

BULLETIN

The grievance process: part 2

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This is part two in a series about the grievance and arbitration process. In my last article I discussed the steps to follow when an issue arises which concerns you in your workplace. I suggested that it would be advisable to have your steward present when you meet with your employer at step one to have initial discussions about your concern.

You should be aware that it is not necessary to have your steward present at this point. The collective agreement requires that the steward be involved at step two. Having your steward attend with you at step one is optional. If you feel that the matter can be ironed out between you and your supervisor, and do not wish to have your steward present at step one, you are free to have that meeting on your own. We do advise however that you at least discuss the matter with your steward before meeting with your supervisor.



What happens after I file a grievance? How long does the process take?



The first article, in the August issue, examined the collective agreement process which moves a grievance along to arbitration. We had mentioned section 104 of the Labour Code which is an expedited process requiring a hearing to be commenced within 28 days.

HSA tries to avoid section 104 as a means of getting to arbitration because it does not allow us to choose an arbitrator we prefer. We do use it, however, where we are not getting cooperation from the employer in moving an issue forward in a timely manner. On occasion employers will refuse to respond to grievances. Section 104 requires them to respond to the grievance.

Once an arbitrator has been agreed upon, a mutually convenient date is set. As the date for the hearing draws closer, we begin to prepare by interviewing witnesses, obtaining necessary documents from the employer and researching the law.

Hearings are held at venues chosen by the arbitrator. Arbitrations are "adversarial" in nature; the arbitrator hears only that evidence and arguments the parties present to him or her, although he or she may ask questions as the hearing moves along.

Typically, the union will be represented by one of the staff lawyers, with a Labour Relations Officer, steward and the grievor present. The employer may be represented by a labour relations consultant (HEABC or CSSEA) or lawyer and will have one or two employer representatives and the immediate supervisor at the hearing as well.

In cases where the employee has been terminated or disciplined, the employer has to present their case first. The "onus" is on the employer to show why the discipline should be upheld. Where the subject of the grievance is any other matter, the union will usually present first because we are alleging that the employer has done something improperly and the "onus" is on the union to show that we are right.

Each side calls witnesses who may include the grievor, colleagues, experts in the professional discipline of the grievor, medical experts etc.

It is essential that every element of the case be proved before the arbitrator. Remember that she/he does not know any of the parties to the dispute and must start off with a "clean slate." Anything we wish the arbitrator to accept as fact must be supported by the evidence.

Once the arbitrator has heard all of the evidence, the two sides present their legal argument. In some cases it may not be the facts that are in dispute, but only the law or the collective agreement as it applies to the facts. For example, what did the parties mean when they negotiated a specific term where it can have two different interpretations, or does human rights law apply to certain individuals in particular cases?

In other cases it is clear that both sides are telling a completely different story and the arbitrator must decide who is telling the truth. In these cases proven facts and the grievors credibility will be the key factors.

Once a hearing has concluded, an arbitrator will take time to consider the matter and write an award. It may be some months before we receive that decision. Where the award involves the application or interpretation of the collective agreement, we keep it on file for future reference and interpretation should the matter arise again.

Arbitrations are principally a matter of common sense. You know why you feel the employer is wrong and you go in there with all the necessary tools to prove it. If you are the grievor, you will have to give oral evidence and you will be cross-examined by the employers representative. The experience may sometimes be trying for the individual involved, but we do our best to make it as clear and expeditious a process as is possible under the circumstances.

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