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# Representing Workers:

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**A Guide for  
Stewards,  
Committeepople,  
Workplace and  
Local Union  
Representatives**



**unifor**  
theUnion | lesyndicat

*1st edition, Fall 2014*

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# INTRODUCTION

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## Message from Unifor President, Jerry Dias

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**W**orkplace representatives – stewards – are the front-line of our new union. The strength of Unifor depends on you, and others like you, who have stepped up and are willing to represent workers and build safer, fairer workplaces and stronger communities.

Our new union has incredible strength. In part that strength comes from our values of equality, dignity, respect, and solidarity, and our long-standing traditions of social unionism and our passion for social justice. In part our strength comes from our proven ability to represent our members at the bargaining table and in the workplace.

As workers, everything we have, we have had to win. We represent and protect individuals and at the same time we advance collective rights. That's why workplace representation is the cornerstone of everything we do.

Our capacity to make economic, legal and social gains for our members -- and our determination to hold on to past gains -- all depends on the dedication of our workplace and local leadership.

# INTRODUCTION

As a workplace representative, you have many roles: union builder, organizer, problem-solver, communicator, mediator, listener, counsellor, advocate, friend. Your role is huge, your responsibilities many. I know from my own experience what it means to shoulder them. It's a challenge to represent working people, and an enormous privilege.

You are part of an incredible network of activists and leaders across our country representing workers. Together we will push back against employers who want to roll back our wages, ignore our health and safety, trample our collective agreements, and divide us along race, gender and other lines. Together we will push our governments to protect and advance our social programs. Together we will build fair workplaces, strong communities, and we will work toward a better world where equality and social justice prevail.

In solidarity,

A handwritten signature in black ink that reads "Jerry Dias". The signature is fluid and cursive, with the first name "Jerry" being larger and more prominent than the last name "Dias".

**Jerry Dias**

*Unifor President*

# INTRODUCTION

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## How this guide is organized

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No single guide can provide the inspiration or the recipe for union success. However, it can be a handy reference for some useful information and it can provide practical advice and answers to a number of basic questions. In your hands it can be a tool to help our union better represent our members.

### **This guide is organized into the following sections**

- Brief introduction to Unifor
- The workplace representative's role as workplace leader
- The workplace representative's role in handling workplace problems and grievances
- The grievance process (investigations, writing and presenting grievances, documentation, arbitration)
- Common workplace issues (such as discipline & discharge, accommodation, human rights)
- Information on Unifor structures, programs & resources

There is a lot of good information in this guide, but mostly, you will learn by doing.

You aren't expected to know everything all at once. Talk to other experienced workplace representatives, committeepeople and officers in your local union. They

# INTRODUCTION

too have a wealth of knowledge, and most of them will be only too happy to share it with you.

Take advantage of other supports available to you – courses available through our Unifor Education Department (see p. 246); knowledge and skills of elected leaders and staff reps; current information on our Unifor website ([www.unifor.org](http://www.unifor.org)); and the experiences and guidance of your own members.

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## **Terminology: Steward, Committeeperson, Workplace Representative**

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In various sectors of our union, workplace representatives go by different titles – including steward, district chairperson, district committeeperson, or just simply committeeperson. For simplicity sake, we will use steward and workplace representative interchangeably in this publication.

Check your collective agreement to see what workplace representatives are called in your workplace. Your collective agreement will also outline how many workplace reps you have in the workplace and what their responsibilities are.

## Unifor: A Union for everyone

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**U**nifor is a new kind of union. We advocate for all workers – union and non-union, employed and unemployed – because all workers deserve healthy and safe workplaces, and all of us can work together to build stronger communities.

Unifor brings a modern approach to unionism: we are taking the best from our history and pushing forward to make the most of the future ahead.

Our members work in production, skilled trades, technical, office and professional jobs; in major auto, energy, health care, independent auto parts, aerospace, retail and wholesale trade; in specialty vehicles, ship building, electrical and electronics, general manufacturing, media, telecommunications, air transportation, railways, and other transportation; in fisheries and forestry; in universities, mining and smelting; in hospitality and gaming, general services, public services, and much more.

A third of our members are women, and we include more indigenous people and workers of colour than ever before. Together we are Unifor: 305,000 members in workplaces across Canada from coast to coast to coast, the biggest industrial union in the history of the Canadian labour movement!

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## Where we come from

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Unifor was formed on Labour Day weekend 2013, as the CAW and CEP came together. Our unions both brought a rich history of political action and workplace struggle into the mix. And, we both brought our experiences of undertaking important structural changes that have revitalized and strengthened us.

The Communications, Energy and Paperworkers was formed in 1992, as a result of a merger of three smaller unions. The new CEP brought together nearly 150 years of history and 140,000 members, and became the 4th largest private sector union at the time. All three of the unions that merged to form the CEP had broken away from international unions, and they also shared very similar democratic structures.

The CAW was formed in 1985 after the Canadian and Quebec Councils of the United Auto Workers made a decision to cut ties with the international union. Over the years between 1985 and the formation of Unifor, the CAW changed drastically. Manufacturing faced a major decline and the union expanded into health care, rail, airlines, service and retail along with many other new sectors.

Our combined history, and our determination to create a better world, will make us an unstoppable force in Canada in the years to come.

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## The Unifor Constitution on elected Workplace Representatives - Article 15

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The Unifor Constitution says that stewards, committeepersons and workplace representatives are elected for three year terms. They must take the oath of office. The Unifor Constitution also explains the recall procedure.

1. All workplace representatives shall be actively involved in the issue-based campaigns, educational programs and community initiatives of the union.
2. All committeepersons, stewards and other workplace representatives shall serve terms of the same duration as their Local Union Executive Officers. In the case of newly organized workplaces, however, the first term of office will be for two years.
3. A Local Union Executive Officer may also serve as a workplace representative.
4. An elected workplace representative may be recalled by the members he/she represents for failing to perform the duties of the office.
5. Members he/she represents will sign a petition listing the specific complaints against the representative and file it with the Local Union. The Local Union will notify the representative of the



specific complaints and will give due notice to the represented members of a special meeting for recall. A two-thirds vote of the members present at the special meeting is required to recall.

6. Each Local Union will set out in its By-Laws the number of petitioners required for a recall and the quorum needed to hold a recall meeting.
7. An elected workplace representative can face recall only once during her/his term of office.

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## The oath of office

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### The Installing Officer says:

*“Do you pledge on your honour to perform the duties of your respective offices as required by the Constitution of the Union and to bear true and faithful allegiance to Unifor?”*

*Do you pledge to promote a harassment and discrimination-free environment and work to ensure the human rights of all members are respected?*

*Do you pledge to support, advance and carry out all official policies of the Union and to work tirelessly to advance and build the membership of our Union?*

# UNIFOR: A UNION FOR EVERYONE

*Do you pledge to deliver all books, papers, and other property of the Union that may be in your possession at the end of your term to your successor in office, and at all times conduct yourself as becomes a member of this Union?"*

**Officers respond:** *"I do."*

**The Installing Officer then says:**

*"Your responsibilities are defined in the By-Laws, Constitution and policies of Unifor. Should any emergency arise not provided for in these, you are expected to act according to the dictates of common sense, guided by an earnest desire to advance the best interest of the Union. I trust you will all faithfully perform your duties so that you may gain the esteem of your brothers and sisters and the approval of your conscience.*

*"You will now assume your respective offices."*

(Page 76 of Unifor Constitution, 2013)

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*You aren't expected to know everything all at once. Talk to other experienced workplace representatives, committeepeople and officers in your local union. They too have a wealth of knowledge, and most of them will be only too happy to share it with you.*

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## Unifor Stewards: Our front-line

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**M**ost workers judge their union on the basis of their stewards/workplace reps. When Unifor stewards are fair and efficient, members feel that the union is fair and efficient. Likewise, if Unifor stewards express enthusiasm for projects, members are more likely to take interest. When we succeed in making sure the collective agreement is upheld, we gain our members' trust, respect and confidence.

The role of a workplace rep is multi-dimensional. It includes defending the rights of members by challenging management and filing grievances. But the workplace representative is also the face of the union – the main way our members learn about, and connect with, the union as a whole.

In the minds of our members, Unifor stewards are their voice within the union and within the workplace.

To be an effective workplace rep means that you will need to develop a real connection with the members you represent. You need to develop a strong sense of your surrounding community and you need to keep on top of what is happening in Unifor and the broader labour movement.

Being effective also means that you tackle the tough stuff – like representing members who are facing discharge and helping workers who are experiencing harassment. Fortunately there are many supports for workplace reps – you are not alone and there are people and resources to help you. The job of a workplace rep is demanding, but it can also be tremendously rewarding to support people and contribute to making our workplaces safer and fairer, and our union stronger.

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## **So what does a Steward / Workplace Representative do?**

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Our Workplace Reps perform a whole range of activities and functions in the workplace that are outlined in this book. But most of what they do falls into two main categories:

- 1) Protect the rights of union members by making sure that the terms of the collective agreement and legislation for the workplace are lived up to.
- 2) Build and keep the union strong, providing leadership, communication, and guidance to rank and file members.

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## **Steward as communicator**

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Getting and giving information are the two most important things in building and keeping the union strong.

### ***Getting to know new members***

Some Unifor collective agreements give the union steward or committeeperson time to meet with new workers. Introduce yourself and explain your work as a Unifor steward. Tell them about our union. At every opportunity explain the gains that the union has made for our members (otherwise workers will assume these are 'given' by employers!).

Make sure new employees feel welcome. Put them at ease. Give them a copy of the collective agreement. Offer to answer any questions they may have. Offer your help if they have any problem. Let them know how they can get in touch with you. Give them Unifor information and invite them to get involved.

If you don't have time during work hours to meet with new members, find a time outside of work hours and the workplace to have a conversation. Probationary members need our support and the first impression you make is always a lasting impression! Make sure that new employees get signed up as members and receive

# UNIFOR STEWARDS: OUR FRONT-LINE

a union card, if they are not automatically signed up at hire or after probation.

## ***Participating in union meetings, events and training sessions***

Unions are among the most democratic organizations in the world. It is both a privilege and a duty for every member to take part in the election of stewards, union committee members and leaders.

Attend all local union meetings. Encourage members to attend all meetings, and encourage them to make their views known. It's at union meetings that members learn how their dues are used, who their representatives are, and what the union does.

Make sure your members get advance notice of meetings. Ask your local for the booklet "11 points for meetings" from the national. It outlines how to participate in formal meetings. Get to know the process and help other members learn it too. Read your local union by-laws - these outline the framework for how you and your members can participate.

Hold departmental meetings and talk over workplace problems with the members. Let them know what is going on, especially those members who do not seem to be interested in the union. Some employers will allow

the use of lunch rooms or conference rooms for on-site meetings.

### ***Supporting your members***

Be available to your members. Encourage members to come to you first with workplace problems – you can help them approach their supervisor. Be a careful and empathetic listener.

Encourage your members to use the union’s services. Inform them of social activities, events and campaigns sponsored by the union or your district labour council.

Help members experiencing problems outside of work. Help with EI claims, with daycare referrals, or substance abuse or addiction issues. Refer them to union leaders trained to respond to these needs, or refer them to any local union programs that may be available (for example, some locals have a Women’s Advocate, and/or Employee Family Assistance Program workplace representative).

### ***Connecting workers with our union***

Help hand out union literature, local union newspapers and leaflets. Post notices on the bulletin boards. Use social media such as facebook to share union information.

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Fight rumours. Find out the truth and let the members know. Always encourage them to come to you for the correct information.

Co-operate with local union officers and members of standing committees in promoting the program of the local union. Teamwork in the leadership means solidarity in the ranks.

Stay in touch with the union through the website and the Uniforum newsletter and other Unifor newsletters (such as the Health, Safety and Environment newsletter). Sign up on-line for newsletters ([www.unifor.org](http://www.unifor.org)) or write to us with your mailing address (Unifor, Communications Department, 205 Placer Court, Toronto, Ontario M2H 3H9).

It is essential that the National Union has every member's updated contact information. You can be a great help in keeping our flow of information going.

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## **Steward as Union Builder**

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In most workplaces Unifor stewards have the opportunity to speak to members every day, at mealtimes and breaks and during working hours. Take advantage of these opportunities to inform members about the latest union activities and encourage



participation. This reinforces the importance and relevance of the union in our workplaces and communities.

Members expect you to know more about the union than they do and they will listen to what you have to say. They might not agree, but generally they will trust you – you are their elected representative and their direct line of communication to the union. Make sure to tell the truth – and do not make up answers if you are asked something you don't know the answer to – you'll gain way more credibility by getting back to them with the correct information.

Take the time to explain union issues and educate our members on the importance of unions in the workplace. For example, point out the unions gains when you're outlining benefits, and always take the opportunity to highlight the role of the union when you're discussing workplace safety or issues of workplace fairness. If we don't educate our members and take credit for what we've been able to negotiate, our members will assume that things have always been this way and that management willingly 'gives' them everything they have.

## ***Developing leaders***

Workplace reps can help develop leaders among the rank-and-file by encouraging participation and drawing on the abilities of others.

Take special care to make sure that you encourage leadership from all parts of the membership – if we are not racially and linguistically diverse, or if we do not have gender balance or representation from equity-seeking groups as part of our leadership, then we risk not being in touch with all of our members.

If you hear yourself or another workplace rep expressing frustration that ‘nobody else is stepping up’, or that people are ‘apathetic’, it’s a good sign that more needs to be done to develop leaders (formal or informal) – for now and for the future.

You might be surprised to know that recent research on social justice groups tells us that more often than not, people believe in the cause but don’t get involved because nobody asks them to, or because they don’t know how to get involved!

Check out Unifor education courses that can help you develop other leaders. Encourage people who might be interested in getting involved to take a union course.

## ***Building unity in the workplace***

Too often our jobs can be stressful, monotonous, dangerous, physically or emotionally demanding. This takes a toll not just on individuals, but also on how we view each other and treat each other. This makes us all too easily divided by race, gender, sexuality, disability, religion, language, cultural groups and so on. It makes us vulnerable to rumours, and to employer-sown divisions.

Building and maintaining a positive workplace environment and a strong, united union is not easy under these circumstances. However, a strong, united union is exactly what we need if we are to combat any of the problems of over-work, stress, and the above issues we just mentioned.

The steward is the key player in the workplace who can build unity, by being fair and consistent and by going out of her or his way to make it clear that the union cares about every worker.

Speak out when you hear racism, sexism, homophobia, transphobia or discriminatory remarks about injured workers and workers with disabilities. Stop rumours and gossip. Organize union and social events that bring people together. Practice inclusion.

## ***Mobilizing our members***

From time to time, to fight real injustice and win, the union must mobilize the true source of our bargaining power – the membership. Workplace representatives have always been the key to success in mobilization.

Stewards can help distribute flyers inside or outside the workplace; organize letter-writing campaigns; coordinate grievances to dramatize the need for stronger contract language; voice members' concerns; car pool members to marches and rallies; take up collections for authorized strike support; promote union supported boycotts and petitions; and help the local union prepare for strike when necessary. Stewards are the engine of progressive change.

## ***Organizing the unorganized***

Our union gives high priority to organizing the unorganized. Organizing is central to building the collective strength of our union, defending pattern bargaining, building strong and healthy communities and ensuring that what we win for ourselves can be achieved by others.

Workplace representatives can play a key role in helping organize the unorganized:

- In the workplace, identify where parts, components, equipment and outside services are coming from. Document the information. Pass it on to your Unifor National Representative.
- Introduce yourself to sub-contractors who are doing work in the workplace (e.g., truck drivers making deliveries). Do they have union cards? Document this information and pass it on to your Unifor National Representative.
- In the community, when you meet workers who work in non-union workplaces, introduce yourself as a member of Unifor, let them know what our union has accomplished for workers in your workplace and take down their names and addresses if they express an interest in the union. Pass the information on to your Unifor National Representative.

## ***Working with other committees***

Depending upon the size of the workplace, there may be other union representatives who are also working directly with members.

Most commonly, these would be the worker members of the joint occupational health and safety committee.

## UNIFOR STEWARDS: OUR FRONT-LINE

They could also be members of a human rights committee, women's committee, equity committee, union counsellors, etc.

You have to develop an intelligent working relationship with them. Don't step on each other's toes, and don't feel that you have to compete with each other for the workers' affection.

You each have important jobs to do, and you should help each other get them done. Again, cooperation in the leadership brings about solidarity in the ranks.

One pitfall that you should avoid at all costs is letting the rank and file use you to second guess one another. Some members have a tendency to go with the same question to different people until they hear the answer they like.

Be aware of your jurisdiction. You were elected to represent workers in a specific area or zone, and you shouldn't let anyone else do it for you. At the same time, you have to recognize that other stewards and committee members have their own areas of representation, and you shouldn't interfere with their ability to do that.

## ***The rules of effective leadership***

- Know your facts. Write them down. Talk them over. Keep a daily record.
- Work problems through. Ask yourself what can you do? What can't you do? What should you do?
- Parcel the job out. Make sure everybody knows what they're supposed to do.
- Tell the people who are doing the job how they are doing. Give everyone full credit.
- Help each person on the job. Give suggestions, not orders.
- Don't make decisions that involve other people without talking it over with them first.
- Use each person's abilities. Don't overload anyone. Don't expect too much from any one person.
- Follow through on each job yourself. If a job isn't done, help get it done. Avoid blaming yourself or anyone else.
- Let the people who did the job make the reports and get the credit.
- Make use of the diversity amongst your membership – build links between workers from different groups.

# UNIFOR STEWARDS: OUR FRONT-LINE

If this means you need help from a translator, get help. If it means you need to confront your own prejudices about certain groups of people, take a human rights course and find out how we build strength through diversity.

- Get to know *all* your members and their concerns.
- Rely on the membership. They are the source of the union's strength.
- Build informal leadership and a strong activist base.
- Make sure the members are aware and stand behind you.
- Serve all members fairly and equally.

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## Steward as Grievance Handler

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Workers should know to come to you if they experience a workplace problem. Many workers don't know who their workplace representative is, or what your job is, so it's up to you to introduce yourself and let them know that you're there for them.

Often times you'll spot a workplace problem even before a worker comes to you about it. If you see a violation of a worker's right or privilege, tell the member right away and get it corrected. This gains respect for the union.



When a worker does come to you with a problem, you'll need to sort out first if it's a something that can be addressed through the grievance procedure. This will require an investigation.

Most grievances actually begin as generalized complaints – a worker complains to their workplace representative about something they feel is wrong. It is only through a good investigation that a workplace representative can determine the appropriate course of action.

Never tell a member that they don't have a problem – that's insulting. Explain the grievance process. Explain that some problems can be solved through the grievance process, and others can't, and that you'll work with them to find out whether the grievance process applies in their situation, or if there's another way you can help.

Keep members informed at every stage. Take care to explain what is happening.

Follow the steps in this pocket guide and take time to read through all the 'tips' for presenting and writing up grievances. You can find out everything you need to know to do a great job representing workers and their grievances by reading through the appropriate sections here, and by talking to more experienced stewards and workplace representatives.

## What every Workplace Representative needs to get to know:

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- **Know your collective agreement.** Always keep a copy with you. You need to know it, if you want to apply it. Start by becoming familiar with stat holidays, wages, and seniority provisions. Be familiar with the grievance procedure and timelines. Since no contract is perfect, understand where it is weak, and keep track of this for discussions at bargaining. Consult with other stewards and committee people on how the contract works in practice.
- **Know your employer's policies and workplace rules.** Some of these are in the agreement, but there are likely other rules in place.
- **Know our union's policies and priorities.** These have been voted on by our members and it's our responsibility to uphold them. Unifor policies are posted on our website. Attend Councils and Conventions if you can – as a delegate or observer.
- **Know your local union by-laws.** These have been voted on by our members and it's our responsibility to uphold them.

## WHAT EVERY WORKPLACE REPRESENTATIVE NEEDS TO GET TO KNOW:

- **Know your members.** You need to know their names, addresses, telephone numbers, and seniority. You can also become familiar with the issues in their work areas, as well as the issues they care about in their communities. Get to know key union supporters, critics, as well as the uncommitted. Seek the support of those who have opposed you. Get the best and the brightest and most forceful members onto your team. Turn their talents to the support of the union's program.
- **Know your managers and supervisors.** Getting to know who you are dealing with is important. It's also helpful to understand their level of authority, and to get a sense of their personality. You will need to develop working relationships with them in order to do your job.
- **Know the legislation that affects your members.** Labour law and human rights laws are "written into" our collective agreements. As a union we are also responsible for upholding these laws. Many of them are to our advantage, and we can rely upon them in grievances (right up through arbitration). Most provincial and federal labour and human rights laws are outlined on their websites. Try to stay current.

## WHAT EVERY WORKPLACE REPRESENTATIVE NEEDS TO GET TO KNOW:

- **Know other officers and other Unifor stewards in your local.** Nobody goes it alone. You need the support and wisdom of another set of eyes on a problem – and they need support from you too. Only by acting collectively will we build a strong union. Through your local chairperson you also have the support of your Unifor National Representative.
- **Know your workplace issues and conditions.** Keep your ear to the ground, look for patterns of problems, and spend time with your members. Keep an eye out for unsafe work practices. Eat lunch with co-workers, drop by their work stations when you can, see for yourself, and listen, listen, listen.
- **Know the duty of fair representation.** Understand our roles and our responsibilities, so that you can fulfill them to the best of your ability. Commit to due diligence.
- **Know something about arbitration.** Understanding where a grievance can end up helps us conduct investigations that are thorough and timely, and helps remind us of the importance of documentation. Preparing a case ‘as if’ it were going to arbitration may help us settle it in the early stages – and, if it doesn’t it will certainly make for a stronger case at the end of the day.

## WHAT EVERY WORKPLACE REPRESENTATIVE NEEDS TO GET TO KNOW:

- **Know yourself.**  
Recognizing your own strengths and limitations will allow you to draw on what you do well, and will help you figure out when it's time to get support. We all need support.

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*Nobody goes it alone. You need the support and wisdom of another set of eyes on a problem – and they need support from you too. Only by acting collectively will we build a strong union.*

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# WHAT EVERY WORKPLACE REPRESENTATIVE NEEDS TO HAVE:

## What every Workplace Representative needs to have:

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- **A copy of the collective agreement.** Learn how clauses in the agreement relate to each other. Carrying your agreement with you means you are ready when a member asks a question. Don't forget 'letters of understanding' and 'memorandums of agreement' which can also speak to working conditions.
- **A current contact list of all workplace reps in your workplace,** up to and including the Local Union President.
- **A copy of the seniority list.** The employer is required to provide this to you. Keep it handy and updated with contact information on your co-workers.
- **Grievance forms.** These are essential.
- **Union Fact Sheet for Investigations.**
- **A copy of workplace rules & policies.**
- **A copy of the health & safety act that pertains to your workplace** (provincial or federal).
- **Information and steps on "the right to refuse unsafe work".**

## WHAT EVERY WORKPLACE REPRESENTATIVE NEEDS TO HAVE:

- **A copy of the Unifor Constitution.**
- **A copy of your local union by-laws.**
- **A copy of the Steward Pocket Guide** (this book).
- **A copy of the Unifor Harassment Investigation Pocket Guide.** Call the Unifor workroom at 1-800-268-5763 for a copy or ask your National Rep.
- **Information for new members** (the Unifor owner's mini-guide).
- **A notebook and a pen.** Always be prepared to document.

## The Collective Agreement

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**A** collective agreement is a written contract negotiated between an employer and a union which sets out terms and conditions of employment. It is legally enforceable.

Your collective agreement is the result of a struggle between the needs of employers and the needs of workers. The collective agreement is a record of how much progress a group of workers has been able to make in previous rounds of bargaining and how much the employer has been able to hold back. It establishes the minimum that a worker should expect from an employer during the life of the agreement.

Grievances are how we protect and enforce those minimums and the minimums that workers are entitled to under law. We need to remember that what's in our Collective Agreement doesn't usually reflect all that we think we are entitled to, or the pinnacle of fairness – rather, it reflects what we've been able to negotiate at this point in time. So when we file a grievance we are simply making sure that management lives up to what's been agreed to until the next round of bargaining, when we'll try to make it an even better or stronger agreement.



# THE COLLECTIVE AGREEMENT

The grievance procedure is also our formal mechanism for enforcing workplace and human rights laws (these laws are considered to be part of the collective agreement, even though they're not spelled out in writing in the agreement).

With all this in mind, we still need to remember that grievances can't be the only focus of our work as workplace representatives. There are many opportunities during the life of a collective agreement that provide a chance for additional gains – particularly around day-to-day issues such as working conditions and rules of work.

Often times our collective agreement language is written in a legal lingo that can be difficult to understand. The legal lingo can feel intimidating. Figuring it out takes some practice but the more we use it the easier it becomes to understand and the better we get at using it to defend workers' rights.

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*Your collective agreement is the result of a struggle between the needs of employers and the needs of workers.*

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## The grievance procedure

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### What is a grievance?

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A grievance is a difference between the union and management over what the collective agreement means, and/or the way the collective agreement is being applied in practice.

It is usually the result of some action taken by the employer or by their failure to take action when it should have been taken.

A grievance always contains a demand for corrective action (this is usually a demand “to be made whole”; that way it covers any redress you might not be aware of when writing the grievance).

A grievance can be based on...

- The Collective Agreement (including Letters of Agreement / Memorandums of Understanding)
- Labour Legislation such as:
  - your Provincial Employment Standards Act / Federal Labour Code;
  - Health and Safety Act;
  - Labour Relations Act;
  - Human Rights Code / Act.

# THE GRIEVANCE PROCEDURE

A grievance can also be based on...

- Past Practice (well-known, established workplace practices);
- Employer rules and policies;
- Discriminatory, unreasonable or unfair management actions.

Grievances generally fall into one of the following categories:

- clear-cut violations of the plain words of the collective agreement
- violations of a labour law like the human rights code, minimum employment standards, or health and safety
- unfair or unequal treatment of workers by management
- discipline or discharge without just cause
- an unreasonable rule
- a rule or policy applied unfairly
- past practice not followed in relation to some contract language

Although a grievance may sometimes have to do with things not spelled out in the collective agreement (like some past practices), every grievance must make reference to the collective agreement.

# THE GRIEVANCE PROCEDURE

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## Types of grievances

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Grievances can also fall into individual, group or policy categories.

