



WLUFA
Wilfrid Laurier University
Faculty Association

PROCEDURES

TO BE FOLLOWED WHEN DECIDING WHETHER A GRIEVANCE SHOULD BE TAKEN TO ARBITRATION

1. Where a grievance concerns an individual Member or group of Members, the individual or group of Members concerned may make a formal written request to the Association, asking that it consider taking the specific case to arbitration. The individual Member or group of Members concerned must also give a written consent allowing the Grievance Committee, the Executive Committee and their advisors to review his/her/their official file(s) and any other documents pertinent to the grievance.
2. Where such a request and consent have been received, the Grievance Coordinator shall place the request on the agenda of the next regularly scheduled Grievance Committee meeting, or if the matter is urgent, call a special Grievance Committee meeting. The Grievance Committee shall give full consideration to the case in question, and shall make a motion, in the affirmative, to recommend to the WLUFA Executive Committee that the grievance be sent to arbitration. If the motion is defeated by the Grievance Committee, the recommendation that goes to the Executive Committee will be that the grievance not be sent to arbitration.
3. Where a request for arbitration and the necessary consent have been received, the President of the Association shall call a meeting of the Executive, together with the Grievance Coordinator and the Grievance Officer handling the case in question. The grievor(s) shall be invited to appear before the Executive to make representations on the request for arbitration. The grievor(s) shall have the right to be accompanied by a representative, who shall not be a member of the Executive.
4. The Association may, at its discretion, seek a legal opinion regarding the request for arbitration. If such an opinion is sought, the Executive Committee shall include consideration of this opinion in its deliberations.
5. Prior to the meeting, the Grievance Coordinator shall provide the Executive with copies of all file material relevant to the particular grievance, including the legal opinion, if applicable.
6. The meeting of the Executive shall be chaired by the President of the Association, unless he/she is the Grievance Officer, in which case the meeting shall be chaired by another officer of the Executive.
7. After the meeting has been called to order, the Chair shall first review with the Executive the following principles governing the duty of a union to fairly represent its members.

“DUTY OF FAIR REPRESENTATION”
Reference: OLRB Information Bulletin No. 12 (2014)

*“The “duty of fair representation” means that a trade union shall not act in a manner that is **arbitrary, discriminatory** or in **bad faith** in representing the Bargaining Unit Members.*

*“A union acts **arbitrarily** when handling a grievance if its conduct is superficial, capricious, indifferent, or in reckless disregard of an employee's interests.*

*“A union acts in a **discriminatory** manner if factors such as race, religion, sex, gender identity, sexual orientation, age, or physical or mental disability influence the way the union handles an application or grievance.*

*“A union acts in **bad faith** if it makes decisions that are motivated by ill-will. If an employee can prove that a decision is influenced by personal hostility, revenge or dishonesty, the union will be found to have violated provincial legislation.*

“Inadvertent errors or poor judgment by the union are not usually seen to be arbitrary, but flagrant errors or gross negligence may be found to be arbitrary. In addition, the union does not always have to be correct in its assessment of a grievance. Union officials can make honest mistakes or exercise poor judgment, without necessarily violating provincial legislation.

“A Member has the right to have the matter honestly considered by the Association, but they cannot insist that their grievance be processed on to arbitration. The final decision on how far a grievance should be processed, and whether or not a grievance should go to arbitration, is made by WLUFAs and not the grievor. The Ontario Labour Relations Act does not require a trade union to carry a grievance to arbitration simply because an employee wishes that this be done. A union can consider any legitimate factors other than the interests of the grievor(s) and the union must weigh these factors fairly against the wishes of the grievor(s). (See #10 below.)”

8. The Chair shall then ask the Grievance Officer to present and review the file(s) and the relevant sections of the Collective Agreement relating to the case in question. Then the grievor(s) (if present) shall be invited to make a presentation.
9. After the aforementioned presentation(s), the Executive shall undertake a thorough discussion of the grievance and the case, with the advice of the Grievance Coordinator, who shall provide reasons for the Grievance Committee's recommendation, and the Grievance Officer. The grievor(s) and representative shall not be present for this discussion.
10. In formulating its opinion, the Executive shall act in a careful, fair and objective fashion, bearing in mind:
 - (a) the significance of the grievance and its consequences for the Member(s) on the one hand, and
 - (b) the legitimate interests of the Association on the other.

Under (a) the Executive shall exercise particular care where the grievance may threaten a Member's career. Under (b) the Executive shall consider the potential financial cost of arbitration, the requirement to protect the Collective Agreement and the reputation of the Association, in the interests of all Members.

11. The decision as to whether to send the grievance to arbitration shall be made by secret ballot by a simple majority vote of the Executive. A member of the Executive who is a grievor shall not vote. The Chair shall not vote except in the case of the need to break a tie. The Grievance Coordinator and Grievance Officer shall not vote except in the case where either of them is also an elected member of the Executive.
12. The motion shall always be presented in the affirmative.
13. After the vote has been concluded, a numerical record of the vote shall be kept together with a written statement of reasons for the decision.
14. The Executive Committee's decision shall be final.

Adopted by the Executive
February, 2017