

INTRODUCTION

In your role as a Steward, you will be the front line representative of the Union, to the membership, in your workplace. Members of your Local will think of you as “being the union” in the workplace. This will often involve receiving members’ complaints regarding conditions in the workplace or actions taken by the employer.

In some instances, these complaints will constitute grievances.

In an effort to enhance your abilities in dealing with grievances, this handbook has been developed as a reference guide. In this guide, we will explore what makes a complaint a grievance, identify the types of grievances, and learn what you need to investigate and why.

Should you have any questions or comments regarding this handbook, please contact your Chief Steward, or Margaret Anne McHugh, Education Officer at NSGEU. For questions about your Collective Agreement and its interpretation, please call the union at 902-424-4063 or toll free at 1-877-556-7438

*I wish to acknowledge **Mike Conrad, now an NSGEU ERO**, who, as Local 4 Chief Steward, was the original author of this guidebook. While the information contained in this guidebook was taken from a myriad of sources, Mike’s experience as a steward adds greatly to the practicality of the information. Changes have been made since Mike’s original version and any errors or omissions in this booklet are my own.*

**Margaret Anne McHugh
Education Officer
NSGEU**

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I
General
Overview

**NEVER BE AFRAID TO
RAISE YOUR VOICE FOR
HONESTY AND TRUTH
AND COMPASSION
AGAINST INJUSTICE
AND LYING AND GREED.
IF PEOPLE ALL OVER
THE WORLD...WOULD
DO THIS, IT WOULD
CHANGE THE EARTH.**

— WILLIAM FAULKNER

WHAT IS A GRIEVANCE?

Simply put, a grievance is a violation of a member's rights, or a denial of a benefit, in the workplace, resulting from action or inaction taken by the employer.

The most common source of a grievance is a violation of the **collective agreement**, or **contract**. Such grievances may arise out of a clear violation of one or more provisions of the contract, or may result from a difference of interpretation of the contract, or what it really means.



Grievances may also come from a violation of **federal or provincial law**. For example, if the employer were to violate an employee's rights under the Occupational Health and Safety Act, or the Human Rights Act, this would also form the basis of a grievance.

Another area that could lead to a grievance is a violation of **past practice**. This occurs when the employer arbitrarily changes a situation that has been established over an extended period of time, and has been accepted by both the employer and the employees, with neither side formally objecting. This must effect a group of people – usually the whole Local – and is not used for individuals.



When determining whether a member has a grievance or not, just ask yourself the question – ***“Is there a violation of the member’s rights under the collective agreement, law, or past practice?”***

If the answer is “Yes”, then “there is a grievance”, you then proceed with investigating and documenting the grievance in preparation for processing it through the grievance procedure.



If the answer is “No”, however, then the member does not have a grievance, but

may still have a complaint that you can assist them with, in ways other than through the grievance procedure.



In either circumstance, it is important to provide whatever assistance you can to the members, as it will serve, to build solidarity, and strengthen the Union.

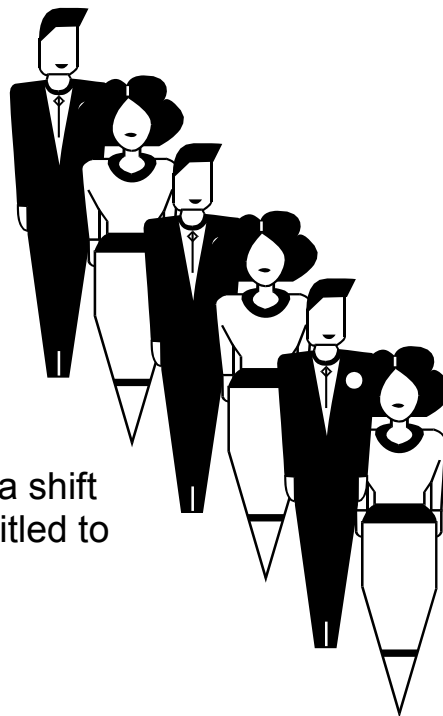
TYPES OF GRIEVANCES

Grievances are not only identified by what violations lead up to them, but also by who is affected by them.



