Grievance Policy

Category: Executive Board Representation
Date last Revised: November 2024
Scheduled for Review: Spring 2026

I. Overview

This policy details each step of the grievance process and the related concerns around Duty of Fair Representation, Confidentiality, and training. Individuals involved in the grievance process are required to have a comprehensive understanding of this policy and related policies (e.g. the Conflict of Interest and Apprehension of Bias Policy and Confidentiality Policy).

II. Duty of Fair Representation

a. The Alberta Labour Relations Board "Bulletin #18—The Duty of Fair Representation" states:

> "Unions have a large amount of discretion when they deal with grievances. For example, unions may settle or drop grievances even if the affected employee disagrees. To counterbalance this power, the *Labour Relations Code* requires unions to fairly treat all members of a bargaining unit. . . . This duty of fair representation requires unions to exercise this power in good faith. This usually means unions must carefully examine grievances. The union must also consider the significance of the case and its consequences for the union and the employee. The representation by the union must be fair, genuine and not merely apparent. The union must act with integrity and competence as well as without serious or major negligence. The union must act without hostility towards the employee. This also means the union's decision must not be arbitrary, capricious, discriminatory or wrongful."[1]

i. The Association, and no person acting on behalf of the Association, shall deny an employee or former employee who is or was in the bargaining unit the right to be represented fairly by the Association with respect to the employee's or former employee's rights under the Collective Agreement. This duty of fair representation includes that

   a) The Association must not be arbitrary,
   b) The Association must not be capricious,
   c) The Association must not discriminate, and
   d) The Association must not act in bad faith.
   e)

ii. Conduct in the processing of grievances shall be reasonable, equitable, and carried out in good faith. The Association must avoid superficial consideration of grievances and must not arbitrarily ignore a meritorious grievance or process; however, individual members do not have an absolute right to advance grievances past Step 1.

iii. Members of the Grievance Committee shall act in accordance with the Grievance Procedure article of the current Collective Agreement, the Grievance Committee article

[1] Alberta Labour Relations Board. "Information Bulletin #18. The Duty of Fair Representation." Rev. January 15, 2015. www.alrb.gov.ab.ca/bulletins/18bulletin.html.

of the Bylaws, and this Policy.

iv. The Association, through the President, shall seek legal advice at or in advance of any stage of the grievance process where consultation with legal counsel is deemed appropriate by the President in consultation with the Labour Relations Officer (LRO), the Senior Grievance and Workplace Wellness Officer (SGWWO), the Grievance Committee, or the Executive Board.

III. Confidentiality in the Grievance Process

i. Confidentiality benefits the grievance process and therefore all Members and the Association as a whole. It ensures that Members feel free to discuss with the Association all aspects of their concerns without fear that the information will be improperly disclosed. An assurance of confidentiality encourages honesty and candour in Members sothe Association can provide good advice and effectively defend the Collective Agreement.

ii. The Association owes a duty of confidentiality to Members who bring forward complaints about possible grievances. All communications between the Association and the Member that relate to the complaint must not be disclosed outside of the Association, including to the University, without the consent of the Member, and only in accordance with this Policy and Appendix I. All communication related to grievances must originate in a confidence that it will not be disclosed. Members must be informed that, for a grievance to proceed, relevant information will have to be discussed with the University, and that if the matter is decided by an arbitrator all relevant aspects of the case typically will become part of the public record, including searchable arbitration decision databases.

iii. Confidentiality does not preclude the sharing of relevant information, as needed, within the Association by those with grievance-handling authority. This is inclusive of the Executive Board, the Grievance Committee, Associationstaff, and legal counsel.

iv. Confidentiality does not preclude that, as the grievance unfolds, less sensitive information, such as the date of the violation, the articles violated and the current status of the grievance, is typically released to the broader membership as the part of the Association's legal duty of fair representation and political responsibility to provide information on its activities.

v. Should a Member communicate a threat of violence, especially where there is a clear risk to an identifiable person or group of persons of serious bodily harm or death and the danger is imminent, the Association must balance the duty of confidentiality with the importance of protecting the safety of others. Any such threat, shall normally be reported in accordance with the law to the proper authorities and the intended victims. Action shall be taken to ensure safety as appropriate. The priority shall be to contact the authorities and await their guidance. The Association's President, SGWWOstaff, and legal counsel may subsequently confer on the proper course of action, in appropriate situations.