**Individual employee grievances** are those that affect a single worker.

**Group grievances** – a number of employees with individual grievances on the same or related subject join together in their grievance.

**Union or policy grievances** – the subject of the grievance is of general interest to the bargaining unit as a whole. Individual employees may or may not be affected. If you are filing a policy grievance, still be sure to also ask for full redress (“to be made whole”) for individual workers whose rights were violated.

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## Workplace problems and grievances

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There is a difference between grievances and other workplace problems; a grievance is an action we can take as a union to correct a violation of the collective agreement.

There are times when members come to us with issues that may not fall into any of the grievance categories we have discussed – and are therefore not grievances.

# THE GRIEVANCE PROCEDURE

That doesn't mean workplace representatives can't get involved – explain to the member the limits of the grievance process, but have a discussion to see if there are other channels for resolution.

Refer members with personal or non-workplace problems to officers or union counsellors in the local or your community who deal with such problems. They can help set the member on the right course. Check in with the member from time to time; they need to know the union cares.

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## **What every grievance procedure has in common:**

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- Outlines a process for enforcing the collective agreement.
- Allows union and management to settle grievances between them.
- Is written down right in the actual collective agreement.
- Includes steps in the grievance procedure.
- Names the people responsible on both sides at each step.
- Requires written documentation.

# THE GRIEVANCE PROCEDURE

- Identifies an arbitration procedure for final settlement.
- Always demands/includes an investigation by workplace representatives.

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## Steps in the grievance process

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Every collective agreement outlines the steps to follow when filing a grievance.

For example:

**Step one:** a discussion is held between the grievor, the workplace rep/steward and the supervisor to try to find a quick, informal solution to the problem. Many workplace problems are solved this way.

**Step two:** If there's no satisfactory resolution, the union writes up grievance, using a grievance form that outlines the problem, how it relates to the collective agreement and says what the union and the worker want done about it. Often getting the problem down in writing is enough to get management to agree to a resolution.

**Step three:** If management doesn't fix things when they receive the written grievance, then people higher up in the organizational chain (on both sides) get involved to try to find a solution.

# THE GRIEVANCE PROCEDURE

**Step four:** If there is still no satisfactory resolution, then the President of the Local /Local Unit Chairperson and the Human Resource manager will get involved. If they need help, a Unifor national representative and/or a head office / senior management person may become involved.

**Step five:** If there's still no resolution, the issue may be referred to an Arbitrator, a government-appointed independent third party.

As you can see, at each stage, the steps become more formalized, and people higher up the chain on both the union side and management side get involved.

**Check your collective agreement.** You need to know:

- How many steps are there in your particular process? (not all workplaces outline four steps before arbitration)
- Who needs to be involved or informed at each step?
- Before filing a grievance, verbal or written, do you have a duty to discuss the complaint with the employer?
- What is expected and required at each step?
- What timelines come into play at each step?
- How, when and why we move from one step to the next?

# THE GRIEVANCE PROCEDURE

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## Seven things to keep in mind about the grievance process

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1. We always try to find a solution at the earliest stage. The higher up the process, the more senior people get involved and the more entrenched they may become.
2. We always proceed knowing the case could potentially go to arbitration. This means right from the beginning we do a thorough and timely investigation and we document, document, document.
3. Except in certain circumstances, we follow the dictum “obey now, grieve later” (see page 40).
4. We keep the grievor informed at every step of the process, even if the only news to report is that there’s no news.
5. We deal with grievances strategically, always with an eye to building the union.
6. We have a legal right to this process. The employer cannot get in our way of proceeding from one step to another; the power to move forward is in the union’s hands



7. Timelines are critical. The last thing we want is to lose a grievance on a technicality – one of the most common ways to mishandle a grievance is to fail to follow timelines.

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## **Obey now, grieve later**

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Stewards and members must know and understand the “obey now, grieve later” rule. This is a general principle of labour law, established in arbitration.

Workers have a duty to obey an employer’s order when given and, if they disagree, grieve it later on.

The union doesn’t necessarily always agree with this rule, but we know that arbitrators will generally uphold it.

Arbitrators also recognize exceptions to this rule. A worker might have grounds to refuse to follow an order if the order

- endangers a person’s health and safety; or
- requires the worker to perform an illegal act.

A third exception might happen when a workplace representative disobeys an order because they’re protecting the interests of other workers from irreparable harm in an urgent situation.

# THE GRIEVANCE PROCEDURE

A union steward claiming an exception must be prepared to show they were justified in doing so.

You will need to educate your members on the “obey now, grieve later” rule (as well as on “right to refuse”, see page 41). Obey now, grieve later can be a tough pill to swallow for members who are really angry / emotional about an injustice – make sure they understand this is not our rule, but it’s a rule we (almost always) need to follow if we are going to have a good shot at fixing the problem.

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## **The right to refuse unsafe work**

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Workplace health and safety laws give workers a great deal of protection when they refuse work because they have an honest belief the work is unsafe or hazardous to themselves or others. So long as the worker tells the supervisor right away that they are exercising the right to refuse under the health and safety law, the worker should not, under law, be disciplined or suffer reprisal.

If there is no worker safety representative around, a union steward may be called upon to act as the worker’s representative or advocate. Your job is then to see that the worker has been fully informed of their rights and that the proper steps are followed. The supervisor,

## THE GRIEVANCE PROCEDURE

together with the worker's representative, must investigate the refusal in the presence of the worker.

If, after the investigation, the worker does not agree with what the supervisor says, the government inspector must be called in. Meanwhile, in nearly every jurisdiction, another worker cannot be made to do the refused work unless s/he has been told of the refusal, the worker's reasons for the refusal, and what their rights are under the law.

Find out more about the right to refuse and how it works under the law which applies to your workplace. Unifor advises bargaining committees to include the right to refuse unsafe work into the language of the collective agreement.

If a worker has been unjustly disciplined or discriminated against for exercising his or her right to refuse, the matter must be filed either as a grievance or a complaint to the appropriate government labour relations board – but generally speaking not both at the same time.

You can order “Unifor Right to Refuse” cards by contacting our Unifor Health, Safety and Environment Department, at [healthandsafety@unifor.org](mailto:healthandsafety@unifor.org) (or 1-800-268-5763 ext. 6558). Be sure to specify your province or federal jurisdiction.

## How to investigate a grievance

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**W**hen a member comes to you with a problem or a complaint, you need to investigate it. Your collective agreement will outline the exact procedure that must be followed – what we present here is a general guide to investigations.

Investigations help us determine the facts of the case, help us determine whether or not there is a grievance, and give us an indication about how best to proceed.

Grievances must be based on facts.

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### What is a fact?

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A fact comes from:

- Witnesses with first-hand knowledge (this includes the grievor)
- Documents verified by witnesses
- Relevance – it must be directly linked to the issue

Hearsay is not fact. Hearsay is second-hand information. For example:

Fran tells Sukhvinder that she saw Trevor put bolts into the machine. Fran's evidence is first hand (what she saw or heard) – it would be admissible at a hearing.

# HOW TO INVESTIGATE A GRIEVANCE

But Sukhvinder's evidence is hearsay, and would not be admissible, given that he did not hear or see it first-hand.

Hearsay is not accepted because the other side cannot test (through Sukhvinder) whether Fran's vision / hearing is accurate, or whether her memory is faulty, or whether she has a reason to lie.

A thorough investigation will not rely on hearsay.

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## Tips for investigating workplace problems & grievances

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### ***Being prepared:***

**Organize your "tools".** Have a place at work and at home with ready access to what you'll need to respond to calls for assistance from members in an organized way. Keep a supply of Grievance Fact Sheets and grievance forms on hand, and your collective agreement within reach. If you are not a full time rep know what your collective agreement says about time to meet with a member during working hours.

**Use a grievance factsheet.** When you are first approached with a possible grievance, record what information you can on a Factsheet. It is a useful tool to

# HOW TO INVESTIGATE A GRIEVANCE

help you collect and record the important facts. It is for union use only, and an important part of the file you'll create.

**Set up a grievance file.** Number it. Collect and file all relevant documents. Keep everything together in the file folder. Your file is your own investigation. It is different from the grievance form that you give to the employer.

**Log it.** Record this grievance in your workplace grievance log (usually kept in the union office). Enter new grievances into the log (grievance #, date filed, name of grievor, type of grievance, workplace rep's name). The log will also include a column for noting the date when the grievance is resolved. The log book is an important central record. The log helps us keep an eye on timelines, and it also ensures that even if the workplace representative is off sick, unelected etc., the chair (keeper of the log) and the Unifor National Staff Representative can know at a glance which grievances are active and which have been resolved.

## ***Interviewing the grievor:***

**Make the most of the first interview.** Choose a quiet, convenient and private place. If possible, set a time when you're both not rushed.

# HOW TO INVESTIGATE A GRIEVANCE

**Listen to what the grievor has to say.** Listen to both words and feelings. Encourage the member to talk freely, venting if necessary. A story may change considerably when the worker has blown off some steam.

**Get all the facts. Write them down on your fact sheet.** Question points you don't understand, press for all the facts, and discuss potential witnesses.

**Make time for listening "first aid".** The person may have a significant emotional investment in the issue. This is particularly true in cases of harassment and serious interpersonal conflict. If this is the case, allow time for venting. When an individual feels understood, an enormous emotional burden is lifted; stress and defensiveness are reduced and clarity increases.

**Develop your questioning skills.** There are different kinds of questions - "open-ended", "close-ended", "greater response", "feeling-finding" and "mirror questions" - that help you elicit information. Avoid "leading questions" - questions that contain or suggest an answer.

- **"Open-ended" questions** typically begin with "what", "how", "who" or "when": "Why did you respond in that way?" "What exactly did he say?" "When did

# HOW TO INVESTIGATE A GRIEVANCE

you first become aware of it?" "What do you think should be done now?"

- **"Close-ended" questions** usually require a "yes" or "no" response: "Did you say management responded in writing?"
- **A "greater response" question** is an adaptation of the "open-ended" question to draw out additional information. Key words include "describe", "explain", "tell", "elaborate" and "provide": "Describe the location where this took place." "Tell me what happened next." "Can you elaborate on that point?" "Can you provide more details on what took place at the meeting?"
- **"Feeling-finding" questions** ask for subjective information that gets at a person's opinions, attitudes, values, beliefs or emotions. They typically use words like "think" and "feel": "How did you feel about that?" "Why do you think she said that?"
- **"Feedback and clarification" questions** are used to clarify information. They can also serve to draw out additional information. Try to mirror the exact words used by the person to avoid turning it into a leading question. "When you said 'everyone participated in the meeting', what did you mean by that?"



## HOW TO INVESTIGATE A GRIEVANCE

- **Avoid “leading questions”.** A leading question suggests its own answer or can prejudicially influence a person’s response. For example, “What colour hat was he wearing?” suggests the person was wearing a hat when perhaps s/he was wearing a hooded jacket. Instead of “Most people would have been upset by that remark. Were you?” try “How did you react to that remark?”

**Get to the source of the member’s concerns.** There may be “layers” of a problem or more than one distinct problem requiring more than one solution and way to achieve it. Providing the member with the time and space to share information and express emotions should give you what you need to identify the problem(s). However, recognize that in some cases, the problem may not be clear until additional fact gathering and research have been carried out.

**Ask for the story in writing.** Ask the member to write out the full story as soon after the event as possible. Suggest that it be organized chronologically with exact names, job titles, dates, times and places. Ask that actual quotes be used to relate things s/he heard or was told, to the best of her/his recollection. Maybe the tone is also important, or how s/he felt at the time. Recording information in this way will help the person

# HOW TO INVESTIGATE A GRIEVANCE

organize her/his thoughts and it will be useful for refreshing their memory (and yours) at later meetings/arbitration. These notes will not be provided to the employer during the grievance procedure – though they may be used at arbitration as long as they were made at or about the time of the events in question. Be sure the grievor signs and dates their written notes. In the case of a continuing grievance, advise the member to keep a diary of events, signing and dating each entry.

Note: not all of our members have the ability to capture issues in writing. Or they may prefer to write their notes in their first language, rather than English or French. In either case you can offer to scribe for them (you write down their exact words), read it back to them, and get their signature indicating that this is their recollection of the events.

**Record all contact with the complainant.** Generally, this is a good practice as it provides a written record of verbal and written communications to help maintain focus on important details concerning the case. It also provides an important timeline of the investigation process itself. Devise a system for recording the date and a summary of each conversation. It will become especially important if a decision is made not to proceed with a grievance or not to provide representation at

# HOW TO INVESTIGATE A GRIEVANCE

some point. It will be an important record if a member complains that s/he has not been fairly represented.

## ***Planning the investigation:***

**Determine when time limits start.** Your collective agreement outlines the timelines that a grievance be filed. You should ensure that a grievance is filed within the time limits specified to avoid an objection concerning timeliness.

**Plan and organize the investigation.** List what information you need and identify possible source(s). Determine how and when you are going to gather what you need. Writing it all down will help you approach what needs to be done in an organized way. Keep revising the plan as new information becomes available. Look for your best evidence. For example, an original receipt for registered mail is better than a statement from someone who describes his or her recollection of it.

**Have an organized approach to gathering the facts.** This is not as easy as it sounds. Real documentation is often not available. Sometimes, people forget important details, withhold pieces of information, interpret facts in a way that suits them or allow emotions to cloud their thoughts. That's why it is so important to dig, check for all angles, re-check, and ask questions. The tried-

# HOW TO INVESTIGATE A GRIEVANCE

and-tested “who”, “what”, “where”, “when”, “why”, “want” and “whoa” is a good model to use. Try to gather assemble your evidence on this basis.

**Stay within the time limits.** A good grievance can be lost by missing a time limit. Get to know the grievance procedure inside out. The collective agreement will outline the procedure. Strictly observe the time limits. Get any extensions in writing. If for some reason a time limit is missed, determine the cause for the delay but don't abandon the grievance. The employer may not object and under certain conditions, arbitrators have the power to extend time limits. Usually, if the employer or the union fails to object to a missed time limit, it is considered that the party waived that right.

**Determine whether this is an individual, group or union/policy grievance** (check your collective agreement).

Where an individual matter is involved - and especially where individual relief is sought - an individual grievance is filed. A group grievance is filed in instances where a group of employees have been affected in the same way and usually seek the same redress. Policy or union grievances involve matters of general policy or of general application of the collective agreement affecting the union as a whole, or where an obligation owing specifically to the union has not been fulfilled.

# HOW TO INVESTIGATE A GRIEVANCE

**Review your reference tools.** The type of problem will determine what facts you need to gather. There may be specific tools you need (for example, the Unifor Pocket Guide on Investigating and Resolving Workplace Harassment).

**Investigate promptly.** Investigate before memories fade or witnesses disappear. Also, when people are involved in a highly charged emotional confrontation, their recollection of facts may be less than reliable. There is a tendency to overlook one's own errors and place oneself in a favourable light. Over time, positions may harden, with each person becoming increasingly convinced of the accuracy of his or her point of view. Therefore, it is important to interview people and acquire statements or take notes early in the investigation process.

**Identify affected parties.** There may be people whose situation could be affected by the outcome of a grievance. For example, another member of the union might have benefited from the way the employer distributed overtime or made a staffing decision. It will be important to explain the rationale for the grievance, listen to their concerns, keep them informed and generally not treat them as the "enemy" just because they enjoy the rewards of a management decision. As much as possible, consider ways to work out a settlement that addresses their situation as well.

# HOW TO INVESTIGATE A GRIEVANCE

**Get the story in pictures.** Look beyond paper evidence. Take pictures, create diagrams, get a google map. This can be useful to demonstrate size and location of furniture or space, condition of materials or equipment, distances and measurements, or state of roads and highway conditions. Ensure that the photographer or author signs and dates each item. These kinds of 'props' help everyone on the union side to 'see' the events described.

## ***During the investigation:***

**Involve the member.** Involve the member in the process - gathering facts, drafting the grievance, participating in meetings. If confidentiality is not an issue, look for ways to involve others who are similarly affected. It makes them better union members and helps strengthen the union in the process.

**Integrate the "organizing model".** Make the organizing model a consistent thread in grievance handling. It is an approach to union work that puts membership involvement at the centre of each union activity. It utilizes the knowledge and expertise of union resources but puts real power in the hands of the members. It means giving members opportunities and support to do things for themselves. We continue to "service" the members by offering advice, handling grievances

# HOW TO INVESTIGATE A GRIEVANCE

and providing representation, but service has to be an organizing activity.

**Stay objective.** Gather all relevant facts and evidence. It is just as important to gather those facts/evidence that hurt the case as it is to gather those that help.

**When in doubt, get advice.** Talk to other stewards or committeepersons and with your local union to find out if there have been other grievances like this one. If discipline (a letter of warning or a suspension) was issued, was it the same for similar offenses? Be sure you are reading the agreement correctly and only then go ahead.

**Adopt a learning stance.** You aren't expected to have immediate answers but members should be able to expect that you'll do your best to talk with others and get back to them with answers. Treat every opportunity as one that enables you to learn and practice your skills.

## ***Interviewing witnesses:***

**Talk to other workers in the area who may have knowledge of what happened.** Interview any witnesses who might have seen or heard anything related to the event or issue. Conduct your interviews as soon after the event as possible.

# HOW TO INVESTIGATE A GRIEVANCE

**Interview witnesses separately.** Interview witnesses separately so one person's recollection or perspective isn't tainted by that of another person.

**Collect statements from witnesses.** Interview each person before asking for a written statement. Your interview questions will help that person focus on the type and detail of the information you are seeking. If the witness is reluctant to make a written statement, make one for them and confirm that it is what actually happened. Have them sign it.

**Interview both supportive and non-supportive witnesses.** You need the whole picture, or one as complete as you can get. Surprises will not help your case or your credibility. Focus on remaining objective, gathering information that both helps and hurts your case.

**Don't settle for hearsay information.** If someone says, "Jean told me..." talk to Jean. At arbitration, hearsay evidence is generally not admissible, or is given little weight.

## ***Getting all sides to the story:***

**Get the employer's version.** The employer must make any related facts and documents available to you. Talk to the supervisor. Get an understanding of where the



## HOW TO INVESTIGATE A GRIEVANCE

employer is coming from. What does the employer know that you don't? Does management have a detailed rationale? Are they trying to be firm on a broad point of principle, or just automatically backing a manager who might be in the wrong? What case law are they relying on?

- a. Obtain as much detail on the employer's version of events or management's position on the issue. Gather factual particulars by interviewing supervisors. Obtain documentation or citations from human resources.
- b. You may find a way of resolving the problem without having to file a grievance but if not, be as rigorous in documenting and analyzing the employer's position as your own. This will give you a good idea of what you're up against and what case you have to meet. It will help you narrow down the facts and arguments likely to be advanced, and allow you to plan accordingly.
- c. During all meetings with management, take notes and sign and date them. Remember to record details such as meeting location, date, time and names and positions of those in attendance.

# HOW TO INVESTIGATE A GRIEVANCE

**Research the law.** Check the case law. Ask your chief steward, chairperson, or national rep for help. Look for decisions on grievances dealing with a similar issue or collective agreement language. If past decisions (called case law) are favourable, bringing this information to management's attention may get the problem resolved without a grievance. See the section in this Pocket Guide on Researching Arbitration Cases (page 101).

# HOW TO INVESTIGATE A GRIEVANCE

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## SAMPLE GRIEVANCE FACT SHEET (For the Union only)

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**WHO** is involved in the grievance?

**Grievor:**

Name: \_\_\_\_\_

Department: \_\_\_\_\_ Classification: \_\_\_\_\_

Seniority: \_\_\_\_\_ Wage Rate: \_\_\_\_\_

**Supervisor or other Management Involved:**

Name: \_\_\_\_\_

Department: \_\_\_\_\_ Job Title: \_\_\_\_\_

**Witnesses or other persons involved:**

Name: \_\_\_\_\_

Department: \_\_\_\_\_ Classification: \_\_\_\_\_

Name: \_\_\_\_\_

Department: \_\_\_\_\_ Classification: \_\_\_\_\_

Name: \_\_\_\_\_

Department: \_\_\_\_\_ Classification: \_\_\_\_\_

**WHAT happened? What is the grievance about?**

(Attach additional notes if necessary)

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# HOW TO INVESTIGATE A GRIEVANCE

**WHEN did the grievance occur?** (date, time, how often, for how long)

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**WHERE did the grievance occur?** (Be specific - department, aisle number, floor, room, etc - include a diagram, sketch or photo if helpful)

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**WHY is this a grievance?** (violation of collective agreement, past practice, law, safety regulations, rulings or awards, unjust treatment, etc)

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# HOW TO INVESTIGATE A GRIEVANCE

**WANT grievance settled** and to be made whole (full redress) (adjustments necessary to completely correct situation; in case of discharge - back pay, seniority, pension)

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**Employer Contends:**

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**Grievor's Record of Conduct and/or penalties for lateness, absenteeism, work performance, etc.**

Dates \_\_\_\_\_ Reasons \_\_\_\_\_

Verbal Warnings: \_\_\_\_\_

Written Warnings: \_\_\_\_\_

Penalties Imposed \_\_\_\_\_

**Any related information**

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# HOW TO INVESTIGATE A GRIEVANCE

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## ***Additional Information***

### ***Information Given by Witnesses***

(print the name of each witness followed by a summary of what each saw and heard; get a signed statement - attach any additional statements to this form)

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Date \_\_\_\_\_ Signed \_\_\_\_\_  
(witness)

### ***Documentary Evidence***

Seniority list, wage schedule, work ticket, record of similar grievance, record of past discipline, etc.

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Date \_\_\_\_\_

Signature of Committeeperson/Steward \_\_\_\_\_

Signature of Aggrieved Member \_\_\_\_\_

# HOW TO INVESTIGATE A GRIEVANCE

## CHECKLIST ✓

**For grievance investigation**  
**Have these points been covered and entered on the fact sheet?**

<u>Overtime</u>	<u>Job Postings (Improper or non-posting)</u>
1. Grievor's classification <input type="checkbox"/>	1. Classification of vacancy <input type="checkbox"/>
2. Shift or work group <input type="checkbox"/>	2. Area vacancy existed <input type="checkbox"/>
3. Date and shift overtime was scheduled <input type="checkbox"/>	3. Name of employee who held vacancy <input type="checkbox"/>
4. Classification scheduled for overtime <input type="checkbox"/>	4. Name of employee promoted to fill vacancy <input type="checkbox"/>
5. Name and classification of employee who worked <input type="checkbox"/>	5. Shift at time of posting <input type="checkbox"/>
6. Record of overtime from supervisor's book <input type="checkbox"/>	<b>6. Articles violated</b> <input type="checkbox"/>
7. The actual work performed <input type="checkbox"/>	<u>Removed from posting</u>
<b>8. Articles violated</b> <input type="checkbox"/>	1. Grievor's posted classification <input type="checkbox"/>
<u>Job Posting</u>	2. Date of last posting <input type="checkbox"/>
1. Grievor's classification and seniority <input type="checkbox"/>	3. Grievor's qualifications <input type="checkbox"/>
2. Grievor's previous classifications <input type="checkbox"/>	4. Reasons for removal <input type="checkbox"/>
3. What grievor was temporarily promoted to <input type="checkbox"/>	5. Classification assigned to <input type="checkbox"/>
4. Date of promotions (if any) <input type="checkbox"/>	6. Name of employees junior and not affected <input type="checkbox"/>
5. Pay stubs if possible <input type="checkbox"/>	<b>7. Articles violated</b> <input type="checkbox"/>
6. Grievor's experience in vacancy requested <input type="checkbox"/>	<u>Temporary Promotion</u>
7. Name and seniority of employee awarded job <input type="checkbox"/>	1. Grievor's seniority and classification <input type="checkbox"/>
8. Number of postings and grievor's application <input type="checkbox"/>	2. Grievor's qualifications <input type="checkbox"/>
<b>9. Articles violated</b> <input type="checkbox"/>	3. Classification promotion was made <input type="checkbox"/>
	4. Time of promotion <input type="checkbox"/>
	5. Availability of grievor at time of promotion <input type="checkbox"/>
	6. Name of supervisor involved <input type="checkbox"/>
	7. Name of employee promoted <input type="checkbox"/>

# HOW TO INVESTIGATE A GRIEVANCE

8. Location promotion made	<input type="checkbox"/>	6. Name of employee performing grievor's regular work (if any)	<input type="checkbox"/>
9. Instructions to grievor (if any)	<input type="checkbox"/>		
10. Exact work performed by grievor	<input type="checkbox"/>	<b>7. Articles violated</b>	<input type="checkbox"/>
<b>11. Articles violated</b>	<input type="checkbox"/>		
		<b>Statutory Holiday</b>	
<b>Improper Pay (Work assignment)</b>			
1. Grievor's regular posted classification	<input type="checkbox"/>	1. Same as overtime	<input type="checkbox"/>
2. Grievor's regular work assignment	<input type="checkbox"/>	2. Seniority of grievor	<input type="checkbox"/>
3. Grievor's assignment on day in question	<input type="checkbox"/>	3. Seniority of employees who did work	<input type="checkbox"/>
4. Name of employees who worked in grievor's place (if any)	<input type="checkbox"/>		
5. Name of employee available (junior to grievor)	<input type="checkbox"/>	<b>Discharge and Penalties**</b>	
6. Date of grievor's last posting	<input type="checkbox"/>	1. Just cause	<input type="checkbox"/>
7. Safety involved (if any)	<input type="checkbox"/>	2. Complete statement of events leading to discipline	<input type="checkbox"/>
8. Rate of pay applicable to assignment	<input type="checkbox"/>	3. Date and times (important to document)	<input type="checkbox"/>
9. Exact work performed by grievor and instructions from supervisor	<input type="checkbox"/>	4. Supervisor's name	<input type="checkbox"/>
<b>10. Articles violated</b>	<input type="checkbox"/>	5. Name, address, phone and statement of witness (if any)	<input type="checkbox"/>
		6. Employee's record	<input type="checkbox"/>
		7. Print or diagram of area (if applicable)	<input type="checkbox"/>
		<b>Vacations</b>	
<b>Demotion</b>			
1. Grievor's classification and seniority	<input type="checkbox"/>	1. Seniority	<input type="checkbox"/>
2. Number of employees affected	<input type="checkbox"/>	2. Time requested	<input type="checkbox"/>
3. Grievor's qualifications	<input type="checkbox"/>	3. Time allotted	<input type="checkbox"/>
4. Classification demoted to	<input type="checkbox"/>	4. Grievor's qualifications	<input type="checkbox"/>
5. Names of junior employees holding higher rated jobs (if any)	<input type="checkbox"/>	5. Name and classification of junior employees	<input type="checkbox"/>
		6. Number of employees in work group	<input type="checkbox"/>



# HOW TO INVESTIGATE A GRIEVANCE

<i>Supervision Working</i>		<i>Transfers</i>	
1. Name of personnel doing the work	<input type="checkbox"/>	1. Seniority	<input type="checkbox"/>
2. Type of work performed	<input type="checkbox"/>	2. Department requested	<input type="checkbox"/>
3. Amount of time worked	<input type="checkbox"/>	3. Name of new employees	<input type="checkbox"/>
4. Area where work done	<input type="checkbox"/>	4. Grievor's classification	<input type="checkbox"/>
5. Grievor's classifications	<input type="checkbox"/>	5. Employees available to replace grievor	<input type="checkbox"/>
6. Availability of grievor	<input type="checkbox"/>	6. Date of grievor's request for transfer	<input type="checkbox"/>

## **\*\*Additional notes on discharge and discipline cases**

- Did the steward ask about personal problems of the grievor?
- Did the steward ask about any previous record, good or bad, long or short?
- Did the steward probe any extenuating circumstances in this case?
- Did the steward ask about the personal character of all people involved?
- Did the steward discuss the consequences of the penalty?
- Did the steward consider whether or not the "punishment fits the crime"?
- Did the steward advise the grievor to seek employment while waiting?
- Was there a security interview and was the steward present?