Individual grievances occur when there is an individual member whose rights have been violated by the employer. Common examples of such circumstances include disciplinary actions or denial of benefits.

Group grievances happen when there is a violation of rights of a group of individuals, affecting them all in the same way and at the same time. It is important, when dealing with a group grievance, to involve all members who were affected in the grievance, in order to ensure that any corrective action achieved through the grievance applies to them all. An example of a group grievance would include the employer's refusal to pay a shift premium to a group of employees entitled to receive it.



Policy grievances arise out of a dispute about the general application or interpretation of the collective agreement, normally having a potential to impact upon everyone who is covered by the collective agreement. That is, a violation that may affect the bargaining unit as a whole may be addressed through a policy grievance. An example of this may be a case where the employer reorganizes a workplace without giving appropriate notice or regard to the requirements of the collective agreement.

Only the Union Head Office files policy grievances. Should you encounter a situation that appears to be a policy grievance, you should consult with your Chief Steward and/or Employee Relations Officer.

Finally, **Union grievances** occur when the employer takes an action that affects the Union itself. For example, if the employer failed to deduct Union dues as provided for by the collective agreement. Quite often, this would be addressed through the filing of a policy grievance.

INVESTIGATING THE GRIEVANCE

When a member approaches you with a potential grievance, it is important to investigate the circumstances behind the member's concern. This is done for two reasons. First of all, gathering the facts around their complaint will help you to determine whether it is actually a grievance or a complaint.

Secondly, if you have determined that it is indeed a grievance, fully investigating the facts will provide the basis for the Union's position in presenting the case throughout the grievance procedure.

It is also important to complete this investigative process as soon as reasonably possible. The information you gather will be most accurate when it is fresh. That is, the sooner that you collect your information, the more complete and exact it will be. Even more importantly, the grievance procedure involves a number of time limits that may make it impossible to file a grievance if too much time is taken.

Check your collective agreement to ensure that you know what the time limits are, and make sure that you adhere to them!



SOURCES OF INFORMATION

The member involved in the grievance, the grievor, will be your primary source of information. After all, no one will be more aware of the circumstances violating a person's rights than the person whose rights have been violated.

Bear in mind that the member approaching you with a grievance may be emotional, angry, vengeful, and upset. Allow them to tell you their story. Give them the opportunity to vent their frustrations. Sometimes this can be as useful as correcting the violation itself. However, remember that it is the facts of the case that are going to assist in the processing of the grievance, and your investigation must accomplish the mission of gathering all the pertinent facts.

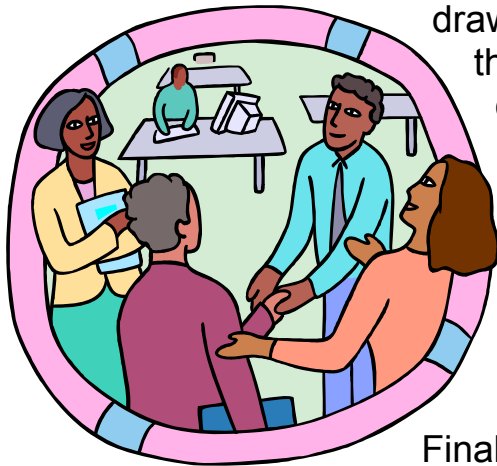
Sometimes when members are explaining what happened, and they are upset, they will not remember everything, they will leave out parts of the story, or will give you the facts to put them in the best light possible. You may have to ask them to clarify more than once. Members with whom you have already established a relationship of trust will be the most open. If it is not a barrier (asking some people to write things out is like telling them that you don't care – for others this is the most comfortable way of telling the story) it is alright for Stewards to ask the member to write out their story, with the details of what happened. It is important that there be documentation in detail and as soon as possible.

If appropriate, you may also need to gather information from witnesses that may have been present or involved. This would include all witnesses, whether they support the information given by the member or not.

You need all viewpoints of the issue in order to determine what really happened, and also to determine what you are up against in presenting the case. You will want to do this as soon as possible as it is conceivable that a witness may be pressured into changing their story over time. Documented information given by witnesses can also be used at a later time to refresh a witness' memory if their testimony is needed, or to undermine their testimony if they do indeed change their story from their original statement.

