

Representing Members 2: Processing Complaints and Grievances

Introduction

Shop Stewards are much more than ‘complaint officers’, but hearing, assessing, and processing complaints from the membership are core activities. A unionized workplace has a Collective Agreement (CA) defining the terms and conditions of employment and an established process for resolving conflicts once that agreement is made. Since individual employees suffer from a power imbalance favoring the employer, it is crucial to the functioning of the union that employees get support from an official representative of the union when they have questions and want to file a complaint about their working conditions. A Shop Steward functions as that representative, at least at the initial stages of the process. In this section we will start by considering what a grievance is and the sorts of complaints that can and cannot be grieved. Then we will work through the nuts and bolts of investigating, filing, and processing grievances.

Grievances: an Overview

A. What is a Grievance?

A grievance is a written complaint about an alleged violation of the employment conditions in a unionized workplace. In principle, a grievance could be filed by either of the parties involved (the union or the employer), but in practice it is almost always the union that files a grievance against the employer. Most often, a grievance is a complaint that some act or practice of the employer has violated the CA, but occasionally a grievance can also be filed about matters the CA does not specifically address. The grievance process is just the set of steps that need to be taken to formally present the complaint and find a fair resolution, along with deadlines for each step. It is important to note that while members might complain about the employer in all sorts of ways, not all complaints count as a grievance. A complaint

does not become a grievance until it is put in writing and formally presented, after a union representative endorses the grievance form by signing it.

The term 'grievance' has a negative stigma that needs to be addressed. Many members feel that filing a formal complaint against one's employer and calling it a 'grievance' is equivalent to bringing a lawsuit against your neighbour; they would rather just put up with the employer's practice than make things confrontational by involving the union and presenting a grievance. There is something right and something wrong about this attitude. On the one hand, a grievance is not the right tool for every complaint. Often an issue is based on a simple misunderstanding and can be resolved through an informal talk with a supervisor. In fact, most grievance procedures recognize this and either require or recommend an informal 'complaint' or 'pre-grievance meeting' before a formal grievance is filed. On the other hand, it is a mistake to assume that involving the union needs to make things confrontational. Filing a grievance is just a means of holding the employer to established timelines (so that the issue does not get swept under the rug) and gaining the support of the union to ensure that it is dealt with fairly. Furthermore, the initial stages(s) of the process are intended to enable joint problem-solving between you, the member, and the employer's representative. They do not involve arguments, threats, or negotiations. Finally, remember (and remind your members) that the grievance process is developed and agreed to by *both* parties to the CA; the employer has already established it as the proper method for resolving workplace conflicts.

Two guiding principles shape the grievance process, and it is helpful to keep these in mind before we look at the details. First, the process is progressive; it begins with a problem-solving meeting between those most immediately involved (usually the affected member with a Shop Steward and a supervisor or first level manager). This initial meeting should be held relatively quickly (within days or weeks of the complaint rather than months), and should be focused on finding a solution to the issue together. If a satisfactory solution is not found, the grievance escalates to second level involving a higher level of management (and sometimes escalates another time after that, involving a Director or Executive Officer, and a Union Advisor in place of a Shop Steward). The second principle is that there are backup resources when the employer and the union are not able to come to an agreement on their own. Some grievances go to mediation, where a neutral third party attempts to get both sides to compromise or agree on a solution. Others go to arbitration, where a third party hears both sides of the dispute and then renders a

legally binding decision. When the two principles work together, the majority of conflicts are resolved relatively quickly and efficiently (at the lower levels), and none are stalled indefinitely when agreement cannot be reached.

A. Ownership of the Grievance

A CA is a contract between the employer and the union (the collection of all bargaining unit employees) and NOT a contract between the employer and any individual employee. This means that when some part of the agreement is broken it is an offense against the entire union, even if it happens to affect only one employee. Grievances are normally 'owned' or 'carried' by the union rather than by the individual grievant.¹ In other words, individual employees don't file grievances; the union files a grievance on behalf of the individual and sometimes on behalf of a group of individuals or on its own behalf – these are known as *individual*, *group*, and *policy* grievances.

