

**Policy on Grievance and Arbitration Procedures
University of Winnipeg Faculty Association (UWFA)**

This Policy defines the responsibility of the UWFA Executive Director (ED), Grievance Officer (GO), Grievance Committee (GC) and the UWFA Executive Council in respect of grievances and informal disputes pursuant to the collective agreements in force at this time. Unless specified otherwise, *Membership* or *Members* in this document refers to Members of the UWFA, as defined by its Constitution and Bylaws, and/or Members of any of its bargaining units.

Members are encouraged to peruse the Duty of Fair Representation section below in order to understand their respective rights as grievers. The attached grievance form and duty of fair representation form are part of this policy

1 General

1.1 A **dispute** is a **complaint or a grievance** regarding the interpretation, application, administration, operation or alleged violation of the collective agreement in force.

1.2 The handling of all disputes which might arise between the UWFA or any of its Members, and the Employer shall be carried out pursuant to the collective agreements in force and the provisions of this Policy.

1.3 A **complaint** is a dispute that may be resolved without reference to the grievance procedure. Every effort shall be made to encourage and to reach an informal resolution of a complaint before it becomes necessary to file a formal grievance with the Employer. A **grievance** is a formalized procedure under the collective agreement which alleges that the employer has failed to uphold its collective agreement obligation with the UWFA.

1.4 The **Executive Director** (ED) of the UWFA is responsible for initiating all written advocacy including the filing of all grievances and subsequent steps in grievances on behalf of the UWFA

1.5 A **Grievance Officer** (GO) shall be appointed to handle the oral advocacy of all grievances undertaken by the UWFA. The GO shall also chair the **Grievance Committee** (GC) of the UWFA.

1.6 The GC shall consist of the ED, the GO and the Vice-President of UWFA.

1.7 All appointments, renewals of appointments and term of appointment for the GO and GC shall be made by the Executive Council, at the discretion of the Executive Council.

1.8 The UWFA holds carriage rights over all disputes between the UWFA, or any of its Members, and the Employer.

Role and functions of UWFA Officials

2.1 The ED shall oversee the handling of all disputes and related files. The ED shall be the primary liaison between the GO and the Executive Council on all Association activities that arise out of the *Grievance and Arbitration* section of the collective agreements in force.

2.2 For disputes which may lead to individual, group or policy grievances, the ED shall have the authority to negotiate with the Employer on behalf of the Member(s) involved regarding any informal settlement that may be reached. Any such settlement must be consistent with the terms of the collective agreements in force.

2.3 The ED is the primary UWFA employee charged with managing disputes and has duties of oversight including the power:

- a)** To conduct a preliminary investigation of all disputes fairly, without discrimination and in a non-arbitrary fashion;
- b)** To negotiate with the Employer regarding the possible resolution of any disputes;
- c)** To determine whether the Employer has violated the collective agreements in force;
- d)** To initiate complaints to the Employer;
- e)** To file all grievances and formal documentation with the Employer pursuant to the collective agreements in force;
- f)** To advise Members of their rights and options under the collective agreements in force, and to provide oral advocacy on behalf of a Member as appropriate; and
- g)** To have the authority to negotiate with the Employer on behalf of the Executive Council regarding any informal settlement that may be reached.

2.4 The GO shall participate in UWFA activities that arise out of the *Grievance and Arbitration* section of the collective agreements in force, and shall have the following functions:

- a)** To advocate orally for grievors and to assist the ED in handling disputes;
- b)** Together with the ED, to recommend to Members any action to be taken as provided for by the *Grievance and Arbitration* section of the collective agreements in force;
- c)** To report on the activities of the GC to the Executive Council and prior to any arbitration to seek approval and advise the Executive Council of its rights and of the possible courses of action available to deal with the arbitration;
- d)** To identify and recommend to the Executive Council any areas of the collective agreements in which improvements should be sought in negotiations; and
- e)** To report to the Executive Council any situation arising from a dispute which, in the opinion of the GO and/or ED violates a collective agreement.

2.5 When the ED and/or the GO believe that a collective agreement in force has been breached by the employer and may give rise to a dispute, the ED and GO shall, at all times, provide fair representation for the UWFA and its Members, pursuant to the collective agreements in force and the provisions of this policy. The ED and/or the GO shall give a report concerning major grievance issues at UWFA's Annual General Meeting excluding confidential personal information.

2.6 The ED and/or the GO shall keep the UWFA's President advised, in an open, direct, and timely way, regarding the activities in relation to the *Grievance and Arbitration* section of the collective agreements in force.

2.7 Whenever a dispute is considered on behalf of an individual Member or group of Members which may have broader implications for the UWFA, its Membership or its collective agreements, the ED and/or the GO shall report to the Executive Council regarding the potential for such broader implications so that the Executive Council may

consider any actions which it might take on behalf of the UWFA.