## How to write up a grievance

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**T**he way you write up a grievance can determine whether a case is won or lost.

A well-written grievance will be brief and to the point. It contains only the basic facts, a statement of cause and a claim for redress. Arguments are *not* written into the grievance (they should be made verbally at the first meeting, and can also be made at other meetings).

Check your collective agreement to determine if it includes specifications on writing up grievances (for example, it may specify that the article which has been violated must be named).

A well-written grievance contains information usually answered by carefully filling in the local union's official grievance form.

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### The 6 Ws

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- 1) *Who is involved?* Name or names, seniority, employee number(s) and classification(s) of the grievor(s).
- 2) *What happened?* What is the grievance about?
- 3) *When did it happen?* Dates, time of day, shift. In cases of pay shortage and claims for retroactive pay,

# HOW TO WRITE UP A GRIEVANCE

the exact dates and times. If there is a continuing violation, put this down on paper.

- 4) *Where did it happen?* Department or workstation.
- 5) *Why is this a grievance?* What happened? Write a brief and general statement about what the employer did that was wrong. State also that this is a violation of the collective agreement. Name the article or articles of the collective agreement that you think were violated if the collective agreement says you must name the articles violated on the grievance form. Always add the words "*and all other related articles.*"
- 6) *Want: What settlement is requested?* Always ask for "*full redress*" or "*to be made whole*".

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## Drafting the grievance

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### ***Why is there so little information contained about the actual case on the grievance form?***

The grievance form should be short and to the point – you want to save your arguments for the actual grievance meeting. Chances are the grievance and issues related to it will expand as you conduct your investigation.

The grievance is a document which will be called into evidence should the case go to arbitration. If a grievance

# HOW TO WRITE UP A GRIEVANCE

is not written correctly it can hurt the union's ability to represent the worker.

Keep it simple and concise. An example of a grievance statement is "I grieve the employer violated paragraph\_\_\_ , and all related articles of the collective agreement".

## ***Why do we add "and all related articles of the collective agreement"?***

When the collective agreement is at issue, identify the article as a whole, and after specifying a particular provision, include a phrase such as "and all other relevant articles...".

This provides greater flexibility to introduce other arguments should additional information become known at a later time.

Since even experienced representatives can too easily make a mistake naming the correct articles violated, we add the words "and all other related articles". This can be a crucial issue at arbitration. When the collective agreement says the correct articles must be named on the written grievance, naming the wrong articles and not including the words "and all other related articles" can take away the arbitrator's authority to rule on the grievance.

### ***Why is the demand for redress simply stated - “to be made whole”? why don’t we say exactly what we want?***

For redress we keep it simple and concise as well. Statements such as “To be made whole” or “To be made whole with full redress” ensures that our call for corrective action provides the space for an arbitrator to rule completely on all elements of the case.

Stating only what we are looking for can limit the outcome. If the grievance takes 6 months to resolve, what would make a member whole at that point might be different than what you could anticipate at the time of writing the grievance. The general words “to be made whole” protect the authority of the arbitrator to make an award and the right of the union to claim further specific redress at another stage if necessary.

### ***Why don’t we include evidence or arguments?***

Save these for when you meet with management.

### ***Why does each grievance get assigned a number?***

A grievance log is the union’s record of grievances filed and where they are in the grievance process. It is helpful both in keeping track of grievances and providing a record of problems with the employer. Having this record is particularly helpful in preparing for bargaining.

# HOW TO WRITE UP A GRIEVANCE

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## SAMPLE GRIEVANCE FORM

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Employer: \_\_\_\_\_ Grievance #: \_\_\_\_\_ Date: / /

Grievor(s): \_\_\_\_\_

Date of Employment: \_\_\_\_\_ Department: \_\_\_\_\_ Title: \_\_\_\_\_

Nature of Grievance: \_\_\_\_\_

Date(s) of Occurrence: \_\_\_\_\_

Additional Information Relevant to Grievance: \_\_\_\_\_

Article Violation: \_\_\_\_\_

*and any other Article of the Collective Agreement or Legislated Act that may apply.*

**Grievance Settlement Requested:**

- 1) A Declaration that the Employer has violated the terms of the Collective Agreement;
- 2) An order directing the Employer to cease violating the Collective Agreement;
- 3) Full payment of all lost wages, pension contributions and benefits, that there be no loss of seniority or vacation credits and that the Grievor(s) be made whole in every way;
- 4) Full compensation for all Union Members affected by the Employer's violation, and
- 5) To be made whole.

**Additional Settlement Requested:** \_\_\_\_\_

Union Representative Signature: \_\_\_\_\_

Grievor(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# HOW TO WRITE UP A GRIEVANCE

## **Step 1**

Date Submitted: \_\_\_\_\_ For the Union: \_\_\_\_\_

Management response: \_\_\_\_\_

\_\_\_\_\_

For Management: \_\_\_\_\_ Date: \_\_\_\_\_

## **Step 2**

Date Submitted: \_\_\_\_\_ For the Union: \_\_\_\_\_

Management response: \_\_\_\_\_

\_\_\_\_\_

For Management: \_\_\_\_\_ Date: \_\_\_\_\_

## **Step 3**

Date Submitted: \_\_\_\_\_ For the Union: \_\_\_\_\_

Management response \_\_\_\_\_

\_\_\_\_\_

For Management: \_\_\_\_\_ Date: \_\_\_\_\_

## **Step 4**

Date Submitted: \_\_\_\_\_ For the Union: \_\_\_\_\_

Management response: \_\_\_\_\_

\_\_\_\_\_

For Management: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE:** Four (4) Copies - Management; Grievor; Union Steward and Union Office.

All Employer responses to the written Grievance and all steps further **MUST BE IN SEPARATE FORM** from the Grievance Form.

# HOW TO WRITE UP A GRIEVANCE

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## SAMPLE GRIEVANCE

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Date of grievance: September 1, 2014

Grievance No: K-209

Presented by: Steward O.N. Beam

Nature: Seniority violation

Employer: Cheverford

Supervisor: B. Bluff

Employee Name: Beth Green

Seniority Date: January 10, 2002

Employee Number: 02-47

I protest that the employer violated articles 5 & 9 and all other related articles of the collective agreement, when on November 30, I was laid off while other employees with less seniority remained at work.

I demand full redress. Signed, Beth Green, September 1, 2014, cc: O.N. Beam, Union Steward.

Date submitted: September 2, 2014

(NOTE: This grievance answers who, why, what, when, where, and remedy.)



## HOW TO WRITE UP A GRIEVANCE

Read and follow every requirement of the grievance procedure in your collective agreement. Give management the signed and dated grievance. Give a copy to the grievor. Ask the supervisor to sign or initial and date a copy for the union. This is your record the grievance was filed on time.

## How to present a grievance

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**O**n the basis of the investigation, the steward or committee (or Chairperson in some cases) will make a decision whether or not the problem is grievable and on what grounds.

Most collective agreements require that the union give the employer the opportunity to resolve an issue before it becomes a grievance. This is expressed in many collective agreements as a requirement that the employee take the matter up with their immediate supervisor, along with a steward if desired. Other collective agreements require a written grievance right from step one of the grievance procedure. Remember to always review the language in your own collective agreement.

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### First meeting

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It is wise at the first stage to take the issue up verbally with the supervisor, even if the contract says the grievance must be submitted in writing at this step. Your chances of achieving a settlement are far better if you give management an opportunity to correct the problem and back down gracefully. You can always submit the grievance in writing if you have to. That's the easy part. The hard part is getting a settlement.

# HOW TO PRESENT A GRIEVANCE

The point of your first meeting with management is not to prove who is the cleverest person. The point is to get a settlement which is satisfactory to the union and to the grievor.

The following information applies to any meeting you have with an employer representative to resolve a problem.

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## **Tips for meetings with employers**

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### ***Before you meet:***

- Completely research the case. Do you have all the facts? Do you know the case?
- Consult with others in the union – do they see something you may have missed?
- Decide which facts to present.
- Know what will satisfy the member that does not violate the contract or leave other workers worse off.

### ***Preparing the member for a grievance meeting***

- It is generally good practice to have grievors attend their grievance meetings. Some collective agreements spell out what parts of the process the grievor is directly involved in. If the grievor will be

# HOW TO PRESENT A GRIEVANCE

attending the grievance meeting, make sure you meet beforehand.

- Prepare the grievor so s/he will know what to expect. Describe the setting, who will be there, how the case will be presented.
- Go over the facts and arguments with the grievor. Outline the key arguments, with the facts and case law in support. Outline management's anticipated arguments and questions, and discuss how to best respond to each of these.
- Decide in advance what role the member with the grievance will play at the meeting (will they silently watch, passing notes if necessary or will they participate more actively in the meeting?). Review what the grievor will or will not say during the meeting. If they have the skills to take notes, ask them to do so as well, then both of you will have a record of the meeting.
- Be sure the grievor understands the importance of not arguing in front of management. If either you or the member disagrees with anything that the other says during the meeting agree in advance that you will call for a short break and work out your differences in private.

# HOW TO PRESENT A GRIEVANCE

- Make sure the grievor knows that you are there to speak for them and for the union.
- Some union representatives organize a rehearsal or role play of the meeting with the grievor.

## ***At the meeting***

### **What to say**

- Go over the facts of the case you have decided to present.
- If it isn't obvious, say why the issue/situation is a problem.
- Be specific and to the point. Don't speak in generalities. A statement that the employer is always breaking safety rules, for example, is weak. Specify dates and locations. Present evidence like a doctor's certificate or the employer's own records if they are available and if they support your case.
- Tell the manager how the member would like to see the problem resolved.
- Use the phrase "We the union" (not 'I').
- Don't try to prove that the employer has done wrong. Make them prove that what they've done is right.
- Stop talking when you have made your point.

# HOW TO PRESENT A GRIEVANCE

## How to say it

- Keep calm and low key.
- Start out by pressing facts and evidence that management will agree with.
- Argue on the basis of the facts and stick to them. Don't get involved in side arguments. When this happens, switch the conversation back to the grievance.
- Do not get sucked into a debate about contract interpretation. Your job is to find out how the person you are meeting with interprets the relevant clauses of the contract. Say that you are there to see if the problem can be resolved, not to debate how an arbitrator will interpret the contract.
- Don't rush or feel pressured by any silences. Take time to read and take notes as needed. Silence while doing this is okay. In fact, you may need to request silence so that you can take notes (this request can be a powerful tool).
- Avoid personality conflicts. Do not provoke or ridicule the employer. You are there to work something out, not to score points.
- Do not lose your temper. Avoid shouting and table pounding. Many times supervisors will be

## HOW TO PRESENT A GRIEVANCE

deliberately insulting in the hope of provoking you into some rash act.

- Create a climate of mutual respect and avoid making threats.
- Be firm and courteous. Don't be timid and apologetic. Show respect but demand equal respect.
- Don't fall for back-slapping.
- Do not get involved in discussions of personal issues.
- If another union representative is helping you negotiate, and/or if the grievor is present, stick together and don't argue with each other. If you have differences, ask for a recess and settle them among yourselves.
- Don't take the process personally. You are there to give the union's position on the matter and to advocate on behalf of the grievor. The employer representatives are there to speak for the employer.
- State the facts as you see them. Advance arguments, supported by the facts and case law. Use formal language like, "It is the union's position that...". Avoid any rhetoric about fairness, or discrimination, unless those words are used in the relevant provision of the collective agreement. Unsubstantiated statements don't help your case.

# HOW TO PRESENT A GRIEVANCE

## What to listen for

- Factual information that you don't know or information that conflicts with your understanding of what happened.
- Any indication of what the manager is prepared to do.
- Let the employer make their own case (do not make it for them!)
- If this is a disciplinary case, the burden of proof is on the employer. They must produce facts strong enough to contradict or disprove the facts that support the grievor. If the employer has "evidence" (for example, photographs, video, medical reports, statements, etc.) ask for a copy now. If they don't produce a copy, after the meeting write to them (on letterhead - not by email) requesting a copy.
- If you know you are not going to resolve the grievance at this meeting try and gather as much information from the employer as possible.
- To best analyze the facts, talk less and listen carefully. Never pass up the opportunity to keep your mouth shut.



# HOW TO PRESENT A GRIEVANCE

## **Caucus if you need to**

- A caucus is a break during which time the two parties go to separate rooms to discuss something among themselves. A request for a break (caucus) may be made by either union or management at any point during the meeting.
- A caucus is usually sought when serious or previously unknown facts are discovered, or when an opportunity to think and regroup is needed, or when you have exhausted a line of argument and think it might sink in better if management were to go and have a caucus of their own.
- A caucus should also be called if you sense there is a difference of opinion (e.g., between a union representative and a grievor) or when you need to discuss a settlement proposal.

## **Finding a resolve**

- Do not let anyone side-track you. Stick to the question in dispute.
- Avoid tit-for-tat bargaining on grievances.
- Drive for an immediate settlement if you can get exactly what you asked for. A delay may give management second thoughts.

# HOW TO PRESENT A GRIEVANCE

- If the resolution you propose isn't accepted, ask what the employer is prepared to do to resolve the situation.
- If they offer less than what you ask for, don't immediately agree. Tell the employer that "the union will respond".
- If the employer says they will get back to you – ask them when they will give you an answer in writing. Remind them of the time limits in the collective agreement. Guard against stalling tactics.
- Once you have a resolve, don't move on to the next grievance, until you have settled and signed off a written resolution of the first one.

## **Prepare for the end of the meeting**

- In your preparation, make some notes that will help you bring closure to the meeting. It may be as simple as identifying the deadline date for the employer's response and considering whether or not you're open to extending the time limit.
- During the meeting, include in your notes the details of any agreements that represent a resolution, in whole or in part.
- As part of bringing closure to the meeting, summarize what you understand to be the points of

## HOW TO PRESENT A GRIEVANCE

agreement or better still, have the parties commit them to paper.

- Identify next steps, noting time frames and commitments.
- Stick to your plan! If you get stuck – say you’ll carry on the discussion at another time (and do so).

### **Taking notes**

- Keep a diary of all meetings that take place. Record the date, time and location of your meetings and who was there.
- Keep careful notes of what the employer says. Write down any facts of the case or information that might be useful.
- Keep notes on what if anything the employer indicates they are prepared to do to resolve the problem.
- These notes cannot be subpoenaed as they deal with attempts to resolve the grievance.
- Write down any commitments the employer makes. Put your notes in the grievance file!

# HOW TO PRESENT A GRIEVANCE

## After the Meeting

- Go back over the meeting to see if it went the way you thought it would and if you learned anything about the case that you didn't already know.
- Investigate new facts, look for additional evidence.
- Be sure everything that happened is written down; management's facts, your observations.
- If you got the resolve you were looking for, follow up to make sure management makes good on their commitments – don't assume this will happen.
- If the manager offered a different resolve, ask the member how they feel about the offer and if they would like to propose another solution in light of what the supervisor said.
- If the outcome was not satisfactory, work out what to do next in light of what came up at the meeting.
- Don't let the supervisor go behind your back to deal with the member.
- Follow-up with the member – keep them in the loop, don't leave them wondering.
- Keep the file up to date with the terms of settlement or the employer's response and your notes from the meeting.

## HOW TO PRESENT A GRIEVANCE

- If the grievance is to go to the next level, do so within the time limits. Keep the grievor updated.
- If the employer said they would provide you with documents follow up with them - in writing (on letterhead) if necessary.

### When a grievance has been lodged

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**K**eepest to specified time limits for filing of grievances and appeals. See that the employer replies within the time limits. If they do not answer within the time limits, go forward to the next step, noting on the grievance that the employer missed the limits.

Keep the member informed at all stages as to the progress of his or her grievance.

See that there is a written reply for every written grievance. Sometimes the employer will try to avoid giving a written answer. Insist they do.

Keep the union fact sheet or investigation file separate from the grievance form. The fact sheet gives details of the member's past record, like warning notices and attendance. It should also include names and addresses of witnesses. **The employer should only receive the official grievance form.**

A file of grievances and replies should be maintained in the union office. It provides information absolutely necessary for arbitration proceedings and a source of information for the bargaining committee about what contract clauses need to be rewritten and how.

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### **What not to do...**

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NEVER take on any of the roles of management.

NEVER pass the buck or make promises to members that you cannot keep.

NEVER trade grievances with management. Each grievance must stand or fall on its own merit.

NEVER turn down a grievance on the grounds the local union does not have the funds to fight it.

NEVER play favourites or politics with the grievance procedure.

NEVER process a trumped up or a phony grievance. To do so would only build false hope and ruin your credibility with management.

## Time limits

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**M**ost collective agreements include time limits for a grievance. If you miss these time limits, you put the whole grievance in jeopardy.

Do not risk losing a good grievance by missing time limits.

Your provincial or federal labour relations act may say that an arbitrator may extend the time for the taking of any step in the grievance procedure under a collective agreement, even if the time limits have run out, if the arbitrator is satisfied that there are reasonable grounds for the extension and that the employer will not be “substantially prejudiced,” as, for example, when the events in question happened so long ago that witnesses are no longer available.

Remember that even if there are cases where time limits might be set aside, it is still far safer to diligently follow them and keep written records of the steps taken.



### Tips for keeping notes and documentation

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**B**uild a well-documented file from the start. If our files are complete it's a good indication that we are representing our members thoroughly. A complete file will help us determine how to proceed with a case, and if it does end up going to arbitration, a complete file will go a long way to helping us win a case.

**Take detailed notes during all interviews.** Notes help you remember important facts, compare conflicting information or corroborate similar accounts. They will be important for other representatives who will later be working with the file. Therefore, it's important that others be able to read your writing!

Be aware that notes with those other than the grievor can be subpoenaed by the employer. Keep your commentary to a minimum.

Writing down what people say tells them that you take your responsibilities seriously. It also encourages them to be factually precise when you ask them to repeat things, so you can record it accurately (or do so using direct quotes). Slowing them down so you can keep up means that they have more time to think about what

## TIPS FOR KEEPING NOTES AND DOCUMENTATION

they're saying. It may give you more facts and less opinion.

When in doubt about the usefulness of information, write it down anyway. You likely won't need everything you've recorded but it's better to take it down at the time, rather than to have to go back later when memories might have faded.

At the end of interviews, go over your notes with the interviewee to make sure your notes are accurate. Sign and date your notes, noting that the interviewee verified their accuracy. Ask them person to sign and date them as well. Make sure they know that you are asking them to sign the notes not because you doubt them, but because it makes them more reliable if you end up at arbitration.

**Organize the file.** The better organized the information, the more useful it will be. Find a system that works for you and develop some logic to the file so it is useful for other representatives at subsequent levels of the grievance procedure. Usually, a summary of the facts and arranging and listing the documents in chronological order (by date) are key to a well-organized file.

# TIPS FOR KEEPING NOTES AND DOCUMENTATION

## GRIEVANCE FILE CHECKLIST

Grievor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Town/City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code \_\_\_\_\_

Phone (w): \_\_\_\_\_ (h): \_\_\_\_\_ (c): \_\_\_\_\_

BARGAINING UNIT: \_\_\_\_\_

SUBJECT OF GRIEVANCE: \_\_\_\_\_

(If insufficient space, please attach appendix)

<b>ATTACHMENTS</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Copy of legible grievance form (retype wording and attach if not legible)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Agreement(s) to extend time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appropriate referral notice or form (arbitration/ adjudication)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Names & addresses of other parties to be advised of arbitration hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (Step 1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (Step 2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employer's response (Step 3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at step 1 grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at step 2 grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outline of arguments presented at step 3 grievance hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
List of jurisprudence cited at all grievance hearings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# TIPS FOR KEEPING NOTES AND DOCUMENTATION

<b>ATTACHMENTS</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Completed Grievance Factsheet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy/summary of any settlement offers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contact with grievor (dates and brief summary)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All witness statements (signed and dated)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy of all pertinent documents in chronological order (i.e., copy of posting; attach a list.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appendices (attach a list)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXPLANATIONS FOR BOXES CHECKED "NO" OR COMMENTS:

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*(If insufficient space, please attach appendix)*

<b>TIME LIMITS</b>	<b>DEADLINE DATE</b>	<b>DATE PRESENTED</b>	<b>DATE RECEIVED by employee</b>
Presentation of grievance			
Response at Step 1			
Response at Level 2			
Response at Level 3			
Referral to arbitration/ adjudication			

# TIPS FOR KEEPING NOTES AND DOCUMENTATION

NAME OF UNION REPRESENTATIVE **(Step 1):**

\_\_\_\_\_

ADDRESS: \_\_\_\_\_

CELL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME OF UNION REPRESENTATIVE **(Step 2):**

\_\_\_\_\_

ADDRESS: \_\_\_\_\_

FAX: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME OF UNION REPRESENTATIVE **(Step 3):**

\_\_\_\_\_

ADDRESS: \_\_\_\_\_

FAX: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

## Resolving grievances

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### Try to settle at the earliest level possible

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If acceptable solutions can be found as soon as problems arise in the workplace, everyone benefits.

Talk about settlement possibilities with the member before filing a grievance. The further a grievance goes in the grievance process, the longer the grievor has to wait for a decision and the more disenfranchised the grievor and the membership can become.

Effective problem solving in the early stages is the goal of the union. In most cases, this is also the goal of the employer. Try to resolve the matter with management as early as possible, keeping in mind that a good settlement is one that is better or as good as one achieved through arbitration.

Throughout the entire process, discuss all settlement proposals and offers with the member and record a summary of each conversation for the file.

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### Grievances can set precedents

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When a case is settled through a grievance, it can serve as a precedent, or a model on which the merits of

similar cases will be assessed in the future. Precedents are usually very important because they establish how the union and the employer will interpret the collective agreement from then on.

Watch out for the unexpected, unintended results a grievance may have. Weigh or consider the effect the grievance, if won, might have on all the workers - the bargaining unit as a whole. A grievance that is good for one worker, if successful, might sometimes set a bad precedent for the union over the interpretation of a part of the collective agreement.

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### **Deciding not to proceed with a grievance**

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Before deciding not to proceed, it is always wise to get advice. If it is clear that there are no grounds for a grievance, or that a grievance will not be pursued at a particular level, provide a detailed explanation to the member and document the reasons and the process of decision-making (i.e., Grievance Committee / Executive Board met on such-and-such a date, etc.).

If you can help the member in other ways, make the offer. Be sure to advise the member if it is a situation where s/he can proceed without union assistance, and of appeal procedures within the union to have the decision reviewed.

# RESOLVING GRIEVANCES

See the section on “Duty of Fair Representation” in this Pocket Guide before deciding not to proceed with a grievance (page 123).

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## **Take special care when human rights principles are at stake**

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All complaints or grievances of members of the bargaining unit should be handled with the utmost care and attention. However, in cases involving human rights, the bar is even higher. In addition to our duty of fair representation (DFR) obligations (see page 123), there are also legal obligations related to both employment and human rights law. Unions have been held to a higher standard of care in discharging DFR obligations when human rights principles are at issue. We need to exercise even greater sensitivity than would normally be necessary; we need to be more proactive or attentive than usual; and we need to take an extra measure of care or assertiveness. Sometimes it even requires involving additional resource people and processes to ensure we fully advocate on the members’ behalf.

Remember: not all human rights issues present themselves at the start of a grievance. Be open to the idea that a human rights dimension to a problem may come to light as the investigation proceeds.



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## Withdrawing a grievance

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If you decide to withdraw a grievance, but you do not want the withdrawing of the grievance to set a bad precedent, be sure to write on the grievance that it is being withdrawn *“without prejudice and precedence”*.

See the section on “Duty of Fair Representation” in this Pocket Guide before deciding to withdraw a grievance (page 123).

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## When a grievance is resolved

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**De-brief with the grievor.** Don’t underestimate how much they have learned through the process. Make sure that you take the time to de-brief it with them so that what they take away from the experience is accurate and helps build the union (share your interpretation of events with them, and ask for theirs).

**Celebrate.** When you’ve done your best, take time to celebrate. If the grievance has been successfully resolved, share the outcome with the membership (unless you’re prevented from doing so for reasons of confidentiality or the terms of settlement).

**Evaluate and learn.** Keep notes on problems that arise with current contract wording. Make notes on changes

## RESOLVING GRIEVANCES

to propose in the next round of bargaining. Evaluate your approaches to interviews, file preparation, writing grievances and other aspects of grievance handling. With each grievance or complaint, identify what you could have done differently to achieve better outcomes. Identify your strengths and areas you'd like to develop.

**Stay in touch with the grievor.** Check back in with them a few weeks or months after the fact to see how things are going. If you have built a good relationship with them, and if they have learned about the union and feel positive about their experience (whether or not you won the grievance), they may be someone you can encourage to get involved in the union. Filing a grievance is how lots of us got started as union activists.

## Arbitration

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**T**he final step in the grievance process is arbitration. Understanding a bit about arbitration can help us avoid it (!) and it can help us prepare in case it's unavoidable.

