FACULTY ASSOCIATION HANDBOOK

FOR

GRIEVANCE OFFICERS

Based on draft guidelines in
the CAUT Handbook on Contract
Administration
(Prepared October 25, 1977)

Revised: August, 1979 and
January, 1984 and May, 1988

(perdocs\handbk.go)

ROLE OF THE GRIEVANCE OFFICERS

The Grievance Officer is the link between individual members and the Association Grievance Committee. In matters arising from the Collective Agreement, he/she is also the link between the individual and the university administrators. This does not rule out informal contact between individual members of the bargaining unit and administrators though the Association must guard against "private" arrangements which may prejudice the interests of the individual and/or the membership.

The Grievance Officer should perform three main roles:

A. Information

It is the function of the Grievance Officer to assist members in understanding their rights and duties under the Collective Agreement and within the Association. He/she should also keep the Association Grievance Committee informed of the views and concerns of the membership.

B. Dealing with Grievances

The principal role of the Grievance Officer is to aid in the presentation of the grievances in accordance with step 1 of Article 39 of the Collective Agreement and assist the Faculty Association Grievance Committee at steps 2 and 3.

The Grievance Officer must be prepared to identify breaches of the Collective Agreement. In performing his/her duties, he/she must protect the interests of all members of the Faculty, not merely members of the Association. He/she must inform the Grievance Committee of all settlements made during the grievance process.

C. Negotiation

The Grievance Officer should express in writing, the needs of members to the Contract Committee. The Grievance Officer should be aware particularly of deficiencies in the Collective Agreement that came to light during the processing of grievances.

BASIC DUTIES

The Grievance Officer must know:

(a) the grievance procedures outlined in Article 39 and the time limits for filing a grievance

He/she should be familiar with:

(b) the provisions set out in the Collective Agreement

(c) past practices and acquired rights

He/she should become acquainted when necessary, with

(d) University By-laws and regulations

The Grievance Officer might also need to consult the Grievance Committee on:

(a) past decisions reached in grievance procedure and in arbitration

(c) sources of information necessary for processing grievances.

The Grievance Officer should be skillful in:

(a) analyzing a grievance

(b) interviewing witnesses

(c) preparing a case

(d) presenting a case to the Department Head and Dean.

PROCESSING THE GRIEVANCE

Whenever a Grievance Officer is contacted by a member(s) to represent him/her in a grievance the methods outlined in this section should be followed. Please note the exclusions from the grievance and arbitration procedure under Article 39.12 of the Agreement. It is possible that a valid grievance may arise in the course of proceedings listed in Article 39.14 which would not necessarily be excluded from the grievance procedure. If you are in doubt as to whether or not a grievance is excluded please contact the Faculty Association Office for advice.

Fact-gathering

When a Grievance Officer is involved in a grievance procedure he/she should keep in mind that facts are the substance of any grievance and the fact-gathering process is of fundamental importance. Facts are available from two sources - - witnesses and documents. The individual grievor will normally be the first source of factual information. In gathering the facts, the Grievance Officer should put all points in writing even if the grievance is not presented. The value of writing all grievances is that it:

(i) provides a record for the future

(ii) exposes bad clauses or gaps in the Agreement

(iii) exposes bad management

(iv) requires the member to examine the substance of his/her complaint and sign it; this can serve as a test of the seriousness of the complaints.

In obtaining the facts from the grievor, the Grievance Officer may find it useful to refer to the five W's below to ensure completeness while keeping in mind what action may be necessary to place the complainant or grievor in exactly the same position he/she would have been had the incident not occurred.

WHO is involved; identify grievor by name, department, etc.

WHEN the event(s) occurred.

WHERE the incidents described in the grievance took place

WHY the grievor is grieving. Identify the subject matter of the grievance and the reason why it is being filed and the specific clauses of the By-laws, contract clauses or practice that gives rise to the grievance

WHAT act of omission or commission caused the grievance

In obtaining evidence, the Grievance Officer should concentrate on recording facts, <u>not arguments.</u> However, it should be realized that letting the grievor "sound off" may have therapeutic value. On the other hand, <u>the matter can only be taken further on the basis of facts</u>.