2.8 For disputes which may lead to individual, group or policy grievances, the ED in consultation with the GO, shall have the general authority to decide whether or not a matter shall proceed to grievance, to establish the terms of redress for the grievance and to determine whether a proposed final settlement in a matter shall be agreed to with the Employer. In the event of disagreement between the ED and the GO, or between them and the grievers(s), the GC shall convene in order to determine how to proceed.

2.9 The ED and/or the GO shall have access to the Canadian Association of University Teachers (CAUT) and, upon the President's approval, to the UWFA's legal counsel.

Grievance Committee

3.1 The GC is an advisory body to the Executive Council. The GC shall convene to advise on disputes when the issue of whether the Employer has violated the collective agreements in force is unclear, when the remediation of disputes involves complex disputes which affect the rights of multiple Members, when there is disagreement with between the ED and GO as to how to proceed, or when a Member disagrees with the decisions of the ED or GO on a substantive matter.

3.2 When dealing with disputes involving multiple Members the GC may consider that each Member may require distinct and discrete advocacy throughout the dispute process and may seek to appoint acting UWFA officers to advocate for each Member, in confidence with respect to the other Members involved.

3.3 When a Member questions the decision of the ED or GO in respect of a dispute, the GC shall convene to determine how to proceed. A written record shall be kept of decisions taken by the GC, along with the accompanying reasons. The appeals process is delineated below in article 8.

General Rules

4.1 Grievances shall not be filed without the written approval of the Member(s) involved. Any settlement that may be reached must be consistent with the terms of the collective agreement in force.

4.2 In all grievance matters, the Executive Council shall have the authority to decide whether or not a matter shall proceed to arbitration.

Duty to Fair Representation

5.1 The UWFA's primary obligation is to guard the terms and conditions of the collective agreements it endorses. The power conferred on the UWFA to act as representative for its Members entails a corresponding obligation on the UWFA to fairly and properly represent all Members. However the UWFA is required not only to fairly represent grieving Members, but also to preserve the rights and entitlements of the collective, as well as the interests of the UWFA more broadly. Grievance representation is not to be understood as solicitor-client relationship, but rather as an institutional and collegial relationship of advocacy. The UWFA, through the ED and the GO demand fair representation, but this is to be understood as fairness in the totality of the circumstances,

including:

- a) the need to establish a reasonably just result for a grieving Member;
- b) the need to respect the entitlements of the collective;
- c) the need to preserve the goals and viability of the UWFA;
- d) the impact of the dispute process on the financial exigency of the UWFA; and
- e) the understanding that resolving disputes often requires compromises in remediating matters and that the UWFA cannot guarantee complete redress for grieving Members' demands.

5.2 The representation by the UWFA must be fair and genuine, and must be undertaken with integrity and competence, without gross negligence and without hostility toward Members.

5.3 To ensure fair, just and reasonable treatment for all Members, there shall be no discrimination practiced with respect to any Member on the basis of age, race, colour, ethnicity, national origin, sex, sexual orientation, marital status or physical or mental disability.

5.4 Fair representation includes:

- a) That an adequate investigation of the facts has been conducted and that the informal stage of the process has been promptly and exhaustively pursued in an attempt to reach a resolution in the matter;
- b) That internal procedures were adequately followed in the processing of each case;
- c) That best efforts in light of the UWFA's resources were made to act within the time limits specified in the collective agreements in force;
- d) That when informed legal advice is sought that the UWFA reasonably responded to that advice;
- e) That Members are reasonably informed of communications which might affect them;
- f) That the UWFA keeps in its main office, so far as is reasonably possible, written records of all meetings, interviews, discussions and all other activities or episodes having to do with disputes; and,
- g) That reasonable confidentiality, where practicable, is maintained in the dispute process

Training

6.1 Reasonable efforts shall be made to ensure that the ED and the GO receive grievance training through attendance at national training conferences such as the Senior Grievance Officers Workshop organized annually by CAUT.

Records Keeping

7.1 While respecting the requirement of confidentiality, it is the responsibility of any one investigating a dispute, whether formal or informal, to document reasonably all matters and to maintain, with due care and in strictest confidence, up-to-date files, to be kept at the UWFA Office.

Appeals and Jurisdiction

8.1 . UWFA has no jurisdiction to entertain grievances or appeals on matters relating to the exercise of academic judgment by peers when such judgment is rendered through a process of self governance unless the process that violated the collective agreement, was indicative of a wrongful management decision, or was the result of manifest procedural unfairness that was itself a violation of the collective agreement.

8.2 A Member who believes that the collective agreement has been violated by the employer may lodge a complaint with the ED. A written record shall be made of the complaint. Upon preliminary investigation, the ED, in consultation with the GO shall decide whether or not a grievance will be filed with the employer. The Member shall be informed of the formal filing of a grievance by the ED, and the ED shall obtain a Member's written consent prior to filing a grievance. Where the ED and the GO agree that a grievance ought not to be filed, the ED shall write the Member to inform the Member that UWFA does not believe a grievance is warranted.