This distinction matters because the union needs to be convinced that a complaint has merit before filing it as a grievance. In some cases a member feels that s/he has been mistreated by the employer and wants to file a grievance, but the union is unable to endorse it, perhaps because the matter is plainly within a manager's rights, or because it concerns an issue that the CA simply doesn't address. In these cases the union can refuse to file a grievance. It must do so in accordance with its Duty of Fair Representation (more on this later), and when this does happen a union representative will always do his/her best to explain the reasons for the refusal to the member. As a Shop Steward, be aware that some of the complaints that members discuss with you might be of this nature. With experience you will become better at assessing complaints to separate those that can be grieved from those that cannot.

It also matters because sometimes a member will recognize that his/her rights have been violated, but will refuse to file a grievance. The member's position might be that the issue is none of the union's business, but this isn't quite accurate. The union

¹ In rare cases a collective agreement allows a member to access the initial stages of the grievance process without the support of the union. In these cases the member 'owns' the grievance. Even in these cases, however, the grievance requires support from the union before it can go to arbitration.

has an agreement with the employer, and it always has an interest when the agreement is broken, even when the only affected member does not wish to complain about it. This is a difficult situation. On the one hand, the union respects the privacy and wishes of its members, and will not file a grievance on behalf of a member when the member has not requested it. On the other hand, ignoring a violation of the contract sets a dangerous precedent. It can give the employer grounds to argue that the union accepts a questionable practice, since it knew about it but did not file a grievance. As a Steward, if a member ever confides in you that s/he has been treated in a way that violates the CA, encourage that member to resolve it rather than ignore it, not only for his/her own sake but also for the sake of others that may be affected by similar practices in the future. If the member refuses, discuss the issue with your Chief Steward or Union Advisor; in some cases there may be the option to file a policy grievance without naming any affected members.

C. Resources for Processing Grievances – Steward’s Binder

YEU has several resources available to help you investigate and assess complaints. They are included in the Steward’s Binder given to new Stewards when they are sworn in at the Hall, and are also accessible online:

- **Shop Steward Fact Sheet** will help you organize an interview when you first meet with a member wishing to discuss a complaint. If you use it to gather all the crucial information you can forward it to Intake when you need to open a case.
- **Grievance Tracking Chart** will help you stay on top of timelines. A grievance must be filed within a certain deadline after the event giving rise to the complaint, and there are strict deadlines for a response from management.
- **Grievance Presentation Form** is the document that is filled out once you are ready to file a grievance. A copy is delivered to the appropriate employer representative (typically a supervisor at the initial level), and copies are kept by the Steward and by YEU.

The Role of a Steward in Processing Grievances

If you have identified yourself as a Shop Steward in your workplace, a co-worker who runs into an issue will likely approach you first. When a member calls the union hall first, we contact all Stewards in your Local to ask who is available to lead it. In both cases, your first task is to decide if you are able to make the time to help. For more on this, see the tips on managing your caseload and avoiding burnout, included in “Additional Resources”. When you accept a case, you will lead it until it is resolved or until it escalates to a level where your Union Advisor takes over the lead.

A few general things to keep in mind with every case you work on:

- Encourage members to follow the “work now, grieve later” rule. When a member doesn’t like a decision by a manager, it is almost always best to comply with the decision while a grievance is pending. An important exception is when an employee is asked to do work s/he reasonably considers hazardous or illegal.
- Keep in mind that throughout your involvement you have access to a lot of support from your Local executives, your Chief Shop Steward, your fellow Stewards, and union staff. Don’t hesitate to ask questions or make a call just to bounce ideas off of someone else.
- You have a duty to respect the privacy of members that approach you. Ensure that members understand that in your Shop Steward role you are a representative of the union, and that you may need to share information with union staff and/or your Chief Steward. Assure the member that the union will not approach the employer on the member’s behalf until (or unless) the member asks us to.
- Not every interaction with a member is an official ‘case’. A member may just want someone to vent to. A member may approach you for general advice about something in the CA or about how to deal with a particular manager. Helping in these ways is all a normal part of being a union representative in the workplace. An official ‘case’ is when a member wants the union to represent his/her interests in some particular matter. It often

involves having a Steward or other representative speak to management on the member's behalf. Cases are kept on file and tracked by union staff. You'll need to use your judgment to distinguish between cases and other interactions. What follows in this chapter focuses only on official cases.

