



## GRIEVANCES

The grievance is one of the most effective tools available to workers to protect their rights. Basically, a grievance is a written complaint against an action or lack of action, of an employer in matters relating to the terms and conditions of employment. Your legal right to file a grievance is established under the *Public Service Labour Relations Act (PSLRA)* and the specific procedure is outlined in your collective agreement

### 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 your right, and the Union needs its members to exercise that right. It is in the best interest of members to file grievances within the timelines provided in your collective agreement. We encourage informal discussion with management to resolve issues. Where issues cannot be resolved promptly however, a grievance must be filed. It is only when a grievance is filed that a formal defence of rights under the collective agreement is activated and the employer is officially put on notice about a particular issue.

#### Timeliness

Grievances can be lost by not following the correct procedure and by not observing time limitations. Filing a grievance within the prescribed timelines is critical. **Too many grievances are lost because time limits are exceeded.**

- An employee may file a grievance:
  - ◆ For members under Treasury Board **not later than the twenty-fifth (25<sup>th</sup>) working day** after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to the grievance.

- ◆ For members at CFIA not later than the thirty-fifth (35<sup>th</sup>) calendar day after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to the grievance.
- The transmittal of the grievance to the next level is done **ten (10) working** days after the grievor received a response from management.

Timelines can be extended by mutual agreement. We always recommend you establish an extension of the prescribed timelines in writing and retain the agreement on file.

- Consult the relevant article of your collective agreement for complete information on the grievance procedure

## **The Grievance Procedure**

Always consult your local representative when you wish to file a grievance. There are three-steps in the grievance procedure. A requirement of the collective agreement is that the employer shall post a copy of the list of managers who are designated to hear the grievance at each level of the grievance procedure.

### **Processing the Grievance - Writing the Grievance**

#### **Details of Grievance:**

**The Details of Grievance should be short, simple and to the point.**

Do not include arguments.

Don't limit yourself by citing specific clauses of the collective agreement. Reference to the contract should be general so as not to restrict the adjudicator to the application or interpretation of a single article or clause. If you are not sure, indicate that you rely on any and all relevant provisions of the collective agreement.

#### **Corrective Action Requested:**

Should state precisely what the grievor wants as corrective action. Be specific and comprehensive in your list of corrective action requested. Make sure to include all redress measures that are appropriate and desired with a statement that asks the grievor to be made whole. To be made whole covers all the parts of the remedy that should exist, without forcing the union to try to list them all. This could include wages, benefits, damages.

Once the grievance form is completed, the grievance is filed with the grievor's immediate supervisor or local management representative. A supervisor, even if he is one of our members can sign a grievance form. When signing, the supervisor accepts the grievance form on behalf of management. They may or may not be involved in the grievance process. The grievance and transmittal form are not valid until all parties (grievor, union representative and employer) have signed it. The employer will provide a signed copy of the grievance form, stating the date on which the grievance was received. It is the employer's responsibility to forward the grievance to Human Resources. It is the responsibility of the local to provide representation at the first and second levels of the grievance process and to transmit the grievance within the prescribed timelines, including the 3<sup>rd</sup> or final level. The Local Representative then forwards the grievance, and all related materials, to the Agriculture Union National Office. The local representative is responsible for ensuring that the grievance form, transmittal slips, the responses from management, as well as background information pertaining to the grievance are forwarded to the National Office. The grievor should be aware of timelines and remain in contact with the union representative throughout the grievance process.

Management's reply to the grievance will be in writing and sent to both the grievor and the union representative at each level of the grievance process.

## **Transmittal of the Grievance**

Transmit the grievance to the next level in the grievance process:

- when management's decision is not satisfactory to the grievor, or
- when a reply has not been received within the time limits prescribed in the collective agreement, and there has been no mutually agreed upon time extensions.

The grievance is transmitted to the immediate supervisor or appropriate employer's representative. When a grievance is transmitted to the final level, **the local representative is responsible for ensuring that the grievance form, transmittal slips, the responses from management, as well as background information pertaining to the grievance are forwarded to the National Office.** Officers in the National Office have the responsibility to deal with grievances at the final level of the grievance procedure.

Make sure the transmittal form is signed by all parties (grievor, union representative and employer).

