Grievance Procedures in the University Environment:
A Manual for Case Officers of the UWOFA Grievance Committee

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Introduction:

A grievance is a formal allegation that that there has been a violation of the legal terms and conditions of employment in the workplace. Grievances arise when there is a dispute between the Association and the Employer about the application or interpretation of a Collective Agreement. Case officers and others involved in the grievance process should study this manual so as to understand how the Association meets its duty to protect our two Collective Agreements and the rights of our Members under them.

For those directly involved in grievance work, such as Case Officers, Stewards and Board Members, three points are paramount.

1. We must seriously consider and fairly adjudicate issues that our members bring to us, or that come to our attention otherwise. This is our main duty and all other aspects of our job directly derive directly from this duty.

2. We must bring our attention to the matters at hand but, in doing so, we must maintain strict confidentiality. What members tell us about a complaint or concern can only be discussed, and discussed respectfully, with members of the Grievance Committee. We must not and cannot talk about any case to any other party except when meeting our responsibilities as officials of the Grievance Committee.

3. We must keep good notes of any meeting with our members or with the Employer with respect to a grievance. A copy of the notes from these meetings must be given to the Professional Officer so that we maintain a complete record involving a given complaint. Remember that such information might be requested by the Employer as part of disclosure if a complaint is arbitrated -- so we must be accurate and respectful in how we report on meetings we attend.

In our Collective Agreements there is a sequence of "internal" steps to be taken when attempting to resolve a complaint or dispute. Typically this first involves an Informal Resolution. Failures at this level would proceed to "formal" steps, **if and only if,** the union decides to take carriage of the dispute. Two of these formal steps are attempts to resolve the dispute, first

with the Dean of the Faculty involved (step 1) or failing that, at the level of the Provost (step 2). Failure in Step 1 and Step 2 may lead to a decision of the Association to resolve the dispute externally, at an Arbitration hearing. The formalities of this sequence of hearings are detailed in the *Grievance and Arbitration* article in our Collective Agreement.

The Manual is presented in three general parts. First, the duties that devolve from being a labour union, including the roles played in defending the Collective Agreements and the rights of our members are elaborated. Second, an overview of UWOFA's grievance handling mechanism is provided. Finally, the duties and responsibilities of the members of the Grievance Committee, and heuristics in performing our duties, are elaborated.

Part 1: Defending the COLLECTIVE AGREEMENT

Background:

Although UWOFA was formed over 50 years ago, we became a unionized faculty association only in the later 1990s, and the librarians/ archivists joined as a second bargaining unit even more recently. We represent faculty who teach at least one full course within a year, either Full-Time or Part-Time, and colleagues with the appropriate credentials doing the work of a Librarian or Archivist. At the time of writing, there are about 1400 faculty and just under 60 librarians/archivists.).

Prior to the rise of unions, workplace relations were governed by a body of law characterized by individual contracts between the employer and individual employees and the resolution of workplace disputes by formal law suits in the civil courts. The current model governing union activity in Canada can be traced back to legislation passed after World War II. The major component of the system is a labour tribunal board. In Ontario it is called the Ontario Labour Relations Board or OLRB. The OLRB provides the oversight for certification of a union as the bargaining agent for a set of employees and determines which employees belong to the union (the bargaining unit) and which are excluded. Other responsibilities of the OLRB come into play during negotiation of a collective agreement between the employer and a certified union, including governing the rights to strike by a union and lockout by the employer. Most central to this manual, the OLRB provides for dispute resolution processes, including the right to arbitrated decisions. Appendix A consists of the section of the Ontario Labour Relations Act relevant to arbitrations.

One of the responsibilities given to us as a union is the "duty of fair representation" (described in the final section of this manual below). This duty arises because, as a labour union, UWOFA has the exclusive right to bargain and act in the name of all of its members: our members rely and are dependent on their union to act in their best interests and to resolve conflicts in which they may be engaged with the employer fairly and without discrimination. UWOFA can be disciplined by the OLRB if we fail in this duty. Appendix B consists of the section of the Act that governs the Duty of Fair Representation

The Collective Agreement (CA).

UWOFA represents a "Collective" - the Bargaining Unit: The CA is a contract, governed by the Labour Relations Act, which is negotiated between the employer (UWO) and the union (UWOFA). It provides the rules of conduct in the workplace to be followed by the employer and all members of the bargaining unit. It is binding on both the collective and on the individual members of the bargaining unit (as defined by our union certificates that were determined by the OLRB).

Employees' freedom to negotiate can only be exercised collectively through elected union representatives. In general, once a collective bargaining relationship is in place, employers may not negotiate with individual employees about terms and conditions of employment; they must deal instead with the union. [In our Collective Agreements we have some negotiated exceptions to this principle, for example, compensation through "market adjustments"]. As a Grievance Committee, and as Case Officers, we cannot counsel our members to perform in ways that are not in accord with the Collective Agreement, and our ability to represent effectively is severely limited if a complaint arises from actions taken by a member that violate the Collective Agreement.

Because the Collective Agreement is a negotiated set of rules to which both the union and the employer have agreed the employer should be as committed as the union in maintaining its integrity.

Structure and logic of a collective agreement: Most collective agreements, our included, contain a "management rights" clause that gives the employer a general right to operate the workplace and manage the workforce. In its most basic and primitive form, management unilaterally sets up administrative procedures and policies. It should be noted that the longer these procedures and policies remain in effect, the more institutionalized they become. Even within the context of a Collective

Agreement, management rights develop in areas where the Collective Agreement is silent, or following changes to the Agreement. In our Collective Agreements management rights can be found in the Articles "*Management Responsibilities*". One can see the rest of the Collective Agreement as an attempt to limit the unbridled use of management rights.

Most arbitrators agree, and it is a well-established principle in common-law, that the employer cannot exercise its rights in a manner that is arbitrary, discriminatory or unreasonable. In our Collective Agreements we have negotiated specific language to this effect into the agreement and can, at least, point to those obligations in matters in which we think an action of the employer is arbitrary or discriminatory or unreasonable. In contrast, we have had considerable difficulty in enshrining some concepts in our CA, such as the obligation that the employer shall act in a "fair" manner. This lacuna is not mere semantics and has been used by counsel for the employer at arbitration hearings in which the argument has been made that an act by the employer arguably might be unfair - but that is not a standard of conduct that the employer is obligated to meet.

The grievance/arbitration process: The Labor Relations Act provides that, in case of alleged violations of a collective agreement or a difference in interpretation of its provisions, a dispute will be resolved through the grievance and arbitration process.

In both of our Collective Agreements there are dispute resolution processes enshrined in *Grievance and Arbitration* Articles. In our Agreements there is a continuum which we have agreed to follow, that, because we are a labor union and have rights under the OLRB, can end in a binding third-party arbitrated decision. The graded steps in this continuum provide opportunities in which a negotiated settlement of the dispute can be reached before recourse to arbitration: the so-called informal stage and, if the union takes carriage of the dispute, the step 1 and step 2 discussions. Sometimes difficulties are encountered in meeting the stipulated timelines for these steps; in such cases either the union or the employer may ask for a "waiver" (see below).

Collective agreement rights are enforced ultimately through arbitration and can only be the subject of a court action in very unusual circumstances. An arbitrated decision is binding on both the Association and the Employer.

Can the Employer file a grievance? Yes. However it is rare for management to do so. Furthermore the Employer only has a right to file an action against the Union, not against an individual employee. For example, if

the Union calls a strike during the life of a collective agreement, the employer could claim this is a violation of the CA Article *No strike/No lockout* clause. The more usual circumstance is that the Employer simply performs some act (or, more often, fails to perform some expected act), and the Union reacts through the grievance procedure. In general the usual case is that the Union grieves when it perceives, or is alerted to, a problem with the actions, or failures to act, of the Employer.