Every case is a little different, but the following summary of the steps involved will give you a better idea of what to expect:

Steps to Filing a Grievance

1. The initial contact

You should plan to take at least 15 -20 minutes to discuss the issue with the member and gather all the information you'll need. If a member approaches you at work, you may not be able to do this right away in a private setting without interruptions, so you should schedule a meeting for a later time. However, get some information as soon as possible. Record the member's current contact information; often the information in YEU's database needs to be updated. Make sure you don't risk missing a deadline by meeting at a later time; if the member wants to complain about something that happened a couple of weeks ago, you may need to take action very soon. Finally, check the language in your CA under "Union Representatives" or "Time off for Union Business" and be sure you know your own rights about dealing with union business on work time.

2. Assessing the complaint:

Your goal when you meet with a member for the first time is to gather enough information about the issue for the union to decide what to do with it. Sometimes it is an issue you will assist with, and sometimes it is something to be brought directly to a Union Advisor (see "Common Grievances and Who Leads Them" in the Additional Resources section). Other times, the complaint is not the sort of issue that can be grieved. Most complaints fall into one of the following categories:

- **Non-grievable** – either because it is within management's rights, or because it isn't even work related. Note that even when a complaint is not

the sort of thing that can be grieved, you may still be able to offer assistance or direct the member to other resources. See “Problem Solving without a Grievance” later in this section.

Examples:

- A change in shift, given with sufficient notice, for a position without established hours of work.
 - A work assignment that the member doesn’t like, but that falls within his/her job description
 - Most minor personal conflicts (“Cindy hums as she works and it drives me bonkers!”)
- **CA violation** – some practice or action that contravenes one or more provision in the CA. In most of these cases, a Shop Steward takes the lead through the first level or two of the grievance process. Sometimes the issue will fall into a ‘gray area’ which may or may not violate the CA, depending on how it is interpreted. As long as the union’s interpretation is a reasonable one, these are considered grievable.

Examples:

- An unreasonable denial of a vacation request (e.g. one made with plenty of advance notice, for a time when no one else is off on leave).
 - Refusal to pay overtime for hours worked on an employee’s day of rest.
 - A manager doing work normally done by bargaining unit members, when members are available to take the shift.
- **Other unfair practices** – An unfair practice that is not addressed in the CA might still be grieved if it violates one of the employer’s own policies or breaks an established past practice.

Examples:

- Employees in a particular unit have always had a 30 minute lunch break, but now the employer wants them to take a 1 hour break at lunch and work 30 minutes longer in the day. The CA doesn’t specify how long a lunch break must be.
- Although the CA doesn’t address it, the employer has always provided a cleaning service for staff uniforms, and has a

written policy on how to use the service. Now they are asking some employees to pay to clean their own uniforms.

- An employee with no record of past discipline is issued a letter of reprimand for behaviour that could have been corrected with less serious measures.

- **Violation of employment, health and safety, or human rights**

legislation - There may be avenues other than a grievance to deal with these matters, but grievances can be filed when an employer's actions are prohibited in legislation, even if the CA doesn't address it. These cases are led by a Union Advisor, but it is important for Shop Stewards to be aware of them.

Examples:

- An employer ignores racist or sexist jokes being told in the lunchroom by a group of employees (Under the Yukon Human Rights Act, an employer has a duty to provide a harassment-free workplace).
- A worker's concerns about the safety of a poorly-maintained piece of equipment are dismissed out of hand by the employer.
- The employer refuses to find a suitable accommodation for an employee with a disability.

- **Competition and Classification Appeals** – A CA may or may not include a description of the process for hiring into new positions or for classifying (and re-classifying) existing ones, but these are issues that the union has an interest in and can file grievances over. These cases are led by a Union Advisor

Examples:

- An employee is consistently asked to perform tasks that are not in his/her job description.
- An employee is consistently assigned tasks below his/her level of expertise or competence.
- An open position is filled by directly appointing an external candidate before assessing the qualifications of an interested internal employee.

When you meet to hear a member's complaint, listen carefully, repeat back to the member the concern as you understand it, and be sure to record the basic facts of the situation (what happened, when did it happen, who was involved, etc.).

At the end of your investigation meeting, tell the member that you will consult with union staff about the case and then get back to him/her.

3. Call the Union Hall

Remember that you don't need to contact union staff about every interaction you have with a member, but whenever a member is seeking union representation you do need to call in. Intake staff will gather details about the case from you (including current contact information for the member), discuss your assessment of the case, check the system for related cases, and put you in contact with your Union Advisor who will work with you to resolve it. The normal process is for you to consult with the Intake Advisor to open a new case, and then contact your Union Advisor directly to discuss the case as it develops.