Having interviewed the grievor, the Grievance Officer may be able to determine quickly that the matter is not a legitimate grievance; that is, it is not a breach of the Agreement, past practice or Senate By-law. The Grievance Officer should explain the reasons to the member and suggest a possible alternative route to obtain satisfaction. However, if the grievor insists that the matter be referred to the Grievance Committee, he/she should do so.

If the facts gathered from the grievor reveal prima facie grounds for a grievance, the Grievance Officer should attempt to seek corroboration from other witnesses and from available documents. Documents which may be relevant include:

Collective Agreement
Memoranda of settlement
by-laws and regulations of the university
correspondence between grievor and administrators

letters of appointment
past settlements of grievances
past arbitration decisions
minutes of Board, Senate, Departmental meetings, etc.
grievor's personal file
* copies of workloads of faculty are on file at the Association House.

Naturally only a few such documents may be relevant in any one grievance but all should be considered as possible sources of fact.

Analyzing the Grievance

Having gathered the relevant facts, the Grievance Officer should proceed to analyze the grievance. It is of particular importance to identify the cause of the grievance as this will determine:

(a) the nature of evidence and argument required;

(b) the chances of settling the matter internally;

(c) the importance of the grievance to the individual or to the Association.

The cause of a grievance may be one or more of the following:

1. Conflict in interpretation of unclear contract language. Lack of clarity may be due to either:

   (i) ambiguous language in a particular clause or

   (ii) conflicting clauses in the Agreement

2. Alleged failure to implement clear contract language.

3. Absence of contract provision but alleged management breach of past practice or infringement of acquired rights.

4. Alleged failure of the administration to follow prescribed procedure.

5. Alleged unreasonable, arbitrary or capricious action by the administration.

6. Breach of employment legislation, such as the Human Rights Code.

7. Breach of university by-laws, rules or regulations.

8. Failure to implement arbitration award.

9. Other...

If none of the foregoing is relevant, it is likely that the Grievance Officer will find it necessary to drop the matter or to seek or suggest settlement in avenues outside of the grievance procedure; e.g. at the next round of negotiations, at faculty council meetings or by informal pressure on the Department Chair or the Dean.

It should be made clear to the grievor of his/her right to appeal to the Executive and Council of the Faculty Association. If the Association declines to support a case the grievor may complain to the Ontario Labour Relations Board. All potential grievances should be considered with care.

In the process of analysis, the Grievance Officer may also identify unfounded or frivolous grievances and be obliged to make this known to the grievor.

When a grievance is thought to exist, the Grievance Officer should be prepared to aid in the presentation of the grievance in accordance with the steps of Article 39. Before any grievance is presented to the administration, the Grievance Officer should do the following things:

1. obtain all the relevant facts and documents from the grievor;

2. insure that corroborating evidence has been obtained from other members or administrators (where possible);

3. insure that the contract, Senate regulations, etc. are fully understood;

4. insure that all contract requirements have been observed, including time limits;

5. prepare a clear record of facts (sample Grievance Officer factsheet is attached);

6. complete the "Grievance Form" (see sample attached);

7. separate the facts and prepare a clear **concise** case;

8. fully explain the grievance process to the grievor.

If the grievance is a matter of discipline, always have the grievor obtain his/her past disciplinary record. If the matter is one of evaluation or assessment, all facts relevant to the member's qualifications such as previous experience, publications, committee work, service to the Association, university and professional associations, letters of reference or commendation, etc. should be obtained. Letters may have to be solicited from persons familiar with the grievor's work.

It is important that all facts relevant to the case are presented at the earliest possible step in the grievance procedure, and that no attempt is made to withhold facts for dramatic

revelation in the later stages of the grievance procedure. <u>All the relevant articles of the Collective Agreement should be cited at the outset</u>.