The Collective Agreement: "Use it or lose it"

A Union must be highly vigilant in ensuring that management does not break the rules of the collective agreement. Ignoring violations of the collective agreement not only may disadvantage the union and its members in the short term, but can also do damage in the long term. Failure to enforce the collective agreement in any single case may have a negative impact on subsequent cases. The Union has a responsibility to current and future employees to see that collective rights are not eroded through failure to grieve in individual cases. In some cases, where management has regularly violated the agreement for a long period of time without grievance from the union, arbitrators have held that unions have in effect lost negotiated rights or benefits. Past practice and estoppel (see glossary) are the usual arguments made on this point by the employer at arbitration. Naturally, the sword cuts both ways: the union, where appropriate, can also make arguments based on past practice and estoppel.

The following sections detail some risks faced by a union that has not upheld or exercised the negotiated rights codified in their Collective Agreement.

The past practice argument. We do not have a past practice article in our Collective Agreements. Nonetheless the employer can still argue from past practice (either direct or indirect). Past practice may be used as evidence in arbitration when the meaning of language in the collective agreement is not clear. Suppose, for example, the Agreement says: "Limited Duties appointees may be asked to perform extra duties necessary for meeting their teaching responsibilities"; such work will be compensated at $50.00/hour"

A disagreement may arise at some point about what is meant by "extra duties".

Let us further suppose that the clause has been in existence since our first contract in 1998 and that, since 2000, Limited Duties (LD) members have been required to do some course-related administrative work without compensation during the week between Christmas and New Year's. Prior to

that time they had the week off. In the fall of 2003 a LD member approaches the Association complaining about no longer having the week off between Christmas and New Year's, arguing that, s/he is in effect being required to perform duties beyond those in effect when the clause was negotiated.

We could grieve that the CA has been violated and the employer owed the member extra compensation. The employer could respond the duties were regular responsibilities and not considered "extra" duties. Moreover, because this argument requires that the past practice was known by both parties and is otherwise consistent with the Collective Agreement the employer at arbitration could argue that the term "extra duties" must be interpreted by the arbitrator as it was by the Parties themselves- that such work is not considered an "extra duty'. The evidence for this claim could be that the practice has existed for years without complaint by the union, indicating that both parties did not consider work between Christmas and New Year's an "extra duty"--otherwise a grievance would surely have been filed.

In other words, where a provision is subject to two possible interpretations, failure to grieve an action based on one interpretation may be construed as agreement with that interpretation. Such an argument could not have been made by the employer if the Union had filed a grievance as soon as the new practice was instituted, or at least as soon as the union became aware of it.

It has been held by some arbitrators that if there is a practice that deviates from language in the collective agreement, or where language never existed, then the Parties must leave the practice in effect until the next round of negotiations in order that the Parties can negotiate agreed upon conditions into future contracts.

The Estoppel argument: Estoppel is an equitable principle of law that prevents a party from relying on the strict terms of a contract when it would be unfair to do so because of the action, through words or conduct, of that party. That is, Estoppel provides for the creation of legal obligations if one party has given an assurance (through word or action) and the other party has relied on the assurance to his or her detriment.

In ordinary contract law, a typical case would be as follows: A tenant tells his landlord that, because of financial constraints, he cannot afford his rental payments and wishes to take advantage of cheaper accommodation elsewhere. The landlord agrees to accept $500 rent instead of the $1000 specified in the rental agreement until the tenant's financial circumstances improve; *the tenant as a result of this agreement, passes up cheaper alternative accommodation*.

The principle of estoppel says that the landlord may not then enforce the strict terms of the contract (calling for $1000 rent). Because of his non-contractual verbal representation and because of the tenant's reliance on it (that is by not taking the opportunity for lower rent elsewhere), the landlord is prevented--"estopped" — from enforcing the contract.

Some labour arbitrators in Canada have translated this principle fairly liberally in the collective agreement context. Since an estoppel can arise through *a course of conduct* as well as by verbal representation, employers have in the past claimed that, to their detriment, they have been misled by a union's non-enforcement of a provision into the belief that the provision would not ever be enforced.

Thus, in the example of the Limited Duties appointee above, even if both the union and employer agreed the work over Christmas was an “extra duty”, the employer might claim nonetheless that it was led to believe that the union would not claim the extra-duty premium for the extra week of work because it had never done so in the past and that, in fact, it had based certain budgetary allocations on its understanding that there would be no additional cost for this work. Because of such "reliance" by management on the union's representation (by conduct), the union might now have difficulty enforcing the provision.

The best way to avoid such problems related to "past practice" is to implement a good steward system to monitor management's actions and the operation of the collective agreement, and to enforce the agreement when a breach occurs. At the time of writing, UWOFA has not implemented a cohesive steward system and so the responsibilit*y* currently is on the President, Executive, Board Members and Grievance Committee to ensure that members are vigilant.

Although a Grievance will most often be written by the Grievance Officer or UWOFA President, Case Officers might be asked to comment on the content in the Grievance before it is issued and, in some cases, might be asked to write an initial draft of the Grievance. Description of the formal grievance form will be discussed in detail in **Part 3: Doing Our Job.**

Arbitration (and its limitation)

If a satisfactory resolution is not achieved in negotiations with the Employer, the Association can go to an Arbitration hearing. This is a hearing, external to the University, overseen by a “judge” (Arbitrator) or a set of judges (Arbitration Board). The Arbitrator is experienced in labour law and can

make enforceable judgments. This is a right earned by unionization.

Recourse to arbitration is a powerful tool available to a union. It can permit a favorable resolution when the employer is reluctant or unwilling to consider the validity of arguments the union brings forward. However, there are some aspects of arbitration that members of the Grievance Committee should keep in mind.

First, unlike many judicial decisions, an arbitrated decision is final; under normal circumstance the decision is not subject to appeal. An arbitration lost can have long-term consequences. Consider for instance an Arbitration that UWOFA lost several years ago. The grievance was on the failure of the employer to provide the "enriched early retirement" provisions provided under the CA. When the union attempted to rejuvenate the possibility some time later in negotiations, a comment by a representative of the employer was that the issue was non-negotiable that "they owned that issue". Naturally, the finality of an arbitrated decision cuts both ways and if the union gets remedy in Arbitration the employer is also bound by the decision and under normal circumstances cannot appeal it. [There are circumstances when a decision can be subject to judicial review but that is very rare and a very costly process].

Second, the arbitrated decision sets a precedent that can affect not only the course taken on future grievances but can also influence grievances brought by other unions in dispute with their employer (and vice-versa). Again, this is positive if the arbitration agrees with the argument of the union but negative if the decision favors the employer.

Third, arbitration puts the resolution of a dispute into the hands of a third party. That is, arbitration takes decisions regarding the dispute out of the collegial decision-making process. Allowing a third party to decide an important issue may result in an unsatisfactory resolution of a grievance for both Parties. To this end, sometimes it is better to attempt to negotiate a settlement before going to Arbitration (see Minutes of Settlement, below).

Fourth, it is a mistake to believe that an arbitrator will give to the union something that it failed to obtain in negotiations, no matter how reasonable it may be for the union to have the right or benefit sought.

Finally, the grievance and arbitration process can only ensure that benefits won at the bargaining table are not lost or eroded during the life of the contract. In the long run, the best way to obtain job security, reasonable benefits and good working conditions is through contract negotiations backed up by a strong, educated and unified membership. To this end, members of the Grievance Committee play a role during negotiations in

providing information to the negotiating team about where grievances have arisen during the life of the CA and problems in contract language that need to be re-negotiated.