## **Common Grievances**

1. **Statement of duties /job content grievances (including “effective date”)**
2. **Classification grievances**
3. **Acting Pay grievances**
4. **Disciplinary grievances**
5. **Termination or demotion grievances**
6. **Rejection on probation grievances**
7. **Duty to accommodate grievances**

## **1. Statement of duties/job content grievances (including ‘effective date’)**

### ***What is the difference between a statement of duties and classification grievance?***

If a member feels that their job is not appropriately classified, they should first attempt to obtain a complete and accurate work description (statement of duties). That is because having any missing duties added to the work description, 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.

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.

### ***What if I don’t have a copy of my Statement of Duties and Responsibilities?***

The collective agreement provides you with two primary rights: First, upon request, there is an entitlement to receive the statement of duties and responsibilities and, where applicable, the point rating allotted by factor to the position encumbered and the organizational chart showing where the position fits in the organization. Second, that the statement of duties provided must be both complete and current. Employees are also entitled to the organizational chart depicting the position’s place in the organization.

If you don’t have a Statement of Duties and Responsibilities, ask for it and obtain one. If your employer does not provide you with this Statement in accordance with the terms of the collective agreement, then you should grieve the failure to do so.

Once you have the Statement of Duties and Responsibilities ensure it is complete and current. Where a member contends that the Statement of Duties and Responsibilities provided by management is neither complete nor current, a grievance under the Statement of Duties article of the applicable collective agreement is the appropriate first step to take.

### 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.

#### Documentation

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.

## 2. Classification Grievances

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 description process, the trigger for a grievance is the receipt of the written notification of a classification decision. However, if job description 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.

**To date, classification grievances cannot proceed to adjudication.** The results of the grievance hearing are final and binding. **YOU HAVE 35 CALENDAR DAYS, FROM**

## THE DATE YOU RECEIVED A NEW JOB DESCRIPTION, TO FILE A CLASSIFICATION GRIEVANCE.

Before proceeding with a classification grievance, it is necessary to ensure that the work description accurately reflects what you are doing. Sometimes, you may be performing duties not contained or not described adequately in the work description. If it is these duties that make you think that the position is underclassified, and if management refuses to provide a current, up to date work description on request, then a "job content" grievance should be filed before filing the classification grievance. (See above)

### 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.*

The grievance is sent directly to the Agriculture Union, which forwards it to the Representation Section of the PSAC. When a classification grievance is filed, you need to send to the National Office the following documentation:

- grievance form signed by all parties (grievor, union and management);
- a signed copy of the current work description (signed by management);
- a point rating by element of your job;
- a copy of the current organization chart that includes the position of the grievor; and,
- an explanation on why the classification is not accurate.

Classification grievances, while on the surface seemingly straightforward, have a number of pitfalls that must be avoided:

**Classification grievances are NOT adjudicable.** The Public Service Labour Relations Act protects classification decisions as a management right which is not subject to the scrutiny of a third party. Similarly, if "appointment" to the higher classification at an earlier date is requested, the adjudicator will decline jurisdiction.

**Classification grievances deal only with a classification decision** – that is, the assignment of points to a statement of duties. It does not deal with the contents of the statement of duties. If you are also filing a work description grievance regarding your statement of duties and responsibilities, your classification grievance should be held in abeyance until the outcome of the statement of duties grievance is known.

**There is no retroactivity beyond 35 days prior to filing the Grievance.** If a classification decision is issued you have 35 days to file a grievance against that decision. If the grievance is to be filed in the event of a statement of duties change and subsequent classification decision, this classification grievance will protect the right to have the change in classification made retroactive to the date of the filing of the grievance.

After a review of the file, the PSAC may recommend that a classification grievance be not submitted to the Grievance Advisory Board, or may request that a classification grievance be withdrawn. In such an event, it must be noted that no representation will be provided by the PSAC. Should the member still wish to pursue the grievance, the member will have to provide his/her own resources through written and/or formal representation to the Grievance Advisory Board.

### **3. Acting Pay Grievance**

Disagreements over pay – either substantive or acting – are a common issue giving rise to grievances. With substantive pay issues, there is a close link to work description and/or classification matters. Therefore, it is strongly recommended that readers also refer to the additional *Info Key* information on these topics mentioned above.

With regard to acting pay issues, most collective agreements contain an article similar to the following:

*Pay Administration*

*“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 the period specified in (b) below, 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”.*

Filing a grievance correctly is an important step in resolving any issue in a manner that is acceptable to you. When grieving under this article, members must meet three criteria:

- The employee must be required by the employer to perform the duties of the higher position;
- They must substantially perform the duties of the higher position; and
- They must meet the qualifying period for acting pay as outlined in the relative collective agreement.