8.2 When a Member disagrees with a substantive decision of the ED or the GO, the Member may request that the GC convene to make a determination on the matter within 5 working days of a Member's request, The GC shall provide written reasons for its decision on the matter within 5 working days of meeting. A grievor may appeal a substantive decision of the GC to the Executive Council.

8.3 An appeal must be filed in writing with the President of the Executive within 5 working days of notice of the decision of the GC. The President must convene an appellate hearing of the Executive Council within 10 business days of receiving the appeal.

8.4 The Executive Council shall only hear appeals within UWFA's jurisdiction (8.1) on substantive decisions of the GC. If the Executive Council decides that a Member is appealing a matter beyond its jurisdiction or is not appealing a substantive decision, it shall not hear an appeal.

8.5 Substantive decisions which may be appealed by a Member to the Executive Council are:

- a) A decision not to initiate a grievance or raise a dispute with the Employer;
- b) A decision to refuse to grieve a matter any further in the procedural steps outlined in the collective agreements in force;
- c) A decision to abandon a dispute at any point in the process;
- d) A decision to refuse to move a process to arbitration;
- e) A decision to accept or reject an offer of remediation by the Employer; or,
- f) A decision that the Member believes to be based on harassment or discrimination on prohibited statutory grounds such age, race, colour, ethnicity, national origin, sex, sexual orientation, marital status or physical or mental disability.

8.6 A grievor may only appeal decisions listed in 8.5, and may not grieve **non substantive issues** including but not limited to grievance/dispute strategy, grievance/dispute administration, or allocation of UWFA resources in the dispute or grievance

8.6 Grievance/dispute appeals shall be successful only when the grievor can demonstrate that the GC made a patently unreasonable decision in the circumstances of the grievance or dispute.

8.7 Grievance/dispute appeals shall be heard by at least 5 voting Executive Council Members. The following steps outlines the general appeals process:

- a) Upon receipt of the appeal, the President shall distribute to the Executive Council the written appeal of the Member, as well as the written record of the GC's decision containing the accompanying reasons
- b) At the hearing, the appellate shall have ten minutes to present the basis of her/his appeal to the Committee;
- c) The ED and/or the GO shall have ten minutes to present the reasons for the GC's decision;
- d) The Executive Council shall have twenty minutes to ask questions of the parties;
- e) The Executive Council shall exclude the parties from the room and deliberate in order to make a decision; and,
- f) A written notice of the decision containing reasons shall be provided to the parties within 5 business days.

UWFA GRIEVANCE FORM

Employee's Name _____

Phone _____

Department/School _____

Employee Address _____

Street/PO Box

Town *Province* *Postal Code*

1. Nature of the Dispute:

2. Section(s) of the Agreement that may have been violated:

3. Facts of the Case: (attach separate page, if necessary)

4. Remedy sought:

5. Results of informal stage of settlement if applicable:

6. I have read the accompanying form on duty of fair representation. I agree to allow the UWFA to grieve this complaint pending the results of UWFA's initial investigation,
Signature of Employee

Signature *Date*

7. Signature of Executive Director

Signature *Date*

Adapted from the November 2003 PSAC Education Duty of Fair Representation Kit

UWFA's Griever Form on Duty of Fair Representation

You have asked that UWFA represent you in a grievance against the employer. You should be aware that the UWFA owes you a duty of fair representation. The following is a brief overview of the relevant law in regards to the content of that duty:

- (i) The duty of fair representation applies to issues between an individual bargaining unit Member and the union concerning representation of the employee in relation to the employer.
- (ii) The duty of fair representation does not normally apply to internal union matters, whether or not they relate to representation. Generally speaking, a DFR complaint cannot be used as a vehicle to review the internal affairs of the union on issues such as union discipline, union procedures with respect to determining union representatives or union decisions on the payment of representation expenses.
- (iii) The duty of fair representation in most labour jurisdictions covers matters with respect to a union's administration of the collective agreement (i.e., the grievance and arbitration process).
- (iv) The duty of fair representation applies to all Members of the bargaining unit. This means Members in good standing. In the case of someone who changes bargaining units (or has been occupying a position excluded from the bargaining unit), the duty exists if the matter at issue arose at the time the person was a Member of a bargaining unit.
- (v) The duty of fair representation does not guarantee that a union will represent a Member of the bargaining unit in all cases. DFR recognizes that a union must balance the needs of the individual with the needs of the Membership as a whole, and in doing so, the union may find that it is in the best interests of the Membership as a whole to not support a particular grievance. The duty of fair representation requires simply that the decision be made honestly, in a manner that is not arbitrary, discriminatory or in bad faith.
- (vi) The interests of the Membership as a whole should not be confused with the "interests of the majority". The duty of fair representation is in addition to our responsibilities under the respective human rights legislation. While our conduct may satisfy the statutory requirements of the duty of fair representation, it may not meet the standards demanded by human rights legislation if there is a discriminatory impact of our actions on one or more persons from a protected group. This includes the duty to accommodate.
- (vii) The particular circumstances will dictate whether or not treatment is found to be arbitrary, discriminatory or in bad faith. Conduct is "arbitrary" if it is superficial,