Minutes of Settlement

There are occasions when the Association and Employer decide to settle a dispute, even though a grievance is going to Arbitration. Minutes of Settlement arise from a negotiated settlement between the two Parties and lay out the terms in which the Association is willing to withdraw the grievance from Arbitration. For instance, UWOFA has agreed to Minutes of Settlement on some cases involving a decision by the Provost to not grant tenure. Our Collective Agreement does not give the Arbitrator (or Arbitration Board) the power to confer tenure but can provide other remedies, such as a new tenure review assessment by a new committee. Rather than leaving the decision to an Arbitrator to adjudicate, the Association and Employer has agreed on occasion to have some tenure files reassessed, and the conditions of the reassessment laid out in Minutes of Settlement. Naturally, the Association would want to ensure that the language in the Minutes contain remedies of the sort we might achieve at arbitration (assuming the Association's case was upheld).

As this is being written, the Association and the Employer have a serious disagreement on the limits that Minutes of Settlement have on engaging articles in the Collective Agreement, especially provision 19.3 of *Promotion and Tenure*, ensuring continuance of employment until a final resolution of the dispute. Until our disagreement with the employer is clarified, future Minutes of Settlement regarding employment terminations should be used rarely, if at all, and in any event very judiciously.

Waiving of Provisions in the Collective Agreement: Either the Union or the employer can ask that a given provision of the Collective Agreement be "waived". A waiver means that a provision of the CA be suspended in a given situation. When this is done it should always be done "without prejudice or precedent". That is, the waiver is meant to apply to the specific situation and the granting of the waiver cannot be used as evidence in a subsequent hearing nor as a basis for a practice argument.

The Case Officer cannot grant such waivers; the granting of waivers is the domain of the President of the Association, who gets advice from various sources on whether or not such a waiver should be granted if requested by the employer. The President can assign this responsibility in some cases to the Grievance Officer. Remember: the President alone "speaks" for the Association.

It is possible that the case officer or members of the Grievance Committee will be contacted by the President if the Employer requests a waiver that relates to grievance work. This most likely arises is when it looks as if a resolution is possible without going to Arbitration (or even to the next step in the grievance process) but that some extra time is needed to complete the negotiations. In such cases, either the Association or the Employer might ask for a waiver of timelines. It may also arise where the Case Officer (either directly or, more usually in consultation with the Grievance Officer), asks the President to request a waiver of timelines because our member or association representative, cannot meet the mandated times. Waivers cannot be forced on the Employer or by them on us, but they are often accepted, smoothing the working relationship.

Part 2: The Structure of Grievance Procedures at UWOFA

This section will discuss the structure and operational procedures developed by UWOFA for meeting its duty to protect its members involved in disputes.

Division of Labour for UWOFA Grievance Work

UWOFA has a Grievance Committee as the central body that investigates and acts on complaints that come from our Members, in making decisions on whether or not to take carriage of grievances and whether to recommend that a grievance be sent to Arbitration.

The general duties for those on the Committee are to assist UWOFA members with their complaints, serve as academic colleagues or UWOFA representative in meetings with the Employer, report and represent the member's complaint to the Grievance Committee, and in meetings of the Committee, deliberate and vote on actions to be pursued in protecting rights mandated by the Collective Agreement.

The Grievance Committee includes the Grievance Officer, a group of Case Officers, the union's Professional Officer and a set of (non-voting) *ex-officio* members. In this section we describe the division of labour for these members, emphasizing here those aspects of most importance to Case Officers

The Grievance Officer:

The main responsibilities of the Grievance Officer are administrative and, as such, s/he normally will not be expected to serve as a case officer on grievance issues except as described below. The main functions of the Grievance Officer follow.

He or she:

- reports to the Board on the activities of the Grievance Committee and on grievance matters, and has Observer status on the Board;

- is authorized to contact lawyers and is delegated by the President to contact the CAUT on behalf of the Association

- in consultation with the Grievance Committee, makes recommendations to the President about the recruitment of Grievance Committee members;

- attends, and reports back to the Board and Grievance Committee about, the annual CAUT Senior Grievance Officers' Workshop (and/or other workshops or conferences, as recommended by the Executive);

- monitors recent arbitration awards and emerging grievance issues on other campuses;

- is responsible for overseeing the development of appropriate procedures for dealing with grievances and communicating to the general membership about related issues. These functions include but are not limited to: creating of a form for the initial contact of a member with the union; developing content for a secure website for the use of the Grievance Committee; training new case officers, and preparing communications for the general membership in the area of rights and grievance issues; and

- writes and presents a report of the activities of the Grievance Committee for the Annual General Meeting of the Faculty Association

<u>Day-to-day duties of the Grievance Officer</u>

He or she:

- consults regularly with the Professional Officer and on the basis of this consultation makes an initial decision about how the consultation should proceed, including, where necessary, the assignment of case officers to a file;

- orients and coordinates the work of the Grievance Committee, including calling and chairing scheduled meetings;

- participates in the handling of grievances at the following levels:

  - assigns case officers (but normally does not serve as Case Oficer in individual cases);

  - participates in Step 2 meetings and settlement discussions;

  - takes a leadership role where appropriate on policy grievances;

- coordinates the preparation of materials for arbitration;

- serves as a primary Association contact with our lawyers at arbitration and for other grievance-related matters; and

- writes the final version of grievance letters and offers of settlement.

The Members of the Grievance Committee:

- serve as Case Officers on grievances and pre-grievances discussions, as assigned by the Grievance Officer;

- are responsible for providing to the Professional Officer (with copy to the Grievance Officer) reports/records on all meetings, conversations and e-mails with Members relevant to grievance/rights cases in which they have been consulted or serve;

- as a Committee, make decisions about filing grievances, and about moving to the next step on grievances

- provide feedback on draft offers of settlement, minutes of settlement, grievances, etc.;

- participate in preparing content of (and/or providing feedback on) communications to membership about grievance-related issues; and

- provide feedback on the materials developed by the Grievance Officer.

The Professional Officer (with respect to grievance issues): The Professional Officer often is the first point of contact with the Association for Members.

The Professional Officer:
- answers queries from Members on rights issues

- is responsible for assembling initial intake information about the Member (e.g., contract status, length of service, any relevant Leaves, etc.) and for making an initial assessment of which articles of the Collective Agreement may have been breached;

- consults with the Grievance Officer on queries that may ultimately result in a grievance or may require the intervention of the Grievance Committee;

-serves as a non-voting secretary of the Grievance Committee meetings and provides to the Grievance Officer draft minutes of those meetings;

- provides documentary information to committee members as required;

- coordinates and maintains files on grievance and rights matters for the Association, ensuring that the documentary record is complete; maintains a spreadsheet of current cases and monitors timelines;

- may write the first draft of a grievance letter, for final approval by the Grievance Officer;

- schedules appointments with lawyers at the request of the Grievance Officer or President;

- ensures proper delivery/submission of grievance-related documents to the Administration;

- provides weekly updates on upcoming deadlines for grievance-related issues to the Grievance Officer and UWOFA President.

- keeps records of where violations of Collective Agreement are occurring (both by unit and by article of the CA), for the purpose of Grievance Officer reports to the membership, preparation for negotiations, and for use at Joint Committee. Keeps similar records of where waivers of the CA are requested, granted, and/or denied.

The President, Vice President, Past President and Chief Negotiator (grievance-related roles only).

These members of the Union:

- act as non-voting e*x officio* members of the Grievance Committee.

- normally will not serve as Case Officers for individual cases but may be involved as Case Officers for policy grievances, discipline cases or

cases that may lead to tenure denial; may participate in Step 2 meetings, settlement discussions, and arbitrations.

- may help recruit members to serve on the Grievance Committee, in consultation with the Grievance Officer, for review by the Association's Executive Committee

The Working of the Grievance Committee

The Policies governing the Grievance Committee were passed by the Board in March 4, 2005 and can be found on the UWOFA webpage; http://www.uwofa.ca/governance/UWOFA_policies/UWOFA_grievance.pdf.