Also, you will want to speak to the management people involved in the grievance. Similar to the information you gather from any witnesses, you will want this information to help in determining what actually happened, and to find out what position management is taking.

In addition to the information you have gathered from the witnesses, you will also turn to other sources of information. Depending on the circumstances of the grievance, it may be useful to take pictures or



draw diagrams of the physical layout of the area in which the grievance occurred. You may also speak to other Stewards and your Chief Steward to get advice on how to proceed or even to see if a similar grievance has been previously handled, and what the outcome was.

Finally, reviewing any necessary documents, such as the collective agreement, legislation, employer policies, schedules, and Union grievance files and arbitration decisions should complete the picture as far as the information required to proceed is concerned.



W – 6

What to Ask For

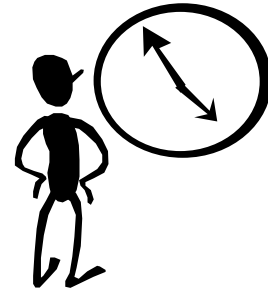
In carrying out the investigation of a grievance, remembering the five W's will help in ensuring that your investigation is complete – *Who, What, When, Where, Why?*

WHO is involved in this grievance? Gather the names, telephone numbers, addresses, department, and classification of anyone involved. This includes the grievor(s), supervisors, and any witnesses.



WHAT happened? What is the grievance about? Collect all the details of the events that created the violation.

WHEN did the grievance occur? Exactly when did the situation take place, how long has it been going on, and how often does it happen? Especially important is whether the grievance falls within the appropriate time limits.

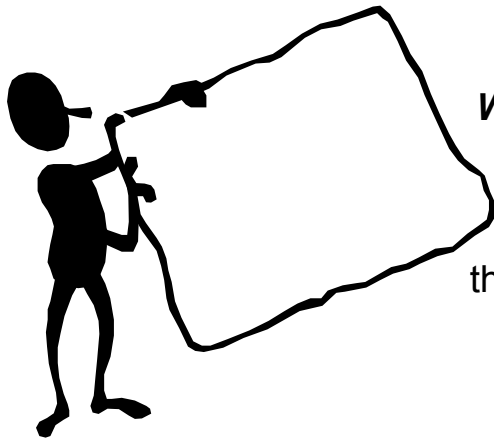


WHERE did the grievance occur? It may be extremely important to accurately record the location of the incident, including any machinery or equipment involved. This is where a diagram or photo may also be useful.

WHY is this a grievance? This is where you ask if this is a violation of the collective agreement, legislation, past practice, etc.



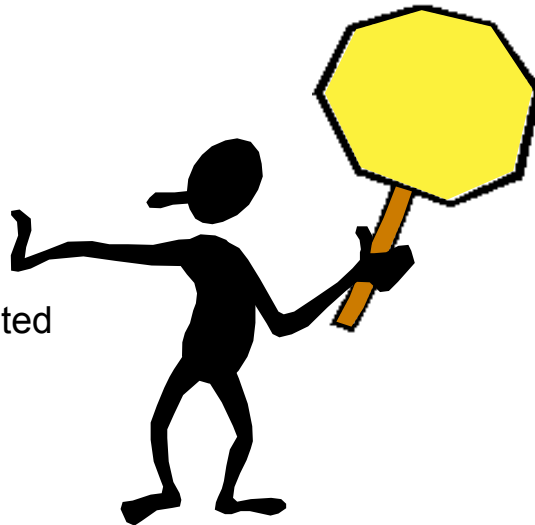
There are two additional W's that should be applied to the process of investigating a grievance:



WANT – what does the grievor want, or what is the grievor entitled to, in order to correct the situation? This provides the redress for the grievance...

and, finally...

WHOA! Stop and go over the information you have collected another time, to satisfy yourself that you have investigated the grievance thoroughly and completely.



DOCUMENTING THE INVESTIGATION

Having good documentation is crucial to easing the processing of the grievance throughout the stages of the grievance procedure. Often, and especially in the instance where a grievance is referred to mediation, arbitration or



adjudication, the time it takes to go from launching the grievance to concluding it can be long. It is likely to be several months or more, and can be more than a year.

