

OPSEU/SEFPO Arbitrations Unit

Consider each of these elements to make sure you are helping the Grievor to build the best case to enforce their rights with the Employer and get what they need from the process.

Explore all of your tools

Have you considered ways to resolve the problem other than with a grievance? Direct and escalating communication with management, joint committees, campaigns, or other organizing tools might be faster and more empowering. You can use them instead of or alongside the grievance process. Note down your efforts and any response.

If the member(s) choose to grieve here are **TEN KEY ELEMENTS** for building a strong case at the Local level and to pass along if the case proceeds to arbitration.

1. Record Basic Information

Keep copies of the grievance form, Employer response, all related emails, and documents. Make sure you have the Grievor's contact information outside of work as well as the contact information for the important witnesses.

2. Describe and Define the Issue

What is the problem for the worker(s)? What happened, and what practical resolution is needed? If the issue is discrimination or harassment specify on what ground (i.e. race, sex, disability, etc.) and turn your mind to the events that demonstrate the discrimination or harassment.

3. Make the Employer responsible

Have you or the Grievor directly raised the issue with the Employer and asked them to resolve it? Do not assume the Employer knows what is wrong or what is needed by the Grievor. If the problem is with a coworker or a third party (students / clients / patients), has it been raised with the Employer to make them responsible for managing the workplace and their obligations under the Collective Agreement?

4. Collective Agreement

How have the Employer's actions violated the Collective Agreement or a related law? Can you name an article(s) specifically? Take an honest review of all the relevant parts of the Collective Agreement and how the Employer's actions breached the rights of the worker(s).

5. Facts

What are the key facts? Does the worker have detailed notes about what happened to help them remember throughout the process? Notes taken as close to the time of key events

("contemporaneous notes") are best and should be preserved without alteration. They may even serve as evidence later if they have not been marked, changed or added to.

Subsequent notes made throughout the grievance process as facts are investigated, are important to help put the case together for mediation or arbitration. Include the Who / What / Where / Why / When / How in as much detail as possible. For discipline / discharge include all previous discipline including warnings.

6. Documents

Have you collected and preserved all key documents? Memos, policies, records, emails, reports, and notes are all documents that are potentially relevant and important. However so are text and electronic messages, photos, video, and recordings. (Please note that we should not advise anyone to surreptitiously record anyone in their workplace). Keep clean copies without marking, editing, or altering them. If you want to write notes on a document make a copy to use for that purpose and keep the original version clean for evidence. Make a note of any additional documents you know exist but don't currently have; we can pursue them through production if they are legally relevant to the case. Include any relevant Employer policies or directions.

7. Employer Response

What is the Employer's position on the issue, do they dispute facts or the legal argument you are relying on or both? Describe.

8. Follow the Steps

Review all the required steps in the Collective Agreement to process the grievance. Most of the time these steps are mandatory; skipping steps or missing timelines or other requirements gives the Employer a chance to avoid the real issue and have a grievance dismissed. Most importantly make sure the grievance is referred to arbitration on time and in the right way.

9. Providing Documents to the Union's Representative

It is best to gather electronic copies of documents that you can email to the representative on the case, whether it is a Staff Representative, Grievance Officer or, in some cases, a lawyer. That way you keep a copy of everything, and they can be easily shared and used for preparation, mediation, and arbitration. If you have paper originals, scan them in to share, but keep the originals aside in a safe folder.

10. Feedback and Patterns

If you are seeing a recurring pattern of behaviour by the Employer that breaches the Collective Agreement, make sure to discuss that bigger picture and strategize with your Staff Representative. If a case concerns a new or concerning interpretation of contract language or illustrates a gap or new dispute in enforcing the contract, make sure to share that information with your Staff Representative or Negotiator.