

SMUFU GRIEVANCE POLICY*

1. Representation

1.1. Position Statement:

In situations involving any potential and actual grievance resulting from violations of the Collective Agreement, Federal or Provincial law, violations of past practice in the workplace or violations of employee's rights, SMUFU undertakes to fairly represent each and every individual member, groups of members and/or the collective membership of the Union in situations where it is deemed able and proper to do so by the Grievance & Arbitration Committee ("the Committee") and with the approval of the Executive where such approval is required.

1.2. Principles Governing the Duty of the Association to Fairly Represent its Members:

1.2.1. The power conferred on the Union to act as representative for the employees in the bargaining unit entails a corresponding obligation on the Association to fairly and properly represent all employees comprising the unit.

1.2.2. The representation by the Union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence and without hostility towards the member(s).

1.3. Fair Representation:

In order to ensure that all potential grievance complaints are dealt with in a fair and expeditious manner, the Chair of the Committee ("the Chair") must be in a position to show:

1.3.1. That a thorough investigation of the facts has been conducted with full appreciation of any relevant "working days" provision contained in the Collective Agreement.

1.3.2. That internal procedures were correctly followed in the processing of each grievance (see below for Grievance Processing & Decision Procedure).

1.3.3. That SMUFU officers worked, or attempted to work, within the time limits specified in the Collective Agreement.

1.3.4. That where deemed necessary, SMUFU sought informed legal advice and relied on that advice.

1.3.5. That concerned members are advised of meetings which might affect them whether or not they are permitted to attend those meetings.

1.3.6. That insofar as was possible, written records of all meetings, interviews, discussions and all other activities or episodes having to do with the issue under investigation were maintained.

1.4. Conflict of Interest & Bias – Definition, Legal Considerations & Guidelines in the Representation of Members:

1.4.1. Definition: A “conflict of interest” occurs where, “ a) a person has a duty to fairly decide or vote on an issue, and, b) there is a reasonable presumption that the person stands to be benefitted or harmed from a certain resolution of the issue.” (CAUT, 1991).

1.4.2. Example Instances: Situations where conflicts of interest arise include, but may not be confined to (CAUT, 1991), instances where the decision makers or voters on issues relating to grievances, or other Association matters,:

- i) stand to benefit or be harmed financially;
- ii) have families or close friends who stand to benefit or be harmed financially;
- iii) have careers or reputations which stand to be advanced or retarded;
- iv) have reputations regarding previous actions which stand to be advanced or retarded;
- v) are known rivals of persons who might be benefitted or harmed by a decision or outcome;
- vi) will or probably will be subject to a decision made by the person whose case is being heard or decided;
- vii) were benefitted or harmed by decisions made by the person whose case is being heard. (CAUT, Undated)

1.4.3. Declaration of Conflict of Interest: It is the duty of any voting or non voting member of the SMUFU Executive and/or the Committee and any other person who may be present at any discussion of any grievance or potential grievance who:

- i) believe that they themselves have an interest in that grievance of a nature reflected in the instances set out in 1.4.2, or
- ii) who believe that another voting or non-voting member or any other person who may be present at such discussion has such an interest,

iii) to declare such interest

1.4.4. Processes for Dealing with Conflict of Interest Declarations: where any conflict of interest or potential conflict of interest declaration is made by any voting, non-voting member or other person pursuant to 1.4.2 & 3 above, then that individual should:

i) abstain from discussion of the matter under consideration except where invited to do so by the Chairperson of the meeting at the request of any member of the meeting on points of clarification, or,

ii) in the case of voting members, abstain from any vote or straw vote taken in that matter, and,

iii) shall take no part in any negotiations or decision making with any party involved in that grievance or potential grievance.

1.4.5. Any member of the SMUFU Executive or the Committee may propose that the member(s) in conflict absent themselves from discussion of the matter in hand. Unless the member(s) voluntarily elect to absent themselves from the discussion of that matter then such a motion must be seconded and discussed according to the Union's rules of order.

The member(s) concerned shall have the right to speak to and discuss the proposition before any vote is taken.