Structure of the Grievance Committee: The Grievance Committee includes 6-8 case officers, chosen to be broadly representative of the membership of UWOFA. In addition, there are several non-voting *ex-officio* members; The President, Vice-President, Past-President and Chief Negotiator (or designate) of UWOFA. As an arm's length decision making body, a voting member of the Committee cannot simultaneously serve as a member of the Board of Directors.

The Committee is chaired by the Grievance Officer (an appointee of the Board). A senior member of the Grievance Committee serves as an alternate to the Grievance Officer if he or she goes on leave or if the Grievance Officer is in a conflict of interest on any issue brought before the Committee. When there is a conflict of interest, the Officer will absent him or herself and will not be involved in any of the discussions or votes. The Committee defines conflict of interest liberally to include consideration of individual complaints brought before the committee by a member from the same department as the Officer. The Grievance Officer does not vote on a motion at the Committee, unless the vote is tied.

A non-voting Professional Officer advises the Committee, keeps minutes of the meetings, and maintains a record of timelines and actions requiring consideration by the Committee.

Schedule of Meetings and Activities: During the academic term, the committee meets every second week; during December and the summer months it meets once a month. Because of the number of meetings, the expectation is that each meeting should last no more than 1½ hours.

The Committee considers all grievances and potential grievances. The Grievance Officer assigns to each case a lead case officer and a second

officer who is sufficiently aware of the case to take over should the lead case officer be unavailable. The Grievance Officer and the Professional Officer consult on all cases.

At the meetings of the Grievance Committee, the Case Officers assigned to a file reviews and presents the facts of the case. It is expected that each Case Officer will have prepared a written report of the file in advance of each meeting for circulation with the meeting agenda. These reports should permit the members of the committee to familiarize themselves with the facts of the case to facilitate discussion. At meetings, the members discuss the status of the various open files and, where necessary, vote on whether UWOFA should take carriage of the grievance, move to the next step in the process, etc.

When the Committee decides that UWOFA should take carriage of a grievance, the Case Officers will be responsible for aiding the member at each step of the grievance, especially steps 1 and 2. Often a complaint is resolved at one of the internal meetings (i.e. informal, step 1 and step 2 meetings). When this does not occur, the Committee must decide whether or not to proceed to arbitration.

Procedure in recommending Arbitration: Recommending that a grievance be taken to Step 3, Arbitration requires a positive majority vote of the Committee. The Committee considers taking this step either on the basis of a formal request from the Member(s) involved to the President of UWOFA, or on the recommendation of the Chair of the Committee or of the Case Officer.

Within 4 days of an unsatisfactory Step 2 decision by the Employer the Grievance Officer is mandated to call a meeting of the Committee and to ensure that copies of the file materials relevant to the grievance are available. At the onset of the meeting, the Chair must remind members of the union's duty of fair representation, and for the need to maintain confidentiality. The Professional officer keeps a record of the arguments made.

The files and relevant sections of the Collective Agreement are presented and reviewed, and, if present, the complainant is invited to make a presentation and respond to questions. Following this review, the complainant (s) and any non-Committee Member(s) are asked to leave.

In formulating its opinion, the Committee must act in a careful, fair and objective manner bearing in mind. The operative phrase is that the union

must "turn its mind" to the problem at hand. This would involve ensuring that

- the union has met its duty of fair representation to the member (see third part of this manual below).

- any legal advice received on the case has been carefully considered

- the balance among the significance of the grievance, the consequences for the complainant(s), and the legitimate interests of the Association has been taken into account.

After the discussion, members of the Committee present at the meeting vote for or against recommending that the grievance be sent to arbitration. The motion is always presented in the affirmative. On request from any member of the Committee the vote may be by secret ballot. The complainant is immediately informed of the reasons for the Committee's negative decision and, if the decision is negative, about the appeal process he or she might wish to pursue.

The decision of the Committee is forwarded to the elected Board of Directors as a recommendation for approval. Because of timeline constraints, the notice to the employer of the union's decision to ask for Arbitrated adjudication may be filed before the Board's approval is given. In such instances, it is understood that Association would withdraw the Arbitration if the Board should decide not to follow the recommendation and a subsequent appeal by the complainant is not upheld.

Please note that a complainant can appeal a negative decision of the Grievance Committee or the Board to go to Arbitration on his or her grievance. The description of the Appeal Process can be found on the UWOFA webpage.

Part 3: Doing Our Job

On the Duty of Fair Representation

As a union, UWOFA is the exclusive bargaining agent for those Faculty Members and Librarians/Archivists covered by their respective certificates. UWOFA negotiates Collective Agreements and enforces them through the provisions of the Agreements Article, *Grievance and Arbitration*.

UWOFA alone has the authority to grieve and to bring a grievance to arbitration. UWOFA carries grievances that allege the employer has violated

the terms of the agreement for all Members (policy grievances), for a group of Members (group grievance) or for an individual Member (individual grievance). That is, UWOFA alone has the authority to grieve and to bring a grievance to arbitration. This accords the union and Grievance Committee considerable responsibility, especially because we have a considerable amount of discretion when dealing with grievances: UWOFA can settle, refuse to carry or drop grievances even if the affected Member(s) disagrees. It is this exclusivity and discretionary powers that explains the special onus of duty of fair representation (DFR).

To counterbalance this power, the Labour Relations Act requires unions to act in good faith. According to this Duty of Fair Representation, UWOFA (like all unions) may not act in ways that are arbitrary or discriminatory, must exercise its authority objectively and honestly, making a thorough study of the grievance, taking into account the significance of the grievance and of its consequences for the employee on the one hand, and for the union on the other.

Members or former Members who feel their union has not fairly represented them cannot bring court action. Instead, they would have to file a duty of fair representation complaint with the Ontario Labour Relations Board and, if successful, can obtain remedy from their union.

When a complaint is made, the Labour Relations Board examines the fairness of the union's conduct. The basic question before the Board is whether the union dealt fairly with the complaint of the employee. The Board does not have the power to rule on the Members' grievance *per se.* However, because the Board must assess whether the union's investigation reflected the worthiness and seriousness of the employee's case it is sometimes necessary for the Board to review and understand the facts of the grievance. If the Board finds that the union has breached the duty of fair representation, it can order a number of remedies, including the awarding of damages to the member(s) who have been disadvantaged by their union's failure to represent them appropriately.

Features of the duty of fair representation (DFR):

Over time, case law has developed on what constitutes fair representation and when that duty has not been met. In DFR complaint cases brought for review, the decision made by the union is not usually questioned; the question is whether the union came to that decision in a way that demonstrated that they "turned their mind' to the complaint being considered. It has been recognized in case law that union officials can make honest mistakes and that wrongly assessing a grievance does not constitute

proof of arbitrary action. The Labour Relations Board can uphold a union's decision if it concludes that the union investigated the grievance and obtained full details of the case, including the employee's side of the story; put its mind to the merits of the claim; and made a reasoned judgment about the disposition of the grievance.

In deciding whether or not to pursue a grievance, a union must avoid arbitrary, capricious, discriminatory or wrongful conduct. It may not act in bad faith. To meet the duty of fair representation, the Grievance Committee and Board must:

1. *Avoid Ill Will:* Unions may consider only relevant and lawful matters when deciding whether to file or continue grievances. Union officers must not and may not let personal feelings influence whether or how to pursue a grievance.

3. *Not Discriminate:* UWOFA, the Case Officers, Grievance Officer and members of the Board must not discriminate on the basis of Association membership (we have a duty for all members of the bargaining unit, UWOFA member or not) or factors such as, race, religion, sex or age. Each Member has to receive individual treatment and consideration.