Therefore, it is very important that the documentation be accurate and complete. This will help to refresh fading memories – those of the Steward and the grievor, witnesses, etc. Also, as others become involved in handling the grievance, such as Employee Relations Officers or legal counsel, good documentation will help them in gaining a full understanding of the facts involved.

The **Union Fact Sheet** is an excellent tool in assisting in the documentation of your investigation. It helps to lead the Steward through the questions that need to be asked, and provides space to record the answers. However, keeping in mind that you may be asked to recall events months or even years after it happens, you should make and keep additional, detailed notes while conducting your investigation.

It is a good practice to make notes every time a member approaches you. It is useful to have records of the issues and time of first approach, in case it leads to a grievance. It will also help in determining things that should be addressed in the next round of contract negotiations, and in helping you to track the service you provide as a Steward.

IMPORTANT NOTE – Any information and documentation you collect in carrying out your investigation belongs to you as Steward, and the Union. Under no circumstances should the Union Fact Sheet or any of your other notes be provided to the employer.



WITNESS STATEMENTS

When gathering information from the grievor, witnesses, or management, the most effective way to do so is by having them write out their statement themselves. This normally encourages the person to be more thoughtful and thorough, and certainly helps in keeping them on the topic. Most people will avoid writing a lot of unnecessary details, but will gladly share insignificant details when telling their story verbally.

If someone is not willing to write their own statement, then you should interview them regarding their version of the situation. Carefully document their answers to your questions, being certain to get any

exact quotes of things that may have been said.



Even if someone were to write their own statement, you might find it useful to conduct an interview with them as well. This will serve to confirm the written statement, and assist you in filling in any gaps that may have been left in the written statement.

You should then have the person giving the statement review what you have written and then have the person sign and date it. Similarly, any written statement the person provides should also be signed and dated.

It is important to do these things as the written statements later become valuable in refreshing the memories of those who gave the statements, helps to prevent them from changing their story, and provides excellent background information to those that become involved in the grievance as it progresses through the grievance procedure.

SUMMARY

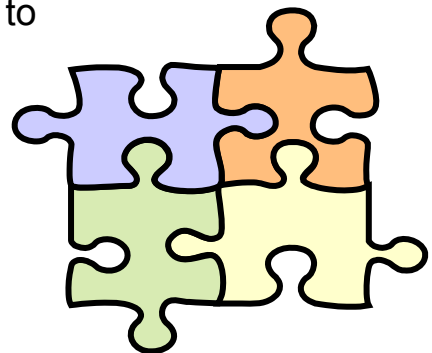


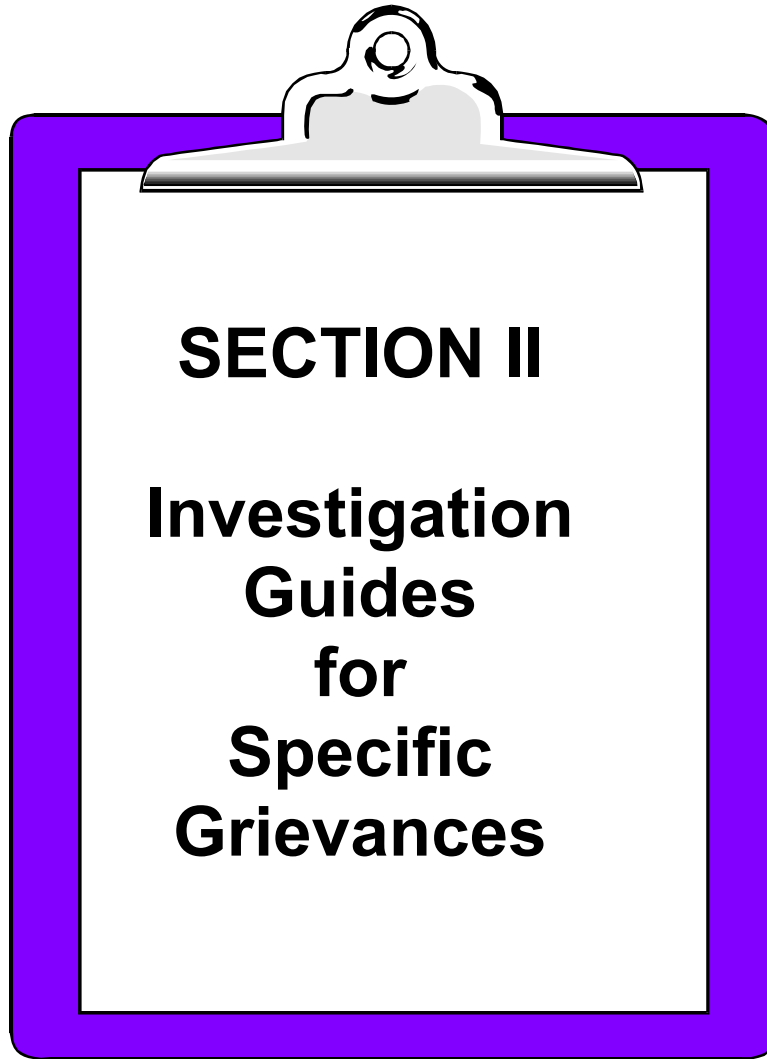
Once you have been approached by a member regarding a potential grievance, or have identified one yourself, you will first determine whether or not you indeed have a grievance. Identify the violation of the member's rights in the workplace, what action management took to create the violation, and what it will take to correct the situation.