IV. Issues Relating to Members' Conflicting Interests

i. Where grievances or potential grievances concern Members or groups of Members with contrary interests, and where it is possible that the Association may need to provide confidential advice, assistance or representation to Members with contrary interests, the

Association shall take steps to fulfil its duty of fair representation to all Members.

V. Handling of Grievances

i. The grievor shall be provided updates at each step or decision point within the grievance process by the SGWWO or designate. Updates shall include any decisions made by the Association, the reasons for the decision, and any applicable deadlines within the Collective Agreement. When applicable, the update shall include a copy of the Statement of Grievance. Where the grievor is the Association, updates shall be provided to the Executive Board by the SGWWO.

ii. The Grievance Committee shall review the outcomes of grievances (whether settled, withdrawn or won/lost at arbitration) and make recommendations, intended to prevent similar grievances, to the Executive Board regarding administration of the Collective Agreement and to the Collective Bargaining Caucus regarding changes to the Collective Agreement.

iii. Records of all grievance-related documents shall be retained by the Association in accordance with the Records Management Policy, and using its file management system.

iv. Notwithstanding that the President is normally the initial point of contact for Members regarding the Collective Agreement, concerns or complaints that may relate to potential grievances which are relayed to the Association shall be referred to the LRO or SGWWO (or designate). The LRO or SGWWO (or designate) shall contact the potential grievor as needed

v. Where a grievor or witness is a member of the Grievance Committee or the Executive Board, that Member shall be recused from all related discussions in Committee and/or Board meetings.

vi. At the request of the potential grievor, the LRO or SGWWO (or designate) shall meet with the potential grievor to discuss the potential grievor's concerns and to give information regarding the grievance process. This meeting may also be used to determine whether the grievance process is the most appropriate way to address the Member's concerns.

VI. Step 1

i. The Association's overarching goal at Step 1 is satisfactory resolution of the grievance and the gathering of evidence.

ii. It is the responsibility of the individual grievor or grievors to request a Step 1 meeting with the appropriate Dean and the President of the Association.

iii. Once a Step 1 meeting is requested, the SGWWO (or designate) shall attend the Step 1 meeting to represent the interests of the Association and its Members, and to participate in making reasonable attempts to resolve the grievance, in accordance with Article 20.2.1.2 of the Collective Agreement.

iv. The LRO or SGWWO (or designate) may request advice from the Grievance Committee regarding how best to resolve a grievance at Step 1.

v. The role of the LRO [2] or SGWWO (or designate) at Step 1 includes providing information to grievors and potential grievors, including about their rights and responsibilities regarding the grievance process, investigating the grievance, and acting to represent the interests of the Association and its Members[3] at Step 1 meetings.

vi. After the Step 1 meeting, the LRO or SGWWO (or designate) shall file a Step 1 report advising that the grievance has been resolved or that the grievance remains unresolved and could advance the grievance to Step 2.

VII. Step 2

i. Advancing Grievances to Step 2

The Grievance Committee shall review the Step 1 report and make a decision whether or not to advance a grievance to Step 2. This decision shall only be taken after a thorough investigation and consideration of the criteria listed below.

ii. Initiation of Grievances at Step 2

The Grievance Committee may recommend that the Executive Board of the Association initiate a grievance at Step 2.

