centre. The employer had advised the union that it intended to contract out the security work. In response, the union started a fight back campaign that included members wearing a “No Contracting Out” button. In this case, the arbitrator held that employees who wear buttons in the public setting of the Convention Centre could be viewed as expressing a public criticism of the employer’s decision to contract out. The arbitrator found that it was reasonably likely to cause disruptions in customer and business relations.

In *Health Employers’ Association of British Columbia and Hospital Employees Union* (2004), 125 L.A.C. (4th) 145 (Sanderson), union members working at a long-term care home wore a sticker to work to protest the contracting out of services. The sticker said: “Contracting out is a crying shame.” The employer argued that the stickers might upset or scare the frail elderly residents, that they violated the dress code and that they might hurt the facility’s reputation and reduce the opportunity to market private beds. The arbitrator found that wearing the sticker was a reasonable expression of employees’ views. It was not insulting or offensive, nor an attack on the employer or government and there was no evidence of any actual disruption or harm to the employer.

In *International Association of Machinists and Aerospace Workers and District Lodge 147, National Association of Federal Correctional Workers and Correctional Service Canada, Treasury Board and Don Graham* (File 561-2-49; Citation: 2005 PSLRB 50), employees were seeking support from correctional officer colleagues to join the National Association of Federal Correctional Officers (NAFCO). The employer saw this as an

attempt to build a case for NAFCO to become certified as the new bargaining agent for Correctional Officers. The employer issued a direction that employees were not authorized to wear any pins, buttons or any apparel (e.g., baseball caps) with a NAFCO crest on CSC premises and that failure to comply with the direction would invite disciplinary action. The employer had a policy with respect to the wearing of uniforms that permitted the wearing of union service pins but the policy was not rigidly enforced. The adjudicator found that the wearing of NAFCO baseball caps and pins is a legitimate lawful activity of a duly authorized employee organization and in no way jeopardized the safety of inmates or staff.

In *Almeida v. Canada (Treasury Board)*, [1991] 1 F.C. 266 (C.A.), employees were suspended for wearing union buttons with statements such as “KEEP OUT DRUGS & PORN” and “KEEP OUR CUSTOMS INSPECTORS” on their uniforms. The majority decision of the Court upheld the decision of the adjudicator to dismiss the grievances. The decision of the majority in *Almeida* focuses on damage to the employer, finding that the adjudicator was justified in concluding that the message on the buttons could well have drawn the grievors into a heated public debate with persons passing through customs. MacGuigan J.A., dissenting, held that the message on the button clearly related to union business. Relying on *Quan v. Canada (Treasury Board)*, [1990] 2 F.C. 191 (C.A.), he held that the employer had failed to show a serious possibility of a detrimental effect on its business or reputation.

In *Bartlett et al. v. Treasury Board (Canada Border Services Agency)* 2012 the Public Service Labour Relations Board determined that the CBSA violated the collective agreement by prohibiting Border Service Officers from wearing a one centimetre-wide “union bracelet” during working hours. The bracelet had a Public Service Alliance of Canada logo on it and the slogan, “Support the bargaining team.” The employer’s order was based solely on a policy that requires the uniform to be devoid of all ornaments. The workers claimed it was their right to participate in union activities which is protected under the collective agreement and legislation. The PSLRB adjudicator

wrote that the employer presented no evidence that wearing the bracelet might affect the perception of neutrality or objectivity from the traveller's perspective or create a conception among travellers about the BSO's authority to enforce the law. He also wrote that the employer cannot, by virtue of its own unilateral policy, remove employees' rights granted by the law or the collective agreement. The decision focussed on whether the bracelets negatively impacted the workers' capacity to perform their duties. The adjudicator stated that: "Collective bargaining is a right protected by the laws of this country and by the Canadian Charter of Rights and Freedoms. For the BSOs to state through a message on a bracelet that they support their team, absolutely does not undermine their authority as law enforcement officers or the neutrality that they project in the eyes of the public."

IN SUMMARY

As the case law demonstrates, the key to whether employees can be prevented from wearing union buttons at work depends on if the employer can demonstrate that its legitimate business interests are adversely affected.

Wearing union buttons is an important way for union members to express an opinion, mobilize support and demonstrate solidarity on issues that concern them. Union interests are served when we actively protect the right to wear union buttons in the workplace.