2.0 Roles and Duties:

2.1. The Chair of the Grievance & Arbitration Committee –

2.1.1. Roles: In conjunction with the other members of the Committee, the Chair of the Committee forms the link between individual members and the SMUFU Executive. In issues arising from the Collective Agreement or other sources, the Chair is also the link between the individual member and the university administrators as well as the link between the Committee and the university administrators.

Whilst this does not preclude informal contact between individual members of the bargaining unit and administrators, the Union must guard against "private" arrangements, which may prejudice the interests of any individual member and/or the membership at large. (See also conflict of interest guidelines in 1.4. above).

2.1.2. Duties: There are three basic duties which should be performed by the Chair of the Committee:

i). Dissemination of Information.

It is the duty of the Chair to ensure that members are knowledgeable about, and understand, their rights and duties under the Collective Agreement, Federal and Provincial law, and within the Union, and keep SMUFU Executive informed about ongoing complaints and grievances;

ii). Dealing with Grievances.

The principal duty of the Chair is to manage and aid in the investigation of grievances through the formal stages of the settlement discussion; preparing and presenting formal grievances in accordance with Article 22 of the Collective Agreement.

iii) Contract Negotiation.

The Chair should record any deficiencies in the Collective Agreement for use in future contract negotiations and should promptly bring such deficiencies to the attention of the Executive.

2.2. Members of the Grievance & Arbitration Committee –

2.2.1. The Composition of the Committee

i) In addition to the Chair of the Committee there will be at least four additional members. These will normally consist of one faculty member from the Faculties of Arts, Science and the Sobey School of Business and a representative of the Professional Librarians.

ii) Committee members and alternates will be appointed by the Executive Committee of SMUFU. The Chair's appointment will normally be for a period of four years (renewable). Other members of the committee will normally be appointed for two-year terms (renewable). All appointments to the committee are at the discretion of the Executive.

iii) The Chair may invite other members of the Union as to be ex-officio members of the Committee for any given case. The current President and Past President of SMUFU will normally be ex-officio (non-voting) members of the Committee. The Chair may appoint another member of the Committee as Acting Chair for any particular case when necessary, e.g. for reasons of conflict of interest.

iv) The Chair of the Committee shall be an ex officio (non voting) member of the SMUFU Executive.

v) Voting members of the SMUFU Executive will not also be voting members of the Committee.

2.2.2. Duties and Responsibilities of the Committee-

i) The Committee shall administer and monitor the grievance and arbitration procedures in accord with the Collective Agreement and shall conform to, and be bound by, the normal SMUFU rules of procedure.

ii) The members of the Committee shall endeavour to give fair and effective representation to all SMUFU bargaining unit members in accordance with the Position Statement as set out in 1.1. above and with Section 54A(3) of the Nova Scotia Trade Union Act which states that, "...no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit";

iii) In its deliberations, the Committee should assess the importance of a grievance to both the Association membership and to the University administration by examining such factors as:

a. whether the issue in question violates one or more of the provisions of the Collective Agreement, Federal or Provincial law, past practice or employee rights;

b. whether there has been a serious injustice;

c. legal duty of fair representation;

d. economic significance for the individual;

e. political significance within the Association or the University community or administration;

f. labour relations significance;

g. substantive significance;

h. chance of success and economic significance for the Association. (CAUT, 1991)

ii) The Committee shall report to the Executive through the Chair at each meeting of the Executive and shall include in its report a summary of all outstanding complaints and grievances;

v) With the exception of the Chair of the Committee, and the President of SMUFU, no member of SMUFU or the SMUFU Executive will communicate with any member of the administration about any specific issue pertaining to any grievance or potential grievance unless requested to do so by the Chair.

2.2.3 Members of the Committee, and of the SMUFU Executive, are bound by confidentiality in keeping with the CAUT Policy Statement on Confidentiality in the Grievance Process (<http://www.caut.ca/pages.asp?lang=1&page=258>). For greater clarity, this means that all grievance matters discussed or referred to in the Committee and in the SMUFU Executive shall be held in the strictest of confidence and shall not be discussed with any person outside of the Committee and the Executive at any stage.