3. *Not Act in an Arbitrary manner:* Judgments have been made that it is arbitrary for a union to give only superficial attention to the facts or matters in issue, to make a decision without concern for the employee's needs and interests, and that fail to assess and investigate the merits of an employee's grievance.

4. *Turn its mind to the matter*: When "turning its mind to the matter" the union must carefully weigh the strength of the case, the importance of the issue, the impact on the individual griever and the interests of the membership at large. When making decisions about grievances and whether to go to Arbitration, abandon or settle a case, a union must judge simultaneously how critical the subject matter of a grievance is to the interest of the employee concerned, the validity of the Member's claim and the balance of interests for the individual complainant and interests of the whole Bargaining Unit. The subject matter of the grievance should be considered with respect to the language of the Collective Agreement or with respect to the available evidence of the event under consideration.

A union may (not must) consider legitimate factors other than the

interests of the complainant. For example, the union may have promised the employer that it would not advance a particular interpretation of the contract. Or the union may be concerned that a victory for the complainant would have an adverse effect on the other employees in the unit. A union may also decide that the cost of achieving the resolution the complainant seeks is too high given the issue at hand.

The union must weigh these factors fairly against the wishes of the complainant. Moreover, unions and employers are permitted to settle an ongoing grievance in exchange for bargaining concessions, although such an action may amount to unfair conduct if the grievance concerns serious discipline or dismissal of a Member of the Bargaining Unit.

There is also case law that has also considered whether the duty of fair representation has been met by considering what the complainant did. *Did the Member-complainant protect his/her own interests?* The Labour Code protects unions from losses caused by the employee's own conduct. Consequently, Members must follow the grievance procedures outlined in the Collective Agreement, co-operate with their Union, and minimize their losses. If employees do not protect their own interests, the complainant weakens his or her claim that his/her duty of fair representation has been breached.

On the duties and responsibilities as a Case Officer

Know the Collective Agreement: Case officers must know our Collective Agreements, both that for the faculty bargaining unit and for the librarian/archivist bargaining unit. Be familiar with the general grievance procedures. Be aware especially of time limits and make sure that steps are completed before they expire (some basic timelines are presented in Appendix C). The Professional Officer, UWOFA President, Professional Officer, Chief Negotiator and other members of the negotiating team and more senior members of the Grievance Committee can help if you have any questions regarding interpretation of any part of the Agreement.

When dealing with a complainant, try to figure out which, if any, Article(s) of the Collective Agreement might have been breached.
Do not attempt to memorize the Collective Agreement; there are many people available to help you with questions you might have, including the Articles that seem most relevant.

It is critical that the case officer maintain timely contact with the

Professional Officer and send him or her copies of all correspondence involving the complainant. The Professional Officer will aid in reminding the case officer of the time lines that have to be respected.

Discriminate between complaints and possible grievances:

Many members are confused about what constitutes a complaint and what constitutes a Grievance. Disputes with the employer may lead to complaints of unfair treatment. A complaint is not necessarily grounds for a grievance. A grievance occurs when, arguably, one or more provision of the Collective Agreement has been violated. That is, a member might be treated by the employer in a way that is, arguably, unfair but where the treatment itself might not be in breach of the Collective Agreement. One of the first jobs of a case officer is in determining whether a complaint can lead to a viable grievance, if resolution is not reached through negotiations with the Employer.

The Collective Agreement mandates that one attempt to resolve disputes informally, and often a Case Officer will act as an academic colleague at a meeting with a Dean. Disputes handled at the informal stage are considered complaints. At a meeting at this level, the Case Officer should make sure that the Dean and The Officer agree to the step under which discussions are proceeding and, where relevant, confirmation that a written account will be forthcoming, within the timelines mandated by the Collective Agreement. Sometimes the case officer will ask to serve as an academic colleague in discussions regarding complaints with a Departmental Chair or Director of a School. These meetings are not considered as part of the informal resolution process (the Chair, after all is just another member of the bargaining unit) and if satisfaction is not obtained at this level, then the complaint must be brought to the attention of the Dean as soon as possible afterwards.

A complaint becomes a grievance when there is a failure to reach a satisfactory resolution informally and the Association takes carriage of it. Members often fail to understand that it is not they who grieve. It is the duty of the Case Officer to ensure that the Member recognize that it is the union grieves on behalf of its members.

At all stages, informal and formal, one must note the time lines mandated by the Collective Agreement: failure to respect time lines may force the Association to abandon a case or can weaken the case if it were to go to Arbitration.

The "Formal" Grievance

Almost all grievances take the basic form: "This is a grievance of the Article *Management Rights* and then goes on to elaborate which aspects of the Article have been breached. In writing the formal grievance letter one must keep in mind that there are two general functions of a grievance:

1) it forms the basis, and sets the limits, of the discussions with the employer in the course of attempting to resolve the dispute by negotiation, according to the procedures outlined in our Collective Agreements

2) it determines the jurisdiction of an arbitrator in the dispute, in the event that the union and employer cannot resolve the problem themselves.

Given the second function, one must consider the implications of what one puts on paper for an eventual Arbitration, even though most grievances are settled without recourse to arbitration.

Keeping these two functions in mind, the written grievance should provide the employer with sufficient information to understand the basic nature of the complaint (to aid in resolution, function #1). But the grievance has to be written so that the action that is being grieved is not restrictively limited to one or two clause in the Collective Agreement if additional ones apply (if needed to meet function #2).

It is important to remember that the grievance is not the place to <u>argue</u> one's case but is the place to outline the nature of the dispute.

Arbitrators have some latitude in interpreting grievance documents, and are said to have authority to determine "the real issue in dispute" between the parties, even where the language in the grievance is imperfect or unclear. Nonetheless some arbitrators will refuse to embark on an investigation of a matter completely different than that set out in the grievance document.

Major components of a Grievance Letter: Each grievance is unique and each may emphasize different components from this list. Nonetheless, this is a useful way of organizing what one wants to render in writing.

What: A description of what happened is probably the most important thing to specify in a grievance letter. Remember that the purpose of the written grievance is not to convince, argue or prove. It is merely to make a

factual statement alleging a wrong doing which, if proven, constitutes a violation of the agreement and will entitle the union to a remedy. The grievance should state briefly, in general terms, the action being grieved; it should NOT recite a story.

> This is an example of a story: *"Last Tuesday Professor X was summoned into the office of her Dean. Dean Satan was extremely rude and said a number of things which can only be described as slanderous. The Dean then gave Professor X a letter which was most disturbing. Dean Satan now says that Professor X ……..."*
>
> This is a grievance: *"The Union grieves the unjust discipline of Professor X in violation of the following Articles in the Collective Agreement…."*"
>
> **Who**: It is important to specify all the employees affected by the problem. If only one person is involved this will be an Individual grievance. If a number of people have been adversely treated in the same way (or nearly so) then we have a Group grievance. If the grievance is one that affects a large number of people because of an alleged misreading or breach of the Agreement, then we have a Policy grievance. For Individual and Group grievances the individuals can be identified by name, or by description of the group they belong to, or by their relation to the action or event being grieved. Keep in mind that different timelines are involved with different types of grievances.

When: It is a good idea to state, in general terms, when the event or incident happened. This will help management, or an arbitrator, identify the event you are describing. *But it is wise to avoid being unduly restrictive.*

Time lines in the Collective Agreement mandate the limits for initiating a grievance, usually based on the date that certain events occurred or the date when the Union (or an employee) became aware of those events (or ought to have known about the events). So if a particular management practice or policy has been in place for some time, it may be wise to note in the grievance, as appropriate, that the union only recently became aware of it.