- When organizing a campaign, avoid messages that are inflammatory or derogatory. Choose text and images that will promote membership support, help members engage others in discussion about the issues and to the extent possible, avoid a direction from management that the buttons not be worn in the workplace.
- Plan the campaign and lay the necessary foundation so the maximum number of members wear the buttons at the same time.
- If management insists that the buttons be removed, follow the "obey now, grieve later" rule. Organize a grievance campaign if the matter can be the

subject of a grievance. If not, get advice from the local's advisor from the component or the regional office on filing an unfair labour practice complaint.

STEWARD TOOLS



Steward Tools

In order to perform your job well, you will need your “tools” with you. Have a place at work where you will have ready access to:

- 1. *Your Collective Agreement:*** Having a general knowledge of the contract is necessary, but when answering a question about the contract, you must look at the entire article, word-by-word, its relation to other articles in the contract and its relation to the contract as a whole.
- 2. *Legislation:*** Have your own copy of the legislation under which your local is covered and learn a basic understanding of its content.
- 3. *A list of the Members You Represent:*** Their home addresses and phone numbers, their occupational group, the section and division which they come under. It is useful to have an organizational chart of the sections and divisions you represent.
- 4. *Membership Applications:*** As a union organizer, you will want to be prepared when new workers start to work in your area.
- 5. *PSAC Steward Fact Sheets:*** When you are approached with a request, complaint, grievance or appeal, get the information down on the Steward Fact Sheet immediately. Don't rely on your memory or the member's memory for details. Ensure that you have a good supply of the Steward Fact Sheets on hand.
- 6. *PSAC Grievance Forms and PSAC Transmittal Forms:*** Ensure you have a supply on hand. Time limits have a habit of running out on you before you know it. Be prepared. If a form is not in use or is not available, **a letter is equally valid.**
- 7. *A List of Your Local Executive:*** With their addresses, e-mails and phone numbers at home and at work.

8. A List of Stewards in Your Local: With their addresses, E-mails and phone numbers at home and at work.

9. A List of Resource People: At the Component and at the PSAC levels and in your community, with addresses and phone numbers, as well as a brief description of the services they provide. Know which Component Service Officer has been assigned to your Local.

10. The PSAC Constitution, Your Component By-Laws and the Local By-Laws: A question about union policies and procedures can best be answered with the facts in front of you.

<http://psacunion.ca/psac-constitution-and-regulations>

PSAC Policies: A policy is a statement which outlines a definite course of action selected to guide and determine present and future decisions on major areas of concern. Over the years, the PSAC has established a number of policy statements which deal with topics such as safety and health, personal/sexual harassment, human rights, pay and employment equity, technological change, steelwork, women's equality and many more. For more information, reference the published document "Policy Papers and Resolutions of Record" or consult the PSAC website at: <http://psacunion.ca/psac-policies>.

What Stewards Need to Know



1. **The Collective Agreement:** Have your own copy of your collective agreement and read it from cover to cover. Discuss the collective agreement with other Stewards and officers so you know how it is interpreted. Read over past grievances to find out how the clauses have been interpreted. Find out about precedent cases.
2. Know **management policies and directives**. Watch bulletin boards and read all the notices. Where Treasury Board is the employer, reference Treasury Board Directives and Policies <http://www.tbs-sct.gc.ca/pol/index-eng.aspx>.
3. **Labour Legislation:** Have a basic understanding of the labour legislation which applies to your members. Obtain your own copy of this legislation. Contact Component Service Officers or the PSAC Regional Office for technical advice and interpretation regarding relevant legislation.
4. **Working Conditions:** Know your work area and how things should be working. Be aware of conditions that may result in management's violation of clauses in your collective agreement, or of safety regulations. Do something about it before an accident occurs.

5. **Supervisors:** Get to know your supervisors and how they manage.
6. **Members:** Talk to the members you represent and get to know them as individuals. Ask about their jobs and where they fit in the organizational chart.
7. **Local Union Activities and By-Laws:** Attend Local meetings and Stewards' Committee meetings. Listen to what is being said. Know your Local By-laws and keep your own copy.
8. **Component and PSAC Policies:** Know your resource people both at the Component and PSAC level. Attend Regional Council and, where possible, other Regional Committee meetings, Component regional seminars, other union activities and seminars in your region. Check the PSAC and your Component's websites on a regular basis. Read the minutes of the Local meetings, Component meetings and the minutes of the National Board of Directors' meetings.

