

Legal Tools: Grievances and More

It's easy to be intimidated by legal processes or on the other hand to have blind faith in them. Really, any legal process is just a tool. If you have the right tool for the right job it works great, but the wrong tool is no use at all.

Members of a bargaining unit have a variety of legal rights, which come from two main sources: *Legislation* and the *Collective Agreement*. Knowing your rights and how to enforce them is a key to standing up to the Employer.

The Collective Agreement

Your Collective Agreement is the single most important tool in defining and enforcing your legal rights. Every member should have a copy of the Agreement and become familiar with it.

Your Agreement includes two basic kinds of rights: substantial and procedural. Substantial rights are about your working conditions, like wages, hours, overtime, and benefits. Procedural rights are about what to do when the boss violates the Collective Agreement – the Grievance Procedure.

Negotiating a good Collective Agreement is hard work. But once you've ratified the contract the work is not done. The Employer won't always follow the Agreement, they may disagree with the Union on what it means, or just ignore it all together. You need to police the agreement, and this can mean Grievances.

A Grievance is a formal allegation that the Employer has violated the Collective Agreement. A Grievance can also be used to deal with a violation of some legislation, such as the Occupation Health and Safety Act, the Ontario Human Rights Code, and the Employment Standards Act (see below).

Not all problems are grievances, be sure you have the right tool for the right problem. Before you file a grievance make sure you know what article of the Collective Agreement or what specific employment law you say the Employer has violated. If it doesn't fit anywhere maybe it's an issue for the labour/management or health and safety committee. Is it an issue for the next round of bargaining, where the collective agreement needs to be amended or added to (which an arbitrator cannot do in a grievance)? Is this an issue where communications, mobilizing, or campaigning can be used?

Stop and think about alternative strategies. When you're sure, go ahead and file a grievance.

If one grievance is a good idea how about 50? Strong and well prepared grievances can protect members, enforce their rights, and bring the Employer

into line. Weak or excessive numbers of grievances might undermine the Union's credibility with the Employer and with Arbitrators.

There are three different kinds of grievances:

1. Individual Grievance – one person grieves that a management action has violated their rights, such as an unjust discipline or denial of earned overtime.
2. Group Grievance – a group grieves together about a management action which has hurt them all, such as a refusal to give employees a statutory holiday.
3. Policy Grievance – the Union (usually the Local President) grieves that a management action violates the agreement, such as a new attendance policy or contracting out.

The Grievance Process

How to file and process a grievance is set out in each Collective Agreement. Be careful to follow the steps in your particular contract precisely, including time limits, or your grievance may fail on a technicality without solving the real problem.

Special Issues - Pay attention to any provisions in the agreement about specific types of grievances that might have additional requirements or separate process, such as classification grievances.

In most collective agreements the grievance procedure has three or four stages/steps.

First Raising an Issue:

Stage One – Generally, the first stage involves the member raising a complaint verbally with their immediate supervisor. Usually this stage does not require the presence of a steward or other Union representative, but a member may choose to have someone with them. This is often just a conversation about a problem as it arises, and not thought of as the start of a grievance when it happens.

Use an OPSEU grievance form when your Collective Agreement says to file the grievance in writing.

Local Grievance Handling:

Stage Two – When an issue cannot be resolved at Stage One the Union can take it forward in the process. Stage Two, in most agreements, will involve filing the grievance in writing, and a meeting involving the grievor and a Union

Representative (steward) with a higher level representative of management (like a Regional Director) or a Senior human resources representative or their designee (sometimes called “the designee”). The Employer will have a specified amount of time to issue a decision in writing, following the meeting. If the Employer fails to issue a decision in the time frame set out, or if the Employer’s response is unsatisfactory to the grievor and the Union, then the Union can refer to the grievance to arbitration.

Some collective agreements, such as CAAT Support, have an additional step prior to the referral to arbitration; their Stage 3 is handled by the local, and Stage Four is then mediation and/or arbitration which is handled by the appropriate Grievance Officer.

Referring a Grievance to Arbitration:

Stage Three - When the grievance can’t be resolved at stage two it is referred to arbitration. In the OPS this is done by sending it to the Grievance Settlement Board (GSB) (through Head Office). In CAAT the referral is done by sending a letter to the President of the College (through Head Office). In the BPS the referral is generally done by sending a letter to the highest level of Management (through your Staff Rep in your Regional office). The Grievance Officer then goes through an often lengthy and frustrating process of getting a neutral Arbitrator appointed to hear the case (agreed to by the Union and the Employer) and scheduling the first hearing date. A mediation or mediation/arbitration may proceed a full hearing, this is a normal step in the OPS.

Arbitration involves a formal legal hearing; the Union and the Employer have counsel (Grievance Officer or Lawyer) and a binding decision is made by the neutral Arbitrator.

The Union’s obligations: Under the Ontario Labour Relations Act every Union has a legal obligation to represent its members in a manner which is not discriminatory, arbitrary or in bad faith. This isn’t as complicated or as intimidating as it may sound. Basically, be sure your local represents all members fairly and as well as you can. If there is a personal or political reason why a steward or the local cannot fairly represent a member (a common problem is where the person previously crossed a picket line) then call your Staff Representative so that we can ensure that we meet our legal obligations.