The two most important things Arbitrators base their decisions on are:

1. The words in the collective agreement (and relevant workplace or human rights legislation).
2. The proven, relevant facts.

From the perspective of arbitration, investigations matter a great deal:

- Even though the great majority of grievances don't go to arbitration, grievance handlers should investigate every grievance as though it might someday go to arbitration. You can never know for sure whether the one you are investigating now might go before an arbitrator.
- It is very important to interview all the relevant witnesses, write down what they say, collect all possibly relevant documents and keep every grievance in an organized file because, if the grievance does, in fact, go to arbitration, workplace

# ARBITRATION

representatives will have a complete file to turn over to the Chairperson, Local Union President or Unifor National Representative who will present the grievance at arbitration.

- A week before arbitration is too late to interview all the relevant witnesses for the first time. The arbitration might be a year after the incident. Memories fade. Relevant documents go missing.
- Good grievance handlers gather all the facts right away because there is no way of knowing in advance what facts an arbitrator will eventually find most relevant, which facts they will find somewhat relevant but not decisive, and which facts they will find absolutely of no relevance at all.

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## Deciding to go to arbitration

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The decision to proceed to arbitration is never made alone. Many of our collective agreements refer to a “grievance committee”. This committee is usually an important part of the decision process. Based on your local union structure and your CA, the following people may be involved in making the decision to take a case all the way to arbitration: Chief Steward, Bargaining Committee Chairperson, Local Union President, Executive Board, local union membership, Unifor National Representative.

# ARBITRATION

It is important to know that once a grievance is handled by the union, it becomes the property of the union, and the decision to go to arbitration, or even to the next step of the grievance procedure, is a decision of the union in consultation with the grievor, and is not the decision of the grievor alone.

Three things that should influence a decision to go to arbitration.

1. The real chances of success.
2. The precedent-making effect the arbitration decision might have on future cases in similar facts, as well as the precedent-setting effect of *not* taking the grievance to arbitration (see past practice and estoppel).
3. The effect the arbitration decision might have on the union's chances in bargaining.

NOTE: If the arbitrator rules against the grievance, management would have their interpretation of the contract on that issue entrenched into law. This would harden their position against changing the contract language around that issue.

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## Researching arbitration cases

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Arbitration cases give us examples of other situations that are similar to ours and tell us how they were ruled on and interpreted by arbitrators. Committeepeople and National Reps refer to past arbitration cases because they:

- give us a good idea of whether or not we have a solid case – and this is important when we’re weighing whether or not to proceed to arbitration.
- give us insight into what evidence an arbitrator considered when making their decision, and this can help us prepare for a case.
- help us prepare our arguments, which may include references to other cases that have come before (we might want to argue that our case is different, say, from one that was ruled in the employer’s favour).

Most stewards will not be expected to research arbitration cases. However, understanding that this is an important step in the investigation process, and in the preparation for an actual arbitration, is important.

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## How to research arbitration cases

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Your local union chairperson and your national representative will be involved in any case proceeding to arbitration and will aid in the case research.

# ARBITRATION

All Unifor National Representatives have access to complete labour arbitration databases through **LABOUR SPECTRUM** (which includes access on-line to **Brown & Beatty**, to the **Labour Arbitration Cases**, and other important cases and resources). Some locals have a SPECTRUM subscription. Many university libraries also have copies of Brown & Beatty that the public can access. An internet search will be most useful for those who have this complete access.

Additional internet sites for researching arbitrations include:

**Lancaster House:** They provide limited access to their database; however, they have a very helpful e-bulletin service which emails summaries of recent decisions. See [www.lancasterhouse.com](http://www.lancasterhouse.com)

**Canadian Legal Information Institute** (usually just referred to as CanLII). Currently this data base has searchable arbitration cases from the year 2000 to present for most provinces, as well as many other legal decisions. Using CanLII (or other free arbitration databases) will help you get a feel for arbitration cases generally, but you will only see a fraction of arbitrated cases, and not necessarily the leading ones (which could lead you to the wrong conclusion if you were only using that information to build your case). [www.canlii.ca](http://www.canlii.ca)

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## **An important note about arbitration cases**

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When we read about a case where the union ‘loses’, this doesn’t mean that if our case is similar that it will necessarily lose. Likewise, when we find a case where the union ‘wins’, this doesn’t mean we will also win. Case law is helpful but does not substitute for full investigations and the relevant facts in the specific case.

Look carefully at what the arbitrator considered and see how that relates to our case (or not). We need to learn lessons from both wins and losses in case law.

It may be that in the end our research leads us to conclude that we are most likely to lose in arbitration, and that we could do better in a negotiated settlement with the employer (where we can bring all of our power as a union to bear on the negotiation), than we would risking what an outside 3rd party might or might not rule.

We don’t want to ‘cement’ a losing situation in an arbitrated case, where it will then come to bear on other cases. This is why careful study of both past cases and the case we are grieving is so important.



## **Rules of contract interpretation**

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### **1. The plain, everyday meaning of the words carries most weight.**

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Generally, it is only when a contract is not clear that it ends up at arbitration. Arbitrators do not want to find reasons to go looking for things outside the plain meaning of the words to understand the meaning of a contract.

### **2. Previous decisions of Arbitrators on similar facts and contract language carry weight.**

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Arbitrators believe unions and management should know about the effect that previous arbitration awards have on the interpretation of contract language.

For example, a union should not expect an arbitrator to overrule contracting out of bargaining unit work solely on the fact that the recognition clause names the job classifications covered in the contract. Arbitrators have already ruled that specific, clear and unequivocal contract language is needed to prevent management from contracting out.

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## 3. There are limits on management's rights.

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The employer's power to make workplace rules is supported by so-called 'management's rights' to direct the work force.

However, management cannot make workplace rules that clearly go against words in the collective agreement. Making rules that go against the collective agreement is the same as changing the collective agreement. Management cannot do this without the union's agreement.

Clear cut collective agreement language is not the only thing that limits management's ability to make rules that lead to firing or disciplining workers. An employer rule must pass another test.

That test is known as the 'KVP decision' (KVP Co. and Lumber & Sawmill Worker's Union, Local 2537, (1965) 16th Labour Arbitration Cases, First series, Page 73 (Robinson, arbitrator).

This is a decision every arbitrator follows when the issue concerns a "company rule" unilaterally made by the employer.

The KVP decision says that if the employer makes a new rule unilaterally, without the union agreeing to it, in order for that rule to be considered enforceable:

## RULES OF CONTRACT INTERPRETATION

- it cannot change negotiated terms of the collective agreement without the union's consent
- it must be consistent with the collective agreement
- it must not be unreasonable
- it must be clear
- it must be brought to the attention of everyone if it is to be acted on
- it must be consistently enforced.

Further, if the employer is considering discharge for an infraction of a rule, this must be brought to the attention of everyone concerned.

The KVP decision went a long way in establishing reasonable limits on 'management rights' even in cases where the collective agreement seems to be silent on the issue at hand. That is the reason why unions and arbitrators still refer to the KVP decision when the union is challenging the very conservative, pro-management theory that says all rights belong to management unless there are clear and explicit words in the collective agreement to the contrary.

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## 4. The Collective Agreement can provide better than the law but not worse.

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Arbitrators have the right to interpret and apply employment-related legislation, including human rights legislation.

The Supreme Court of Canada (*Parry Sound vs. OPSEU Local 234* (2003), 230 DLR (4th)257) made it clear that employment and human rights legislation are incorporated into the collective agreement. This is also spelled out in the labour legislation in each province and federally (for example section 48(12)(j) of Ontario's Labour Relations Act and Section 60 (a.1) of the Canada Labour Code).

Arbitrators can also refuse to enforce sections of a collective agreement that are unlawful (for example, a breach of health and safety laws).

For example, employers often want to force workers to work mandatory overtime. Workers sometimes like to work overtime, but they generally don't like be forced to do so. Local unions often use the employment standards act to limit the hours the employer can force workers to work mandatory overtime. The words in the collective agreement might give the employer the right to schedule unlimited overtime, but Employment Standards Acts

## RULES OF CONTRACT INTERPRETATION

generally limit the hours of work that employers can force workers to work in overtime without the workers' consent (the collective agreement is deemed consent).

More and more, union bargaining committees are taking care to negotiate words into collective agreements to make important workplace legislation a part of the collective agreement with the important riders that

- 1) where the collective agreement provides better, the collective agreement will apply,
- 2) if the legislation is amended to provide better than the collective agreement, those amendments to legislation will also apply, and
- 3) if the legislation is changed in such a way as it suddenly provides less protection to the worker than what was provided before the change in the legislation, the legislation in effect on a certain date specifically named in the contract will apply.

An important benefit of spelling out workers' rights, even if they are just the minimums found in the law, is that workers can read the collective agreement and understand their rights rather than having to go looking for whatever legislation applies.

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## 5. Past practice and what was said at the bargaining table, carry weight.

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If the words used in a contract clause are not clear (if they are ambiguous), how the union and management have applied the clause in practice and what they said in negotiations about it, give the clause the meaning that can be enforced.

For something to be considered a past practice, it has to be clear and unambiguous, known to the other side, and consistently followed.

This is why it is wise for workplace representatives to keep copies of letters between the employer and the union or employer notices, memos, etc. when such letters deal with issues in the collective agreement. It is also wise to keep detailed, dated notes on what the employer said in negotiations. It is better still to clear up ambiguities in negotiations by agreeing to write clear, unambiguous language.

Unions have used “past practice” to help settle grievances successfully. However, if the issue goes to arbitration, most arbitrators will limit our reliance on past practice:

“If a provision in an agreement, as applied to a labour relations problem, is ambiguous in its requirements,

## RULES OF CONTRACT INTERPRETATION

the arbitrator may utilize the conduct of either one of the parties, as an aid to clarifying the ambiguity. The theory requires that there be conduct of either one of the parties, which explicitly involves the interpretation of the agreement according to one meaning, and that this conduct (and, this interpretation) be acquiesced in by the other party. If these facts are established, the arbitrator is justified in attributing this particular meaning to the ambiguous provision. The main reason for this is that the best evidence of the meaning, most consistent with the agreement, is that mutually accepted by the parties. Such a doctrine, while useful, should be quite carefully employed." *SOURCE: John Bertram & Sons Co. Ltd., (1967) Volume 18, Labour Arbitration Cases, Page 362, (Weiler, arbitrator).*

So, where it can be shown that a "practice" has existed for a long period of time, that both management and union have accepted the practice as an interpretation (or aid to interpretation) of the contract, and the past practice gives meaning to words which are unclear or ambiguous in the contract, then the "past practice" may be enforced.

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## 6. “Estoppel” can make the other side keep a promise.

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The idea of estoppel means one party to an agreement (either union or management, for example) cannot insist on its rights under the strict words of the agreement.

IF

- There’s representation. That is to say, if by its statements or conduct (including past practice), one party has given the other party to the agreement reason to believe it would not enforce the strict words of the agreement.
- There’s reliance. That is to say, if the other party came to rely on that representation.
- There’s detriment. That is to say, if the other party gives up some right or benefit by relying on that representation.

So, here’s an example of how estoppel can arise from a statement made in negotiations.

Let’s say the employer always provided the members with free work boots. In negotiations, you told the employer you wanted this benefit to be spelled out in the collective agreement. The employer answered you by making the statement, for the record, that you need



not worry: the employer will continue to supply the members with free work boots. The union bargaining committee accepted this promise and dropped the demand to put this benefit into the collective agreement. After the contract was signed, the employer said they would stop supplying free work boots. They tell you it isn't in the collective agreement. They don't have to supply them.

You file a grievance. The grievance is about estoppel. The employer's statement in negotiations (representation) led you to take them at their word (reliance) and, as a result you gave up the chance to negotiate the benefit (detriment).

In this situation, the union grievance would be upheld by most arbitrators.

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## Sixteen leading cases to remember

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### 1. **Weber**

(*Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 (S.C.C.))

Where a collective agreement exists, virtually all matters that arise in the employment context are subject to the grievance procedure and employees are not entitled to sue their employer in court. This often also covers co-workers.

## 2. **Parry Sound**

*(Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324, [2003] 2 S.C.R. 157 (S.C.C.))*

The substantive rights and obligations of human rights legislation are deemed to be incorporated into each collective agreement over which an arbitrator has jurisdiction. Under a collective agreement, the broad rights of an employer to manage the enterprise and direct the work force are subject not only to the express provisions of the collective agreement, but also to statutory provisions of human rights legislation and other employment-related statutes.

## 3. **Hoogendoorn and Bradley**

*(Hoogendoorn v. Greening Metal Products & Screening Equipment Co., [1968] S.C.R. 30 (S.C.C.)); (Bradley v. Ottawa (City) [1967] O.J. No. 1017; (1967), 63 D.L.R. (2d) 376 (Ont. C.A.))*

Where the union is taking an action against an employee (e.g. having them discharged for failing to pay union dues), that employee has a right to notice of the arbitration proceeding and has the right to participate. Also where the union is pursuing a grievance on a job posting on behalf of a grievor who was not awarded the job, the incumbent employee is entitled to notice of the arbitration proceeding and has the right to participate.

## **4. Leisureworld / James Bay**

(*S.E.I.U., Local 204 v. Leisureworld Nursing Homes Ltd.*, [1997] O.J. No. 1469 (Ont. Div. Ct.)); (*James Bay General Hospital v. Public Service Alliance of Canada* [2004] O.J. No. 4666 (Ont. Div. Ct.); (2004), L.A.C. (4th) 12 (Ont. Div. Ct.), *affg* 126 L.A.C. (4th) 1 (Devlin))  
An Arbitrator in Ontario can extend time limits in the grievance procedure but does not have the right to extend the time limit on referral to arbitration where that step is not part of the grievance procedure.

## **5. Browne v. Dunn**

(*Browne v. Dunn* (1863), 6 R. 67 (H of L) [adopted in *Peters v. Perras* (1909), 42 S.C.R. 244 (S.C.C.)])  
If you are going to contradict the testimony of a witness, you must put that contradictory evidence to the witness and give the witness an opportunity to comment upon the apparent contradiction.

## **6. KVP**

(*Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co.* (1965), 16 L.A.C. 73 (Robinson))  
The Union can grieve Employer policies not contained in the collective agreement. An Arbitrator has the power to strike down the policy (and any discipline under it) if it fails to meet the following criteria:

# RULES OF CONTRACT INTERPRETATION

- it cannot change negotiated terms of the collective agreement without the union's consent
- it must be consistent with the collective agreement
- it must not be unreasonable
- it must be clear
- it must be brought to the attention of everyone if it is to be acted on
- it must be consistently enforced.

## 7. **Wm. Scott**

*(Wm. Scott & Co., [1977] 1 C.L.R.B.R. 1 (P.C. Weiler))*

Arbitrators must address two issues in a discipline case. 1) Did the employer have cause to discipline the grievor and 2) is the penalty selected appropriate. Then, if both conditions are met, the Arbitrator still has the power to assess the fairness of the particular penalty imposed. If an Arbitrator finds that the penalty chosen by the employer was not just and reasonable in all the circumstances, s/he will substitute one that is unless the collective agreement stipulates a specific penalty for the infraction.

## **8. Aerocide**

*(Aerocide Dispensers Ltd. v. United Steelworkers of America (Walker Grievance) (1965), 15 L.A.C. 416 (Laskin))*

Employers should not be allowed to alter or enlarge the grounds originally given to support discipline or discharge.

## **9. Blouin Drywall**

*(Blouin Drywall Contractors Ltd. v. C.J.A., Local 2486 (1975), 8 O.R. (2d) 103 (O.C.A.))*

Grievances should be construed liberally to get at the real issue in dispute. Unions can grieve a breach of the collective agreement even where the beneficiaries are not bargaining unit members (e.g. retirees).

## **10. Steel Equipment**

*(United Steelworkers of America, Local 3257 v. Steel Equipment Co. (1964), 14 L.A.C. 356) (Reville)*

Where an arbitration board has the power to mitigate the penalty imposed on a grievor, the board should take into consideration in arriving at its decision the following factors:

- i. The previous good record of the grievor
- ii. The long service of the grievor

# RULES OF CONTRACT INTERPRETATION

- iii. Whether or not the offence was an isolated incident in the employment history of the grievor
- iv. Provocation
- v. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated
- vi. Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances
- vii. Evidence that the employer rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination
- viii. Circumstances negating intent, e.g., likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it
- ix. The seriousness of the offence in terms of employer policy and employer obligations
- x. Any other circumstances which the board should properly take into consideration, e.g., (a) failure of the grievor to apologize and settle the matter after being given an opportunity to do so; (b) where a grievor was discharged for improper

driving of employer equipment and the employer, for the first time, issued rules governing the conduct of drivers after the discharge, this was held to be a mitigating circumstance; (c) failure of the employer to permit the grievor to explain or deny the alleged offence

## **11. CBC**

*(Canadian Broadcasting Corp. v. C.U.P.E. (Sgrignvoli Grievance) (1979), 23 L.A.C. (2d) 227 (Arthurs))*

Summarizes the factors considered in breach of trust cases. It is also applicable to other similar discipline cases. Such factors include:

- i. bona fide confusion or mistake by the grievor as to whether he was entitled to do the act complained of;
- ii. the grievor's inability, due to drunkenness or emotional problems, to appreciate the wrongfulness of his act;
- iii. the impulsive or non-premeditated nature of the act
- iv. the relatively trivial nature of the harm done;
- v. the frank acknowledgement of his misconduct by the grievor;

# RULES OF CONTRACT INTERPRETATION

- vi. the existence of a sympathetic, personal motive for dishonesty, such as family need, rather than hardened criminality;
- vii. the past record of the grievor;
- viii. the grievor's future prospects for likely good behaviour, and
- ix. the economic impact of discharge in view of the grievor's age, personal circumstances, etc.

But these factors, while helpful, are not components of a mathematical equation whose computation will yield an easy solution. Rather, they are but special circumstances of general considerations which bear upon the employee's future prospects for acceptable behaviour, which is the essence of the whole corrective approach to discipline. How well or badly the grievor had behaved in the past is some indication of his likely future behaviour. How aggravated or trivial was the offence is some clue to the risks the employer is being asked to run if the grievor is reinstated in employment. And how seriously the discharge will affect the grievor is at least one (but not the only) measure of whether a reasonable balance is struck between the other two considerations - age, personal circumstances, etc.



## **12. John Bertram**

*(John Bertram & Sons Co. Ltd., (1967), 18 L.A.C. 362 (Weiler))*

If an article in a collective agreement is ambiguous, an arbitrator may use the conduct of the parties as an aid to clarifying the ambiguity. This is often referred to as past practice. In order to be persuasive, the arbitrator requires that:

- One party has engaged in conduct clearly based on one interpretation/meaning
- Other party has accepted/acquiesced
- Gone on for some time without objection

If this has gone on, the arbitrator is justified in attributing this particular meaning to the ambiguous article.

## **13. CN/CP Telecommunications**

*Canadian National Railway Co. v. Beatty (1981), 128 D.L.R. (3d) 236, 11 A.C.W.S. (2d) 505, 1981 CLB 769 (Ont. Div. Ct.), and cases referred to therein, affg (2009), 4 L.A.C. (3d) 205*

Arbitrators have the power to apply the doctrine of estoppel. In order to prevent a party from relying on the strict language of the collective agreement, that party must show:

# RULES OF CONTRACT INTERPRETATION

- i. a clear and unequivocal representation by words or conduct (in some circumstances silence or acquiescence)
- ii. intended to be relied on by the other party
- iii. reliance in the form of some action or inaction
- iv. detriment resulting from that reliance

## **14. Toronto District School Board**

*Toronto District School Board and Canadian Union of Public Employees (2002), 109 L.A.C. (4th) 20 (Shime).*

Prior to arbitration, a party may request that the other side disclose and produce all documents that are arguably relevant. This is a step that can assist parties to prepare and present their case, refine the issues, facilitate settlement, and make the process fair. Arbitration by ambush is not condoned. If documents that are requested are not produced, the arbitrator may refuse to allow the party who possesses such a document to use it at arbitration.

## **15. Monarch Foods**

*Monarch Foods (1978) 20 L.A.C. (2nd) 419 (M.Picher)*

Workers do not lose their right to privacy and integrity of the person when they become employees of an employer. Employers do not have a common law right to search an employee or subject an employee to a physical examination without consent. There is no

inherent management right to subject an employee to what would otherwise be a trespass or an assault upon the person. Normally, where an employment relationship is governed by a collective agreement, the authority of an employer to require an employee to submit to a medical examination must be either expressed or implied in the collective agreement.

## **16. *Irving Pulp & Paper / Imperial Oil / CN Rail***

*Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd. (2013) S.C.J. No. 34; Imperial Oil Ltd. and C.E.P. Local 900 (2006), 157 L.A.C. (4th) 225 (“Nanticoke”); Canadian National Railway Co. and C.A.W. Canada (2000), 95 L.A.C. (4th) 341 (M. Picher).*

Employers cannot subject all employees to mandatory, random and unannounced drug and alcohol testing. Employers may order drug and/or alcohol testing of a specific employee in a workplace that can be classified as a dangerous work environment if 1) there are reasonable grounds to believe that the employee was impaired while on duty; 2) the employee was directly involved in a workplace accident or a significant incident; or 3) as part of a rehabilitative program upon a worker’s return to work following treatment for substance abuse.

Revised: July, 2014

## Duty of fair representation

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**O**ur Unifor Constitution and the principles of our union demand that all union representatives represent the members fairly and equitably in all matters.

When dealing with grievances, a union is also required by law to represent all workers covered by the collective agreement in a bargaining unit (even those who are not signed-up union members). The law usually says such representation must be carried out in a manner that is not “arbitrary”, or “discriminatory” or “in bad faith.”

This does not mean that the union must take all grievances through to arbitration. It does mean, however, that because a settlement or a withdrawal of a grievance affects the rights of an individual worker, the union must have treated that worker’s grievance fairly and objectively.

A union is entitled to make decisions that may disappoint some members in the bargaining unit, as long as the union honestly considers the facts and balances the interests of the grievor with the best interests of all the workers taken together.

Collective agreements always require the parties to the agreement to meet and try to settle grievances short

## DUTY OF FAIR REPRESENTATION

of arbitration. The grievance procedure should be used, as well, to discover the employer's case and version of events relevant to the grievance. A union is not forced to process a grievance or to refer it to arbitration simply because an employee "wants his or her day in court."

The union may consider many factors, including the merits of the grievance, the real chances of success, as well as the interests of the bargaining unit as a whole.

If the committee decides to withdraw a grievance, you must notify the grievor in writing – by registered letter if necessary – before the grievance is withdrawn. Inform the grievor of her/his right to appeal and explain the Union appeal procedure to follow under our union's constitution. Listen to what the grievor has to say about the facts you have; ask for any new information on those facts; and *then* make up your mind.

If the grievor decides to appeal your decision to the membership or to the national union, you must apply to management, in writing, for an extension of the time limits on the grievance. This is to protect the grievor's rights while the appeal is being dealt with. If the appeal is upheld, the grievance can thus be reinstated into the grievance procedure.

Since the law usually says the duty of fair representation is about not acting in a way which is

# DUTY OF FAIR REPRESENTATION

“arbitrary,” or “discriminatory” or “in bad faith,” it would be useful to define these terms.

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## What is arbitrary?

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- Treatment that is abrupt, inconsiderate, indifferent or insensitive.
- Failure to investigate.
- Superficial, off-handed investigation.
- Failure to notify grievor of union appeal procedure.
- Reckless disregard for the interests of the grievor.

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## What is discriminatory?

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- Treating members of the bargaining unit differently without a good reason.
- Lack of prejudice or bias not necessarily a defence for lack of representation.
- Different treatment based on union membership or on grounds prohibited by human rights codes (race, gender, etc.).
- Departure from usual procedure without a valid reason.

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## What is bad faith?

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- Hostile or malicious frame of mind.
- Evidence of bad faith is based on history of personal hostility, desire for revenge, lack of fairness or impartiality, intentional deception, flagrant dishonesty or ulterior motive.
- Having a “hidden agenda” towards the grievor.

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## Fair representation guidelines

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- In all grievances involving discipline or discharge, you must speak to the grievor to get his or her side of the story. You should tell the grievor what the employer’s case is and obtain the grievor’s reaction to it.
- As soon as possible, get the grievor’s story in full from the grievor directly. After you have taken notes on the grievor’s story, have the grievor sign them. Always make written notes. Base the decision on facts. Do not make a decision on the basis of hearsay or rumour.
- Consult other committeepersons or Unifor staff if in doubt. Most every unit in Unifor has a National Representative assigned directly to them by the National Union.

## DUTY OF FAIR REPRESENTATION

- Investigate thoroughly. Collect relevant documents. Interview others. Ask for written statements or take thorough notes.
- Have the grievor at the meeting with management to discuss the case. If the grievor is excluded, have good and sound reasons. Handle every grievance in the same thorough and professional way. If you depart from your usual practice, have valid reasons.
- If the grievance has merit, make an attempt to resolve it. Discuss any reasonable offer with the grievor.
- If the employer denies the grievance, weigh the interests of the bargaining unit with those of the grievor.
- The more serious the consequences to the grievor, the more energetic the committee's efforts should be. A suspension or discharge (firing) must be handled with the utmost of care.
- Do not be influenced by bias or hostility to the grievor.
- Because legislation in some provinces, but not all jurisdictions, may allow an arbitrator to set aside time limits where there is cause, missed time limits alone



# DUTY OF FAIR REPRESENTATION

may not be a good enough reason to drop a serious grievance. If time limits were missed, document the circumstances. File if the grievance is serious and has merit. In any event, others will decide whether time limits can be set aside. So, when in doubt, file the grievance! But always follow and observe the time limits in the collective agreement.

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## Fair representation checklist

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- Did you thoroughly investigate and document, in writing, the worker's grievance?
- Did you get the grievor's side of the story?
- Did you attempt to settle the grievance?
- Did you consult and keep the grievor informed?
- If in doubt, did you seek the advice of union staff?
- Did the grievor answer your questions truthfully and co-operate fully?
- Did you speak to available witnesses?
- Did you show any bias or hostility toward the grievor?
- Did you carefully weigh the seriousness of the issue?
- Did you weigh the interests of the bargaining unit?
- Did you weigh the effect of going to arbitration?

# DUTY OF FAIR REPRESENTATION

- Was the internal union appeal procedure made known to the grievor?