By the way—no one expects you to know everything about grievances in your first few months. All you need is a basic understanding of the issues at hand, a commitment to fairness and you will gain confidence as you perform your steward job.

Steward's Dictionary



ADJUDICATION: Process for settling grievances by a third party when they arise out of the interpretation or application of a collective agreement or arbitral award or out of disciplinary action resulting in financial loss or penalty (i.e., discharge, suspension). Normally used for Public Service units covered by the Public Service Staff Relations Act. See Arbitration.

ADR (Alternate Dispute Resolution): Refers to practices such as mediation, negotiation, facilitation, arbitration and conflict management which allows individuals and groups to resolve conflict situations.

AGREEMENT, COLLECTIVE: A contract (Collective Agreement and Contract are used interchangeably) between the union acting as the bargaining agent and the employer, covering wages, hours of work, working conditions, benefits, rights of workers and union, and procedures to be followed in settling disputes and grievances.

ARBITRATION: A method of settling negotiating disputes through the intervention of a third party whose decision is final and binding. Such a third party can be either a single arbitrator, or a board consisting of a chairman and one or more representatives.

BACK-TO-WORK LEGISLATION: A special law passed by the government—federal or provincial—that orders an end to a labour-management dispute. It ends a strike or lockout by either imposing a binding arbitration process on the two parties of a labour dispute or a new contract without negotiation.

BARGAINING AGENT: Union designated by a labour relations board (Québec, Ontario) or similar government agency e.g. Public Service Staff Relations Board as the exclusive representative of all employees in a bargaining unit for the purpose of collective bargaining.

BARGAINING UNIT: Group of workers in a craft, department, plant, firm, industry or occupation, determined by a labour relations board or similar body as appropriate for representation by a union for purpose of collective bargaining.

BASE RATE: The lowest rate of pay, expressed in hourly terms, for the lowest paid qualified worker classification in the bargaining unit. Not to be confused with *Basic Rate, which is the straight-time rate of pay per hour, job or unit, excluding premiums, incentive bonuses, etc.*

BENEFITS: Non-Wage benefits, such as paid vacations, pensions, health and welfare provisions, life insurance, the cost of which is borne in whole or in part by the employer.

CALENDAR DAY: 24 hour period beginning at 00:01 ending at midnight including Saturday, Sunday and statutory holidays.

CANADA LABOUR CODE: Is an Act of Parliament of the Canadian government to consolidate certain statutes respecting labour. The objective of the code is to facilitate production by controlling strikes & lockouts, occupational safety and health, and some employment standards.

CANADIAN LABOUR CONGRESS (CLC): Canada's national labour body representing organized labour in the country.

CERTIFICATION: Official designation of a labour relations board or similar government agency of a union as sole and exclusive bargaining agent, following proof of majority support among employees in a bargaining unit.

CHECK-OFF: A clause in a collective agreement authorizing an employer to deduct union dues and sometimes other assessments and transmit these funds to the union. See Rands.

CLASSIFICATION PLAN: A job evaluation method based on a comparison of jobs against money.

COLLECTIVE BARGAINING: Method of determining wages, hours and other conditions of employment through direct negotiations between the union and the employer. Normally the result of collective bargaining is a written contract which covers all the employees in the bargaining unit, both union members and non-members.

CONCILIATION AND MEDIATION: A process which attempts to resolve labour disputes by compromise or voluntary agreement. Pertinent legislation applies when negotiations reach an impasse. Either party can request the assistance of a mediator, a conciliator, or the establishment of a conciliation board. The mediator, conciliator or conciliation board does not bring in a binding award and the parties are free to accept or to reject the recommendation.

CONTRACT: See Agreement.

CONTRACTING OUT: Practice of employer having work performed by an outside contractor and not by regular employees in the union. Not to be confused with *subcontracting*, which is the practice of a contractor delegating part of his work to a subcontractor.

CONTRACT PROPOSALS: Proposed changes to the collective agreement put forward by the union or the employer and subject to collective bargaining.

