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Introduce your Partner

Interview your partner so you can introduce her/him to the rest of us. Use these questions to guide you:

1. **Your partner's name and an adjective** that begins with the first letter of their given name that (for her/him) describes an effective steward. For example, Listening Lynn, or Justice Juan or Fair Fayruz.
2. **Their unit/local's name** and something their unit/local has done that they are proud of.
3. **Two words that describe their experience with grievances.**
4. Their **top learning goal** for this course

Proposed Participation Guidelines

- Cell phones on vibrate or off
- Each of us self-monitors how much air time we're taking up
- Start and end at agreed-to times
- Avoid side conversations....it takes 2 to talk
- No one is forced to speak, but opportunity is provided
- Respect confidentiality for what is shared in the room – you can tell your own story, but you don't have the right to tell someone else's
- Listen to each other with respect
- Limit interruptions
- Silence can be healthy
- Other?

What is a Grievance?

Part 1: What is a grievance? How would you distinguish a grievance from any other workplace complaint?

Part 2: Questions for a quick discussion at your table:

1. What “related laws” might an employer violate that could result in a grievance
2. What if the employer did something that upset members, but the contract language referring to the employer’s actions is weak? Could it be a grievance?
3. Can a member grieve the actions of another member? Explain.
4. What might an employer grieve against a union?

Create a map of the Grievance Process Task Sheet

1. Steps in the Grievance Process

Each of the two groups has been given a set of cards – out of order – of the Steps to the Grievance Process.

Your task is to post them on the wall, in a vertical line – 1st step at the top, last step at the bottom – in the correct order.

The first team to complete the task with cards in the correct order, wins a great deal of applause.

Your cards will look something like this when you're done:

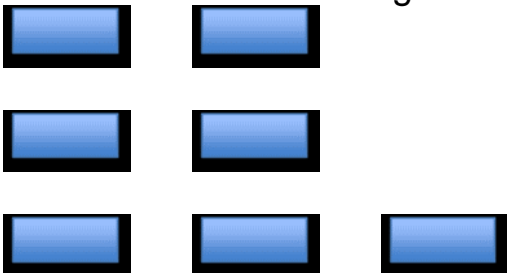


2. Steward Actions in the Grievance Process

Your second set of cards represents actions that you as a steward would take at each step of the way. These cards, too, are out of order.

Post these cards beside the “Steps” cards you have already posted. In a couple of places, you may have a couple of steward action cards for one step.

Your cards will look something like this:



And so on.....

Meeting with the Employer: Accommodation issues

Sonja is a social worker for the local CAS. About 80% of her duties involve visiting clients at a wheelchair accessible school.

Recently Sonja was in a car accident which resulted in the loss of her left leg. She is now fit to return to work. Her specialist after reviewing her job description has determined that she is capable of performing her pre-injury job with necessary physical modifications to the workplace.

Sonja wants to continue with her previous job. The Employer has refused to pay for the necessary physical alterations to her vehicle so she can drive from her wheelchair.

They say that they will purchase her a higher desk to fit her wheelchair and install grab bars in the washroom. They are not prepared to finance the modifications to her car. Since they pay mileage, they believe Sonja must finance the modifications out of the mileage payments. Meanwhile they place Sonja in a boring desk job with no client contact.

STATEMENT OF GRIEVANCE

I grieve that the employer failed in its duty to properly accommodate me, and in so doing has violated specifically, but not limited to article ____ of the collective agreement, and the Ontario Human Rights Code.

SETTLEMENT DESIRED

1. The employer pays for the necessary alterations to my car so that I can drive from my wheelchair;
2. The employer reinstates me in my social work position, the duties of which I can perform with the requisite alterations to my car.
3. I am given full redress.

In your group:

1. **Divide your group in half** – ½ to take the employer side, ½ to take the union side. Give your members roles – e.g. the grievor, the steward, the supervisor, the manager of H.R.
2. **Prepare separately**, for the 1st step meeting you will have. The union side should complete a FAR Form as part of its preparation.
(15 minutes to prepare your arguments and tactics for the meeting)
3. **Each group will stage their step 1 meeting to the full class** for discussion afterwards.

Meeting with the Employer: Needles and Lancets

Robin and Adam are Technologists working in a Private Medical Laboratory. The Provincial Government has recently passed legislation dealing with needle stick hazards.

The new law has a phase in period and private labs are not yet covered by the safe needle portion of the law. Lancets for taking finger pricks are also not covered by the legislation.