4. Informal Resolution

The most preferable way to resolve almost every issue is through an informal chat with those most immediately involved. When this works to everyone's satisfaction it settles the issue quickly, with a minimum of expense and emotional turmoil. It does not always work and that is why there is also a more formal procedure in place. A few points to consider:

- Your CA might include an informal meeting as a step in the grievance procedure, or it might state that resolving workplace issues informally is "suggested" or "encouraged". Whether it is required or not it is almost always a good idea for the member to bring the complaint to a supervisor to try to resolve it before filing paperwork.
- If an informal complaint is required in your CA, then usually the member is also permitted to bring a Shop Steward. Be aware that your presence automatically sets a more serious tone at the meeting and, depending on the circumstances, this may not be desirable. Use your judgment and

explain to the member the costs and benefits of your involvement at this stage in the process.

- Whether or not you attend, the meeting should be kept simple and to the point: “Here is what happened, this is why we don’t like it, and here is how we are hoping you can resolve it.” If the supervisor seems unwilling or unable to deal with the issue, don’t spend too much time or energy trying to change his/her mind. If s/he offers a compromised solution to the problem, consider carefully whether the compromise is a better option than what you might expect to get from filing a grievance. Also be sure that it is consistent with the CA; you cannot make side deals affecting only one member. Ask for time to consult with the member and with your support team before agreeing to anything.
- The point of a meeting at this stage is to ensure that the complaint is not based on a simple misunderstanding, and to offer an opportunity for a quick fix. If it becomes apparent that the issue won’t be resolved easily, end the meeting and plan to file a grievance. This does not need to be a hostile thing; filing a grievance is simply an alternate way to seek a resolution to a problem. The meeting can end with friendly handshakes along with the clear message that “we still aren’t satisfied and we plan to file a grievance.”

5. Drafting a grievance form

The grievance forms used by YEU have space for only one or two sentences. This is intentional; the grievance form is not the place to write out arguments and all the related issues. When you present a grievance you want to state as clearly and simply as you can what action or inaction you are complaining about and (sometimes¹⁷) what you want done about it. The context, supporting arguments, and related issues might come up in a later meeting.

The best way to get familiar with grievance language is to look at a number of examples:

¹⁷ For members with the Yukon Government, Levels One and Two grievances do not require that you include your desired resolution. It is enough to state the issue on the grievance form and then assist the member in working out a solution during the meeting.

- “Selena Miranda was unjustly passed over for overtime work on or about April 21, 2016, in violation of Article 3.01 and all other relevant articles of the Collective Agreement. We ask that she be paid 4 hours at the overtime rate and be made whole.”
- “I grieve that my vacation leave request was denied after the three week period of consent, in violation of Article 23.05 and any other relevant articles.”
- “I grieve that the Employer has failed to increase my leave accruals after 5 years of service, contrary to Article 20.02 of the Collective Agreement (and any other related articles). My anniversary date is March 31, 2008, and so I was entitled to an increase on March 31, 2013.”
- “I grieve the letter of reprimand issued to me on December 12, 2013. The employer’s reasons are insufficient and the discipline is unwarranted. This is in contravention of Article 27.01 of the Collective Agreement as the employer did not establish ‘just cause’. I further grieve that I was not provided the opportunity to have union representation at the time this discipline was rendered, which violates the union rights afforded me in Article 27.04. This grievance is not limited and may include other articles of the Collective Agreement.”

While it is important to cite the specific article(s) of the CA that a member is complaining about, mentioning only that article can keep us from appealing to other parts of the CA. This is why grievances should always include a claim that it “may include other articles of the Collective Agreement” or make reference to “any other related article”. The language used is important, especially if a case escalates to the final stages of the process. As a Steward you will draft grievance forms (consult with your Chief Steward if you’d like input when writing your draft), and then have this reviewed by your Union Advisor. The advisor will add a grievance number once the form is ready to submit; this number should be added to all notes and forms related to that case.

When you are ready to present a grievance form, it is important to bring two copies to the appropriate supervisor; one for the supervisor to keep and another to be signed and kept by you. This signed copy is proof of the date the employer received the grievance, ensuring that it will be dealt with within the time limits in your contract. If hand-delivering the form is not possible it can be scanned and emailed, but this should be followed up with a phone call requesting written confirmation of the date it was received.