COST-OF-LIVING ALLOWANCE: Periodic pay increase based on changes in the Consumer Price Index.

DISCRIMINATORY ACT OR PRACTICE: Is a denial of rights, e.g., a denial of employment, promotion, etc.; which occurs either in employment or in the provision of goods, services, facilities or accommodation; based on or motivated by a prohibited ground of discrimination.

DUES: Periodic payments by union members for the financial support of their union.

DUTY OF FAIR REPRESENTATION: The **exclusive** authority of a union to act as the spokesperson for employees in a bargaining unit includes a corresponding obligation on the union to fairly represent ALL employees in the unit.

DUTY TO ACCOMMODATE: The duty to accommodate in the workplace is the legal requirement for employers to **proactively** eliminate employment standards, practices, policies, requirements, procedures or rules that discriminate against individuals or groups on the basis of a prohibited ground, such as race, sex, disability, age, family status, and so on.

FEDERATION OF LABOUR: A Federation, chartered by the Canadian Labour Congress grouping local unions and labour councils in a given province.

FINANCIAL ADMINISTRATION ACT: Provides for the organization and financial management of the federal public service. This is where Treasury Board gets its power over (among other things) classification, discipline, assignment of duties, management rights and policy powers.

EMPLOYMENT EQUITY: A comprehensive program designed to overcome discrimination in employment experienced by members of equity groups. The goal is to give equity groups access to all jobs, re-evaluate traditional jobs and improve equity groups' overall economic situation. An employment equity plan is designed to eliminate barriers that create discriminatory practices and denies access to all jobs to members of a designated group and to address past discriminatory practices.

FULL MEMBER: A member who pays dues and has signed an application for a membership card.

GRIEVANCE: A written complaint against management by one or more employees or a union concerning an alleged breach of the collective agreement or an alleged injustice. Procedure for the handling of grievances is usually defined in the collective agreement. The last step of the procedure is usually arbitration/adjudication.

INFORMAL CONFLICT MANAGEMENT SYSTEM (ICMS): ICMS is a systematic approach to managing and resolving conflicts in the workplace. It emphasizes discussion and collaborative problem solving in order to resolve disputes quickly and constructively.

INJUNCTION: A court order restraining an employer or union from committing or engaging in certain acts.

INTERNATIONAL LABOUR ORGANIZATION (ILO): Tripartite world body representative of labour, management and government and is an agency of the United Nations. It disseminates labour information and sets minimum international labour standards called “conventions”, offered to member nations for adoption. Its headquarters are in Geneva, Switzerland.

JOB EVALUATION PLAN: A measurement tool that is used to evaluate work and establish relativity among positions. The reason for doing this is to be able to assign a rate of pay to a given job. In order to be in accordance with Human Rights legislation, a job evaluation plan should be gender neutral and include factors of skill, effort, responsibility and working conditions.

JOB SECURITY: A provision in a collective agreement protecting a worker’s job, as in the introduction of new methods or machines.

JURISDICTIONAL DISPUTE: A dispute between two or more unions as to which one shall represent a group of employees in collective bargaining or as to whose members shall perform a certain kind of work.

LABOUR COUNCIL: Organization composed of locals of CLC-affiliated unions in a given community or district.

LABOUR RELATIONS BOARD: A board established under provincial or federal labour relations legislation to administer labour law, including certification of trade unions as bargaining agents, investigation of unfair labour practices and other functions prescribed under the legislation.

LAYOFFS: Temporary, prolonged or final separation from employment as a result of lack of work.

LOCAL (UNION): Also known as lodge or branch. The basic unit of union organization. Trade unions are usually divided into a number of Locals for the purposes of local administration. These Locals have their own constitution and elect their own officers; they are usually responsible for the negotiation and day-to-day administration of collective agreements covering their members.

LOCK-OUT: A phase of a labour dispute in which management refuses work to employees or closes its establishment in order to force settlement on its terms.

MEDIATION: See Conciliation and Mediation.

ORGANIZING: A plan to organize unorganized workers to form part of a union.

ORGANIZING MODEL: The organizing model is an approach to running the local that puts membership involvement at the centre of each union activity.