All statements of facts from the grievor should be signed by the grievor (see item 7 above). Facts and arguments should be supported, where possible, by contract language, past practice, previous grievance settlement or previous arbitration awards.

In preparing the case, the following chronology will prove useful:

1. Statement of facts. Raise no contentions and present no arguments but merely report what has occurred.

2. Response to all contentions raised by administrators to date whether they are verbal or in writing.

3. Supporting argument raising contentions in light of the facts, contract language, past practice, arbitration, etc.

Guidelines for the Grievance Officer in Presenting the Grievance to the Department Head and Dean

1. If the grievor has requested the Grievance Officer to be his/her representative under Article 39.06, then the Grievance Officer should insist on being recognized as such. It is his/her right to be present at all grievance talks with the Department Head. The Grievance Committee may also call upon the officer to represent the grievor at step 2 in which case the officer has the right to be present at such talks with the Dean.

2. Do not be side-tracked or by-passed by the administrator or by the grievor. Even where informal settlement is possible without your presence you should be kept informed of the outcome.

3. Insist on a response within the time limits as set out in Article 39.06.

4. Do not by-pass the Department Head but, if he/she is unreasonable or fails to respond, move expeditiously to the next step by contacting the Faculty Association office to have the grievance considered by the Grievance Committee.

5. Do not trade grievances. Tackle each case on its own merits.

6. Listen to the administrator's case. Do not talk too much.

7. Check any fact or allegation raised by the administrator <u>prior</u> to responding to it.

8. Hunt for evidence negative to the case both in preparation and in discussion

with the administration.

9. Co-operate with the Department Head and Dean but do not jeopardize the grievor's chance for a settlement favourable to him/her.

10. Insist on a retroactive settlement and a full remedy.

11. Ensure that the grievor is always informed of the progress being made.

12. Keep the Association office informed of the progress at step 1 and check out the proposed settlements.

13. Discourage individuals from taking up their own grievances as this can have adverse repercussions on the rights of other members.

14. Report all contract violations to the Grievance Committee whether or not the disadvantaged member will support you. (If you do not enforce your rights you may be precluded from doing so at some later date.)

15. Inform the Department Head of your intention to take the matter to the next step of the procedure in the event of a failure to settle the matter. Keep in mind that the Grievance Committee decides whether or not to support the grievance to the step 2 and 3 levels.

16. Record carefully the administration's arguments and any new evidence raised by the administration.

17. In cases where a Grievance Officer is handling a case at step 2 (where resolution involves a written agreement to be signed by both parties), the Grievance Officer should not sign immediately, but should convey the documents to the Faculty Association office for submission to the Grievance Committee for approval.

THE FACULTY ASSOCIATION OF THE UNIVERSITY OF WINDSOR

GRIEVANCE OFFICER FACTSHEET

Confidential

****

NOTE: Grievance Officers should carefully read the Grievance Officer's Handbook before completing this form.

Prepared by _____
Grievance Officer - (print or type)

A. **Who is complaining or Grieving?**

Name _____

Department_____Phone_____

Faculty _____

Home Address and Telephone _____

_____

Name of Dean/Director _____

Who are the witnesses willing to testify? (name, address, phone)

_____

_____

_____

B. **What is the Complaint or Grievance?**

C. **When did the Act or Omission Occur?**(give exact date (s))

D. **Where did it Occur?** (if this has a bearing on the matter)

E. **Why is this considered to be a complaint or grievance?** (State the Article(s) and relevant clauses, where appropriate in the Agreement related to the matter)

F. **Corrective Action Requested.** (that action necessary to place the complaintant or grievor in exactly the same position he/she would have been had the incident not occurred.)

G. **List relevant documentation**

Signature of Grievance Officer _____

Signature of Grievor _____

Date _____

****

Results of Complaint Stage.