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## On probationary employees

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Do not turn down a grievance solely on the grounds that the worker is on probation. As part of the bargaining unit, probationers have the same right to be represented by the union as any other workers. Moreover, probation is with the employer, not the union. Probationary workers normally become members of the union before they complete probation.

Most collective agreements do not provide “just cause” protection when it comes to the question of the firing of a probationary worker; however, several arbitration decisions tell us that management cannot fire probationers for reasons that are blatantly discriminatory, arbitrary or in bad faith or against the human rights code.

If a probationer wants to grieve her/his dismissal, you might have grounds to fight, but you will not know until you do an investigation, document the facts and consult about the facts with others in your committee, and your National Representative.

## Review of decisions

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**U**nion members have a wide right to review decisions, failures or refusals to act on the part of the National Union, the National Executive Board (NEB), any administrative arm of the National Union, a Local Union, or any of its units, committees, officers, Committeepersons or stewards, or any other subordinate body of the National Union.

The normal route of appeal (except where the Constitution makes specific provision otherwise) is:

- First: to the membership or delegate body immediately responsible
- Second: to the Office of the National President or the National Executive Board, unless the appeal begins there
- Third: to the Public Review Board.

The Public Review Board consists of nationally recognized citizens outside the labour movement, whose decisions are final and binding. It should be noted that with regards to appeals concerning the collective bargaining strategy or policy of the Union or any matters related to the application or administration of a collective agreement, the Public Review Board has no jurisdiction unless the appellant has alleged before

## REVIEW OF DECISIONS

the National Executive Board that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the Union's decision was unreasonable or had no rational basis (see [www.unifor.org](http://www.unifor.org) for a copy of the Constitution, Article 18).

## Developing a working relationship with management

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**D**eveloping a working relationship with individual supervisors or managers can be key to getting problems resolved.

Working relationships involve respect for people and process. They are not the same as cosy relationships with management, and they are a far cry from hostile relationships. We've probably all seen examples of each.

A cosy relationship with management is one where it can be hard to tell the difference between the union and management – the relationship becomes too close for the union to be able to effectively stand up for the interests of workers.

It's our job to keep workers' interests our top priority, and not get seduced by the idea that 'we're all in it together' or that 'when it comes to health and safety, we all have the same goal', 'we're family', etc., etc. Management's profit motive (or adherence to the bottom-line) will always come into the equation at some point – whether we work in the private sector or the public sector, for a large employer or a small family business. It's fine to get along with management on a

## DEVELOPING A WORKING RELATIONSHIP WITH MANAGEMENT

personal basis – it’s not fine to let your relationship with management get in your way of representing workers’ interests.

The opposite of cosy is hostile. In some workplaces management takes on the union and our workplace representatives on every single issue - there are constant battles – they might take the form of a paper war, or open hostility. Allowing ourselves to get caught up in every battle risks our credibility with members.

There’s no question that building working relationships in environments where there is a long history of hostility, or where supervisors have really abrasive personalities, is really hard work. Where it’s an individual supervisor and we’ve done our best at civility, we may need to get creative. Where it’s a more generally hostile environment we may need to seek out supervisors with whom there’s at least a chance of having productive discussions. After all, we have a job to do to represent workers, and we can’t allow small-mindedness (or our own egos, which may be involved) to get in our way.

At the end of the day, we’re looking for a middle ground between cosy and hostile. A working relationship is one that can allow us to resolve at least minor issues quickly and informally, or through due process, without major confrontation or workplace action.

# DEVELOPING A WORKING RELATIONSHIP WITH MANAGEMENT

That said, establishing a good working relationship (that is, respect for differences and respect for process) does not change the fact that at the end of the day we have fundamentally different interests from employers.

This means that there will be times when relationships break down, or when we will need to take action that risks a decent working relationship – such as strike action – and we need to be ready and willing to take that action.

Then, when we're coming back from a strike, a difficult set of negotiations, or from arbitration, we need to be a good winner and a good loser if we want to eventually get back to a working relationship.

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## **Ways to deal with the really difficult Supervisor**

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Sometimes, no matter how well prepared you are, or how logical your approach, there's no reasoning with a really difficult supervisor. It's time for plan 'B'.

Organize the members to shun all but the most formal contact with this person, to speak only when spoken to, and then only to answer a direct question or comply with a direct order.

## DEVELOPING A WORKING RELATIONSHIP WITH MANAGEMENT

The members begin to grieve every violation, major and minor. They protest every departure from past practice or abuse of authority. They use every right they have under the law or the collective agreement.

Sooner or later, upper management wonders why they are having so many problems in your department. You may walk in one day and find a new, more cooperative supervisor to deal with.

Just as you will need to work to make sure your members are not afraid of management, make sure you're not either! Insist that management deal with you as a steward on an equal footing.

Some supervisors make it their personal mandate to discredit the union by attempting to make the union appear ineffective (delaying decisions, cancelling meetings, etc.). Don't take the bait. Follow up with everything, spend more time with your members and intensify your communication with members.



## **Discipline and discharge**

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A significant number of grievances we deal with relate to the discipline and discharge of members.

Nearly every collective agreement states that the employer can discipline or discharge employees for “just cause”. From our point of view, that means an employer shall not discipline an employee without proving “just cause”. This idea of “just cause” is one of the most important gains unions have made. Even though these words “just cause” are often found in the management rights clauses, these words actually limit management rights.

In all other types of grievances, the union has the burden of proof. In cases of discipline or discharge, management must prove that it had “just cause” for its action.

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## **Understanding “just cause” and defending workers**

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What is just cause? Here is a short definition:

“Sufficient or enough and proper reason for discipline or discharge.”

What arguments can the union use to show that management has no or not enough “just cause” for firing or disciplining a worker?

# DISCIPLINE AND DISCHARGE

## **INNOCENCE**

This defence establishes that the grievor did not do what management says. Proving someone not guilty depends on the facts and what reasonably can be believed to be true in the balance of probabilities. The problem with the “balance of probabilities” is that it is a lesser standard of proof than what is needed in a criminal trial.

The “balance of probabilities” theory says that the most probable of several reasonable explanations based on the facts of what happened can be accepted by an arbitrator. It does not mean the employer has to prove the worker is guilty “beyond a reasonable doubt” as in criminal law. This is another reason why it is so important that workplace representatives, in order to prove innocence, must carry out a thorough investigation of all related facts, witnesses, and documents.

## **EXTENUATING AND MITIGATING CIRCUMSTANCES**

This defence accepts that the grievor did do what management says, but establishes that the grievor can offer a reasonable explanation under the circumstances.

Other mitigating factors:

- Previous good record and length of service.
- The offence was an isolated incident.

## DISCIPLINE AND DISCHARGE

- The grievor was provoked by some unusual event.
- The offence was committed on the spur of the moment without premeditation.
- Firing would condemn the grievor to a special economic hardship.

*Source: Steel Equipment Co. Ltd. (1964) 14th volume, Labour Arbitration Cases, Page 356, Reville (Arbitration)*

### **THE PUNISHMENT MUST FIT THE CRIME**

This defence establishes that the penalty is too harsh for the seriousness of the issue.

### **UNIFORMITY**

This defence accepts that the grievor did as management says but establishes that others have also done the same with management's knowledge and they have not been disciplined as severely or they have not been disciplined at all. Management must apply its rules even-handedly and without discrimination.

### **UNREASONABLE RULE OR MANAGEMENT DIRECTIVE**

This defence accepts that the grievor did break the rule, but establishes that the rule is either unreasonable in itself or has been applied to some and not others (discriminatory) or has not been made known by verbal or written communication. Note: management can take for granted that workers know some things

# DISCIPLINE AND DISCHARGE

are forbidden without having to be told. For example, drinking, theft, and violence.

What happens when a rule is unreasonable in and of itself? Rules that go against natural justice can be challenged. One workplace had a rule that said any worker charged with an offence while off duty and not on employer property, could be suspended without pay pending the outcome. An arbitrator found this rule unreasonable because it would mean presuming someone guilty before they had been proven guilty.

There has to be a true business reason for the rule. The employer rule should be reasonably related to (a) the orderly, efficient, and safe operation of the employer's business and (b) the performance the employer might properly expect from a worker.

## **INVESTIGATION AND PROCEDURE**

This defence establishes that the proper procedures were not followed. It might also establish that a proper investigation never took place. Did management, before handing out discipline, make an effort to find out if the grievor did in fact do as accused? Did they give the grievor a chance to explain? Did the worker have union representation as provided for in the collective agreement? Not providing union representation when the employer calls the worker to a disciplinary meeting

and when the contract says a worker must have union representation can be important grounds to challenge any discipline that resulted from the meeting.

### **RIGHTS OF WORKPLACE REPRESENTATIVES**

Workplace representatives, as employees, do not have any special privileges. When they are carrying out their duties to represent their co-workers, however, management must recognize that they have a special role in the workplace. Their job is to challenge management decisions.

Management might consider the workplace representative's role in forcefully challenging management decisions as a kind of "insubordination". Normally, insubordination is a so-called "industrial offence". However, when speaking as a committeeperson on behalf of co-workers, a committeeperson may do or say some things which would otherwise be seen as insubordinate. In any event, the workplace representative must still exercise good judgment as they are not immune from discipline.

### **EXCEPTIONS TO THE OBEY NOW AND GRIEVE LATER RULE**

Normally workers have to obey employer rules and file grievances later, if they disagree. Some exceptions are noteworthy:

# DISCIPLINE AND DISCHARGE

**Right to Refuse:** Occupational Health and Safety. See the Right to Refuse section of this guide.

**Illegal orders:** Management cannot order you to do something which is against the law. **When a workplace representative is acting to protect other workers from imminent harm and when, in the circumstances, the grievance procedure cannot provide any effective redress or remedy.**

Examples of this situation can arise when a workplace representative is refused leave for union business but insists on leaving the job in order to represent a worker at a disciplinary interview or at a refusal of unsafe work or when the workplace representative's attendance is needed at a meeting where grievances affecting workers' seniority rights have to be written by a certain time limit.

**Irreparable harm:** When the employer makes a demand that once obeyed causes irreparable harm that cannot be undone (for example, invasion of privacy such as a random drug test where there is no collective agreement language, or being required to take a flu shot). This exception should only be used in rare instances.

Members may be disciplined for not following the 'obey now and grieve later' principle, even when they are in

# DISCIPLINE AND DISCHARGE

the right. Their discipline would be dealt with through the grievance procedure.

## **PROGRESSIVE DISCIPLINE**

Discipline generally must be graduated in order to correct “employee misconduct”. Graduated discipline usually means verbal warnings, followed by written warnings, followed by one or more suspensions, followed by discharge. Many arbitrators demand such an approach before allowing a worker to be discharged except in the case of serious offences such as theft, drinking, or violence.

We should always object to the employer giving out two forms of discipline for the same offence. This can happen when management decides to give a written warning and later on, decides to give out a suspension for the same thing.

We must always watch that management does not use stale discipline. Usually the collective agreement says there is time limit on how long past discipline can be considered. This might be three months or it might be two years. It depends on the collective agreement.

## **CULMINATING INCIDENT**

To prove just cause for discharge, an employer must show progressive, corrective discipline, plus a culminating incident.

## DISCIPLINE AND DISCHARGE

The idea of “culminating incident” can work to the advantage of the employer in that it allows management to use a seemingly minor offence as the “last straw”. But first they have to prove the following:

- An offence has been committed which, in and of itself, deserves some discipline.
- The worker understood the consequences of any further offences.
- Discipline was handed out for previous incidents that are referred to.
- Prior discipline which was successfully grieved cannot be used.
- The culminating incident was related in some way to the previous incidents referred to.
- Management informed the worker, at the time, they were considering the offence as a culminating incident. In other words, management cannot “up the ante” from a suspension to a firing halfway through the process. Grievors are entitled to know at the outset the extent of the case against them.
- The prior record of discipline is not stale. There is usually a negotiated time limit on how long past misconduct can be used against a worker.



## DISCIPLINE AND DISCHARGE

NOTE: Workplace representatives ought to inform a member who is being disciplined often what the possible consequences could be. The Union Counselling program or Employee Assistance Program if one has been negotiated, may help, for example. It is better to name and deal with a problem before it gets as far as discharge.

### ***When it comes to discipline & discharge, tell the worker's story***

When you are defending a worker who has been disciplined or discharged, your job is first and foremost to conduct a full investigation - you want to build as complete a file as possible. Then working with your Chairperson or Chief Steward, you will work to position the argument. Developing a 'theory of the case' means you determine how you might best win (and make sure you have your evidence in order). You will want to think critically about management's 'theory of the case' too - and be prepared to counter their evidence (and make sure you know what they've got). Part of your case also includes telling a full story - let the employer / arbitrator know who the grievor is - if they are a single mom, say so; if they are a 22-year employee with 2 kids ages 8 and 4, say so. You don't want the employer/arbitrator to see the individual as 'just another worker' or 'just another discipline case'. It will also help you to get to know the

# DISCIPLINE AND DISCHARGE

worker, so that you don't fall into the trap of seeing them as 'just another problem to solve'.

## ***When it comes to discipline & discharge, get advice***

Talk to other workplace representatives or local officers to share information and obtain their perspectives and advice. Contact your National Staff Representative for any indication of a trend, and what other locals are doing about similar problems. Network with union representatives from other areas who are facing similar situations.

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## **Understanding last chance agreements**

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A last chance agreement is an agreement signed between the union and the employer (and sometimes the worker), giving a worker who has been accused of engaging in some kind of serious misconduct, one last chance to keep her/his job. Sometimes these are also called 'never, never agreements'.

The employer typically agrees to withdraw discipline on the condition that if there is any further violation of the terms specified, then the worker can be terminated without recourse - or with limited recourse - to the grievance/arbitration procedure.

## DISCIPLINE AND DISCHARGE

Effectively this means that if the worker does not live up to the terms in the last chance agreement, the employer can fire them without having to prove 'just cause', and the union is limited in our ability to challenge the termination.

Employers will often push for a 'last chance agreement' because it paves the way for a termination. Unions should enter into "last chance" agreements only in those truly desperate circumstances where there is no other possibility of saving a worker's job. If the grievor has a defense, or if there is a reasonable chance that the arbitrator will lessen the penalty to a suspension, then "last chance" agreements should be avoided.

Before entering into a "last chance" agreement it might be helpful to keep in mind that the employer will always have another chance to fire a worker, but the worker will never have another chance to keep that job.

Arbitrators are likely to enforce the terms of the last chance agreement, unless there is a clear human rights violation. For example, in the case of a worker with a disability who is chronically absent, an arbitrator may look beyond the last chance agreement to determine whether the employer has met their duty to accommodate.

# DISCIPLINE AND DISCHARGE

*“Generally speaking, arbitrators will enforce such agreements in accordance with their terms, except where the agreements are contrary to legislation, as may be the case where the circumstances in question are governed by human rights legislation.” (Brown & Beatty)*

## **Last chance agreement checklist**

- Is a last chance agreement appropriate / necessary in this case?
- Has the grievor disclosed all information relevant to meeting the requirements of the last chance agreement?
- Is the last chance agreement in accordance with human rights legislation?
  - Are there underlying mental health or addiction issues which have not been addressed?
  - Are previous absences/behaviours due to a disability?
- If this is an appropriate case, are the terms of the last chance agreement reasonable?
  - Are the requirements too strict?
  - Is there a specific penalty of discharge for any breach of work rules?
  - Does the last chance agreement have an expiry date?

## DISCIPLINE AND DISCHARGE

- What if a new disability develops or is diagnosed?
- Should there be reinstatement followed by a period of treatment before the worker must return to work?
- Does the grievor clearly understand that a breach of the last chance agreement will result in the automatic termination without substantive recourse to the grievance procedure?

Note: an arbitrator will be able to determine if the agreement is legal and if the agreement has been breached. If these two facts are determined, and there is a specific penalty of discharge, the arbitrator cannot vary the penalty.

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### **Dismissal of employees with addiction issues**

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Drug and alcohol dependencies are considered disabilities under the law. More and more of our members struggle with substance addiction, and substance addiction has become a major social and health problem in our society.

To defend a worker with an addiction problem who gets fired, we need to know:

- 1) Under what conditions might an arbitrator decide that an employer was justified in dismissing the employee (in spite of the substance addiction issue)?

## DISCIPLINE AND DISCHARGE

2) What kind of evidence will help reinstate a worker who has been dismissed due to substance abuse / addiction?

Two Ontario arbitration decisions provide guidance in answering these questions. In *ATU, Local 113 v TTC 114 CLAS 357 (2012)*, a TTC janitor who had long struggled with addiction was dismissed for showing up to work intoxicated. The collective agreement provided for the specific penalty (termination) for performing work while intoxicated. From the arbitrator's point of view, the employer had a legitimate reason to terminate the employee. The arbitrator upheld the termination (i.e., the worker did not get their job back).

In that case, the arbitrator was concerned with the question: "is there a legitimate labour relations reason for the dismissal?" This is a **labour relations analysis**. A labour relations analysis only examines the alleged misconduct and whether it gave the employer reason to terminate the employee – the questions about substance addiction do not enter into this question – regardless of how unfair that may seem.

But let's look at *ONA v London Health Services Centre [2013] OLAA 24*. In this case, a nurse with only a short service record was stealing drugs from the hospital and falsifying patient charts.

## DISCIPLINE AND DISCHARGE

In this case, a second question came into play: “is the dismissal discriminatory, and did the employer meet the duty to accommodate?” This is a **human rights analysis**. The human rights analysis takes into account the addiction issues and asks whether the employer discriminated against the employee on the basis of their disability. The main question here is usually: did the employer accommodate the employee to the point of undue hardship?

In this case, the worker’s termination was not upheld – the arbitrator determined that the employer had not met its duty to accommodate the nurse to the point of undue hardship. In making their decision, the arbitrator considered whether the addiction was the cause of the misconduct for which she was fired. The nurse had stolen drugs for personal use only – this was significant to the arbitrator in the causal analysis.

In the result, the arbitrator referred this matter back to the parties to determine whether the nurse in question could be reasonably accommodated. In referring it back, the arbitrator provided guidance as to the evidence that should be considered to determine whether an employee is entitled to accommodation and to what extent:

# DISCIPLINE AND DISCHARGE

- a) Is there actual evidence of an addiction?
  - A medical or psychological report can establish this – we should not rely on “common sense” or non-specialist assessment.
- b) Is the addiction the direct cause of the misconduct?
  - As above, it appears the connection should be fairly direct.
- c) Has the employee sought treatment?
  - “Accepting and Pursuing Necessary Treatment” is considered a **prerequisite for accommodation** and an important factor in favour of the employee
- d) Has the employee apologised?
  - An unsolicited and genuine apology, at the first reasonable opportunity is a strong factor in favour of the employee.
- e) Is the employee capable of performing duties of the job (reasonably modified or not)?
  - A “capacity assessment” – either medical, psychological or through the relevant professional regulatory body – can provide powerful support to the employee’s argument for returning to work.



## DISCIPLINE AND DISCHARGE

When we are grieving discipline/discharge in cases where there is the possibility of a substance addiction issue (i.e., a disability), we need to insist that the arbitrator not only apply a labour relations analysis when viewing the case, but also a human rights analysis.

For more information on the Duty to Accommodate, see page 160.

## Human rights

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**T**he definitions below are intended to help in understanding human rights issues, including the duty to accommodate.

### Discrimination

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Discrimination means unfairly treating people in one group differently than people in another group.

The Canadian Charter of Rights and Freedoms and the federal, provincial, and territorial human rights codes name different kinds of discrimination which are unlawful. They also outline steps to stop discrimination.

Most workers are covered by provincial or territorial human rights codes. Some are covered by the federal code. The human rights code is a part of a union collective agreement. This is so even if the collective agreement doesn't say this in so many words.

A grievance arbitrator can apply the human rights code in the final and binding settlement of a grievance. If there is a conflict between the code and certain words in a collective agreement, the human rights code must over-ride those words. The collective agreement can provide better than the law, but it cannot provide less.

Most Unifor collective agreements go farther than human rights codes. Many Unifor collective agreements include “no discrimination” clauses, joint union-employer anti-harassment policies, employment equity programs, same sex spousal benefits, equity coordinators, women’s advocates, employer-paid human rights training for all workers, clearly outlined policies for accommodating workers with disabilities, and fully paid parental leave.

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## **Prohibited grounds**

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The term “prohibited grounds” refers to a reason for discrimination that is not lawful. The prohibited grounds in the federal human rights code are: race, national or ethnic origin, colour, religion, age, sex, pregnancy and childbirth, marital status, criminal conviction, disability (either physical or mental or as the result of dependence on alcohol or drugs), family status, sexual orientation, gender identity, creed, place of origin.

Other grounds covered by other human rights codes include: nationality, citizenship, ancestry, political beliefs, gender expression, civil status, language, source of income, social origin, social conditions, place of residence.

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## Harassment

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Workplace harassment is not a joke. It is cruel and destructive behaviour against others that can have devastating effects. Harassment disregards a person's dignity, physical or psychological well-being, and can create unfavourable or unsafe working conditions.

Union stewards and committee persons have an obligation to fight harassment and show leadership on human rights issues. Harassment poisons our workplaces and divides the workforce. It directly conflicts with equality in the workplace and solidarity in the labour movement.

As a union steward, you need to be able to recognize and deal with workplace harassment fairly and effectively.

*Workplace harassment is any unwelcome action (physical or verbal) by any person (including management, customer, client, co-worker) on a single or repeated basis, which humiliates, insults or degrades. Unwelcome or unwanted means any actions which the harasser knows (or ought reasonably to know) are not desired by the victim of the harassment.*

Racist, sexist and homophobic "jokes" are common in many workplaces. The telling and retelling of these

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jokes just reinforces stereotypes that have no real basis whatsoever. Some people say that these jokes or insults are harmless and that “people shouldn’t get so uptight.” But in reality, this kind of talk helps to create an atmosphere of insensitivity, in which the most blatant forms of discrimination and harassment can flourish.

At our founding convention Unifor adopted an internal Workplace Harassment Policy. This anti-harassment language must be included in all collective agreements. The policy covers harassment based on sex, race, age, creed, religion, marital status, sexual orientation, gender expression, gender identity, disability, political affiliation, place of national origin, etc. If one of our members is being ‘harassed’, but they’re not being targeted on any of the above grounds, you can represent them through the harassment policy or the regular grievance procedure.

Unifor offers courses on human rights and training on dealing with workplace harassment. See our website: [www.unifor.org/education-en](http://www.unifor.org/education-en) or contact the Education Department at [education@unifor.org](mailto:education@unifor.org).

Every steward/committeeperson needs a copy of our **Unifor Pocket Guide for Investigating and Resolving Workplace Harassment**. To obtain a copy call the Unifor workroom at 1-800-268-5763. Copies are also available on-line at [www.unifor.org](http://www.unifor.org).

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## ***How does the Unifor Anti-Harassment Policy work?***

It is the responsibility of management to ensure that the workplace is free of harassment. But just leaving the issue up to management is not good enough. Many of our employers still do not have harassment policies and processes to deal with complaints. If that is the case, we urge all locals to use the following procedure set out in this policy. Further, we strongly recommend that locals negotiate in their collective agreement the Unifor Harassment in the Workplace policy including the joint procedure for investigating and resolving harassment.

The role of local union is crucial in combating harassment. If a worker believes that s/he is being harassed at work and wants help, the incident must be brought to the immediate attention of the unit chairperson and the local union president.

The experience of harassment can be overwhelming for the victim. People often react with shock, humiliation and intense anger.

Because of the sensitive and personal nature of harassment complaints, especially racial and sexual harassment; the victim may prefer initially to seek other assistance. This could be any local union elected person or official, including a workplace women's advocate, member of the women's committee, human rights

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committee and employment equity committee. This person could assist the harassment victim in bringing the incident(s) to the attention of the top local union leadership.

The local union president and the unit chairperson must contact the Unifor national representative, and if necessary, they will meet with a senior employer representative(s) to carry out an investigation. The issue must be handled with confidentiality, and is to be resolved within 10 working days of notifying the unit chairperson and local union president. An extension to the ten day time limit may be granted with written request to the National President's office.

The national representative must notify the Unifor national human rights department about the complaint and its resolution.

Any resolution of harassment complaint must reflect the serious nature of such acts, and send a clear signal that they will not be tolerated.

All of us, as union members must challenge harassment whenever it occurs. We must ensure that the dignity of our brothers and sisters is not threatened by harassment.

Our goal as a union must be to help create a workplace environment free of harassment. That means not only dealing with complaints when they arise, but also watching for instances of harassment and confronting the source.

## ***Does your agreement include a Joint Anti-Harassment Policy?***

Unifor places a high priority on the negotiation of joint anti-harassment policies. This means the anti-harassment complaint, investigation, and resolution procedure is spelled out in many of our collective agreements. This represents a commitment by the employer in writing that it will co-operate with the union at all stages to resolve complaints of harassment.

Check your collective agreement. If your collective agreement contains an anti-harassment policy and procedure, it will set out the steps and time frames to follow as well as the persons responsible.

If your collective agreement does not yet include an anti-harassment policy and procedure, follow the steps outlined by the Unifor policy above, using the **Investigating and Resolving Workplace Harassment Pocket Guide** as your resource.



## ***The right to refuse workplace harassment***

As a result of bargaining improvements to the anti-harassment procedure, several Unifor collective agreements now recognize, in principle, that in serious cases of harassment on prohibited grounds, or where the safety of the worker is being threatened, it may be necessary for that worker to leave the job.

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## **Duty to accommodate**

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In order to understand accommodation, we need to understand more about what the law says about discrimination.

### ***Direct discrimination***

Direct discrimination means discrimination that is clear and explicit in the words of the policy or rule in questions.

### ***Indirect discrimination***

In the workplace, indirect discrimination happens when a job standard or requirement does not clearly and explicitly discriminate against a certain group in so many words, but this standard or requirement creates a situation that has the effect of discrimination. That is why indirect discrimination is sometimes called “adverse effect” discrimination.

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Example: A job description says that climbing ladders and lifting are required duties. A worker on the job becomes temporarily disabled. He tells his supervisor that climbing and heavy lifting are putting his health and safety at risk.

The supervisor refuses to modify the job. He says, “the job is the same for everyone. We don’t discriminate.” The supervisor tells the worker he can either take sick leave or go on working the job as is.