6. Attending the Grievance Meeting

Representing your co-worker at a meeting with management can be an intimidating thing at first. As you mentally prepare for the meeting, remind yourself that in your capacity as a Shop Steward you are an equal and deserve to be treated as such. Also remind yourself that as a representative of the union you have the collective strength of all your co-workers behind you. This is not license to be rude, smug, or disrespectful, but it does set a distinctly different tone to the meeting than one in which you meet with management as an employee.

Check your rights as a union representative under your contract, and schedule the meeting on work time whenever possible.

It is crucial that you understand the purpose of the meeting at this stage. A first level grievance meeting usually involves only an immediate supervisor, and a second level meeting might involve a manager at the next level in the hierarchy. In both cases, the intent of the meeting is to problem-solve. You and the member want to present the issue, explain why you see it as a breach of the CA or unfair in other ways, and make suggestions about how to resolve it. Your role is to support and coach your co-worker, but keep in mind that it remains a meeting between the supervisor and the employee. It should not turn into a meeting between yourself and the supervisor. You will also listen carefully to the employer's response and record notes on what is said (you can also ask the member to keep some notes). If the supervisor's position strikes you as unreasonable you should be comfortable telling him/her so and explaining why.

Although you should have something to say in support of the member's position, you are not expected to bring forward well-prepared arguments or to call witnesses

supporting your case. That sort of work might be done by a Union Advisor or a lawyer at a later stage in the grievance process. You are there as an advocate for the member and as a representative of the union but not as a lawyer at a criminal proceeding. A first-stage grievance meeting is more formal than a pre-grievance chat with the supervisor, but it is still focused on finding a solution to a problem together.

Some of the ways you might be involved are:

- **Summarizing the issue.** When you write a grievance form you don't add context or explanation, so this is your chance to describe what happened and explain why it seems unfair. You should take note of any disagreement about the basic facts, such as when a vacation request was made, or what attempts were made to contact the member to offer an overtime shift. You are not expected to bring documents or witnesses to establish these facts (that might be done at a later stage by a Union Advisor), but it will be important information to pass along
- **Explaining the union's position on the relevant CA article(s).** If you have cited a specific article when writing the grievance, take some time to explain how you understand the article and why you think it was breached. Management might have a different interpretation of the relevant article, and it will be their job to explain it.
- **Correcting mistakes, or pointing out unfair treatment.** A supervisor might defend her actions by stating that it is just the way they have always done things. Point out that it still breaches the collective agreement and that you are now looking for a change. Or the supervisor might claim that she does not have to assign overtime on the basis of seniority. If the CA says otherwise, point out the mistake.
- **Asking for clarification.** A good general practice, and one that is especially important in grievance meetings, is to repeat back to the supervisor any important statements s/he makes, asking if you've understood it correctly. For example, you might say, "It sounds like your position is that employees must use vacation leave instead of special leave to attend a medical appointment. Is that correct?"

- **Keeping discussion focused.** Don't allow things to get sidetracked. You've grieved one specific action and are looking for a way to correct it. There may be numerous related issues, and there may be a history of bad relations between the member and the supervisor. These can very easily lead the direction of the discussion away from the issue you are meeting about. You may need to interrupt and say something like "That might be an issue that needs to be discussed another time. Right now we are trying to resolve ____."
- **Record notes.** Just as with discipline meetings, your written record of what takes place at the meeting is usually the only information the union gets about it. Your notes can become very important if the grievance escalates to a higher level. Review "Taking Effective Notes" in the Additional Resources section.
- **Summarizing outcomes at the end.** It is often helpful to give a brief summary of where things lie at the end of the meeting. "Just to clarify, we all agree that ____ happened, and in response you have agreed to do ____."
- **Private consultation with member.** You may get some information from a supervisor during the meeting that you were not expecting. For example the member may have told you that the supervisor changed his shift without the proper amount of notice, but the supervisor might have evidence that proper notice *was* given. Other times the supervisor might offer a compromise you weren't expecting, and you might not be sure if it is acceptable to the member. Be prepared to ask for a short private meeting with the member to consult before continuing in situations like these. Also meet privately with the member after the meeting to review the results and discuss whether further action is necessary.