OSH COMMITTEE: A joint occupational health and safety committee consists of labour and management representatives who meet on a regular basis to deal with workplace health and safety issues.

OVERTIME: Hours worked in excess of a regular number of hours fixed by statute or union contract.

OVERTIME RATE: Higher rate of pay for overtime hours worked. See Overtime.

PAY EQUITY: Pay equity incorporates the principle of equal pay for work of equal value which is the requirement to pay males and females within the same organization the same salary for work that is judged to be of equal value. A methodology is used which identifies wage gaps and the female salary is raised to the male salaries to achieve the goal of pay equity.

PICKETING: Patrolling near employer's place of business by union members to publicize the existence of a labour dispute, hurt the employer's productivity, persuade workers to join a strike or join the union and discourage customers from buying or using employer's goods or services.

PREMIUM PAY: A wage rate higher than straight time, payable for overtime work, work on holidays or scheduled days off, or for work under extraordinary conditions such as dangerous, dirty or unpleasant work.

PRIVATIZATION: This is the transfer of publicly owned resources and services from government ownership to private ownership e.g. roads, utilities, airports, national parks. In many cases, government still regulates the standards for service operation and maintenance of resources.

PROHIBITED GROUNDS OF DISCRIMINATION: Grounds upon which it is deemed discriminatory to treat people differently, negatively or adversely.

PSAC ID: The identification number printed on the PSAC Membership Card and the one recognized by the PSAC computerized membership system. All members (Full and Rand) are assigned a number.

PSEA (Public Service Employment Act): An Act respecting employment in the federal public service.

PSLRA (Public Service Labour Relations Act): An Act respecting labour relations in the federal public service.

RAIDING: An attempt by one union to induce members of another union to defect and join its ranks.

RAND FORMULA: Also called Agency Shop. A Union security clause in a collective agreement stating that the employer agrees to deduct an amount equal to the union dues from all members of the bargaining unit, whether or not they are members of the union for the duration of the collective agreement. The Rand Formula is based on the principle that those who benefit from a collective agreement should contribute dues even when they are not members of the union. See Check-Off.

RAND MEMBER: A worker who is paying dues to her/his union but who has not signed an application to become a member of their union.

RE-OPENER CLAUSE: A provision calling for re-opening a collective agreement at a specified time prior to its expiration for bargaining on stated subjects such as a wage increase, pension, health and welfare.

SCAB: A person who continues to work or who accepts employment to replace workers who are on strike. By filling their jobs, they weaken or break the strike. Anti-union term is “replacement worker”. For members covered by the PSEA, a scab is a union member who has not been deemed to be essential and who continues to work during a strike of her or his bargaining unit.

SENIORITY: Term used to designate an employee’s status relative to other employees, as in determining order of lay-off, promotion, recall, transfer, vacations etc. Depending on the provisions of the collective agreement, seniority can be based on length of service alone or on additional factors such as ability or union duties.

SHIFT: The stated daily working period for a group of employees, e.g. 8 a.m. to 4 p.m., 4 p.m. to midnight, midnight to 8 a.m. See Split Shift.

SHIFT DIFFERENTIAL: Added pay for work performed at other than regular daytime hours.

SHOP STEWARD: A Union official who represents a specific group of members and the union in union duties, grievance matters, and other employment conditions. Stewards are usually part of the work force they represent.

SLOWDOWN: A deliberate lessening of work effort without an actual strike, in order to force concessions from the employer. A variation of this is a work-to-rule strike—a concerted slowdown in which workers, tongue in cheek, simply obey all laws and rules applying to their work.

SOCIAL WAGE: The benefits to workers which come from a source other than the wage component of their pay packets. The social wage comprises benefits paid by public funds such as healthcare, education, pensions, child care.

SPLIT SHIFT: Division of an employee’s daily working time into two or more working periods, to meet peak needs.

STRIKE: A cessation of work or a refusal to work or to continue work by employees in combination or in accordance with a common understanding for the purpose of compelling an employer to agree to terms or conditions of employment. Usually the last stage of collective bargaining when all other means have failed. Except in special cases, strikes are legal when a collective agreement is not in force. A Rotating Strike is a strike organized in such a way that only part of the employees stop work at any given time, each group taking its turn. A Sympathy Strike is a strike by workers not directly involved in a labour dispute—an attempt to show labour solidarity and bring pressure on an employer in a labour dispute. A Wildcat Strike is a strike violating the collective agreement and not authorized by the union.

