GRIEVANCE RECOURSE

Adjudication, Mediation and Expedited Adjudication are three ways in which grievances, which have exhausted the internal departmental grievance procedure, may be resolved under the *Public Service Labour Relations Act (PSLRA*).

Adjudication is a formal hearing before a neutral third party, where each side to the grievance can submit their arguments, examine witnesses and where a formal decision is rendered. The decision rendered by the third party — the adjudicator — is final and binding, unless overruled by either the Federal or Supreme Court of Canada following an appeal which alleged the adjudicator made an error in law in the decision.

Prior to any formal hearing, the parties may agree to the appointment of a mediator from the Public Service Labour Relations Board (PSLRB). The principal benefit to mediation is that it is a joint process whereby a mutually beneficial agreement can be reached. The mediator encourages each party to consider the interests of the other party, identifies the issues, explores and collaborates on possible bases for agreement. The mediator never imposes a decision.

Expedited adjudication is a process whereby an agreed Statement of Facts is prepared and presented to the Chairperson of the Public Service Labour Relations Board, who renders a decision. Unlike a formal decision rendered by an adjudicator, these decisions are not precedent-setting.

Adjudication:

The adjudication procedure is outlined in the collective agreement and in article 209 of the *Public Service Labour Relations Act*.

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:

- the interpretation or application in respect of a provision of a collective agreement or an arbitral award.

- a disciplinary action resulting in termination, demotion, suspension or financial penalty.

Before referring a grievance alleging violation of the collective agreement, an individual must obtain the approval of his or her bargaining agent to represent him or her in the adjudication proceedings.

Mediation:

Grievance Mediation is a process that allows the parties to resolve workplace disputes with the assistance of an impartial third party. The purpose of mediation is not to determine who is right or wrong, but rather to reach a mutually satisfactory resolution of the grievance at issue. It can arrive at creative solutions acceptable to both parties that are not always available through the formal adjudication process. Mediation is an informal process. As such, it can be used at any stage of the grievance process. There are no witnesses to be sworn in or formal evidence to be presented.

The mediator does not decide the outcome. The parties talk about the dispute. With the mediator's help, they seek a settlement both can accept and live with. There are no minutes taken of the proceedings or reports issued by the mediator. When a dispute is settled in mediation, the parties will normally sign a memorandum containing details of what has been agreed to.

The greatest advantage of mediation is that the parties can agree on the outcome of the grievance. The settlement meets their needs and interests. It is a mutually acceptable resolution to the conflict.

Unlike the formal adjudication procedure, mediation can address the issues and interests surrounding and underlying the matter in dispute. Problems can be looked at in a broader perspective than is possible at adjudication, where the emphasis is on the adjudication of rights and the answer to relatively narrow questions.

Mediation, to be effective, relies on the willingness of the parties to make an effort to resolve their dispute. As such, it is a voluntary process. Participants should approach a mediation session with open minds and be prepared to explore ways of settling the dispute. If one or both parties enter a mediation session with no intention of moving from a pre-set position, mediation will be a waste of everyone's time. If a party is unwilling to reconsider and modify its position in a dispute, it is preferable to proceed, directly to the formal grievance procedure.

Expedited Adjudication:

At the request of either party, a grievance that has been referred to adjudication may be dealt with through Expedited Adjudication with the consent of both parties.

An expedited hearing is a condensed, simplified and, thus, accelerated version of a normal hearing process. The process may or may not involve an agreed statement of facts and does not allow witnesses to testify. As a result, this type of hearing usually lasts less than one day. A decision is provided orally at the hearing by the adjudicator and confirmed in writing within five days of the hearing. The decision is final and binding on the parties but cannot be used as a precedent.

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