indifferent or in reckless disregard of an individual's interests. "Discriminatory" practices are when Members of the bargaining unit are dealt with unequally on account of factors such as race or sex or through simple personal favouritism, unless there are valid reasons for doing so. "Bad faith" decisions are those based on ill will, hostility, revenge or dishonesty.

I have read the above, and understand that I am entitled to fair representation and the protections and limitations of this duty under the laws of Manitoba and Canada.

Member Name: _____

Date:

UWFA Representative: _____

Date:

Frequently Asked Questions About UWFA's Duties (see <http://www.gov.mb.ca/labour/labbrd/index.html>)

WHAT IS THE NATURE OF THE UNION'S DUTY IN REPRESENTING EMPLOYEES COVERED BY A COLLECTIVE AGREEMENT?

The Labour Relations Act imposes a duty upon a union to fairly represent all of the employees in the bargaining unit covered by the collective agreement, whether or not the employees are union Members, in any matter arising out of the administration of the collective agreement. It is an unfair labour practice for a union to represent employees in a manner that is arbitrary, discriminatory, or in bad faith, when they are administering a collective agreement. In dismissal cases, the union will be committing an unfair labour practice if it acts negligently. If, for example, an employee's complaint concerns the alleged mishandling of a grievance, a breach of that duty will not be established if the employees simply show that the union could have, or even should have, treated the grievance differently. It is not whether the union was right or wrong that is the concern of the Board, but whether the union's actions were motivated by bad faith, whether it was discriminating against the employee or whether it acted in an arbitrary manner, and, in a dismissal case, whether the union failed to take reasonable care.

CAN A UNION REFUSE TO PROCESS A GRIEVANCE OR REFER IT TO ARBITRATION?

A union is entitled to make decisions that may adversely affect some employees in the bargaining unit as long as it is not acting on improper motives and honestly considers the matter. The duty of fair representation does not impose an absolute duty on a union to carry every grievance filed by an employee to arbitration.

WHAT FACTORS MUST A UNION CONSIDER WHEN DECIDING WHETHER OR NOT TO PROCESS A GRIEVANCE OR REFER IT TO ARBITRATION?

The union is entitled to consider many factors, including the merits of a grievance, the relative chances of success and the interests of the bargaining unit as a whole. Union officials may make honest mistakes or exercise poor judgement but these occurrences may not in themselves be a violation of **The Labour Relations Act**. The standard of care required will vary according to the seriousness of the consequences and the nature of the job interest at stake.

WHAT CAN AN EMPLOYEE DO IF HE OR SHE FEELS THE UNION DID NOT HANDLE THE GRIEVANCE PROPERLY?

As the exclusive bargaining agent for the employees in the unit, the union has the right to settle all grievances, to decide whether a grievance should go to arbitration, and to decide how a grievance should be presented at arbitration. The union need not take every grievance through to arbitration simply because an aggrieved employee requests that this be done, but the union must honestly consider the matter and not act in a manner that is arbitrary, discriminatory or in bad faith.

If an employee is unhappy with the way the union has handled the grievance he or she might be able to appeal the union's decision internally if the union's rules or constitution allow such an appeal. Apart from any such internal union appeal an employee has no general right to appeal a union's decision. If an employee believes that the manner in which the union has handled the grievance constitutes an unfair labour practice contrary to section 20 of **The Labour Relations Act**, he/she may file an application with the Board.

WHAT ACTIONS ON THE PART OF A UNION WILL BE CONSIDERED ARBITRARY, DISCRIMINATORY OR IN BAD FAITH?

Arbitrary refers to the absence in decision making of those factors which should be present. Unions have been found to act arbitrarily when they completely ignore a grievance or where they treat a matter in an indifferent fashion. However, it is not arbitrary for a union to put its mind to a complaint or grievance and honestly decide not to take the complaint or grievance further.

The duty not to act in a **discriminatory** manner protects against the making of distinctions between employees and groups of employees for reasons that have no relevance to legitimate collective bargaining concerns. A union is only entitled to treat Members of a bargaining unit differently where it has valid reasons for doing so.

The **bad faith** requirement ensures that the union will act honestly and free of any personal animosity toward Members of the bargaining unit. A union acts in bad faith when its conduct is motivated by ill-will, hostility, or for some reason which has nothing to do with the matter at hand.