> **Example:** *"In a discussion with a member from Faculty X on March 1, 2007 it came to the Union's attention that the Faculty of X has been improperly providing compensation to some members of that Faculty outside those permitted by the Collective Agreement*

Where: The location of events may not always be a critical matter for inclusion in a grievance. If it is not relevant, then it shouldn't be mentioned in the grievance letter There are some cases where it is relevant For instance, if the grievance pertains to an improper move of a member to a new building, it would be useful to name the building currently occupied and where she or he is being moved.

Why: This is another component that may be unnecessary. In general, a grievance should give some idea why the event described constitutes a grievance. In some cases this will be obvious: *The Union grieves that the unjust dismissal of Professor's X*

However, in some cases a bare statement of fact may not be sufficient; you may have to state why the facts constitute an infringement. For example, it is not very helpful simply to state that *a letter of reprimand was placed in the Official File of Professor X.* This statement might prompt the question, "So what?" In such cases it is useful to provide more detail, such as: *In the Union's view, the imposition of Discipline was inappropriate given the nature of the alleged infraction.*

The Remedy: This is what the union argues is required to fix the problem. In most cases, there is little point in attempting to be moderate in the writing of the remedies sought because neither negotiations nor arbitration is likely to yield more than you request in the grievance itself and, in fact, will often yield less. This is not to suggest that demands for remedy be unreasonable or inflated; rather they are best conceptualized as a further means of keeping options open. In general, a grievance ought to request ***everything*** that might possibly be proposed during settlement discussions or arbitration. The union should ask for full redress for any aggrieved member.

Interacting with Complainants

First contacts: Because the Case Officer may be known as a member of the Grievance Committee, disputes may be brought to his or her attention before any other union officer.

a) If you have been contacted by a Steward about an aggrieved member or directly by the member who has concerns or complaints please direct this person to the Professional Officer immediately and follow up with the Professional Officer in case this has not been done. The Grievance Officer will assign a Case Officer (often the Case Officer contacted), so please make sure the member knows this is the usual procedure we follow (otherwise a member may approach a number of people and receive conflicting and perhaps incorrect advice).

b) Sometimes, the Member will come to you for advice. If in doubt about what to advice to give them, have the member contact the Professional Officer or the Grievance Officer. Advise the Member against talking to the employer alone in any situation where there is the possibility of conflict.

c) Please inform the Grievance Officer immediately if a Member with whom you have personal issues has been directed to you by a Steward or comes to see you directly. In such situations the Grievance Officer might decide it best to assign another person as the Case Officer. In meetings of the Grievance Committee, you should note the conflict of interest and absent yourself from any discussions or votes on the specific file.

d) Everybody has weaknesses and shortcomings. Keep personalities out of the issues. Your job is to defend every member who feels they have been treated wrongly by the employer, regardless of whether that member has weaknesses, whether you like the member and whether you may have had conflicts with the Member some time in the past. Your role is to defend the collective agreement and all members fairly and vigorously. Please keep in mind our duty of fair representation at all times.

Assignment as a case officer: On assignment, the first task is to contact the Professional Officer to get as much background as possible before contacting the complainant. The Professional Officer has an intake form in which basic information has been obtained that you should review. Among the characteristics of importance are: whether the Faculty or the Librarian/Archivist Collective Agreement is the one in force and the member's contractual status (e.g., Full-time or Part-time, Tenured or Not, Faculty and Department). Sometimes this information will be obtained during your initial meeting with a complainant.

Try to make an initial assessment of which Articles of the appropriate Collective Agreement are relevant and might have been breached. The Professional or Grievance Officers, the UWOFA President and senior members of the Grievance Committee can help you make this assessment. Remind the complainant that to grieve, there has to have been a violation of the Collective Agreement and that you and your colleagues will examine the situation carefully to see if a breach has occurred.

There are times when a member is so aggrieved that he or she just wants to get out of the situation immediately. Although this might be an understandable sentiment, such action might have adverse effects on the member and undercut our ability to represent him/her effectively. A general principle is "work now, grieve later". A member cannot abandon his or her academic or professional duties because of the dispute. *Be careful in advising the complainant to refuse to do some particular work.* There are exceptions to the "work now, grieve later" rule. For instance one exception would occur where there would be no remedy to the grievance, if the complainant were to continue to work. A second exception is where issues regarding health and safety are involved.

After being assigned as a Case Officer on a file, and after your first contact with the complainant, keep in touch with the member regularly even if you have nothing new to report. The Member should know we have not abandoned his or her interests.

Remember at all times the need for confidentiality. As a Case Officer (and indeed as a member of the Grievance Committee even when not the case officer) you must observe the strictest confidentiality, bearing in mind the duty of confidentiality to the complainant is similar to that owed by a solicitor to a client.

For Group or Individual Grievances the Case Officer must discuss the concept of confidentiality and the importance that any complainant give permission for members of the Committee to review any documents pertinent to the grievance. When there is a failure to obtain such permission, the fate of the case will have to be decided by the Grievance Committee, which will be charged with seeing if alternative ways of approaching the issue might be achieved.

Honesty in all dealings: Remember that you are hearing just the member's side of a story. Members are sometimes careful or judicious in what they report or give only a carefully edited part of the story. Remind the complainant that any information divulged is confidential and that we cannot represent properly if we do not have all the facts. Probe to get as complete

an explication as possible. Do not ever accuse the member of any misdeed.

Occasionally a member has divulged information but then asks the case officer to misrepresent those facts when talking to the employer. In such rare cases, we must inform the complainant that we will not misrepresent the true circumstances though we will, of course, honor our commitment to confidentiality.

Monetary or other compensatory reward for service: It is not unusual for a member to want to thank the case officers who have worked on his or her case. It is understood that a case officer cannot accept presents or other financial compensation for doing the work of the union. It is acceptable to have the member buy you a beer or a modest lunch or a homemade meal if he or she wished to do so - but anything more extensive must be declined politely.

Member-Member Disputes: One of the most difficult issues facing a union and grievance committee is when one member has a complaint against another member. Several aspects of such cases must be keep in mind

- We cannot grieve the actions of a member, only actions (or failures to act) by the Employer

- Often an investigation will indicate that the problem between the members is a result of an action (or failure to act) by the employer; we can grieve those actions or failures to act. Accusations of one member by another that s/he is being harassed or subject to discrimination may be examples of cases where the employer failed to meet its duties

- In some cases one of our members may come to us with concerns that they have been subject to a complaint about discrimination or harassment as defined in our Collective Agreement. The Grievance Committee does not deal with such cases *per se* unless the employer deems the case one that should be pursued under the Article *Discipline* (and this arises most typically when a complaint is made to the employer directly)

- In other cases the complainant may go the Equity Office. In such cases we provide support to ensure that the provisions of the Collective Agreement regarding the handling of Harassment and Discrimination are followed as mandated by the Collective Agreement. Failure to comply with these provisions, as with any other provisions in

the Collective Agreement, is subject to grievance.

- Sometime a member goes to the equity office with a complaint of being harassed by another member. Typically, in such situations, both members come to the Association to be represented by their union. When this happens, the Grievance Officer assigns each complainant with different case officers. When discussions occur about this case during a meeting of the Grievance Committee, each case officer declares a conflict of interest and is present at committee only to discuss and represent the interests of the member to whom they have been assigned.

Interacting with the Employer

Neither Chairs nor Directors are the employer: Remember that Chairs of Departments or Directors of Schools are Members of the Bargaining Unit. They are not management, despite the quasi-managerial nature of their position. We can grieve the action of the employer but not that of a Departmental Chair, so it may be necessary that we involve the employer in the discussions as soon as practicable.

If you are acting as an academic colleague when the member is talking to his or her Chair or Director please ensure that your interventions are done respectfully.

Represent the union and its members.