Your own conduct at grievance meetings should be 'friendly professionalism without being a pushover.' You are there to demand that the terms of employment agreed to in the CA are respected, and to see that unfair treatment of your co-workers is remedied; and not simply to present a request to a superior and then go along with whatever s/he decides. At the same time, you risk losing credibility and embarrassing yourself, the member, and the union if you take a belligerent attitude

and refuse to offer the same respect you expect from management. Stay calm and controlled and remind yourself that there are backup measures in place if you meet an unreasonable supervisor and make no progress. Don't allow your frustration to make things worse. Unlike meetings that the employer has called, you and the member have requested this meeting and you can end it if it becomes apparent that it is going nowhere.

7. Follow up with your team

Take some time to reflect on the meeting and consider discussing it with your Chief Steward or mentor (if you have one) to get another perspective. You also need to update your Union Advisor by email or over the phone, and should submit any official notes taken during the meeting. Some things your advisor will want to know:

- **General tone of the meeting:** did it remain professional and respectful?
- **Resolutions:** What (if anything) did management agree to? If they acknowledged a breach of the CA, how do they plan to make it right?
- **Member's satisfaction:** Is the member happy with the way things turned out or does s/he want further action? Just as with the initial filing of the grievance it is the union, and not the individual member, that decides when to transmit a grievance to a higher level. Sometimes a member with unreasonable expectations needs to be counseled to accept what is offered and close the grievance.
- **Management's reasoning:** Perhaps the most important information to pass along are the reasons offered by management when they deny a grievance. Did they offer a different interpretation of the relevant articles of the CA? Was there a disagreement about the facts of the case? Did they present any documented evidence supporting their claims?

Together with your advisor and the member, the union will determine if the grievance can be closed or if it should be transmitted to a higher level. Depending on the grievance procedure in your own CA, you might repeat steps 6 and 7 with a higher-level manager, or your advisor might take over lead of the case and meet

with a Board of Directors, an Executive Director, or a senior level manager. If you attend a meeting at a second stage, you will have an opportunity to discuss the case with another employer representative who isn't as close to the situation. This person will likely be less personally involved and might see the issue more objectively. Come to this meeting with the same attitude as at the first meeting and explain why the union is not satisfied with the decision made at the first level.

Legal Issues and other Advisor-Led Cases

Shop Stewards lead most grievances through the initial stages of the grievance process. Often a grievance is resolved at these initial stages, but any one of them could end up being led by a Union Advisor at the final stages or at arbitration. In addition, some of the issues that arise in a workplace are led immediately by Advisors rather than Stewards, usually due to important legal considerations, matters requiring special technical knowledge, or policy issues that involve more than just an individual member. For an overview of the most common issues and who takes the lead on them, see the chart in "Additional Resources".

While you don't need to be able to lead the cases that go to an Advisor, it will help if you know enough about them to recognize them when they occur. Links to more information on each of these is available in "Additional Resources". Here is just enough about them for you to know what to look for.

A. Discrimination

The Yukon Human Rights Act prohibits "unfavorable treatment" on the basis of any of the following prohibited grounds:

- ancestry, including colour and race;
- national origin;
- ethnic or linguistic background or origin;
- religion or creed, or religious belief, religious association, or religious activity;
- age;
- sex, including pregnancy, and pregnancy related conditions;

- sexual orientation;
- physical or mental disability;
- criminal charges or criminal record;
- political belief, political association, or political activity;
- marital or family status;
- source of income;
- actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed above
- gender identity and gender expression (these are included in federal human rights legislation, and are expected to be added to Yukon's Human Rights Act when it is next amended)

This general prohibition is supplemented with some exceptions. It is not illegal, for example, for you to give preferential treatment to your own children, or for a religious organization to refuse to hire someone who does not share their religious beliefs. Nor is it illegal for employers to discriminate on the basis of the above categories when there is a reasonable requirement for doing so (for example, giving preference to members of an under-represented ethnic group when making hiring decisions). Some examples of workplace practices that *do* violate human rights are:

- Refusing to offer a job to the highest ranked candidate on the grounds that she is pregnant (and will likely want maternity leave soon).
- Forcing someone to retire at a specific age (when being under that age is not a *bona fide* occupational requirement).
- Withholding a pay increase on the basis of union involvement.
- Not offering overtime work to an employee because s/he has children at home.

Since practices like these are breaches of legislation governing employment, and not just breaches of the contract between the union and the employer, they are led by Union Advisors with more in-depth knowledge of the legal issues.