1. This decision shall only be taken after a thorough investigation and consideration of the criteria listed below.
2. The authority to initiate such a grievance rests with the Executive Board of the Association.

iii. Criteria of a Thorough Step 2 Investigation

1. A recommendation or decision on advancement of a grievance to, or initiation of a grievance at, Step 2 shall only be taken after a thorough investigation.
2. In formulating a recommendation or decision, criteria to be considered include
    a. Breach of the Collective Agreement: terms (express or implied) violated with sufficient validity. Validity means under the language of the Collective Agreement and based on the available evidence of what has occurred as determined through thorough investigation by the Association
    b. Significance of breach
        - Significance to and consequences for the grievor. Note: the grievor does not have an absolute right to advancement (or not), but the grievor's wishes should be taken into account
        - Significance to and consequences for the Association
    c. Consideration of past practice around the advancement of similar grievances
    d. Any other interests of the Association (e.g. listed as objectives or as part of the Code of Ethics in the Association's Bylaws), whether contrary or otherwise

iv. Documentation

a. The LRO or SGWWO (or designate) shall convey the Grievance Committee's

[2] The Labour Relations Officer shall fulfill all responsibilities as outlined in this policy with the exception of representing members in Step 1 Meetings.

[3] The LRO or SGWWO (or designate) must be mindful of the interests and rights of the grievor and also those of the Membership more generally and the Academic Unit Chair if present.

decision, in writing, to the grievor(s), along with reasons for the decision.

b. Should the Grievance Committee decide to advance the grievance to Step 2, the LRO of SGWWO (or designate) shall follow the Step 2 procedures as outlined in the Collective Agreement article 20.2.2.
c. The President or designate shall provide a copy of the Step 2 report to the grievor, and a copy of this report shall be filed in MRFA records, normally by the LRO.
d. Step 2 statements of grievances in writing shall follow a common format, to be maintained, reviewed, and amended from time to time by the Grievance Committee.

v. After the Step 2 meeting (Article 21.2.2.4), the LRO of SGWWO (or designate) shall file a Step 2 report advising
   a. that the grievance has been resolved (Article 20.2.2.4.1), or
   b. that the grievance has reached a partial settlement and that the grievance proceed to Step 3 (Article 20.2.2.4.2), or
   c. that the grievance remains unresolved and that the grievance proceed to Step 4 (Article 20.2.2.4.3).

VIII. Step 3

i. The Association's Responsibilities at Step 3 includes the following:
   a. The Grievance Committee shall recommend appointment of nominees to the joint committee. Appointment shall be made by the Executive Board.
   b. The Grievance Committee shall advise the Association Members of the committee as required.
   c. The LRO or SGWWO (or designate) shall file the Step 3 report and shall provide an update to the grievor.

ii. After the Step 3 meeting/process, the Association's nominees shall file a Step 3 report advising
   a. that the grievance has been resolved (Article 20.2.3.4), or
   b. that the grievance remains unresolved and that the grievance proceed to Step 4 (Article 20.2.3.6).

IX. Step 4

i. While legal opinions may not be feasible until Step 5, at Step 4 the Association may through the President, request a written legal opinion on the merit of the grievance.

ii. The Grievance Committee shall formulate a recommendation on whether or not the grievance should be advanced to Step 5. This recommendation shall be given to the Executive Board for consideration. The criteria to be considered by the Grievance Committee shall include
   a. Reports from prior steps of the grievance process
   b. The written legal opinion on the merit of the grievance
   c. Breach of the Collective Agreement: terms (express or implied) violated with sufficient validity. Validity means under the language of the agreement and based on the available evidence of what has occurred as determined through thorough investigation by the Association
   d. Significance of breach
      - Significance to and consequences for the grievor (Note: the grievor does not

have an absolute right to arbitration (or not) but the grievor's wishes should be taken into account)
- Significance to and consequences for the Association

e. Likelihood of success at arbitration
- Including with respect to potential remedies
- Including with respect to timeliness of decision

f. Risks from advancing to arbitration and/or from potential loss at arbitration
- To the grievor
- To the Association and the Members collectively, etc.
- Note: arbitral decisions are publicly-searchable documents that include the name(s) of the grievor(s), the findings and decisions of the arbitrator, established precedent, etc.

g. Consideration of past practice around the advancement of similar grievances

h. Any other interests of the Association (e.g. listed as objectives or as part of the Code of Ethics in the Association's Bylaws), whether contrary or otherwise

iii. The Executive Board shall review the Grievance Committee's recommendations and make the final decision regarding whether the grievance shall proceed to Step 5. It shall consider criteria that include all of the above, as well as
   a. Resources required, including estimated cost and Contingency Fund balance, and other consequences for the Association.

iv. The President or the LRO shall convey the Executive Board's decision, in writing, to the grievor(s).