Their employer refuses to get safety needles and lancets into the lab. Both Robin and Adam have been picked in the recent past and had to suffer tremendous strain until test results came back. They want the union to make the Employer get safe sharps NOW.

STATEMENT OF GRIEVANCE

I grieve that the employer has failed to take proper and appropriate measures for my health and safety which is a violation of specifically, but not limited to Article ____ of the collective agreement, as well as the Occupational Health and Safety Act and any other relevant legislation.

SETTLEMENT DESIRED

1. The employer immediately stocks the lab with safety needles and lancets, and removes the old needle sticks.
2. The employer restores all sick time taken for blood tests and other effects of workplace injuries;
3. The employer pays for pain and stress experienced in waiting for test results after workplace injuries caused by the lack of safe equipment
4. I be given full redress

In your group:

1. **Divide your group in half** – ½ to take the employer side, ½ to take the union side. Give your members roles – e.g. the grievor, the steward, the supervisor, the manager of H.R.
2. **Prepare separately**, for the 1st step meeting you will have. The union side should complete a FAR Form as part of its preparation.
(15minutes to prepare your arguments and tactics for the meeting)
3. **Each group will stage their step 1 meeting to the full class** for discussion afterwards.

Meeting with the Employer: After Hours

Justin has worked for the LCBO for fifteen years and has a clean record. Marissa has worked for the LCBO for seven years and the only thing on her file is a note that she was fifteen minutes late for her shift three years ago.

Friday night the store manager saw them parked in the LCBO lot after hours and they were necking. Monday morning they were called into the office and given a two week suspension without pay and a last chance warning.

STATEMENT OF GRIEVANCE

I grieve that I have been unjustly disciplined.

SETTLEMENT DESIRED

1. The suspension without pay is immediately lifted;
2. I am awarded all pay, benefits and credits lost through this unjust suspension.
3. My record is restored and the letter of discipline removed from my file
4. I am given full redress

In your group:

1. **Divide your group in half** – ½ to take the employer side, ½ to take the union side. Give your members roles – e.g. the grievor, the steward, the supervisor, the manager of H.R.
2. **Prepare separately**, for the 1st step meeting you will have. The union side should complete a FAR Form as part of its preparation.
(15 minutes to prepare your arguments and tactics for the meeting)
3. **Each group will stage their step 1 meeting to the full class** for discussion afterwards.

Meeting with the Employer: Compassionate Leave

David Whitecloud works for MPAC (Municipal Property Assessment Corporation). He has asked for an extra day's leave of absence with pay to attend his uncle's funeral. He needs the extra day because of the distance he has to travel to attend the funeral.

The manager denies the extra leave with pay. He tells David that MPAC only grants such leave if the deceased is the parent or child of the employee.

STATEMENT OF GRIEVANCE

I grieve that the employer has unduly denied my request for a compassionate leave of absence with pay to attend my uncle's funeral, which is a violation of, specifically but not limited to Article ___ of the collective agreement.

SETTLEMENT DESIRED

1. The employer grants me the extra day of leave to attend my uncle's funeral.
2. I am given full redress.

In your group:

1. **Divide your group in half** – ½ to take the employer side, ½ to take the union side. Give your members roles – e.g. the grievor, the steward, the supervisor, the manager of H.R.
2. **Prepare separately**, for the 1st step meeting you will have. The union side should complete a FAR Form as part of its preparation.
(15 minutes to prepare your arguments and tactics for the meeting)
3. **Each group will stage their step 1 meeting to the full class** for discussion afterwards.

Meeting with the Employer: Quarrels at Work

Cheri and Allen are always at odds at work and are constantly arguing and reporting the other to the employer for frivolous shortcomings.

Management has ordered the pair to participate in an intervention by a behavior specialist. Both want to grieve.

STATEMENT OF GRIEVANCE

I grieve that the employer has failed to provide me with a healthy work environment safe from harassment and bullying which is a violation of specifically but not limited to Article ___ of the collective agreement, and of the Occupational Health and Safety Act and other relevant legislation.

SETTLEMENT DESIRED

1. The employer ceases and desists
2. The employer creates a healthy and safe work environment for me
3. All management is trained in conflict resolution and the Amendment to the Occupational Health and Safety Act
4. I am awarded damages for undue stress caused by the employer's negligence
5. I am compensated for any and all lost wages, benefits and credits
6. I am given full redress.

In your group:

1. **Divide your group in half** – ½ to take the employer side, ½ to take the union side. Give your members roles – e.g. the grievor, the steward, the supervisor, the manager of H.R.
2. **Prepare separately**, for the 1st step meeting you will have. The union side should complete a FAR Form as part of its preparation.