B. Harassment and Bullying

The terms “harassment” and “bullying” get somewhat different legal definitions in different jurisdictions, but most of us have a pretty good sense of when personal relations become inappropriate. Both are forms of behaviour that one ‘reasonably

ought to have known' would be unwelcome. Harassment and bullying can be discriminatory (when they are based on one of the prohibited grounds mentioned above), but they don't need to be; one person might start bullying another out of a clash in personalities. The Canadian Centre for Occupational Health and Safety has a good list of examples.¹⁸ There are three things in particular that Stewards should be aware of.

- Because they are responsible for the work environment, employers have an obligation to provide a workplace that is safe for all workers and free from discriminatory treatment. Many employers have internal anti-bullying policies or units like the Respectful Workplace Office in the Yukon Government that are responsible for preventing bullying and harassment and addressing it when it does occur. In addition, many CAs are beginning to address bullying in the workplace and include clauses specifying the employer's responsibilities. Harassment complaints can be filed against an employer even when it is not the employer who is doing the harassing.
- Not all interpersonal conflicts amount to bullying or harassment. These are terms that should be used very carefully (since they have legal implications). Often, personal conflict in the workplace needs to be addressed with training or counselling and not by grieving against the employer.
- Very often harassment or bullying come out of friction in a relationship that develops over time, rather than just being a single event. One of the most important things for your members to do if they are feeling abused in the workplace is to keep a written record of every interaction they feel is abusive, including the date, time, location, and people involved. This record might be used to show that there is a pattern of behaviour amounting to bullying or harassment.

¹⁸ <https://www.ccohs.ca/oshanswers/psychosocial/bullying.html>

Harassment cases can become very complicated and might involve one member complaining about another, which is why they are best dealt with by Advisors rather than Stewards.

C. The Duty to Accommodate

Along with the prohibition against discrimination comes an obligation for the employer to accommodate various needs of employees. An employer might be obligated to provide time and space for an employee to pray in the middle of a shift, or to provide flexible hours to accommodate an employee's needs for child care. Importantly, an employer is obligated to accommodate people with physical or mental disabilities, and to do so "to the point of undue hardship." This can mean providing specialized equipment for someone who uses a wheelchair or an ergonomic chair for someone with chronic back pain. It might also mean relocating an employee to a different work area, modifying their daily tasks, or being flexible with work hours. How far the employer needs to go to accommodate its employees can be a tricky matter that depends on the size of the organization and the resources the accommodation requires. Cases involving accommodation also involve sensitive private information. For these reasons they are led by a Union Advisor, but a Shop Steward can be a powerful force for creating a friendly workplace supportive of those who need different arrangements.

D. Occupational Health and Safety

Every employer has a duty, under the Yukon Occupational Health and Safety Act, to ensure a safe working environment for its employees, including workplace machinery, equipment, and procedures. An employer must establish safe operating procedures, regularly inspect equipment, and offer adequate supervision, instruction, and training. Depending on the size of the operation and the nature of the work, an employer may also be obligated to establish a Health and Safety committee made up of employer and employee representatives. For their own part, employees have a duty under the Act to comply with the employer's safety policies (including the use of personal protective equipment like hard hats, steel-toed boots, and latex gloves), report any potentially unsafe working conditions to their

supervisor, and report any accidents or injuries that occur in connection with their work.

An employee also has the right to refuse work that s/he has reason to believe is hazardous. When work is refused on these grounds it is immediately reported to a supervisor and investigated in the presence of a health and safety representative. “Undue hazard” is open to conflicting interpretations, and so cases involving a refusal of unsafe work are handled by a Union Advisor.

While Stewards do not typically process grievances related to Health and Safety legislation, it is an important part of their function to keep members informed of their rights and to encourage everyone in the workforce to identify potential hazards before they become dangerous. Often, safety regulations are perceived as onerous to workers (e.g. “do I really need to inspect my work truck *every* shift?), but they are in place for the worker’s own benefit and protection. A Steward should support these policies and set the example for others.

E. Group & Policy Grievances

One thing to investigate during your initial meeting with a member bringing forward a complaint is whether the same issue is affecting others in the workplace. If one member’s vacation request was unfairly denied, for example, it may be due to a policy the supervisor is following and it may turn out that several other members have had similar denials without bringing them to the union. *A group grievance* is a grievance filed on behalf of more than one member when they have all been subject to the same unfair treatment. Often these require more support from the union and are led by a Union Advisor instead of a Steward.