- In all dealings with the employer, remember to represent the Association's position, not your personal one. Remember that your role is as "defender of the Collective Agreement" and "defender of union policies". You are not the "creator of union policies".

- Your job is to represent members; the employer's job is to run the University. These roles are not necessarily incompatible but one must recognize that the interests of the employer and the academic and professional interests of our Members may not coincide.

- Deal with management on a business-like basis. Avoid personal conflicts, antagonisms, and issues. Remember that you have a right to be treated as an equal and to have your own agenda and objectives. Take the initiative. Do not just react to management's desires.

- Be respectful of management when in discussions. Maintain a professional approach. Make sure that the employer understands you are acting in an official capacity. Be polite but also, when necessary, assertive

- At meetings listen carefully to the employer to see if he or she is providing information or signals that suggest ways to reach a negotiated settlement.

- **Never** gossip about other members to the employer or discuss with them union activities.

Preparing for and attending a Grievance Meeting

Overview: As Case Officer you will have meetings with the employer. A mutually co-operative approach is what is most desirable. In the grievance procedure, as in other areas of labour relations, satisfactory resolutions are most often achieved by negotiation from positions of conflicting interest, not by one party convincing the other that its position is inherently just. Management may not care at all whether our cause is just, but it may well offer a fair settlement if it believes that the union is likely to take the case to arbitration--and perhaps win--if a resolution is not achieved.

You may see the term “without prejudice” in settlement minutes or may hear the term used by the employer. The term “"without prejudice” refers to the position that settlement terms cannot be used in evidence against either Party in subsequent proceedings. That is, neither side can go to a later Arbitration and bring the specific settlement in as evidence. All settlement negotiations are automatically "without prejudice", whether the parties specify this or not. The legal rationale for this is that it makes sense to encourage private settlement of disputes, and that people would be less likely to consider settlement if attempts at resolution could later be used against them.

As the union representative you should approach the grievance meeting as an equal. Before going to the meeting, you may wish to consider the possibility that while management might be prepared to negotiate a realistic settlement there is the possibility that it is merely going through the motions or, worse still, using the meeting as a chance to obtain as much information as possible while giving up as little as possible. Full and frank discussion on our part depends upon a similar attitude on the part of management.

Before the Meeting: Prior to any meeting, review the facts and discuss with the Grievance Officer and the member(s) the strategy to be employed during the meeting. It is important to clarify the rules of conduct for the meeting beforehand. Have a plan and an objective for the meeting, and be in control of the speakers and what they say. Decide who will be the spokesperson, the role, if any, the complainant will play, the conditions under which you may wish to caucus with your member and the like.

-If at all possible, do not go to a meeting with management alone; discourage any of our Members from meeting with the management alone.

At the meeting: Take notes of all discussions, both formal and informal.

- Introduce yourself at the meeting, if necessary, and state your role as case officer or, at an informal meeting, as an academic colleague.

- If one is discussing possible settlement conditions, it is helpful to remind the employer- and to get his or her agreement- that the discussions are "without prejudice"

- Never, when dealing with the employer, provide immediate answers to their suggestions, proposals or requests for information. Say "I'll get back to you." Don't act faster than you want or have to. Even when the employer's suggestions sound reasonable, don't agree immediately. Think about it; check with the Grievance Officer and UWOFA President. A decision made at a meeting of the Grievance Committee and after checking facts will always be better than a quick decision.

- Don't disagree with the member in front of the employer; ask for a break, go outside, resolve the disagreement and come back to management, days later if necessary.

- If the meeting ends without a response from management on the grievance, press them to give you a date for a written response, keeping in mind the time limits.

Obtain and maintain complete files, and ensure that the Professional Officer has copies: It is essential that we have complete files on any case we pursue.

a) Make sure that you copy the Professional officer on **all** e-mails or other correspondence you receive or send to a Member on whose file you are working or that you receive from the employer or other interest5ed parties.

b) Make notes at all meetings with the Member or with the employer regarding the member and make sure that the Professional Officer receives a copy of all of these. Make sure to note the dates of these meetings

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Albert Katz, UWOFA Grievance Officer

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GLOSSARY OF TERMS

Arbitration: The process for final resolution of grievances by a third party or parties empowered to subpoena witnesses, hear evidence, and make a final and binding order respecting the difference between the parties

Bargaining Agent: A union certified or recognized to represent a group of employees.

Bargaining Unit: A group of employees determined by the Labor Relations Board, to be appropriate for coverage under one collective agreement.

Collective Agreement: A written agreement between an employer and a trade union covering terms and conditions of employment of employees of the employer.

Estoppel: An equitable principle that prevents a party from enforcing the strict wording of a contractual document where the other party has relied on representations, through words or conduct, that the provision would not be enforced.

Fair Representation (duty of): A statutory or common-law duty owed by a bargaining agent to all members of the bargaining unit (whether or not they are members of the union), which prevents the bargaining agent from acting arbitrarily, discriminatorily or in bad faith

Grievance Procedure: A process set out in the collective agreement for the resolution of grievances;

Grievance: A notice, in writing, by which one party to a collective agreement claims that there is a difference respecting interpretation, application or violation of the collective agreement.

Management Rights: A type of collective agreement provision which typically purports to reserve to management all rights not mentioned in the collective agreement ("residual rights"); such rights may not be exercised in a manner which is arbitrary, discriminatory or unreasonable.

Remedy: That which is sought by the grieving party in order to resolve the matter in dispute and compensate persons or parties adversely affected, for example, monetary damages, interest, re-instatement, etc.

Without Prejudice: Term used to describe a document, conversation or event that may not be used in evidence by one party against the other; often applied to settlement negotiations.

Appendix A: Section 48 of the Ontario Labor Relations Act

Arbitration

48. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable. 1995, c. 1, Sched. A, s. 48 (1).

Same

(2) If a collective agreement does not contain a provision that is mentioned in subsection (1), it shall be deemed to contain a provision to the following effect:

> Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.
>
> 1995, c. 1, Sched. A, s. 48 (2).

Where arbitration provision inadequate

(3) If, in the opinion of the Board, any part of the arbitration provision, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection (2) is alleged by either party to be unsuitable, the Board may, on the request of either party, modify the provision so long as it conforms with subsection (1), but, until so modified, the arbitration provision in the collective agreement or in subsection (2), as the case may be, applies. 1995, c. 1, Sched. A, s. 48 (3).

Appointment of arbitrator by Minister

(4) Despite subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of

either party, may appoint the arbitrator or make the appointments that are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement. 1995, c. 1, Sched. A, s. 48 (4).

Appointment of settlement officer

(5) On the request of either party, the Minister may appoint a settlement officer to endeavor to effect a settlement before the arbitrator or arbitration board appointed under subsection (4) begins to hear the arbitration. However, no appointment shall be made if the other party objects. 1995, c. 1, Sched. A, s. 48 (5); 1998, c. 8, s. 7.

Payment of arbitrators

(6) Where the Minister has appointed an arbitrator or the chair of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed. 1995, c. 1, Sched. A, s. 48 (6).

Time for decision

(7) An arbitrator shall give a decision within 30 days after hearings on the matter submitted to arbitration are concluded. 1995, c. 1, Sched. A, s. 48 (7).

Same, arbitration board

(8) An arbitration board shall give a decision within 60 days after hearings on the matter submitted to arbitration are concluded. 1995, c. 1, Sched. A, s. 48 (8).

Same

(9) The time described in subsection (7) or (8) for giving a decision may be extended,

(a) with the consent of the parties to the arbitration; or

(b) in the discretion of the arbitrator or arbitration board so long as he, she or it states in the decision the reasons for extending the time. 1995, c. 1, Sched. A, s. 48 (9).