The worker doesn’t want to take sick leave, which is a pay cut, or go on working without any change in his duties. He won’t put himself in danger and he won’t quit. He files a grievance. The union committee explains to the manager that the supervisor’s rigid refusal to modify his job duties is “adverse effect” discrimination. The job description is not discriminatory on the surface. It is neutral. However, in these particular circumstances, the job description does cause discrimination. Only the fact that the worker has a temporary disability puts him in a position of having to choose between his job and his health. The manager checks out the human rights code, agrees with the union, and orders the supervisor to modify the worker’s duties so that, until he recovers from his temporary disability, he does packing instead of climbing ladders and lifting.

## ***Unified approach***

For many years, the difference between “direct” and “indirect” discrimination was very important in determining how a human rights issue was handled. That was until a ground breaking, precedent setting decision by the Supreme Court of Canada in 1999.

The Supreme Court found that the government of British Columbia discriminated against a woman named Tawney Meiorin when she was fired from her job as a fire fighter because she failed to pass a certain aerobic fitness test. The Supreme Court judges said that the employer had not shown that the particular aerobic fitness test used in this case was reasonably necessary to the safe and efficient performance of her job as a firefighter. The aerobic test she had to pass did not take into account her other strengths which are actually more important to the job as a firefighter.

In the Meiorin decision, the Supreme Court went on to outline what has been called a “unified approach” to ending or reducing discrimination. The new approach is called “unified” because it asks the same questions whether the discrimination is “direct” or “indirect.” The employer must now be pro-active (not re-active) in eliminating or reducing discrimination whatever the cause. Job requirements or standards must be designed

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in a way which is inclusive and opens doors to all groups as much as possible.

Example: Let's say a worker has been doing a job for many years that she doesn't like. Now she has the seniority to bid on a job that she really likes. However, with age she has also acquired a disability. Because of her disability she would have difficulty doing one part of the job she really wants. So, the employer says she can't have the job she has been waiting for years to get. The worker believes this is discrimination on the basis of disability and wants to file a grievance.

Under the new unified approach outlined by the Supreme Court of Canada in the Meiorin decision, there are certain steps to follow. The union must make out a "prima facie" case of discrimination. Once there is a "prima facie" case, the "burden of proof" shifts to the employer. The employer must show that the job requirement which is a barrier to a worker with a disability is a "bona fide occupational requirement." The job requirement must also allow for the "most appropriate accommodation" of differences in workers' abilities up to the point of "undue hardship." The employer, the union, and the worker have a "joint responsibility" to find and put into effect the most appropriate accommodation short of undue hardship.

We have just introduced many new terms – “prima facie,” “burden of proof,” “bona fide occupational requirement,” “most appropriate accommodation,” “undue hardship,” and “joint responsibility.” Let’s define these terms.

## ***Prima facie case***

The words “prima facie” come from Latin. They mean “at first sight.” A prima facie case is one where the facts are strong enough “at first sight” to show that there is a wrong that calls for a remedy.

In the case of discrimination, a prima facie case answers yes to three questions:

1. Is there substantially different treatment because of a distinction, preference, exclusion or a failure to take into account an already disadvantaged position?
2. Is the different treatment based on a prohibited ground (like disability)?
3. Does the different treatment withhold a benefit or impose a burden?

Example (continued): At first sight, the worker is being denied the benefit of seniority because of a disability which prevents her from doing one aspect of the job she wants. There is a “prima facie” case of discrimination.

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Most different treatment because of disability will establish a “prima facie” case of discrimination.

## ***Burden of proof***

Once the union makes out a “prima facie” case, the “burden of proof” shifts to the employer who must now produce facts strong enough to contradict or disprove the facts supporting the complaint or grievance.

Example (continued): The employer relies on the argument that the job standard in dispute is a “bona fide occupational requirement” and that there is no “appropriate accommodation” short of “undue hardship.”

With a good understanding of “bona fide occupational requirements” and “most appropriate accommodation” and “undue hardship” and with further investigation of the facts of each individual case, the union can overcome many of the employer’s arguments in these areas.

## ***Bona fide occupational requirement***

Job requirements, standards, tests, and policies, including those named in a collective agreement can often have a discriminatory impact. In some cases, discrimination cannot be avoided. In other cases, the discrimination can be avoided or remedied. The first

thing to do is to make sure the stated qualifications are real, genuine, and made in good faith. In other words, these standards or requirements have to be “bona fide” (good faith). To have a “bona fide occupational requirement,” an employer must be able to show:

- the standard was adopted for a purpose rationally connected to the performance of the job,
- the standard was adopted with an honest good faith belief that it was necessary to fulfill this legitimate work-related purpose
- the standard is reasonably necessary to accomplish this legitimate work-related purpose and is designed in such a way as it accommodates all workers and potential candidates without creating “undue hardship” (to the business or other workers).

Here are other important questions the Supreme Court of Canada says should be asked when determining if a job standard is reasonably necessary:

- Has the employer investigated alternatives that do not have a discriminatory effect?
- If other alternatives were investigated and found to be workable, why are these alternatives not used?

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- Can different standards be used that reflect how individuals and groups are different, instead of one single standard for everyone?
- Is there a way to do the job that discriminates less and still gets the job done, accomplishing the employer's legitimate purpose?
- Can the job be designed so the necessary qualifications are met without placing an undue or unfair burden on the worker?
- Have the union and the worker concerned actively helped in the search for possible alternatives that would open the door to accommodation?

These questions will clearly help workplace representatives challenge assumptions and barriers which prevent workers with disabilities from continuing to work in a way which respects their dignity. Moreover, none of this would do any harm to genuine job requirements.

The employer has to put its mind to finding the "most appropriate accommodation."

## ***Most appropriate accommodation***

The duty to accommodate demands the "most appropriate accommodation" short of "undue hardship."



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One human rights commission writes that the “most appropriate accommodation” is the one which:

- most respects the dignity of the individual
- meets individual needs
- best promotes the fullest integration and participation
- ensures confidentiality.

Unifor’s Health and Safety Department has developed a Return to Work or Modified Work Checklist which stresses certain points. The checklist says the most appropriate accommodation is one which:

- consults the worker;
- respects the advice of the medical practitioner;
- begins at the most appropriate time;
- defines an individual return to work plan;
- prevents further injuries and recurrences;
- helps the worker get better;
- assists the worker in reintegrating into productive, meaningful work;
- uses the principles of ergonomic job design (fitting the job to the worker, not the worker to the job);
- lasts as long as necessary;
- does not follow an arbitrary mould.

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When a worker is ready to return to work after absence due to disability, they have the right to return to the “pre-disability” job. Human rights commissions say this is only if they can perform the “essential duties” of the job. The essential duties are the core duties. In many cases, a worker with a disability can perform the core duties of their job with some accommodation.

Our union fights first for the right of the worker to return to the “pre-disability job.” This approach challenges both the union and the employer to work together to make the modifications necessary to eliminate as far as possible the causes of injury or disability in the first place. This approach is also the least disruptive to other workers.

The union should not allow the employer to assume the worker cannot return to the “pre-disability job” without first giving the worker a chance which is fair and objective. If the worker cannot do an essential part of the job without some modification to the job itself, the union should fight for the necessary modification. The union should force the employer to show that the necessary modification cannot be done without “undue hardship.”

Often all it takes to protect the worker’s right to return to their “pre-disability” job is to force the employer to

put their mind to the issues. If the union agrees that reduced hours of work are in the best interests of the worker, the union and the employer can accommodate the reduced hours with a letter of understanding. Wage replacement benefits for the time not worked may be paid by workers' compensation (if the disability is work related) or by the insurance carrier (if the disability is not work related). Most accommodations are really not costly.

Jobs can be modified in many different ways. A few examples include:

- ergonomic job design;
- redesigning work stations;
- purchasing special equipment;
- job content restructuring;
- rearranging working hours, shifts, and so on.

The "most appropriate accommodation" must answer the individual needs of the worker. The worker's own physician must provide the employer and the worker's representative with a clear description of the worker's medical restrictions.

Accommodation must include workers with:

- permanent disabilities;
- temporary disabilities;

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- disabilities whose causes are work related;
- disabilities whose causes are not work related.

Accommodation works best when it builds in respect for seniority rights and other essential provisions of the collective agreement. The employer and the union must agree jointly on the most appropriate accommodation.

A Joint Return to Work (Modified Work) Committee is established for this specialized purpose.

Other alternative kinds of accommodation include temporary (most notably pregnancy accommodation) and permanent alternative work. Many questions about alternative work are answered under the next heading which tells us about what “undue hardship” means.

## ***Undue hardship***

If there is discrimination, the employer has a duty to make every reasonable effort to make the most appropriate accommodation up to the point of “undue hardship.” Human rights codes define the words “undue hardship” differently. For example, the Ontario human rights code lists three factors which must be taken into account.

They are:

- cost
- outside sources of funding
- health and safety requirements

## **Cost and outside sources of funding**

According to one human rights commission, over two thirds of accommodations of workers with a disability cost under \$500 each. Many accommodations cost nothing at all.

Before claiming “undue hardship,” the employer must compare the benefits and savings that result from accommodation to the costs of that accommodation. Furthermore, an employer cannot claim “undue hardship” without first making use of all outside sources of government funding which are available to cover the costs of both the individual worker (training, personal equipment, etc.) and the employer (new equipment, technology, training). If a worker’s disability is from a work related injury, the worker’s compensation board will often pay certain costs.

## **Health and safety**

If a health and safety requirement is a barrier to accommodating a worker, the employer has to weigh the benefit that comes from ending discrimination

against the health and safety risk that remains after accommodation. To keep a health and safety requirement that prevents accommodation, the risk to health and safety must be serious, probable and significant.

To be considered “bona fide,” a health and safety requirement must be reasonably necessary to the safe performance of the job. It cannot be adopted to create a barrier to equality.

## **Alternative work**

If the things that need to be done to accommodate a worker within their “pre-disability” job would create “undue hardship” in terms of cost and health and safety, the employer, the union, and the worker must consider alternative work which is suitable and appropriate. Alternative work may be temporary or permanent.

In an arbitration decision called “Mount Sinai Hospital v. ONA” in 1996, the arbitrator, Richard Brown, said the duty to accommodate covers not only the duties and requirements of current jobs but also the duties and requirements of “a bundle of existing tasks within the ability of a worker with a disability.” The employer has to use a three step test:

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- 1) Can the worker perform his or her existing job?
- 2) If the worker cannot do their existing job, can the worker do his or her job in a modified form or with the tasks of different jobs “rebundled”?
- 3) If the worker cannot do their job in a modified or rebundled form, can they do another job in its existing or modified or rebundled form?

The size of the workplace, the number of jobs, and the kind of work involved will determine whether it is possible to “rebundle” tasks. For example, it would create “undue hardship” for other workers if a rebundled job would give all the light work to one worker and all the heavy work to all the others. However, the larger the workplace, the greater the number of jobs, and the greater the different kinds of tasks, the greater the chances of “rebundling” tasks without creating undue hardship for anyone.

By way of example, at CP Rail, the union negotiated collective agreement language which sets out the following steps in accommodating workers with disabilities:

First, the employee’s present position will be considered for modification.

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Second, positions within the employee's classification shall be considered.

Third, positions within the bargaining unit shall be considered.

Fourth, positions outside the bargaining unit shall be considered.

Any alteration of seniority shall be considered as a final resort only after all other avenues have been duly considered by both parties. In situations involving lay-off and recall from lay-off, the provisions of Rule "x" (the lay-off and recall provision of this collective agreement) will have priority over any other special arrangements that have been established to accommodate disabled employees.

## ***Seniority***

Seniority is the corner stone of a collective agreement.

Seniority rights in the collective agreement protect the worker from all kinds of unfair, arbitrary and discriminatory treatment. The aims and objectives of human rights codes and collective agreement seniority provisions go hand in hand. They both serve to protect equality, fairness, and prevent discrimination.

The duty to accommodate a worker with a disability can conflict with certain collective agreement provisions



based on seniority, but often this duty provides the only effective defence of the seniority rights of a worker with many years of service.

Unifor will never set aside seniority in the order of lay-off and recall. A worker has the right to equal treatment regardless of disability but should not have the right to better treatment because of disability.

After taking all factors into account, the union sometimes considers negotiating a letter of understanding to assign a worker with a disability to a vacant position without the necessity of a job posting. That happens only when this form of accommodation is suitable to the worker and causes the least interference with the seniority rights of other workers.

### ***The “Innocent Absenteeism” rule***

For many years, arbitrators accepted the so-called right of an employer to terminate or discharge a worker for “innocent absenteeism” regardless of long years of service and seniority. Innocent absenteeism is absence for medical reasons where there is little or no likelihood of the worker being able to do work the employer considers “essential” or “productive.” In a 1996 decision on a grievance made by CAW Local 2301 at Alcan Smelters in Kitimat, BC, the arbitrator Allan Hope wrote

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that the duty to accommodate now tells the employer to show that they have taken every reasonable measure they can, short of undue hardship, to accommodate a worker with a disability before using “innocent absenteeism” as a reason for discharge.

## ***Joint responsibility***

The union also has a duty to accommodate. Workers have a right to union representation when meeting with the employer concerning modified work or return to work (*Commercial Bakeries Corp. vs. Retail Wholesale Canada/CAW Local 462*, 20003 CANLII 52702).

This means the union has to be an active player, investigate, and forcefully argue for alternatives where appropriate. We should challenge job descriptions which contain requirements that are not really needed and that only create a barrier to equality in general and workers with disabilities in particular. We should challenge employers to prove to us there is no alternative short of “undue hardship” when they use this argument.

If the only appropriate accommodation available to a worker conflicts with provisions in the collective agreement, the union must still put its mind to the issues. We can oppose accommodation on the grounds of conflict with the collective agreement, but we must

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also show a convincing case that there is undue hardship to other workers.

If the employer resists appropriate accommodation, the union has to make a serious and substantial effort to overcome that resistance. This can be done through a grievance or through collective bargaining or both.

Example: When the supervisor said that modifying the job of a worker with a disability would cause hostility from other workers, the union strongly recommended, as part of the total solution, that the employer give a one day paid human rights and anti-harassment training program to everyone, supervisors and workers both. This way, everyone would know that it is everyone's right to work in a harassment free environment and to get accommodation when necessary. The employer agreed. Human rights training for all new workers and supervisors also became part of the collective agreement.

It is very important that workplace representatives keep good records of all steps that the union takes to accommodate in cases of discrimination. Despite the fact that the burden of proof shifts to the employer when we make out a "prima facie" case of discrimination, we always investigate our case as though the burden of proof is on the union, not the employer.

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The worker also has responsibilities. The worker must:

- co-operate with the union in its efforts to find accommodation
- advise the employer of their disability
- make their needs known, preferably in writing
- answer questions about the restrictions and limitations based on medical information from health care professionals when appropriate but not including diagnosis
- participate in discussions about possible accommodations
- co-operate with experts as required
- meet agreed upon job standards after accommodation is provided

The employer must:

- co-operate with the union in its efforts to find accommodation
- accept the worker's request for accommodation in good faith
- get expert advice where needed
- investigate all possible solutions
- keep a record of all actions taken
- respect confidentiality

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- pay the cost of any medical documentation needed, doctor's notes, letters setting out accommodation needs
- find and put into effect the most appropriate accommodation in a timely manner up to the point of undue hardship
- not force the worker to go to the employer's doctor but if there is a dispute over medical evidence, the worker and the employer may agree on the worker seeing another doctor agreeable to both the worker and the employer (often called an Independent Medical Examiner)

## ***A last word on grievances related to accommodation***

When job rights are at stake, as in the case of a termination or a lay-off out of order of seniority due to disability, the union must file a grievance.

When job rights are at stake, do not rely only on a claim within the worker's compensation system.

If the employer refuses accommodation, the union must file a grievance under the collective agreement without delay. Even if the collective agreement makes no mention of the duty to accommodate, the union must still file a grievance. The human rights code is considered to be a part of the collective agreement. An

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arbitrator can apply the human rights code to the grievance facts and enforce the provisions of the human rights code as part of the collective agreement.

Pay particular attention to the time limits in the grievance procedure. The grievance must demand full redress and say that the duty to accommodate must be met as provided for by the human rights code and the collective agreement.

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*Our union fights first for the right of the worker to return to the “pre-disability job.”*

*This approach challenges both the union and the employer to work together to make the modifications necessary to eliminate as far as possible the causes of injury or disability in the first place. This approach is also the least disruptive to other workers.*

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## Workers' health and safety

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**A** steward must take an active interest in health and safety. You should be able to help a worker use the health and safety legislation. In each jurisdiction, there is a law and a set of regulations that apply to your workplace.

Our union has a Health and Safety Department; staff are ready and able to assist any local union that calls.

In many workplaces, our negotiators have successfully forced employers to recognize their responsibility to provide Health and Safety training to the workers. In most cases, the employers are using the training opportunities provided by the Unifor Health and Safety Department.

In a number of our bargaining units, we have been successful in negotiating full time Health and Safety Representatives who coordinate and enforce the Health and Safety programs of the Union.

They assist our union's Health & Safety Department and the local union Health and Safety Representatives. In some large workplaces we have also negotiated Ergonomics Coordinators and Health & Safety Training Funds to better protect our members.

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In our smaller units, it is common for a steward to also be a member of the Joint Occupational Health and Safety Committee. It is also common to have a Health and Safety Representative on the day shift, but not on afternoons or midnights. In these situations, the Union should work out a representation process that best suits the particular circumstances.

In some cases, the day shift Health and Safety Representative might wish to be called in to investigate complaints or incidents on an off shift. The steward should make sure that the Health and Safety Representative is notified.

On shifts where there is both a steward and a Health and Safety Representative, the steward should refer health and safety business to the Health and Safety Representative for resolution.

A number of health and safety courses are offered by our National Union, ranging from one-day to week-long programs on a variety of topics (from the general to the specific). They give participants a trade union perspective on health and safety and cover issues such as the right to refuse unsafe work and the right to know about workplace hazards.



As a steward, you should take the time to take one of these courses. You will gain knowledge that no union representative should ever be without.

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## The right to refuse unsafe work

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The right to refuse unsafe work starts with the **right to know**. Workers have the right to know information that could affect their health or safety in the workplace. Workers have the right to training and information on machinery, equipment, working conditions, processes and hazardous substances. For example, workers have the right to information about chemicals they are using or exposed to while at work.

Workers have the **right to refuse unsafe work** if they think they are in danger, or that their work endangers someone else. It is illegal for the employer to discipline workers for refusing unsafe work.

Here's how it generally works:

- The worker reports the problem to their supervisor and says they are *"exercising their right to refuse unsafe work."*
- The worker notifies their union representative as soon as possible.

# WORKERS' HEALTH AND SAFETY

- The supervisor has to investigate and attempt to fix the problem.
- No other worker can be assigned to do the job unless they are told about the work refusal and the reasons for it.
- If the worker doesn't feel like the problem is fixed, and believes there are still reasonable grounds to refuse, then the union rep will guide them through the next steps (in adherence with the provincial / federal guidelines for work refusals).

The right to refuse is protected in law, and union reps need to know the laws and processes that need to be followed. They also need to be prepared to respond if an employer attempts to discipline a worker for exercising their legal right to refuse.

It takes courage to stand up and exercise our right to refuse, but it may be the only way for workers to protect themselves, and could even save a life.

Workers also have the **right to participate**. Encourage workers in your area to get involved by reporting unsafe conditions, voicing their concerns, becoming a health & safety rep or taking part in a Joint Occupational Health and Safety Committee.

## WORKERS' HEALTH AND SAFETY

**Unions today remain committed to defending health and safety legislation so that all workers - whether they have a union or not - can exercise their right to healthy and safe workplaces.**

## Workers' compensation

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**W**orkers who file compensation claims need an advocate. In some of our local unions there are benefits reps who are especially trained to deal with compensation issues. As a workplace representative / steward, you should have a basic grasp of the compensation process your members will follow.

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### How to make a workers' compensation claim

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In some local unions there are designated worker's compensation advocates. If this is the case in your local, refer questions on claims and appeals to them. Otherwise, you may be called upon to help a worker make a compensation claim. Unifor Education Department offers training on workers' compensation advocacy (see page 246 to find out more).

The following information will help you to make a workers' compensation claim for yourself or to help your fellow workers establish a claim:

*I was just injured on the job. What do I do now?*

Get first aid if necessary, first. Next, report the injury to your employer. If you don't report the injury right away, it might be very hard to prove later on that your injury is work related.

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If no one saw the accident, tell co-workers and your supervisor right away. Remember the names of witnesses you know saw what happened. Delay in reporting throws doubt on a claim.

The employer must arrange or pay for transportation to the hospital or your doctor. It is important that you do not drive yourself or ask a friend or family member to take you. It is your employer's duty to transport you to medical attention.

If have to go see a doctor, they must send in a Physician's Report to the Workers' Compensation Board. (The Board may be called something else in your province or territory, but, for the sake of brevity, we will call it the WCB.)

The employer must pay you for the day of injury.

Each province or territory sets out its own rules as to when a compensation claim must be opened for you, but generally speaking, if you need to see a doctor or you have time away from work due to the injury or if your work needs to be modified for more than a week, you should have a worker's compensation claim filed.

*What is a work related, compensable injury?*

A work related injury is one that happens in the course of employment or arising from the work you do.

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Not every injury is an “accident”. It may come on gradually over time. It may be a soft tissue injury from repetitive stress. The injury may be one of many occupational diseases from exposure to toxic substances or other hazards. You have the right to file a claim for these kinds of injuries.

It is a sure bet that if you don't file, the hazards that caused the injury aren't likely to get fixed.

*Do I have to be treated by the employer's doctor?*

No. You have the right to choose the doctor you want. You do not have to be treated by the employer's doctor. However, if the WCB tells you to see a doctor of their choosing, you have to go or you will be cut off benefits. Make sure you see your doctor regularly, every couple of weeks or so, or you may be cut off WCB benefits.

*What should I do after I report my injury to my employer?*

First, go to a doctor. See your family doctor, or a doctor at your local hospital or community health clinic. There will be a number of forms that you will have to deal with after you report your injury to your employer. Keep a copy of the accident report and all forms. Make sure you know and remember the name and contact information of the attending doctor if you go to the hospital.

### ***Doctor's first report***

Make sure the doctor who first treated you sends the Physician's Report to the WCB. (This report is usually called the Form 8.) Without this, there will be no benefits paid. If you were treated at an emergency department, you can have your own doctor send a follow-up report.

The WCB looks carefully at the doctor's report to see if the injury or diagnosis matches up (is compatible) with the accident. Make sure then your doctor has all the details of how the accident happened. Help them understand the way you normally do your job. If something changed in your usual routine and that caused the accident, the doctor has to note that. It answers the question as to why you would have an injury if you have been doing the same job for a long time.

Tell your doctor about all the parts of your body that were injured. See that they write them down. After a fracture heals, for example, it may be the secondary injuries to your neck, back, etc., that will need the most ongoing treatment. You don't want to lose benefits you will need simply because one word wasn't written down.

It is well worth your time to read a blank Physician's Report or Form 8. Go on line to the website of your

# WORKERS' COMPENSATION

WCB, find it, download a copy, and study it. Look at the questions that the doctor has to answer. The more you understand the medical information needed to support a claim, the more you can help yourself or give good advice to another injured worker.

The WCB really needs to see “objective physical findings” on the doctor’s report. That means symptoms or signs of injury that can be seen by another person. In other words, pain alone, as bad as it may be for you, may not be enough proof of injury. It is too “subjective”. Bruising, swelling, limited range of motion, x-ray findings, etc are examples of “objective” facts that your doctor needs to report.

The doctor must also answer the questions as to what tasks you are safely able to perform. These questions as to your medical restrictions or “functional abilities” may be answered right away or at a follow-up visit. The WCB and your employer must have this information, but the employer has no right to know the medical diagnosis of your injury.

Follow-up reports from your doctor will be necessary or your benefits may stop.



### ***Worker's report of injury***

Once your doctor or employer sends in reports, the WCB will send you a Worker's Report to fill out. The employer or local union may have copies as well.

It is most important to ask your union benefits representative, workers' compensation advocate or another workplace representative who is knowledgeable about compensation for help with completing the Worker's Report. They may also want you to help them fill out a union fact sheet. That will really help the union better represent you. The union advocates must respect the confidentiality of the information in your file.

The space provided on the Worker's Report for describing the accident doesn't usually allow for more than a few sentences. That's why you should use the page for additional information to more fully describe exactly what happened.

For example, don't just say, "I fell at work and hurt myself."

Here's an example of a more complete description of an accident at work:

"I was walking through my work area at the start of my shift. I didn't see the oil that was on the floor. I stepped in it. My right leg went forward. I lost my balance. I fell

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backwards. My right shoulder hit my machine. I reached out with my right arm. I broke my fall with my right hand. When I landed, my head hit the floor. I hurt my right shoulder, my right wrist, my hip, my neck, and the back of head. I remained there on the floor until my co-worker called First Aid for help.”

Again, just as you would ask the doctor to, you name every part of the body injured.

Include names of witnesses who you're sure can say what happened. The WCB may contact them. If they tell a different story or say they don't know, that will cast doubt on your claim.

Make a copy of your Worker's Report before you send it.

Keep notes on all the telephone calls you have with the WCB.

*What should I do if I don't understand something the WCB is asking me to do?*

Read carefully every letter the WCB sends you. Follow the instructions you receive from the WCB. So-called “non-compliance” or “failure to cooperate” with your duties as a worker under workers' compensation is one of the most common reasons why benefits are stopped. If you don't understand something the WCB is asking you to do, call the WCB and ask your claim manager

to explain what you have to do to comply. If you think something they are directing you to do is unreasonable, offer a workable alternative. Ask if that would satisfy their requirements, but follow their instructions!

A record is made and placed in your file of every conversation you have with the WCB. If you outright refuse to do something that the WCB is directing you to do, your benefits may be stopped or reduced.

*Does my employer have to make a report?*

Generally speaking, the employer has to make a report for every injury that requires more than first aid only.

In some provinces or territories you are entitled to have a copy of the Employer's Report. If not, ask for a copy the report the employer sent anyhow. Ask your workplace representative to help you get a copy, if necessary. You can eventually get a copy of the employer's report from if you appeal a decision and you request access to your file.

The sooner you get a copy, however, the better. It is most important to check the Employer's Report for accuracy. Employers often make mistakes in reporting your earnings, hours of work, and other things that will affect the calculation of your loss of earnings benefits.