STRIKEBREAKER/SCAB: See “scab”.

STRIKE VOTE: Vote conducted among members of a union to determine whether or not to go on strike.

SUSPENDED MEMBER: A member whose membership status has been revoked—either voluntarily or otherwise.

TECHNOLOGICAL CHANGE: Technical changes in operational machinery or office equipment, new production techniques, change of work processes such as homeworking/teleworking and outside normal work locations. Technological changes often are applied to extract more productivity from workers without an increase in either pay or workforce.

TELEWORK: Work that is done away from the normal places of work such as offices, factories and is now performed in workers' homes, cars, aeroplanes or in another country. The application of technology has greatly facilitated this change. See Homeworking.

TOTAL QUALITY MANAGEMENT (TQM): TQM is a complete re-organizing of the work process and the workplace by application of principles of "teamwork" and work "teams" that are supposed to involve the worker and give them greater control in their work. It involves "teams" of workers monitoring and controlling each other in their work process, production and application of agreement or employer policies. It results in a scaling down of the workforce and increase of low morale. Some researchers have described TQM as "management by stress."

TRADE UNION: Workers organized into a voluntary association, or union, to further their mutual interests with respect to wages, hours, working conditions and other matters of interest to the workers.

UNION LABEL/BUG: A tag, imprint or design affixed to a product to show it was made by union labour.

UNION SHOP: A place of work where every worker covered by the collective agreement must become and remain a member of the union. New workers need not be union members to be hired, but must join after a certain number of days. See Union Security, Modified Union Shop.

WILDCAT STRIKE: Strike action taken by workers without the authorization of their union officials.

WORKERS' COMPENSATION: Insurance providing wage replacement and medical benefits to employees injured in the course of employment. Workers' Compensation Boards/Commissions (WCBs) are funded by employers.

WORKFORCE ADJUSTMENT This is a process that is used to deal with a workforce whose jobs are abolished or otherwise disappear. Federal public service employees are governed by a Workforce Adjustment Directive arrived at through the National Joint Council.

WORKING DAY: a 24 hour period beginning at 00:01 ending @ midnight. Excludes regularly scheduled days of rest, Saturday, Sunday and statutory holidays.

WORK-TO-RULE: See Slowdown.

WORKING CONDITIONS: Conditions pertaining to the workers' job environment, such as hours of work, safety, paid holidays and vacations, rest periods, free clothing or uniforms, possibilities of advancement, etc. Many of these are included in the collective agreement and subject to collective bargaining.

PSAC Online Learning

The PSAC has its own e-campus! Our e-courses are designed to provide you with a variety of union-related education. Some of the e-courses provide you with an opportunity for personal development. With our e-campus, you can learn at your own pace, in the location of your choice. To register, please visit <http://psacunion.ca/online-learning>.



Here are the modules available:

- Welcome to the PSAC
- Welcome to the PSAC—accessible version
- Union 101
- Union 101 = accessible version
- Human Rights Are Workers Rights
- Human Rights Are Workers Rights—accessible version
- Equity Groups and the PSAC
- Equity Groups and the PSAC—accessible version
- Pensions and Retirement
- Introduction to Union Health and Safety
- Grievances and Representation Primer
- Understanding Economics
- Understanding Strikes

Useful Web Resources for Stewards

PSAC:

- Public Service Alliance of Canada Constitution and Regulations
<http://psacunion.ca/psac-constitution-and-regulations>
- PSAC Policies
<http://psacunion.ca/psac-policies>
- Component and Regional Council By-Laws
<http://psacunion.ca/>
Follow the links from 'Components' and 'Regions'
- Your Rights at Work
<http://psacunion.ca/your-rights-work>
- PSAC-NCR
<http://psac-ncr.com/>
- PSAC-BC Stewards Page
<http://psacbc.com/our-organization/stewards>
- PSAC Human Rights Program
<http://psacunion.ca/topics/human-rights>
- PSAC Disability Insurance
<http://psacunion.ca/disability-insurance-information-psac-members>
- PSAC Health and Safety Program
<http://psacunion.ca/health-and-safety>