(15 minutes to prepare your arguments and tactics for the meeting)
3. **Each group will stage their step 1 meeting to the full class** for discussion afterwards

Grievance Glossary

Arbitration – the determination of a grievance by a neutral party – an arbitrator - through a hearing. At the end of the process, the arbitrator issues a final and binding legal decision.

Award – the final decision of an arbitrator, in labour-management arbitration. The award is binding on both parties to the dispute.

Bargaining Unit – A group of employees covered by the collective agreement. The bargaining unit is defined by agreement or certification when the union gains the right to bargain for this group of employees.

Burden of Proof – Which party bears the onus of proving their case. In most cases the union bears the onus; however, in dismissal/discipline grievances and some others, the employer bears the burden of proving their actions were appropriate. The party with the burden must present their case first at arbitration.

Collective Agreement - a legal book of rules negotiated by the employer and the union, which specifies our rights as workers, and the limits on the employer's discretion & power in the workplace. If we don't write in language covering wages, vacation, job postings, seniority, or protection from unjust discipline, then we have no defined processes or rights on these issues, except minimum standards required by the *Ontario Employment Standards Act*.

Labour laws say very little about what must be in a collective agreement. It's a very short list:

- **a recognition clause** (that the union is the only bargaining agent for the workers);
- **a term of the agreement** (examples: one, two, three years);
- **a grievance and arbitration procedure** (so that there will be a way to settle disagreements over the interpretation of the contract without a strike or work stoppage while the contract is in force; this is a requirement of the Labour Relations Act);
- and **a dues check-off** (an automatic payment of union dues by all workers covered by the collective agreement - and considered an important part of union security).

A collective agreement is a legally-binding agreement. If either the employer or the union violates the agreement, there is a grievance and arbitration process to use to settle the dispute.

Collective Bargaining – is the process of union and employer negotiating a collective agreement to determine wages, hours of work and other conditions of

employment. The result is a written contract that covers all employees in the bargaining unit for a specified period of time.

Duty of Fair Representation (DFR) – is outlined in the *Ontario Labour Relations Act* as the obligation to represent all bargaining unit members in a manner that is not “arbitrary, discriminatory or in bad faith.” Section c1, Schedule A, s. 74 of the Act reads, “A trade union or council of trade unions, so long as it continues to be entitled to represent employees in 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.”

Failure to represent - Charge that a union has violated a member’s right to fair representation with the employer. When a unionized employee alleges that he or she has been treated by their union in an arbitrary, discriminatory or bad faith matter, they may file a complaint with the Ontario Labour Relations Board.

Employment Standards Act Complaint - In Ontario the Ministry of Labour enforces the Employment Standards Act. Employees are free to file complaints for any **alleged violation** of the Act, including failure to pay termination and severance pay, reinstatement after a leave of absence, overtime pay, vacation pay, hours of work and eating periods, payment of wages, reprisals and public holidays. Unionized employees will usually have greater rights in their collective agreements and will deal with these issues through the grievance procedure. Where a complaint is filed, a Ministry representative will investigate the matter and may request that the parties involved attend a mini-hearing known as a fact finding meeting. At this meeting, a decision may be rendered. If one of the litigants disagrees with the decision of the Ministry representative, they may file an appeal to the Ministry of Labour, where they have the right to a full hearing before a tribunal. Some employees, including a number of OPSEU members, are excluded from many sections of the Act.

Grievance – a written complaint that either management or the union (but usually management) has violated the collective agreement or a related piece of legislation. It includes a statement of the remedy being sought.

The method for dealing with grievances is usually detailed in the collective agreement. If the grievance cannot be settled at the workplace level, it can be sent to arbitration for a ruling.

- **Individual grievance** – a single grievance filed and signed by one employee who is a member of the bargaining unit, who is affected personally and directly by the employer’s actions

- **Group grievance** – a single grievance filed and signed by a group of members together who are all affected personally and directly by the Employer's actions.
- **Union or Policy Grievance** – a grievance filed not by an individual member but by the appropriate union official on behalf of the union as a whole. The union would file a union or policy grievance if the employer's violation affected the union's ability to interpret the collective agreement, or if the violation affected several members and might affect more in the future. For union grievances in the Ontario Public Service, the signature of the president of OPSEU is required.
- **Employer grievance** – a grievance filed by the employer alleging that the union has violated the collective agreement.