The Union, and all of our officers and members, are also bound by the Ontario Human Rights Code. It is especially important to note that this means that the Union cannot condone discrimination by the Employer and cannot stand in the way of valid human rights processes such as the accommodation of disabled employees in the workplace.

What to do if you receive a ...

Employer Grievance?

It rarely happens, but the Employer might file a grievance with the Union, which alleges that the Union has violated the terms of the Collective Agreement. You should contact your Staff Representative for assistance, and together you will follow the grievance procedure and respond to the Employer's allegations.

Labour Board Complaint?

If a member files a complaint against the Union under the Ontario Labour Relations Act and serves it on the Local you should immediately forward it to the Grievance Department at Head Office or give it to your Staff Representative. There is a short time frame to respond and it will be handled by staff or assigned to outside counsel.

When you file a grievance personally, or act as a steward assisting another member in handling their grievance you will be facing the boss. Avoid threats, insults, or unreasonable statements, but be strong and determined. Make it clear you won't compromise member's rights.

10 Grievance Presentation Tips:

1. Move quickly. An immediate answer is not always possible. Supervisors may need to consider an issue or check with superiors. Is a delay justified, or just a stall? Be reasonable but the keep the pressure on and obey the time limits.
2. Be clear, polite and firm. Tell management you will pursue the case to a settlement. Supervisors don't like to expose their labour relations problems to higher-ups and may well settle.
3. Know when to listen and when to talk. If you listen well, you gain valuable information – and the right to demand that management hear you without interruption when it's your turn.
4. Know your facts – be confident. Facts determine the outcome of a grievance. Present your facts firmly and politely, be accurate and don't exaggerate. Be positive and confident.
5. Anticipate the Employer's position and objections. Think about how management will respond and how to deal with their arguments. Ask why the grievance happened and listen to the answer. Keep your focus. Let supervisors talk themselves out, then bring them back to the main point.
6. Control the discussion. Keep to your best arguments. Ask management questions, ask them to justify themselves. Object if you get evasive answers.
7. Maintain a united position. Be sure the steward and grievor agree on the issues and the facts. Never argue among yourselves in front of management. Ask for a brief recess if you need to caucus to sort things out.
8. Keep in touch. The grievor and steward should communicate often, and speak to the staff representative if they need help.
9. Settle when possible. Solving a problem locally, by mutual agreement, is best. This way both sides "own the solution" rather than having it imposed from outside. It builds respect and co-operation between the Union and Management.
10. Keep good records. When you meet with Management take notes. If a settlement is reached it should be put in writing and signed.

Legislation

The second main source of your legal rights is legislation. For workplace issues, the key statutes are the Occupation Health and Safety Act, the Ontario Human Rights Code, the Employment Standards Act and the Ontario Labour Relations Act.

If you have a Collective Agreement in place the general rule is that you can (and must) enforce your rights under these laws through your grievance procedure. In particular the Employment Standards Board and Ontario Human Rights Commission will refuse to handle direct complaints from an employee who is covered by a Collective Agreement, and will direct them to file a grievance instead.

The Employment Standards Act – sets the basic minimum standards for working conditions for most employees in Ontario, such as hours of work, overtime, statutory holidays, and severance pay. Some parts of the Act do not apply to Crown Employees. Where the Collective Agreement contains a greater benefit than the Act, follow the Agreement.

Ontario Human Rights Code – “Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or handicap.” Guarantees freedom from discrimination, sexual harassment, and the duty to accommodate.

Ontario Health and Safety Act – Sets out the parties obligations to create and maintain a healthy workplace, including health and safety committees and the right to refuse unsafe work. Enforced through the Ministry of Labour and Ontario Labour Relations Board. There is an excellent OPSEU booklet called “A Worker’s guide to the Occupational Health and Safety Act.”

Ontario Labour Relations Act – Governs the ways in which Unions are certified, contracts are bargained, unfair labour practices, and the Union’s duty to represent its members in a way that is not “arbitrary, discriminatory or in bad faith.” If you work in the OPS, the Crown Employees Collective Bargaining Act (CECBA) incorporates the majority of the OLRA.

Knowledge is Power

Here are some key resources for you to keep yourself informed about your rights and how to enforce them.

1. Collective Agreement – this is your deal with the employer, your contract. Always have a copy and refer to it when you have questions.
2. OPSEU Website – visit it often for general information, legal updates, and useful links to other websites. The home page contains the latest updates on Union news and campaigns. Select “For Members” on the bar at the top and then “Tools & Resources” and see a large collection of updates on important legal developments.

The grievance database on the website contains GSB and CAAT decisions, which you can search by keyword. Instructions and helpful hints are found on the site.

Use the links to visit other sites such as the Ontario Human Rights Commission where you can see their latest policies on accommodating people with disabilities.

3. Legal research – always look first to previous cases under your own Collective Agreement (see database, above). If there is not a decision on point, the best general resource is the text and case reporting system published by Brown and Beatty. Each OPSEU Regional office has a paper copy of this key book, and an online searchable version called the Westlaw. Both contain discussions of general principles such as “progressive discipline” and guide you to specific decisions on point.
4. Educationals – live and learn. Take as many courses as you can.