- Occupational Group Structure
<http://psacunion.ca/topics/occupational-group-structure>
- PSAC Work Force Adjustment
<http://psacunion.ca/workforce-adjustment>

COMPONENTS:

- Member Self-Help Kiosk
<http://www.une-sen.org/index2.php?lang=en#>
- KeyInfoClé
<http://www.syndicatagr.com/en/keyinfokit.html>
- CEIU Resources
<http://ceiu-seic.ca/en/resources>
- UCTE
<http://www.ucte.com>
- USGE Tool Box
http://www.usge-sesg.com/en/Toolbox/toolbox_main_en.html

FEDERAL LEGISLATION:

- Public Service Labour Relations Act and Regulations
<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/>
- Public Service Employment Act and Regulations
<http://laws.justice.gc.ca/en/P-33/>

- Canada Labour Code
<http://laws.justice.gc.ca/en/L-2/index.html>
- Canadian Human Rights Act
<http://www.chrc-ccdp.ca/>
- Employment Equity Act
<http://laws-lois.justice.gc.ca/eng/acts/E-5.401/index.html>
- Official Languages Act
http://www.ocol-clo.gc.ca/html/act_loi_e.php
- Financial Administration Act
<http://laws.justice.gc.ca/eng/acts/F-11/>
- Parliamentary Employment and Staff Relations Act
<http://laws.justice.gc.ca/en/P-1.3/index.html>
- Access to Information Act
<http://laws-lois.justice.gc.ca/eng/acts/A-1/>

PROVINCIAL RESOURCES:

- Occupational Health Clinics for Ontario Workers
<http://www.ohcow.on.ca/>
- The Workers Health & Safety Centre
<http://www.whsc.on.ca/>
- WSIB (Workplace Safety and Insurance Board)
<http://www.wsib.on.ca/>

- CSST (Commission de la santé et de la sécurité au travail)
http://www.csst.qc.ca/en/Pages/all_english_content.aspx
- Workers' Compensation (links to all provinces and territories)
<http://www.awcbc.org/en>
- Commission des droits de la personne et des droits de la jeunesse
<http://www.cdpcj.qc.ca/en/pages/default.aspx>
- Ontario Human Rights Commission
<http://www.ohrc.on.ca>

NATIONAL JOINT BODIES:

- National Joint Council
<http://www.njc-cnm.qc.ca>

FEDERAL GOVERNMENT:

- Treasury Board Secretariat
<http://www.tbs-sct.gc.ca/tbs-sct/index-eng.asp>
- Public Service Commission
<http://www.psc-cfp.gc.ca/index-eng.htm>
- Public Service Labour Relations Board * (will be merged with PSST and become the Public Service Labour Relations and Employment Board (PSLREB))
<http://www.pssrb-crtfp.gc.ca>

- Public Service Staffing Tribunal* (will be merged with the PSST and become the Public Service Labour Relations and Employment Board (PSLREB)
<http://www.psst-tdfp.gc.ca>
- Employment and Social Development Canada
<http://www.hrsdc.gc.ca/eng/home.shtml>
- Office of the Privacy Commissioner of Canada
http://www.priv.gc.ca/index_e.asp

OTHER:

- Canadian Legal Information Institute
<http://www.canlii.org>
- Canadian Labour Congress
<http://www.canadianlabour.ca/home>
- Fédération des travailleuses et des travailleurs du Québec
<http://ftq.gc.ca>

The Joint Learning Program

The Joint Learning Program (JLP) is a partnership between the Public Service Alliance of Canada (PSAC) and the Treasury Board of Canada Secretariat. The objectives of the JLP are to improve labour relations and increase the understanding of the roles of the union and management in the workplace. The JLP achieves its objectives by providing workshops in areas of mutual interest for which the employer does not already have a legal obligation to provide training and where both union and management have specific roles and responsibilities.

Here are some of the JLP workshops which can assist in effective problem solving in the workplace:

- Creating a Harassment-Free Workplace
- Duty to Accommodate: Building an Inclusive Workplace
- Employment Equity
- Labour—Management Consultation
- Mental Health in the Workplace
- Respecting Differences and Anti-discrimination
- Understanding the Collective Agreement