Read the Employer's Report carefully for anything that will cast doubt on your claim. Employers often put down

# WORKERS' COMPENSATION

things that challenge a claim because they don't want to pay anything more to the WCB than they have to or because they get rebates, money back, from if there are no lost time claims.

If the employer has reported something that is not true or incomplete, you need to send the correct information to the WCB right away. You can also ask your workplace representative for help in getting the employer to send correct information.

Some Unifor Local Unions have reduced the number of claims that are unnecessarily held up or disallowed. They did this by negotiating a procedure whereby a union worker's compensation advocate will always be present when the worker's and employer's reports are completed. This provides the injured worker with representation right from the start. It has solved a lot of problems at the source.

*I was still able to work. Can I get benefits from the WCB?*

Yes. There are two types of WCB claims. Lost time claims are for payment of lost wages and medical expenses. No lost time claims cover medical expenses. Medical expenses can be:

- doctor's bills
- physiotherapy

## WORKERS' COMPENSATION

- chiropractor
- other therapy
- prescription drugs
- artificial aids such as hearing aids or braces
- travel costs to get back and forth to your treatment
- clothing allowance if a brace or wheelchair damages your clothing.

You have to pay these expenses and then ask the WCB for the money back. Get receipts for everything. Keep track of your mileage. Send these to the WCB. Keep copies of everything, in case the WCB loses something.

Make sure your physiotherapist or chiropractor sends in forms to the WCB so they know you've gone for treatment.

*What happens if the WCB takes a long time to decide on my claim?*

*Where can I get money to live on until then?*

There are a number of places that you can go to for help while you are waiting for your WCB claim to be decided. Apply for everything. They'll let you know if you are not eligible.

- Sickness and accident (weekly indemnity) benefits through work.

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- Employment Insurance (EI) sick benefits
- Canada Pension Plan disability benefits.
- Welfare or social assistance.

If you apply for these other kinds of benefits, you must let them know that you feel your injury or illness is work related and that you are applying for WCB benefits.

They will probably tell you to sign an assignment of benefits or subrogation of benefits form. This form is a promise to pay back the money you receive from them once you get it from WCB.

*Is there a time limit on making a WCB claim?*

It is best to report right away. Delay in reporting causes a lot of claims to be denied. However, check to see what the maximum the time frame is for making a claim in your province or territory. There are situations where a worker has a good reason or explanation for not having filed right away.

*What should I do if my employer tries to get me to take sick pay instead of making a WCB claim?*

Do not let your employer talk you out of making a WCB claim. If your injury is related to your work, you should claim WCB benefits. WCB benefits are often higher than benefits under other plans. If you have complications,

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recurrences, or secondary effects from your injury later on, you may not receive benefits and coverage for treatment you need unless there is a worker's compensation claim on file.

*Can I appeal a decision to disallow my claim?*

Yes, you can! It is important though to check the time limits on appeal and make sure you file before the time expires. You can ask the local union for help in making your appeal.

However, you can still ask an adjudicator to reconsider or review the decision. If you ask the WCB to reconsider their initial or first decision, just be sure not to let the time limit to appeal expire! Read the appeal steps carefully.

*New information?*

If your claim is denied or if your benefits are cut-off or reduced for any reason but you have new information or facts the WCB did not have or consider, you can ask for reconsideration or a review of the decision. You will need to provide the adjudicator or case manager the information they need to change their decision.

Read the letter where the claim is disallowed. Note all the reasons. Ask yourself what new facts and information would answer the questions and give the

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WCB reason to reconsider. Talk to witnesses who can correct wrong information. Go back to your doctor if there's a question of medical proof of injury. Ask if they can provide any new information that would clear up doubt. You may need a second medical opinion.

In Ontario, the Occupational Health Clinics for Ontario Workers will assess a worker's condition in strictest confidence if s/he believes they are sick or injured because of work and provide medical diagnostic services for workers with workplace injuries. To find out to contact OHCOW, go on line to [www.ohcow](http://www.ohcow) or call 1 877 817 0336.

The Unifor Education Department has courses to help workplace representatives who are not experts on workers' compensation develop a basic understanding of the system and how to help injured workers troubleshoot problems with claims.

## ***Return to work***

In recent years the workers compensation system has been radically changed. A much greater emphasis is now placed on getting the injured worker back to work as soon as possible. This has both good and bad features. It is important for workplace representatives to look out for the best interests of the injured worker in the return to work phase of a claim.



## WORKERS' COMPENSATION

The injured worker needs to know that any statements or actions that can be construed by the WCB as “non-cooperation” with return to work can and will be used to stop benefits.

Employers, generally speaking, must offer the injured worker work that the worker can safely do. The stronger requirement of an employer to accommodate a worker with a disability is provided by the human rights code.

So, if an injured worker is not offered an opportunity to come back to their job or to modified work, the circumstances should be investigated. There could be grounds for a grievance. Unlike workers compensation, human rights codes set no time limit on the duty to accommodate.

It is just as likely, however, the employer will bring the injured worker back and offer modified work for as long as they are required to do so under workers' compensation legislation. This is where the injured

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*All human rights codes cover disabilities which are both work related and not work related. Unlike most other grounds of discrimination, disability is one which can happen to any worker at any time. Disability may be visible or not visible.*

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# WORKERS' COMPENSATION

worker will need good representation. Often such return to work plans are undignified, demeaning, unsafe, inappropriate, and do not respect the collective agreement and human rights of the worker. There is no easy fix to these problems. Fixing them requires careful examination of all alternatives and strong representation by the workplace representatives.

Grievance handlers, health and safety representatives, workers' compensation advocates, and equity or human rights representatives need to work together with the injured worker and the employer and the WCB to make sure the best possible return to work plan is set up.

## ***Worker's compensation & the duty to accommodate***

Worker's compensation laws outline a duty to accommodate workers with work related injuries. However, human rights codes define disability in the broadest terms possible and without the time limits and restrictions on the duty to accommodate we often find in worker's compensation legislation. For instance, the Ontario Workplace Safety and Insurance Act says employers do not have to provide employment for injured workers after two years from the date of the first injury. By contrast, under the human rights code, there is no time limit on the employer's duty to accommodate a worker with a disability. Any such arbitrary time limit

## WORKERS' COMPENSATION

on the worker's right to return from disability which is written into the collective agreement is in conflict with the human rights code and is therefore unlawful.

In a case of an injured worker demanding accommodation, an employer violates the human rights code, and thus the collective agreement, when the employer relies only on the medical reports and opinions of the worker's compensation board. A worker's compensation board has no power to enforce the human rights code. The employer must do its own investigation on how the worker might be accommodated in a suitable job with the human rights code in mind.

The union should demand that the employer provide the union with all employer reports to the worker's compensation system and all reports on any injured worker's functional abilities so that we can do what is necessary to protect the worker's interests without delay.

All human rights codes cover disabilities which are both work related and not work related. Unlike most other grounds of discrimination, disability is one which can happen to any worker at any time. Disability may be visible or not visible.

# WORKERS' COMPENSATION

We must challenge assumptions about disability. A worker with a disability could be the victim of discrimination because an employer perceives or assumes that they are not capable of doing productive work. This is called “social handicapping.” It is wrong and against the law.

Anything that has the effect of undermining the dignity and self-esteem of a person with a disability is discrimination.

Unifor offers a series of courses for workplace reps to better equip you to support workers seeking accommodation and pursuing compensation claims.

## Unifor: Our democratic structure

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In Unifor, every member has a voice. Every member has an equal right to say what they think the union ought to be doing, to debate issues, to elect representatives, to question their elected officers and to cast a vote in making decisions.

It's important that stewards understand our structure

- So that they know where to get the help they need
- So that they can participate fully in union life
- So that they can actively encourage members to get involved
- So that they can explain 'how the union works' to our members
- So that they can encourage all members to exercise their rights within the union and in the workplace.

Most workers don't learn much about unions in school. Their two major sources for learning about unions are mass media, and their own experiences with unions. We don't control mass media, but we can work to ensure that what workers learn from us makes them want to get involved.

# UNIFOR: OUR DEMOCRATIC STRUCTURE

At the very least, workers need to know that the union belongs to them and their voice and vote matters. Getting this message out is up to you.

Workers elect their:

- steward/workplace rep
- bargaining committee
- other committee members
- local union officers (incl. President)
- delegates to Unifor Councils & Conventions

Workers vote on:

- Whether they're willing to strike / take workplace action
- Whether or not to ratify (accept a contract)

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## Local unions

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In Unifor we have 750 local unions and over 3,000 workplace units.

There are two types of local unions:

- amalgamated/composite locals that are made up of several workplace units
- single unit locals with just one workplace. Workers in each unit elect a bargaining committee to negotiate with management a collective agreement on wages,

working conditions and benefits. The members vote by secret ballot to ratify (accept or decline) a negotiated contract or agreement.

Local union members elect local officers (President, Financial Secretary, Recording Secretary, Unit Chairperson), Committee Chairs, as well as Convention and Council delegates. Everyone can attend local membership meetings where we discuss and vote on the priorities and policies of the local (in amalgamated locals, members also hold unit meetings to deal with their workplace or employer-specific issues). Local union committees may include: Health and Safety; Women's; Human Rights; Pride; Political Action; Environment; Constitution & By-laws; Young Workers; and many more. There's room for everyone to get involved.

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## Who's who at the local level?

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Every local union has an elected executive to run their day-to-day affairs.

**President:** Coordinates all the work of the local. Plans and chairs regular meetings where workers can discuss and debate important workplace and community issues. Carries out Unifor policies and priorities voted on by members.

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**Vice-President** – the president’s right-hand person. Locals with several hundred workers usually have more than one vice-president.

**Recording Secretary** Takes minutes of local meetings, handles correspondence and maintains the union’s records.

**Financial officer** (sometimes called the treasurer or secretary-treasurer): Collects all monies paid to the local union, including membership dues, and is responsible for properly accounting for all local union spending. Also maintains the membership database.

**Bargaining Unit Chairperson:** Oversees grievances and the collective bargaining process.

**Steward / Workplace Representatives:** Elected by their co-workers to investigate and resolve workplace problems, and handle grievances. Stewards are the ‘front-line’ of Unifor.

**Bargaining Committees:** Elected by the workers to represent them in negotiations with employers.

Every local union is also assigned a **National Representative**, a full-time labour relations expert who helps out in a variety of situations from representing members who have a grievance, to providing key support during bargaining.



Most local unions also elect or appoint Health and Safety representatives, and Local Union Committee Chairpeople. Many locals also have Women's Advocates, Employment Equity Reps, Employee Family Assistance Plan reps, and more. All of these positions are outlined in your local union by-laws, which must be made accessible to all local union members. Members in good standing can run for any of these positions - check your local union by-laws for details..

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## Quebec and Regional Councils

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All Local Unions are members of a Regional Council. In addition to Quebec Council, there are four Regional Councils: British Columbia, Prairies, Ontario and Atlantic\*. Each Council elects a leadership that includes a Chairperson (who also serves on the National Executive Board), Vice-Chairperson, Secretary-Treasurer, and others as determined by Council By-Laws.

Councils meet at least once a year. Delegates to Council (local union members elected by their co-workers) participate in discussion and debate on regional priorities, campaigns and policies. National Officers, Regional, Area, Industry and Department directors and staff provide reports for delegates to discuss and debate. Council Standing Committees organize conferences

# UNIFOR: OUR DEMOCRATIC STRUCTURE

and meetings, initiate educational events and activities, mobilize members and make recommendations to the Council on campaigns, policies and procedures.

Regional Councils and the Quebec Council are a democratic force for union activism, solidarity, and strength. They involve and engage thousands of local union activists in the life of the union by conducting campaigns and activities on workplace and community issues, often in cooperation with progressive allies. Councils also support the National Union's Organizing Department helping to bring new workers into our union.

\* Local Unions located in the Territories or Nunavut are assigned to a Regional Council by the National Executive Board. Membership of a National or multi-regional Local Union are assigned to the Council covering their residence. The formula for delegate entitlement to these Councils is outlined in the National Constitution.

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## **Unifor Canadian Council**

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The Canadian Council is the parliament of our union. Every local union elects members (called delegates) to come and participate in this annual meeting where we discuss, debate, and vote on the priorities and policies of the union, based on issues that matter in our workplaces and our communities.

At Council the National President provides an overview of the past year's progress in collective bargaining, outlines local union and industry changes, discusses our response to changes on the political scene, links our issues with international issues, and much more. Regional, Quebec, Industry Councils and National Staff also report on their activities and assignments. Delegates debate and vote on these reports. Delegates vote to elect a Council Chairperson (3-year term), as well as Industry Council representatives, all of whom also serve on the National Executive Board. Elections are determined on a per capita basis (calculated by how many members each delegate represents) and are conducted by secret ballot.

Over 1200 delegates come to Canadian Council from across the country and from all different workplaces represented by Unifor. This is a tremendous opportunity for workers to get and share information to bring back to their membership. Council is conducted in English and in French, with translation. Canadian Council also includes these Standing Committees: Women, Organizing, Aboriginal & Racialized Workers, Young Workers, Lesbian, Gay, Bisexual and TransWorkers (LGBT), Workers with Disabilities, Health, Safety & the Environment (HSE), and Political Action.

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## Industry Councils

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Unifor is a general workers union. We represent workers in every major industry and sector of the economy – and this tremendous diversity is one of our biggest strengths. But in addition to our common struggles, we must also pay attention to what makes each industry unique.

We have established the following Unifor Industry Councils where delegates from local unions meet to discuss changes in industry, bargaining strategies, government policy:

Aerospace	Auto
Aviation	Education, Technical, Office and Professional
Energy	Fisheries
Forestry	Forge & Foundry
Healthcare	Hospitality & Gaming
Independent part suppliers	Media
Mining, Metals & Minerals	Rail
Retail Wholesale	Road Transportation
Service	Telecommunications
Transit	

*(updated February 2015)*

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## National Executive Board

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Our NEB is made up of nineteen elected people, all of them workers. Together they represent the diversity of the many, many workers and workplaces we represent.

The NEB includes representation from:

- all of the regions (five Regional Council Chairpeople and three Regional Directors)
- gender representation (as enshrined in our Constitution)
- specified rep for Aboriginal/Racialized Workers
- specified rep for Retirees
- specified rep for Skilled Trades
- three National Officers (National President, Secretary-Treasurer and Quebec Director)

The NEB meets at least three times a year and is accountable for carrying out the policies and priorities of the National Union, as determined by the membership at Canadian Council.

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## From local to international

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Call it working together, or call it solidarity, working with other unions in our community and in our world is a big part of what makes us stronger and smarter.

## UNIFOR: OUR DEMOCRATIC STRUCTURE

- At the local level we work with other unions in our communities through District Labour Councils (together we support community projects and bring a worker's perspective to municipal governments).
- At the national level we belong to the Canadian Labour Congress (together, we're over two million workers strong) Check out [www.clc-ctc.ca](http://www.clc-ctc.ca).
- At the global level we connect with unions around the world (together we keep track of the activities of multinational companies, track industry changes, and share resources and strategies).

Want to know what workers in other countries who work your industry are saying and doing about workplace issues? Check out some of the groups you belong to (just by being a member of Unifor):

[www.industrialunion.org](http://www.industrialunion.org) (workers in shipbuilding, auto, aerospace, mining, energy, cement and more)

[www.uniglobalunion.org](http://www.uniglobalunion.org) (telecom; technology; graphical; cleaning & security workers; media, entertainment, arts and sports; gaming; private health care; and more)

[www.iuf.org](http://www.iuf.org) (food, agricultural, hotel, restaurant & catering workers)

[www.itfglobal.org](http://www.itfglobal.org) (transportation workers)

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## **Unifor National Office departments & programs**

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***All Unifor National Office Departments can be reached by calling 1-800-268-5763***

### ***National President's Office***

Unifor's National President works to protect and advance the interests of the National Union, has full authority to direct the working of the union, leads bargaining in major auto, and reports to the Unifor National Executive Board, Canadian Council and Conventions. Assistants in the National President's Office are responsible for bargaining in the different sectors of the union, overseeing various Unifor departments, campaigns, and staff assignments. Email: [president@unifor.org](mailto:president@unifor.org).

### ***National Secretary-Treasurer's Office***

The National Secretary Treasurer is charged with overall responsibility for the national union administration, staff relations, budget, staff training, appeals, audits of local union funds, and oversees several of the union's departments. The National Secretary-Treasurer also plays a key role in major bargaining.

## ***National Service Representatives***

Service representatives are full-time, experienced Unifor staff members. Their primary responsibility is to assist local unions with day-to-day problems, including negotiations and arbitration. Service reps work out of Unifor offices across the country. Contact your service rep through your Area Office (see page 251)

## ***Research department***

The Unifor Research Department provides information and statistics on wages, hours and other conditions of employment that are needed in collective bargaining and for lobbying governments on legislative, trade and economic issues. Our researchers also supply general economic facts for our public presentations and speedy, accurate information for use by local unions. Email: [research@unifor.org](mailto:research@unifor.org).

## ***Retired Workers***

Retirement is not the end of union activity for our members. Every local union with at least 25 retired workers must have a retiree chapter. A national representative works in cooperation with the retiree chapters and councils in setting up conferences, presenting collective bargaining amendments and lobbying all levels of government to obtain justice and dignity for senior citizens on pensions, health care,



housing and other issues of concern to retired workers.  
Email: [retirees@unifor.org](mailto:retirees@unifor.org).

### ***Pension & Benefits department***

The Unifor Pensions and Benefits Department provides expertise in bargaining pensions, health and insurance benefits and income security plans. Department staff work with bargaining committees, assist with closures where necessary, and provide information on current benefit issues. This includes analyzing existing pension and benefit plans, reviewing the financial status of these plans, and providing assistance in developing specific proposals, providing costing information, supporting staff and committees during the process of partial and complete wind-ups, developing early retirement incentive proposals, reviewing plan language and amendments, etc. Our staff also provides research support and analysis for our campaigns for public pensions and medicare.

The Pensions & Benefits Department does extensive work on workplace issues like adjustment, training, workplace change, and responding to lean production. The Department staff support local unions with expert advice on EI (unemployment insurance), work sharing agreements, and workplace adjustment programs.  
Email: [pensionsandbenefits@unifor.org](mailto:pensionsandbenefits@unifor.org).

## ***Communications***

Our Communications Department works to get the union's message out to our members and the public. We publish the newsletter Uniforum, and maintain the national web page, Facebook page and Twitter account. We release information to the press and arrange interviews with the print and electronic media on contract settlements, disputes and union policy. In addition to communicating information with members, the broader public and the media, we hold a bi-annual conference and train local union leaders and activists in effective communication techniques for membership, the public and the media. Email: [communications@unifor.org](mailto:communications@unifor.org).

## ***Legal department***

The Unifor Legal Department provides the union with expertise in matters of law. We work closely with Unifor Service Representatives on legal interpretation of collective agreements and labour law, and we advise the National Union on legislative and policy issues.

## ***Organizing department***

The organizer's task is to bring unorganized workers into the union. Our Unifor Organizing Department meets with workers, sets up committees of interested workers,

distributes literature and represents workers who want to apply for certification (bargaining rights) before various labour boards across the country. We also work with locals to support community chapters. Email: [join@unifor.org](mailto:join@unifor.org).

### ***Health & Safety***

Unifor fights for better laws and information on substances found in the workplace. Our Health and Safety Department helps local unions set up programs to eliminate hazardous conditions in the workplace. We publish the Unifor Health, Safety and Environment Newsletter and we develop fact sheets on health and safety issues (we can also provide information on request). We work with the Education Department on health and safety training, and we organize conferences on health and safety, workers' compensation and the environment. Contact us: [healthandsafety@unifor.org](mailto:healthandsafety@unifor.org)

### ***Skilled Trades***

The Unifor Skilled Trades Department works on issues including apprenticeship, lines of demarcation between trades, journey person cards and contracting in and out of work. We assist in negotiating and enforcing collective bargaining rights and we lobby governments and business for stronger, fairer policies on skilled trades. We work with Unifor National Representatives,

Stewards and Committeepersons, Area Councils that form part of the Skilled Trades Councils.

## ***Women's department***

The Unifor Women's Department supports women activists in Unifor through union education, activism, and mobilizing. We help bargaining committees, equity representatives, women's advocates and local union women's committees with collective bargaining and local and campaigns to end harassment and violence and to fight for equal pay for work of equal value, childcare and childcare subsidies, employment equity, and more.

We also work with the Education Department to develop programs designed specifically for women. And, we work with Council Women's Standing Committees, hold regular women's conferences, maintain a Facebook page for Unifor Women, and coordinate celebrations of International Women's Day and observances of December 6th, the Day of Commemoration and Action to End Violence Against Women. Email: [women@unifor.org](mailto:women@unifor.org).

## ***Education department***

The Unifor Education Department supports workers and activists in their everyday on-the-job union learning by offering courses on issues ranging from collective

bargaining to social justice and human rights. We strive to provide union leaders with the training needed to represent members in the workplaces, at the collective bargaining table and in the administration of the union. Our department holds conferences, offers courses in communities across the country (one and three-day), and provides courses at our Unifor Education Centre in Port Elgin, Ontario (week long and 4-week). Courses are designed to help Unifor members and leaders get a handle on what is happening in the world, and give them the confidence to help build the union and the social movements we are a part of. We co-founded and co-host the Unifor-McMaster University Labour Studies Certificate Program.

Descriptions of all of our programs and our course schedule can be found on the Unifor National web page and the Unifor Education Facebook page. Email: [education@unifor.org](mailto:education@unifor.org).

### ***Human Rights department***

The Unifor Human Rights Department is responsible for coordinating human rights training, anti-racism work and other human rights struggles in the union and the community. We can be contacted in confidence about human rights issues including harassment. Our Department regularly hosts Unifor Human

# UNIFOR: OUR DEMOCRATIC STRUCTURE

Rights conferences, as well as Pride conferences and conferences for Aboriginal and Racialized Workers. We are committed to challenging all forms of discrimination, and in particular our focus is on addressing racism, homophobia, transphobia, discrimination based on disability, religion, and citizenship status. We work very closely with the Unifor Women's Department. Email: [humanrights@unifor.org](mailto:humanrights@unifor.org) and [pride@unifor.org](mailto:pride@unifor.org).

## ***Young Workers***

The Unifor Constitution provides for Standing Committees for Young Workers. Our Young Worker Committees help create space for young people within the union to develop confidence, skills, and knowledge to participate actively in union life, and play a stronger role in the building of the union.

The bi-annual Young Worker conference is co-organized by young activists and leaders from standing committees along with the support of the Education and other departments. Email: [youngworkers@unifor.org](mailto:youngworkers@unifor.org).

## ***Employee & Family Assistance Program - EFAP (Addiction)***

Many Unifor Local Unions have bargained language to establish EFAP or Substance Addiction Representatives who members can contact in strictest confidence for

help with a broad range of issues from alcohol and drug dependency to other situations where they or family members need referral to professional support and counseling. Contract language has to be bargained so that a member who needs time out of the workplace for treatment can seek help without fear of losing their job rights and in the knowledge that the benefit plan provides income replacement.

### ***Membership Mobilization and Campaigns***

Our union is involved in politics out of choice and out of necessity. Our collective agreements build on a foundation of workplace legislation – human rights, health and safety, employment standards, labour codes, and more. Politics can either weaken or strengthen that foundation. The gains we make in negotiations are never secure. Decisions at the federal, provincial, and local government level can wipe them out. On the other hand, governments have the power to extend the principles of our bargaining breakthroughs to the whole of society through programs such as universal health care, public pensions, EI (unemployment insurance), worker’s compensation, other income security programs, childcare, and housing.

The Membership Mobilization and Campaigns Department of Unifor works with our Local Unions to

increase our union's capacity to reach out and build a stronger base of activists willing to take part in our actions to influence government decisions. Email: [politicalaction@unifor.org](mailto:politicalaction@unifor.org).

### ***International department and Unifor Social Justice Fund***

Unifor has a long tradition of active solidarity with workers beyond the boundaries of Canada and beyond the immediate personal interests of our members. This is part of our commitment to social unionism. Historically, we are identified with the United Farmworkers in California and the struggle of South African trade unions before apartheid was finally defeated.

Through our International Department we challenge free trade deals and government policies that negatively impact on workers' rights here in Canada and around the world. We have ongoing relationships with like-minded unions and social justice seeking groups around the world (including Industriall, the International Transportation Federation, the International Union of Food and Agricultural Workers, and UNI Global Union). We also join with student, environmental and justice-seeking activists in fighting the assault on democracy represented by new trade agreements and ever-increasing corporate dominance.



Unifor's Social Justice Fund offers solidarity assistance to non-profit and humanitarian projects within Canada and around the world. The fund was first negotiated in 1990. Where we have negotiated the Social Justice Fund, the employer pays into the Fund an amount per hour worked per worker. Unifor members have a direct connection to the incredible work done by our partners around the world tackling poverty, inequality, HIV/AIDS and other social justice issues. Email: [international@unifor.org](mailto:international@unifor.org).

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### **Unifor dues structure**

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All members share in the benefits of a good collective agreement and so together we share the costs of building a strong union that can negotiate and enforce that agreement.

This basic principle was the major issue in many strikes fought for union recognition and is now recognized in law. As a result of winning those early struggles, membership dues are deducted "at the source" from the member's paycheque.

Delegates to the Founding Unifor Convention voted to adopt a harmonized percentage formula for monthly membership dues. The minimum dues rate is now 1.35% of pay (this means a significant dues cut for members

working less than 40 hours a week). Union dues are tax deductible.

Dues are broken down into three categories of use: Local Union, Regional or Quebec Council and National Union. Here are some points that may help you in discussion with members about dues.

### ***Local Union portion of dues***

A share of dues money stays in the local union. Local union dues :

- support the activities of local union committees
- cover wages of elected union officials who lose time off the job while bargaining, attending arbitrations, supporting workers' compensation appeals, building the local union
- support publication of local union newspapers
- partially cover the expenses of local union representatives when they need to attend conferences, conventions and training programs, in order to acquire the information and skills necessary to fully represent members
- pay for our meeting halls and offices so that we have our own places to gather, independent from our employers.

- cover local union's legal services, election and costs of affiliation to our central labour bodies, like labour councils and provincial/territorial federations.

All local union expenditures must be approved by the membership. Audits of all local union finances are conducted by both local union trustees and national union auditors.