2.2.4. Concerned members will not normally be permitted to attend meetings of the Committee but may be invited to make presentations to the Committee at the behest of the Committee or at their own request. In any event, concerned members will not be permitted to remain in the committee meeting during substantive discussion of the issues pertaining to their case.

3.0 The Grievance Process & Decision Procedure

3.1 Grievance – Stage 1 and Stage 2

3.1.1 The Committee will decide on a majority vote whether a grievance is to be recommended to the SMUFU Executive. The SMUFU Executive shall decide by majority vote whether a grievance will be filed. In considering the pursuit of a grievance, the decision criteria set out in Section 2.2.2(iii) will apply added to which the Committee and Executive should consider:

(a) That the matter must be grievable;

(b) That the concerned member wishes to pursue a formal grievance, and/or

(c) That SMUFU wishes to pursue a grievance even though the concerned member may not wish to; i.e. where the infringement of a concerned member's rights may presage the infringement of other persons' rights.

3.1.2 It will be the responsibility of the Chair of the Committee, or another designated member of the Committee, to communicate the Executive's decision to the concerned member. Deliberations of the Committee and the SMUFU Executive are confidential.

3.1.3 If it is the decision of the Executive that a grievance will be pursued, it will be the responsibility of the Chair, or another designated member of the Committee, to put the formal grievance into writing following the accepted format and submit the grievance to the Administration.

3.1.4 If the SMUFU Executive decides not to proceed with the filing of a grievance, the Chair or other designated member of the Committee shall advise the concerned member of its decision as soon as possible. The concerned member shall have 10 working days after notification of the negative decision

within which to give notice of appeal of the decision of the Executive Committee to the President of SMUFU. The President will select an advisory panel of three past-Presidents of SMUFU. The advisory panel shall review the Committee file, discuss the matter with the President and/or the entire Executive, and provide a recommendation to the Executive of SMUFU. In any event, the Chair of the Committee shall have the authority to submit a formal grievance during any appeal process to meet any relevant time limitations in the Collective Agreement to protect the validity of the grievance.

3.1.5 The Chair of the Committee, or another designated member of the Committee, will normally represent SMUFU in meetings with the Administration in the first and second stages of the grievance process.

3.1.6 Any settlement offer will be put to a vote of the SMUFU Executive. The vote will determine whether the grievance is settled or escalated to the next stage.

3.1.7 The Chair will seek authorization from the SMUFU President before seeking legal advice on grievances.

3.1.8 If the SMUFU Executive has not determined whether a grievance shall be submitted, the Chair has the authority to file a grievance if, in his or her opinion, the Executive may not provide a determination on submission of a formal grievance before the relevant time limitations under the Collective Agreement expire.

3.2 Arbitration

3.2.1 The decision to proceed to arbitration shall be taken by the SMUFU Executive on a majority vote. The Executive shall undertake a thorough discussion of the grievance following which the Executive will vote on the decision to take the matter to arbitration, or withdraw the grievance.

3.2.2 In formulating its decision the Executive shall act in a careful, fair and objective manner having regard for:

- i) the significance of the grievance and its consequences for the concerned member(s) and,
- ii) the legitimate interests of the Union in terms of the financial cost of an arbitration, the requirement to protect the collective agreement, the reputation of the association and the interests of all members.

The Executive will also consider the criteria set out in 2.2.2(iii).

3.2.3 If the Executive decides not to proceed with arbitration, the Chair of the Committee shall advise the concerned member of the decision as soon as possible.

4.0 Grievances Pursued by Administration against SMUFU:

Decisions and Procedures –

No oral or written responses should be made to the Administration or any other party in regards to a grievance filed by the Administration. The Administration should be informed that the matter will be investigated and a response made in due course. The Executive will determine the appropriate process on a case-by-case basis.

*Much of this policy was adapted from language provided by Peter Simpson, Assistant Executive Director for CAUT and former President of Laurentian University Faculty Association.

Policy approved in 2013, revised September, 2016.