Oral decision

(10) An arbitrator or arbitration board may give an oral decision and, if he, she or it does so, subsection (7) or (8) does not apply and the arbitrator or arbitration board,

(a) shall give the decision promptly after hearings on the matter are concluded;

(b) shall give a written decision, without reasons, promptly upon the request of either party; and

(c) shall give written reasons for the decision within a reasonable period of time upon the request of either party. 1995, c. 1, Sched. A, s. 48 (10).

Orders re decisions

(11) If the arbitrator or arbitration board does not give a decision within the time described in subsection (7) or (8) or does not provide written reasons within the time described in subsection (10), the Minister may,

(a) make such orders as he or she considers necessary to ensure that the decision or reasons will be given without undue delay; and

(b) make such orders as he or she considers appropriate respecting the remuneration and expenses of the arbitrator or arbitration board. 1995, c. 1, Sched. A, s. 48 (11).

Powers of arbitrators, chair of arbitration boards, and arbitration boards

(12) An arbitrator or the chair of an arbitration board, as the case may be, has power,

(a) to require any party to furnish particulars before or during a hearing;

(b) to require any party to produce documents or things that may be relevant to the matter and to do so before or during the hearing;

(c) to fix dates for the commencement and continuation of hearings;

(d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases; and

(e) to administer oaths and affirmations,

and an arbitrator or an arbitration board, as the case may be, has power,

(f) to accept the oral or written evidence as the arbitrator or the arbitration board, as the case may be, in its discretion considers proper, whether admissible in a court of law or not;

(g) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or the arbitration board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such differences;

(h) to authorize any person to do anything that the arbitrator or arbitration board may do under clause (g) and to report to the arbitrator or the arbitration board thereon;

(i) to make interim orders concerning procedural matters;

(j) to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement. 1995, c. 1, Sched. A, s. 48 (12).

Restriction re interim orders

(13) An arbitrator or the chair of an arbitration board shall not make an interim order under clause (12) (i) requiring an employer to reinstate an employee in employment. 1995, c. 1, Sched. A, s. 48 (13).

Power re mediation

(14) An arbitrator or the chair of an arbitration board, as the case may be, may mediate the differences between the parties at any stage in the proceedings with the consent of the parties. If mediation is not successful, the arbitrator or arbitration board retains the power to determine the difference by arbitration. 1995, c. 1, Sched. A, s. 48 (14).

Enforcement power

(15) An arbitrator or the chair of an arbitration board, as the case may be, may enforce the written settlement of a grievance. 1995, c. 1, Sched. A, s. 48 (15).

Extension of time

(16) Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, despite the expiration of the time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension. 1995, c. 1, Sched. A, s. 48 (16).

Substitution of penalty

(17) Where an arbitrator or arbitration board determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject-matter of the arbitration, the arbitrator or arbitration board may substitute such other penalty for the discharge or discipline as to the arbitrator or arbitration board seems just and reasonable in all the circumstances. 1995, c. 1, Sched. A, s. 48 (17).

Effect of arbitrator's decision

(18) The decision of an arbitrator or of an arbitration board is binding,

(a) upon the parties;

(b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;

(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and

(d) upon the employees covered by the agreement who are affected by the decision,

and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision. 1995, c. 1, Sched. A, s. 48 (18).

Enforcement of arbitration decisions

(19) Where a party, employer, trade union or employee has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, employer, trade union or employee affected by the decision may file in the Superior Court of Justice a copy of the decision, exclusive of the reasons therefor, in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1995, c. 1, Sched. A, s. 48 (19); 2000, c. 38, s. 7.

Procedure

(20) The *Arbitration Act, 1991* does not apply to arbitrations under collective agreements. 1995, c. 1, Sched. A, s. 48 (20).

Referral of grievances to a single arbitrator

49. (1) Despite the arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement may request the Minister to refer to a single arbitrator, to be appointed by the Minister, any difference between the parties to the collective agreement arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Request for references

(2) Subject to subsection (3), a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after 30 days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

Same

(3) Despite subsection (2), where a difference between the parties to a collective agreement is a difference respecting discharge from or other termination of employment, a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after 14 days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

Minister to appoint arbitrator

(4) Where a request is received under subsection (1), the Minister shall appoint a single arbitrator who shall have exclusive jurisdiction to hear and determine the matter referred to him or her, including any question as to whether a matter is arbitrable and any question as to whether the request was timely.

Same

(5) Where a request or more than one request concerns several differences arising under the collective agreement, the Minister may in his or her discretion appoint an arbitrator under subsection (4) to deal with all the differences raised in the request or requests.

Settlement officer

(6) The Minister may appoint a settlement officer to confer with the parties and endeavour to effect a settlement prior to the hearing by an arbitrator appointed under subsection (4).

Powers and duties of arbitrator

(7) An arbitrator appointed under subsection (4) shall commence to hear the matter referred to him or her within 21 days after the receipt of the request by the Minister and the provisions of subsections 48 (7) and (9) to (20) apply with all necessary modifications to the arbitrator, the parties and the decision of the arbitrator.

Oral decisions

(8) Upon the agreement of the parties, the arbitrator shall deliver an oral decision forthwith or as soon as practicable without giving his or her reasons in writing therefor.

Payment of arbitrator

(9) Where the Minister has appointed an arbitrator under subsection (4), each of the parties shall pay one-half of the remuneration and expenses of the person appointed.

Approval of arbitrators, etc.

(10) The Minister may establish a list of approved arbitrators and, for the purpose of advising him or her with respect to persons qualified to act as arbitrators and matters relating to arbitration, the Minister may constitute a labour-management advisory committee composed of a chair to be designated by the Minister and six members, three of whom shall represent employers and three of whom shall represent trade unions, and their remuneration and expenses shall be as the Lieutenant Governor in Council determines. 1995, c. 1, Sched. A, s. 49.

Appendix B: Section 74 of the Ontario Labor Relations Act

74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be. 1995, c. 1, Sched. A, s. 74.

Appendix C: Timelines in the UWO-UWOFA Collective Agreement, 2006-2010

For Individual or Group Grievances

(i) Attempts at Informal Resolution:

- One has to start the process within **180 days** of when the Member(s) knew of the circumstance that gives rise to the complaint

- If the dispute is resolved, the Dean sends a written report within **10 working days** of the meeting
- If the dispute is not resolved, the Dean sends a written report with **5 working days**

(ii) Formal Grievance Process:

Step 1:

-The Grievance must filed with **15 working days** of receipt of Dean's letter

- There must be a meeting within **10 working days** of receipt of Grievance

- The Dean must respond in writing within **5 working days** of the Step 1 meeting and, if resolved at this stage, a written and signed agreement within this same time period.

Step 2:

Policy grievances **start at this stage and unresolved Individual and group grievances proceed to this stage if the Association decides to continue the grievance process.**

- Individual or group grievance must be filed within **5 working days** of receipt of a complaint not resolved at Step 1
-Policy Grievance must be filed within **15 working days** of the date when Association knew of the circumstance giving rise to the grievance

From herein, timelines the same for all three types of grievances

-Provost or designate sets up meeting within **10 working days** of receipt of grievance; Copies of document to be provided with **2 working days** prior to Step 2 meeting.

- If there is no settlement, the Provost or designate is to provide written decision within **5 working days** of last step 2 meeting.

Step 3: (Going to Arbitration)

-Grievance resulting from a failure to reach a settlement at Step 2 must be filed within **10 working days** of receipt of Step 2 response.

Although rare, the Association and Employer can request that a grievance go directly to Arbitration. This has happened with our union when there was a disagreement on the meaning or interpretation of a given article.

-Grievance initiated at Step 3 to be filed with **15 working days** of circumstance giving rise to grievance

- Notification of a grievance going to Arbitration Board is to be filed within **21 days** of decision to proceed to Arbitration.