### ***National Union portion of dues***

The National Union portion is approximately equal to 54% of 2 hours, 20 minutes wages (for full-time workers).

- 10% of the national dues money is dedicated to organizing new workers. This makes sense because all workers deserve the benefits of belonging to a union and because we are stronger when more of us are organized.
- Dues pay for expert staff in pensions and benefits, legal and research so that we are well-equipped at the bargaining table. This expertise also supports our demands for workers' rights in the courts and in legislation.
- Dues also fund the activities of the national union in everything from communications, to retired workers, to the representation of our union's views at parliamentary committee hearings.

# UNIFOR: OUR DEMOCRATIC STRUCTURE

- Dues help pay for training our stewards/workplace reps, our health and safety reps, our activists and our leadership so that together we're well-equipped to be both effective and strategic.
- Dues pay for our meetings and conventions (yes, there is a cost to democracy, but it's worth it!).
- Dues pay for us to make sure the voice of working people is heard in our communities, in the media, and with policy makers.
- 10% of the national dues money goes directly to our strike fund. We pool our resources so that we can take on employers when we need to!

National union funds are subject to approval by the National Executive Board and are audited by major independent auditors.

## ***Regional Union portion of dues***

The regional portion of dues goes toward funding projects and committees that deal with issues that are particular to each region of our country, and within that, to provincial /territorial issues.

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## **Our Unifor strike fund**

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This fund carries great weight when our bargaining committees sit down to negotiate with the employer.

The fund is ready to support our members and their families in dignity if the employer locks us out or if workers have to strike to win a fair and equitable settlement.

A Unifor member on active payroll when a strike begins and who participates in strike activity may draw weekly strike benefits of \$250 per week.

While nearly all our collective agreements are signed without a work stoppage, we defend the right to strike as a legitimate exercise of free collective bargaining. The general practice is for the membership to take the strike votes, which must be by secret ballot and requires two-thirds of those voting to favour a strike. Thus, the Bargaining Committee is given the mandate to call a strike, if necessary, to achieve a just and equitable settlement of our demands.

Once called, a strike can only be terminated by a majority vote of the membership at a meeting that is held for that specific purpose.

Unifor never uses the threat of withholding strike benefits to force a settlement against the wishes of the members.

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## A word about collective bargaining, strikes and lock-outs

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As a steward / workplace representative you likely have the most direct contact with members, so you will be the one fielding their questions most of the time.

Here are some quick points to help you educate members about collective bargaining, strikes, and lock-outs.

1. Every contract has a term - usually three years. Leading up to the end of a contract, your Bargaining Committee (whom you elect) will call a special proposal meeting to get your input on priorities (called 'demands') for the upcoming negotiations.
2. The union will also conduct a strike vote - this is to determine how strongly the membership supports the demands - are workers willing to strike / take workplace action over this contract?
3. Unifor staff work with local bargaining committees and provide information on other comparable collective agreements, on industry trends, and on the employers' finances. The local also reviews past grievances to see what areas of the contract need improvements.

4. The bargaining committee enters into talks with the employer. (During negotiations you will get periodic updates from your elected committee. You won't know everything that's going on, but you will get some information especially as the strike deadline approaches).
5. If the union and the employer reach an agreement before the deadline, then a 'tentative agreement' is brought to a special membership ratification meeting and the workers vote on whether to accept /'ratify' it (in which case it gets printed up and distributed to all workers) or to reject it (in which case the bargaining committee returns to the negotiating table).
6. If the committee and management cannot reach an agreement by the deadline, they either agree to extend the deadline and keep talking, or the workers go out on strike (the union is in a legal strike position if the contract has expired, if the majority of workers have voted to go on strike, and if the governing labour board has issued a 'no board report' and appointed a conciliator). Another possible outcome is a lock-out: this happens when the employer refuses work to employees or closes the workplace to try and force a settlement on their terms. It's not uncommon for the media to report a strike, when in fact the workers have been locked out by management!

## UNIFOR: OUR DEMOCRATIC STRUCTURE

Over 98% of all contract negotiations in Canada are settled without a strike. A strike only occurs when workers in a workplace decide together, for themselves, that enough is enough and a strike is the only option. At Unifor 10% of our dues money goes toward a strike fund. This fund carries great weight when your bargaining team sits down to negotiate with the employer. The fund is ready to support you and your family with dignity if the employer locks you out or if you and your co-workers have to strike to win a fair and equitable settlement. A Unifor member on active payroll when a strike begins and who participates in strike activity may draw weekly strike benefits of \$250 per week.



## **An introduction to key Unifor bargaining principles**

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### **Wages**

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Our members have a right to a living wage and to share in the benefit of increased productivity from new technologies and work methods. This is why Unifor wage proposals go beyond just covering increases in inflation.

### **Cost-of-living (COLA)**

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As well as negotiating wage increases, we try to negotiate a “cost-of-living-allowance” into our agreements. COLA is a mathematical formula that protects our wages against inflation so that what we get in increases are in addition to inflation (and don’t just go to keeping up with inflation). In some of our larger workplaces we have had excellent COLA clauses for years, and it’s important that these be maintained.

### **Length of agreements**

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Collective bargaining engages our members, their families and communities in debate about the role of

# AN INTRODUCTION TO KEY UNIFOR BARGAINING PRINCIPLES

unions in society. This is one major reason why Unifor, as a matter of policy, sets three years as the target for the length of our agreements. Long term agreements (those that go beyond four years) are the exception and are only signed where there is agreement from the President's office. Union members must be able to address new issues at the bargaining table on a regular basis. At the same time, three year agreements give our members some security to plan their personal lives.

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## **Redistribution of work time**

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Employers distribute work in our society. The result has been that some workers work too long and too hard while others have no work at all or not enough work. Opening up jobs to the currently unemployed and underemployed, through redistribution of work time, is a critical part of any solution to the job crisis. It is also critical to union solidarity. Unifor puts a major priority on redistribution of work time. We negotiate paid holidays and vacations, weekend worker programs, early retirement incentives, second and third shifts, reductions in overtime, special paid absences, paid training, more relief time during working hours, reduced work days (7.5 hours work for 8 hours pay), higher severance payments and continuation of benefits and

a certain level of income for longer periods (to increase the penalty employers pay for lay-offs).

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## Pensions

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Few workers could ever save enough to provide for dignity and income security in their retirement. Unifor places a high priority on defending and improving government sponsored pension programs like Old Age Security and the Guaranteed Income Supplement, and the Canada and Quebec Pension Plans. Many workers who have no union or no employer pension depend entirely on these public plans for retirement. The public plans are also the floor on which we build the pension plans negotiated with employers.

Our bargaining program on pensions includes demands for increases in monthly benefits, protection against cost of living increases (indexing), early retirement options like 30 and out with no penalty, increases for current retirees and survivors, same sex spousal benefits, continuing dental, drug and other coverages after retirement, improving the portability of earned pension credits from one employer to another, restoring pension credits lost due to lay-offs and other absences, bridging benefits which help workers who retire before government pension benefits start, and phased in early

# AN INTRODUCTION TO KEY UNIFOR BARGAINING PRINCIPLES

retirement options where senior workers work fewer hours in their pre-retirement period. Wherever possible we negotiate **defined benefit plans** so that workers have a guaranteed benefit when they retire, rather than **defined contribution plans** – where workers assume the risks of the stock market.

In some cases employers are too small to set up their own pension plan. There are plans that are well-suited for small employers. For example, there are a number of Unifor members covered by plans such as the Canada Wide Pension Plan (CWIPP). More information is available through your Unifor National Representative and our Pension & Benefits Department.

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## Benefits

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As a labour movement we have been outspoken on the need for an expanded health care system that includes universal drug coverage and dental care. In the interim, our objective is to have all benefits (workers' insurance programs) employer-financed. To this end, we have negotiated basic medical-hospital-surgical plans, drug plans, dental plans, sickness and accident and life insurance plans in many of our collective agreements. In addition, we strive to negotiate optical programs, hearing aid benefits, mental health services, extended

# AN INTRODUCTION TO KEY UNIFOR BARGAINING PRINCIPLES

disability allowances, speech therapy, physiotherapy, chiropractor allowance, acupuncture, etc.

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## **Job security**

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Bargaining job security is not easy, but there are mechanisms for protecting jobs. For example, we can bargain commitments from the employer for investments in our workplaces that are tied to job protection and job creation. We can bargain protection against contracting out and contracting in. We can bargain protection against lay-off (and where there is layoff, seniority-based layoff); adequate notice of layoff; bumping rights; and adjustment programs that include payments and/or retraining. Employers who face a substantial financial impact may find alternatives to the layoff.

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## **Employment equity**

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In the early 1980s we began negotiating joint committees to eliminate barriers to equality for women, workers of colour/racialized workers, Aboriginal/indigenous peoples, and workers with disabilities. The objective of negotiated employment equity plans is to achieve a workforce that is representative of the community. For more information on negotiating employment equity, contact our Human Rights Department.

# AN INTRODUCTION TO KEY UNIFOR BARGAINING PRINCIPLES

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## Pay equity

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Unifor is committed to wage equity. Pay Equity means *equal wages for work of equal value*. Pay Equity Plans are designed to: review who does what work within a workplace; determine whether there are any gender and/or race-based patterns (women tend to be in certain classifications, men in others, etc.); evaluate these jobs and make comparisons between jobs. If the evaluation shows discrimination is taking place, then employers are required to adjust pay scales (upwards, never downwards). Pay equity plans have resulted in significant increases for many of our members. Maintaining pay equity is critical so we ensure that discriminatory patterns don't re-emerge. Caution: across the board percentage increases can quickly re-create the problem!

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## Employee family assistance plan / Substance abuse/Addiction program

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In many Unifor workplaces, there are full-time EFAP reps to assist members in trouble with alcohol or drug problems or other situations where they or family members need referral to professional support and counseling. Many of our agreements provide time off the job with full pay and no loss of seniority to members who enter recovery treatment programs.

# AN INTRODUCTION TO KEY UNIFOR BARGAINING PRINCIPLES

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## Union leave

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As employers become increasingly 'lean' we need to continue to bargain provisions for Leave of Absences (LOAs) so that we can conduct the work of our union. LOAs should be accessible to both elected union representatives and to union activists so that we can grow our union.

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## Paid education leave

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We build our union by developing the capacity of our activists and leaders. A critical pillar of our education strategy is Paid Education Leave (PEL). Negotiating PEL into our collective agreements means that employers are required to pay into an education fund – either on a pennies-per-hour-per worker basis, or on a lump sum basis – that is entirely controlled by the union. Workers attend our PEL programs (during work hours at our Education Centre) and their wages and expenses are covered by the PEL fund). PEL is a key bargaining priority; contracts signed without PEL require the authorization of the President's office.

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## Social Justice Fund

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Unifor's Social Justice Fund offers solidarity assistance to non-profit and humanitarian projects within Canada

# AN INTRODUCTION TO KEY UNIFOR BARGAINING PRINCIPLES

and around the world. Both our founding unions have been negotiating funds with employers since the 1990s; employer pays into the Fund an amount per hour worked per worker (or a lump sum). Through this wage deferral, Unifor members have a direct connection to the incredible work done by worker and social justice groups around the world tackling poverty, inequality, HIV/AIDS and other social justice issues.

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## **Environment**

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The Unifor Constitution recommends each local union establish an Environment Committee as a standing committee of the local union. Unifor also encourages the locals to bargain the establishment of joint environment committees at larger workplaces or, in smaller workplaces, to expand the role of the Health & Safety Committees to include the environment.



## Community chapters

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**U**nifor's community chapters are a new form of union membership that aims to reach out to groups of workers that are generally excluded from union membership. Potential groups of people may include workers in workplaces where organizing campaigns have not yet succeeded; workers in precarious jobs; unemployed workers; students and any other group of workers hoping to improve their economic and social conditions.

Here's what our Unifor Constitution says about Community Chapters:

*Unifor understands that strong local unions are rooted in strong communities. We can help build strong communities and enhance our collective strength in the struggle for social and economic justice by opening our union to workers who currently have no access to union membership, because they have no collective agreement, or job, or hold temporary contract or other precarious employment. This effort will support our drive to build new bargaining units and strengthen the heart of the union.*

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## 11 points for union meetings

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Using the following 11 points, you will be able to participate effectively and democratically in local union meetings.

- 1) **THE MOTION:** You make a motion by raising your hand to get the chair's attention. After being recognized by the chair you state your name and say, "Sister (or Brother) Chair, I move that we...," and state your motion. Motions are proper only after they have been offered to and accepted by the chair, and have been supported (seconded) by another member. You make a motion when you want the group to take some action like sending a letter, accepting a report, spending money to help a community struggle, etc.
- 2) **THE AMENDMENT:** Amendments are offered in the same way as motions. You make an amendment when you agree substantially with the motion that has been made but want to make some change to it before it is adopted. For example, a motion has been made to hold a special local union meeting, but no date has been specified. You want to be sure the meeting will be held at a time when all members can attend, so you amend the motion to include a suitable date, by saying, "Brother (or Sister) Chair, I move that the motion be amended to read ..."

## COMMUNITY CHAPTERS

- 3) **NOTICE OF MOTION:** If a motion is of particular importance, or if it deals with policies, by-laws, or the constitution of a body, it is often best dealt with through a notice of motion. A notice of motion will state the substance of the motion, and will specify a future meeting at which the motion will be discussed.
- 4) **VOTING:** Voting on motions is normally by a show of hands. The chair will ask those in favour of the motion to raise their hands. Then the chair will ask those who are opposed to raise their hands. The chair rules on the result of the vote. A simple majority is required to pass most motions.
- 5) **HOW TO END DEBATE:** If you think there has been enough discussion of any issue, you may try to close discussion. You end debate by getting recognition from the chair, after which you say, "Sister (or Brother) Chair, I call the question." If the motion to call the question passes, debate on the issue ends and the chair must call for an immediate vote. If the proposal to put the question fails, debate on the motion continues.
- 6) **HOW TO TABLE:** If you feel the motion before the meeting should be delayed so that more information can be made available, you may move a motion

## COMMUNITY CHAPTERS

to table. If it is seconded and the motion to table passes, the main motion is put aside. A motion to table is not debatable, and should be put to an immediate vote by the chair.

- 7) **POINT OF INFORMATION:** If at any time during the meeting you are confused about the business being discussed, or if you want the motion that is being considered more clearly explained, you may rise to ask the chair for a point of information. Remember that a point of information is to receive information, not to give it.
- 8) **POINT OF ORDER:** If you disagree with any of the chair's rulings, or if you believe that the person who is speaking is not talking about the business being considered, you may raise a point of order and state your objection to the chair. The chair then is required to rule one way or the other on your point of order.
- 9) **POINT OF PRIVILEGE:** You rise on a point of privilege when there is a need to immediately address a situation that affects the comfort, convenience, integrity, reputation or rights of a meeting or an individual member, such as turning the heat up or down, asking the speaker to talk more loudly, etc.

- 10) **APPEAL FROM THE CHAIR:** If you disagree with a ruling of the chair on a point of order, you may “appeal from the decision of the chair.” After you make such an appeal, it must be supported by at least one other member. You will then be given an opportunity to state your reasons for believing the chair should be overruled, after which the chair will have an opportunity to give her/his reasons for the ruling. No one else may participate in this discussion. The chair will place your appeal before the group for a vote. The group will then, by majority vote, overrule your appeal and uphold the chair, or support your appeal by overruling the chair.

Since appeals from the decision of the chair tend to delay meetings, they are used only when the rulings of the chair are of such great importance that the member cannot in good conscience allow them to stand.

- 11) **MOTION TO ADJOURN:** A motion to adjourn is always in order. It must be seconded and requires a majority vote to carry. It is not debatable. While a motion to adjourn is in order at any time, it is most commonly put when the business of the meeting is concluded. Some by-laws may have a fixed time for adjournment, but allow for motions to extend the time.

## Make learning a key part of your job

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**F**ind mentors and a support network to get advice, trade ideas and obtain feedback. Help set up a network of workplace representatives in your region for informal networking and organize information sessions and other learning opportunities.

Bookmark web sites of your human rights commission and labour board, and visit them from time to time. Read decisions of arbitrators, labour boards, courts and tribunals that relate to issues you are likely to deal with. Find out when arbitration hearings are being conducted in your area and whether or not you are able to attend. Gather reference materials and organize them in binders or create a filing system. The more you learn about arbitration the better workplace rep you will become.

Attend courses - our union has a world-renowned reputation among labour educators for offering an extensive system of peer-delivered programs. Our aim is to support your on-the-job learning, increasing your confidence to take on the issues that matter to our union and our members.

If you haven't yet taken a Unifor Education course, now is the time. If you've been through some of our

programs, it may be time to see what else we have on offer to keep you updated and deepen your skills and knowledge.

And, if you want to build a stronger local union, get to know all the programs we have on offer and encourage members from your local to participate – your job gets easier and our union gets stronger when we build throughout our membership.

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### **Unifor education programs**

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Our commitment to education has played an enormous role in creating the strong social union that we are today. Union education is about defending working people and developing our understanding, commitment and confidence to change and improve the world.

Whether you're interested in collective bargaining, grievance handling, health and safety, women's issues, human rights, the environment, international solidarity, workers' compensation or any other union-related issue, you'll find that our education programs give you the opportunity to envision the world we want to live in, and begin to develop the skills and the strategies that will take us there.

## MAKE LEARNING A KEY PART OF YOUR JOB

Our **one-day courses** are offered across the country. They are open to all Unifor members – anyone can attend and there is no registration fee. Workplace reps should take advantage of these courses to learn more about the duty to accommodate, building respectful workplaces, union activism, and much more. Reps can also promote these amongst our members as an important way of engaging workers in union and community issue. There's something for everyone; check out the full listing of courses on our website, [www.unifor.org/education-en](http://www.unifor.org/education-en).

More in-depth **three-day courses** offer leadership, workplace reps and activists opportunities to practice their skills at collective bargaining, workers' compensation, grievance handling, and human rights. Three-day courses are delivered regionally and costs are shared 50/50 between the local union and the National Union.

Course schedules and course descriptions for one-day and three-day programs are available on our website, [www.unifor.org/education-en](http://www.unifor.org/education-en) or you can contact us at [areacourses@unifor.org](mailto:areacourses@unifor.org). Local unions can also request area schools on specific topics by contacting the Education Department at [areacourses@unifor.org](mailto:areacourses@unifor.org).



Our union's **week-long programs** provide intensive training in a number of areas. Week-long programs are held at our state-of-the-art Education Centre in Port Elgin. We offer courses on everything from Steward Training to Health & Safety training to Women's Activist to Local Union Executive Board Training - and so much more.

Week-long courses are funded through the 50/50 cost-sharing program (local unions and National Union) or through the Paid Education Leave (PEL) fund. PEL programs are paid for by employers (we negotiate their contributions) but the course content and delivery is entirely determined by the union. There is no cost to individuals for attending week-long programs - anyone interested should apply through their local union.

Our **Unifor core PEL program**, which is also delivered in Port Elgin, is the cornerstone of our educational programs. Spread out over several months (a week at a time), the program focuses on a number of key themes: the union, the workplace, the economy, politics and human rights. Using case studies, guest speakers, small group discussions, debates, project work, film and video, media studies and art and culture participants learn about past and current (as well as international) struggles for workplace democracy and social justice.

## MAKE LEARNING A KEY PART OF YOUR JOB

Registration for three-day, week-long and core programs is through your local union. Each UNIFOR local union selects their own participants. Contact your local union President or Unit Chairperson for information on how to apply.

Unifor also offers an incredible summer-time **Family Education Program** for members and their families. Through activities that stress learning by doing, participants look at what the union does in the community as well as the workplace. Teens have their own course. There is childcare for toddlers and a day camp for children and pre-teens. The program includes sports, games, and other vacation activities. For more information about applying to attend the Family Education Summer Program, contact your Local Union Executive or Education Committee.

Workplace representatives are welcome to apply, and should also encourage other members of the local union to apply. If selected to attend Family Ed, the member agrees to give up her/his vacation time and the national union covers all costs of the program including travel and accommodation. Programs are offered in English and French.

## MAKE LEARNING A KEY PART OF YOUR JOB

All of our course schedules are on our website:  
[www.unifor.org/education-en](http://www.unifor.org/education-en) In addition, your local union leadership regularly receives schedules from the Education Department for both week-long courses in Port Elgin and courses offered in your area (along with call letters and registration information). For more scheduling information contact:

Unifor Education Centre in Port Elgin 1-800-265-3735  
(week-long & 4-week program)

Unifor Education Department 1-800-268-5763  
extension 8489 (one-day and 3-day programs)

## Unifor: How to reach us

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### On-line

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Check out Unifor's home page at: [www.unifor.org](http://www.unifor.org) for current news, campaigns, opinions, facts, figures, bargaining breakthroughs and analysis. Meet us on twitter at <https://twitter.com/UniforTheUnion>. Send an email to our President, [president@unifor.org](mailto:president@unifor.org), or to any of the area offices below.

### **NATIONAL**

205 Placer Court, Toronto, ON M2H 3H9

Tel: (416) 497-4110 Toll Free: (800) 268-5763

Email: [communications@unifor.org](mailto:communications@unifor.org)

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### **Alberta**

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#### **EDMONTON**

14931 - 107 Avenue

Edmonton, AB T5P 0X8

Tel: (780) 448-5865 Toll Free: (800) 890-9608

#### **FORT McMURRAY**

201 - 10020 Franklin Avenue

Fort McMurray, AB T9H 2K6

Tel: (780) 743-3933

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## British Columbia

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### ***NEW WESTMINSTER***

326 - 12th Street, 2nd floor

New Westminster, BC V3M 4H6

Tel: (604) 522-7911 Toll Free: (800) 665-3553

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## Manitoba

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### ***WINNIPEG***

1376 Grant Avenue, 2nd Floor

Winnipeg, MB R3M 3Y4

Tel: (204) 489-0355 Toll Free: (800) 665-7492

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## New Brunswick

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### ***MONCTON***

55 Highfield Street

Moncton, NB E1C 5N2

Tel: (506) 857-8647

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## Newfoundland and Labrador

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### ***ST JOHN'S OFFICE***

NAPE Building, 330A Portugal Cove Place

St John's, NL A1A 4Y5

Tel: (709) 726-5667

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# UNIFOR: HOW TO REACH US

## ***ST. JOHN'S 2***

302-55 Bond Street  
St. John's, NL A1C 1S9  
Tel: (709) 753-7191

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## **Nova Scotia**

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### ***HALIFAX***

63 Otter Lake Court, 2nd Floor  
Halifax, NS B3S 1M1  
Tel: (902) 455-9327 Toll Free: (800) 565-1272

### ***SYDNEY***

4 Hugh Street  
Sydney, NS B1P 1V7  
Tel: (902) 562-3857 Toll Free: (800) 591-7523

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## **Ontario**

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### ***CHATHAM***

200 Riverview Drive  
Chatham, ON N7M 5Z8  
Tel: (519) 354-5800 Toll Free: (800) 204-3121

### ***FAMILY EDUCATION CENTRE***

Port Elgin Office, R.R. #1, Bruce County Rd. 25  
115 Shipley Avenue, Port Elgin, ON N0H 2C5  
Tel: (519) 389-3200 Toll Free: (800) 265-3735

## UNIFOR: HOW TO REACH US

### ***KITCHENER***

5 Executive Place

Kitchener, ON N2P 2N4

Tel: (519) 893-4873 Toll Free: (800) 265-2884

### ***LONDON***

140 Pine Valley Blvd

London, ON N6K 3X3

Tel: (519) 649-2552 Toll Free: (800) 265-1891

### ***MISSISSAUGA***

5915 Airport Road, Suite 510

Mississauga, ON L4V 1T1

Tel: (905) 678-0800 Toll Free: (800) 268-9040

### ***OTTAWA***

301 Laurier Avenue West

Ottawa, ON K1P 6M6

Tel: (613) 230-5200 Toll Free: (877) 230-5201

### ***OTTAWA 2***

5 Gurdwara Drive

Ottawa, ON K2E 7X6

Tel: (613) 523-0434 Toll Free: (800) 982-2601

# UNIFOR: HOW TO REACH US

## **SARNIA**

900 Devine Street  
Sarnia, ON N7T 1X5  
Tel: (519) 332-4102

## **ST CATHARINES**

318 Ontario Street, Unit 7B  
St Catharines, ON L2R 5L8  
Tel: (905) 687-1841 Toll Free: (800) 663-9983

## **THUNDER BAY**

979 Alloy Drive, Suite 100  
Thunder Bay, ON P7B 5Z8  
Tel: (807) 344-1122 Toll Free: (866) 832-1122

## **WINDSOR**

2345 Central Avenue, 2nd Floor  
Windsor, ON N8W 4J1  
Tel: (519) 944-5866 Toll Free: (800) 465-0974

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## **Quebec**

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## **DRUMMONDVILLE**

1125 Blvd. St-Joseph, Suite 120 Place Royale  
Drummondville, QC J2C 2C8  
Tel: (819) 478-0111 Toll Free: (877) 478-0111



## UNIFOR: HOW TO REACH US

### ***JONQUIERE***

2679 Boul. Du Royaume Bureau 120  
Jonquiere, QC G7S 5T1  
Tel: (418) 548-7075 Toll Free: (800) 268-4808

### ***MONTREAL***

10100-565 Cremazie Blvd. East  
Montreal, QC H2M 2W1  
Tel: (514) 389-9223 Toll Free: (800) 361-0483

### ***QUEBEC***

275 - 5000 Boul. Des Gradins  
Quebec City, QC G2J 1N3  
Tel: (418) 624-5320

### ***QUEBEC 2***

110 - 5000 Boul. Des Gradins  
Quebec City, QC G2J 1N3  
Tel: (418) 622-5261 Toll Free: (800) 561-5261

### ***RIMOUSKI***

2, rue Saint-Germain Est, Bureau 608  
Rimouski, QC G5L 8T7  
Tel: (418) 723-2647

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## **TROIS-RIVIÈRES**

7080 rue Marion

Trois-Rivieres Ouest, QC G9A 6G4

Tel: (819) 378-4696

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## **Saskatchewan**

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### **REGINA**

2365 13th Avenue

Regina, SK S4P 0V8

Tel: (306) 777-0000

### **SASKATOON**

200 A - 2121 Airport Drive

Saskatoon, SK S7L 6W5

Tel: (306) 382-8811



# NOTES

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