Grievance Settlement Board (GSB) - arbitration board which hears grievances from the Ontario Public Service sector of OPSEU

Held in abeyance – temporarily held aside or suspended

Human Rights Complaint – is a complaint of workplace discrimination under one of the 14 prohibited grounds of the Ontario Human Rights Code (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability). Grievances alleging discrimination that is not on one of these grounds are not human rights complaints. The Human Rights Tribunal of Ontario deals with all claims filed under the Ontario Human Rights Code. Collective agreements often include human rights prohibitions and where they do not, they are deemed to. This means that human rights complaints may be filed as grievances.

Labour Management Committee (LMC) – a committee having representatives from both management and union which meets regularly to resolve workplace issues. These issues might be ones where collective agreement language is incomplete such as training, work reorganization, harassment. Or they might involve disputed interpretations of contract language that are causing repeated workplace tensions. In the Ontario Public Service, labour/management committees at the local level are called LERCs (The OPSEU collective agreement for the OPS officially refers to the LERCs as “Local Employee Relations Committees.” OPSEU prefers “Local Enforcement and Renewal Committees.” This term is more descriptive of the Committees’ purpose.) In the Colleges, these committees are called Union College Committees.

Management Rights – the rights of management to run the operations of the workplace that are not subject to collective bargaining. Such rights may include

areas of hiring, location of offices, setting of policy and so on. From the union's perspective, contract language tries to set limits on how management exercises these rights. Occasionally, a grievance will reference the management rights clause as not having been "reasonably" carried out. "Reasonable" in this context has a specific meaning at arbitration and the employer is not required to act "reasonably" unless the collective agreement says so.

Mediation – a neutral party, usually the arbitrator acting as a mediator, facilitates a settlement discussion between the Employer and the Union in an attempt to resolve a grievance prior to arbitration. If successful, the process will result in a settlement that is unlike an award. It has no application to any situation outside the grievance it settles. This is what the phrase "without precedent and prejudice" means.

Mitigating Factors – These are factors which may have affected the alleged actions of the employee. They can lessen or excuse the discipline. Each case will be different. Use mitigating factors at the earliest possible time during the process. The employer needs to be aware of and consider these facts. Before raising mitigating factors make sure to consult with all parties including your staff representative or grievance officer so that you do not disclose information that could be damaging rather than helpful. Mitigating factors not mentioned immediately can carry less weight if revealed later at arbitration.

Occupational Health and Safety Complaint - Under section 25 of the *Occupational Health and Safety Act*, an employee may file a complaint against an employer or union if the employer or union has taken, or threatens to take, a retributive action against the employee because the employee complied with the Act, the regulations or an order or because the employee sought the enforcement of the Act, the regulations or an order

Prima facie – on the face of it. A *prima facie* case means a description of the facts before they are proven which show that the grievance is a proper one which can be arbitrated. An employer sometimes raises a preliminary objection, arguing that the union has no *prima facie* case, on the grounds that even if what the union alleges is true, there is no breach of the collective agreement. The union must then show that the facts, still unproven, if assumed to be true just for the purposes of this argument, do reveal a breach.

Seniority – the term used to designate an employee's status relative to other employees. It's a key factor in determining the order of lay-off, promotion, recall, transfer and such conditions of work as vacations, etc. Seniority is usually based primarily on length of service that is counted with the employer.

Sine die – an adjournment without another date set.

Standing – a member has standing to file a grievance only on issues which directly and personally relate to them.

Timeliness – the question of whether a grievance has been processed within the required time limits prescribed under the particular Collective Agreement. Failure to comply with the prescribed timelines in a collective agreement can result in the grievance being dismissed by the arbitrator on a preliminary basis. Compliance with timelines should not be taken lightly.

Unfair Labour Practice Charge - a charge that either the union or the employer has infringed an employee's rights by violating Ontario labour laws. The charge is assessed in a hearing before a labour relations board.

Union Security Clauses - provisions in the collective agreement which support the union's ability to do its job. Examples of such clauses would be paid time to orient new employees to the union; paid time off for union business; paid time for joint committee and caucus work, and so on.

Workplace Safety & Insurance (WSI) – In Ontario, this is an insurance plan for workers who are temporarily or permanently unable to work due to an injury or hazard in the workplace. Employers pay into a fund administered by the Workplace Safety and Insurance Board (WSIB) according to Ontario's Workplace Safety and Insurance Act. The Workplace Safety and Insurance Board has an appeals branch where complaints about decisions may be heard. If you disagree with decisions here, you can file an appeal to the Workplace Safety and Insurance Appeals Tribunal (WSIAT)

Working Conditions – conditions which determine workers' job environments such as hours of work, paid and unpaid leave, shift scheduling, discipline and dismissal procedures, and workload and so on.