X. Step 5

i. Prior to the arbitration hearing, the Association may , through the President, request a legal opinion. This shall include, at a minimum, a request for an opinion on
   a. The merit of the grievance (if different from stated merit at Step 4)
   b. The likelihood of success at arbitration
   c. The risks of proceeding with arbitration
   d. Any other relevant factors from a legal perspective

ii. The President and SGWWO shall determine whether it wishes to proceed with a one-person or three-person arbitration board, and its nominee(s).
   a. The expertise of the nominee(s) shall be considered in light of the grievance.
   b. In the case of grievances involving Academic Freedom, denial of tenure, peer evaluation, and other academic matters, the Executive Board shall endeavour to identify potential nominees with experience in post-secondary education and labour relations.

iii. The Grievance Committee shall provide support, as required, to legal counsel to prepare for the arbitration hearing.

XI. Reporting to the Membership and to the Executive Board

i. The LRO and/or the SGWWO shall report to the Association's Membership during the academic year:
   a. As necessary at scheduled Regular Meetings of the Association
   b. By providing a summary report at the Annual General Meeting of the Association

ii. Reports to the Membership should adhere to the principles of confidentiality such that no mention is made of
    a. The department and the Faculty from which the grievance originated
    b. The name of the grievor(s), the Chair, or the Dean
    c. The gender of the grievor(s), the Chair, or the Dean
    d. Any other details that would identify the grievor

iii. Reports to the Membership should, wherever possible, include
    a. The number of grievances brought forward and/or advanced during the period of the report
    b. The Step for each grievance
    c. Article(s) in the Collective Agreement referenced in the grievance
    d. How each of the aforementioned articles were contravened (nature of violation)
    e. The nature of the resolution

iv. Regular grievance reports shall also be provided by the SGWWO to the Executive Board, as part of the in-camera portion of the Executive Board meetings.

XII. Grievance Committee Training

The Association shall make provisions for annual training of Grievance Committee members with respect to the grievance process and equity, diversity, and inclusion matters, and for other interested members of the Association as appropriate. The Association shall also endeavour to provide supplementary grievance-related training or professional development where appropriate, and the Grievance Committee shall assist in identifying potential areas of development, and potential training or professional development opportunities.

XIII. Related Policies

- Confidentiality Policy
- Conflict of Interest and Apprehension of Bias (inc. Conflict of Interest Checklist)

XIV. Appended Documents

- Waiver of Association Representation (to be submitted by Members via the online form)

XV. XVI. Waiver of Association Representation[4]	
Purpose	This waiver documents the decision of an MRFA member to waive their right to have an Association representative present during a meeting. A copy of this signed form shall be submitted to the MRFA immediately upon a meeting being scheduled.
Scope	"An Employee shall have the right to have a member of the Association Executive present at any meeting that the Employee believes might be the basis of discipline." A member may waive their right to Association representation for any meeting "that the Employee believes might be the basis of discipline."
Date	February 26, 2020

I hereby waive my right to Association representation during a meeting scheduled to take place on _____. I understand that this is a waiver for this scheduled meeting only, and that I "shall have the right to have a member of the Association Executive present at any [future] meeting that [I believe] might be the basis of discipline." By signing this waiver, I do not waive my rights to disclose the details of this scheduled meeting to a representative of the Association.

_____ _____

Name (please print) Appointment Category

_____ _____

Signature Date

[4] While a Member may waive representation for the meeting, the Association reserves its right to review any resulting discipline. On receipt of this waiver from a Member, a corresponding memo to this effect shall be submitted to the employer.