A policy grievance is one filed by the union against the employer, but not on behalf of any particular member or group of members. It is a complaint against some general policy or proposed policy that conflicts with the CA, or with legislation. As an example, an employer might circulate a new policy about blackout periods for vacation time (e.g. no vacation requests will be approved for the month of June). If this blackout period cannot be reasonably established as an operational requirement, the union might file a policy grievance *even if no vacation requests have yet been denied*. Since policy grievances do not involve the representation of a

member (they are disputes directly between the union and the employer), they are filed and led by Union Advisors instead of Stewards.

F. Competition and Classification Appeals

The details differ in each CA, but generally the union has an interest in how employers hire into new or vacant positions, and how they classify positions into a pay grid. A competition appeal can be made when an employee is not fairly considered for an internal job posting, and a classification grievance is sometimes filed when a written job description does not accurately describe all the functions of a position. Both sorts of complaints generally require that a trained representative compare the candidate's resume against the job posting, or an employee's qualifications and actual job duties against a job description. YEU Union Advisors investigate complaints about unfair competition on a job posting, and personnel from PSAC's national office handle classification issues.

Problem Solving Without a Grievance

One of the most frustrating experiences you are likely to face as a Steward is when a member has what strikes you as a legitimate complaint, but one for which there are no grounds to file a grievance. For example the employee might be under an "averaging arrangement" allowing the employer to vary the hours of work so long as they work out to an average of 8 hours/day and 40 hours/week. When an employer abuses an arrangement like this to avoid paying overtime it could result in unreasonable variations in the employee's shift that are just unfair; yet it might be permitted by the wording of the arrangement in the CA. Some tips for dealing with situations such as these:

- Take time to carefully explain why the case is not grievable. The news will still be disappointing but it is important that the member understand why a grievance is unlikely to succeed.
- Suggest other resources for dealing with the issue. Remember that a grievance is just one tool. You may be able to work something out through an informal talk with a supervisor.

- For personal issues, many employers offer an Employee Assistance Program with professional (and anonymous) counseling services. Larger organizations like the Yukon Government have established a Respectful Workplace Office to help with interpersonal conflicts in the workplace, and a Disability Management Unit to assist with accommodating disabled employees. Your Union Advisor will have more information about resources like these when a complaint cannot be grieved.
- Involve the member in the next round of bargaining. Just because the current CA allows the employer to act in some unfair manner, future CA's do not need to. The issue might be worth submitting as a bargaining proposal to the next bargaining committee. If accepted, the union can attempt to negotiate a new provision or to close loopholes in existing ones.

Duty of Fair Representation

The union has a duty to fairly represent every member of the bargaining unit. This means that it cannot act arbitrarily (e.g. refusing to process a grievance without giving any reason, or giving more resources to one case than another very similar one), discriminatorily (e.g. treating a member unfavorably on the basis of race, or sex, or even union support), or in bad faith (e.g. making a side deal with management to drop one grievance in order to win another one). For a Shop Steward, this duty means that you cannot play favorites in the workplace. You need to be able to represent a co-worker you do not get along with just as well as a co-worker you have a good social relationship with. There are many ways that this objectivity can get compromised. If you develop a social relationship with a supervisor, for example, you need to be honest about your ability to support a member who wants to grieve some action of that supervisor. If you have a co-worker who never seems to pull his weight, you need to be honest about whether you can fairly represent him/her at a disciplinary meeting. When you feel that your objectivity is compromised and you are unable to give a member fair representation for any reason, you can always ask another member of your team (your Chief Steward or YEU's Intake Advisor) to find another Steward.

Be aware that the *appearance* of bias can be almost as problematic as *actual* bias. Even if you feel that you can represent a member fairly and objectively, refer the case to someone else if you have reason to think that others might perceive it as biased. A member who knows that you have a social relationship with the supervisor he wants to complain about might accept that you can give fair representation; but if the grievance doesn't go the member's way, they might blame your relationship with the supervisor. Avoid taking cases when you are biased, and also cases where you might appear to be biased.

Conclusion

The information in this section of the Handbook covers the grievance process in general, but every member complaint comes with its own context and set of related issues. The only real way to get comfortable processing grievances is through practice. New YEU Stewards will have opportunities to shadow more experienced ones, and every Steward always has access to several other members of a team for information and general support.