The member must provide documentation and proof that he/she has met the three criteria outlined above as well as examples of the work performed on behalf of the employer.

As qualifying periods for acting pay vary from collective agreement to collective agreements, check for qualifying periods of acting pay for the member grieving.

Grievances under the Acting Pay provisions of the collective agreement may proceed to Adjudication before the Public Service Labour Relations Board (PSLRB). The Representation Section of the Public Service Alliance of Canada, which conducts representation at Adjudication, must approve the grievance for referral to the PSLRB.

Keep the wording of the grievance simple. Do not include any arguments.

### **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).*

## **4. Disciplinary Grievances**

Keep the wording of the grievance simple. Do not include any arguments.

### **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.*

## **5. Termination / Demotion**

Keep the wording of the grievance simple. Do not include any arguments.

Termination and demotion grievances are sent directly to the final level.

### **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 at 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.*

When the employer or adjudicator grants the grievance, the grievor should check that all documentation relating to the grievance has been removed from his/her personal file.

## **6. Rejection on probation**

Keep the wording of the grievance simple. Do not include any arguments.

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

### **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 at 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.*

## **7. Duty to Accommodate**

Keep the wording of the grievance simple. Do not include any arguments.

### **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.*

For this type of grievance, the corrective action will depend on the circumstances surrounding the grievance. The following could be examples of corrective action: sick leave to be reinstated, recovering of salary lost, to be reinstated in former group and classification level, etc. The case will dictate what corrective action to request.

## Adjudication

Adjudication is the final stage of resolution (where a grievance is adjudicable) and consists of a hearing before an impartial third party. The Adjudicator hears the case and writes the decision which is binding on all parties.

The *Public Service Labour Relations Act (PSLRA)* outlines clearly those cases that can be heard before the Public Service Labour Relations Board (PSLRB). Sub-section 209 (1) of the *PSLAR* provides:

**209.** (1) *An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*

- (a) *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*
- (b) *a disciplinary action resulting in termination, demotion, suspension or financial penalty;*
- (c) *in the case of an employee in the core public administration,*
  - (i) *demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or*
  - (ii) *deployment under the Public Service Employment Act without the employee's consent where consent is required; or*
- (d) *in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.*

Where grievances do not fall within the ambit of Sub-section 209 (1) of the *PSLRA*, an adjudicator must decline jurisdiction.

(December 2011)

## Tips when handling a grievance:

- **Timeliness - Timeliness - Timeliness**
  - ❖ Filing of grievances and/or complaints
  - ❖ Transmittal to next level
  
- **In your role as a union representative, you are on equal footing with the employer. Act respectfully and be assertive.**
  
- When presenting a grievance, **be prepared**: use the 6 “W’s” to gather all the essential facts: Who, What, When, Where, Why, Want; have a copy of the pertinent information (collective agreement, directive, emails, letters, etc). Use a Steward Factsheet. (See attached)
  
- Keep grievance wording clear and to the point. Present your arguments at the actual grievance consultation.
  
- Gather facts and specific information as early as possible in the process such as dates of events, and notes of conversations. The grievor should create a chronology of events as early in the process as possible and then to build on that chronology as the grievance proceeds. Any relevant documents should also be gathered and retained on the grievance file as early in the process as possible. Building a good grievance file helps to build a good case
  
- Do not create expectations. Members need to be aware up front of their chances for success. Explain to the grievor that a grievance is not always won, even when you think it looks like a “done deal”.
  
- When presenting your grievance in front of the employer, it is a consultation meeting - not a hearing. Do not be afraid to ask questions– view yourself as an information finder; for example:
  - ❖ Why did the employer make that decision?
  - ❖ The decision was based on what (interpretation of collective agreement and/or directive)?
  - ❖ Was an investigation conducted (ask for a copy). Who conducted the investigation? Who was interviewed?

- Send information to the National Office when the grievance is at the final level
  - ❖ Grievance (signed by all parties)
  - ❖ Transmittal forms (signed by all parties)
  - ❖ Response from the employer at all levels
  - ❖ Pertinent information in relation to the grievance
  
- Ensure the grievance file includes your arguments and discussion at each level of the grievance process. Include notes about the employer's comments and questions during the grievance consultation.
  
- When in doubt, ask for help.

*(February 2011)*