You will then ensure that you cover the 7 W's – *Who, What, When, Where, Why, Want, and WHOA!* – in carrying out your grievance investigation.

Careful documentation of the information you collect, including gathering witness statements, complete with signatures, will round out a good grievance investigation file.

Following these guidelines will enable you, the Steward, and the Union, to provide the best service possible to our members throughout the grievance procedure. It will allow the Union to choose its course wisely in proceeding with a grievance, and will facilitate the Union's efforts to achieve a satisfactory outcome to the grievance and thus, to the member.





SECTION II

Investigation Guides for Specific Grievances

INTRODUCTION

In addition to the **Union Fact Sheet**, a series of **Appendix Forms** has been developed to assist in investigating specific types of grievances.

For example, a Dismissal/Discharge grievance will involve facts that you will definitely want to gather, that may not be required for other types of grievances, such as a Vacation grievance.

This section of the handbook will review the various questions posed in these Appendix Forms, and give some background as to why that particular information is important. (Large format -- 8.5X11) versions of these fact sheets can be found in another section on the NSGEU website under "Education/steward resources"

Once you have completed the appropriate Appendix Form, attach it to the Union Fact Sheet, and include it in your grievance file.

NOVA SCOTIA GOVERNMENT EMPLOYEES UNION
UNION FACT SHEET
APPENDIX 1

Discharge/Dismissal and Suspensions

What is the employee's past record of discipline? Be precise, noting any warnings, reprimands or previous penalties, including dates and reasons given:

What is the employee's personal relationship to their immediate supervisor or other managers involved? Is there a personal conflict between them?

Are there extraordinary circumstances involved? i. e. Does the employee have an alcohol, drug, or gambling addiction?

FORM # UFSA1/00



UNION FILE #: _____

STEWARD: _____

ERO: _____

WHO IS INVOLVED IN THIS GRIEVANCE?

Grievor:

NAME:	LOCAL:
ADDRESS:	
PHONE: (Home) (Work)	
DEPARTMENT:	
JOB CLASSIFICATION:	PAY GRADE:
LENGTH OF SERVICE:	
LENGTH OF SERVICE ON PRESENT JOB:	

Supervisor or other management involved:

NAME:
TITLE:
DEPARTMENT:
PHONE:

Witnesses or other persons involved:

NAME:
ADDRESS:
PHONE: (Home) (Work)
JOB CLASSIFICATION:

NAME:
ADDRESS:
PHONE: (Home) (Work)
JOB CLASSIFICATION:

FORM #: UFS/00

WHAT HAPPENED? WHAT IS THE GRIEVANCE ABOUT?

WHEN DID THE GRIEVANCE OCCUR?

(Date and time grievance began? How often and how long has it been happening? Is it within time limits to proceed with a grievance?)

WHERE DID THE GRIEVANCE OCCUR?

(Exact location – department, machine aisle, office, etc. Include a diagram or photo, if helpful.)

WHY IS THIS A GRIEVANCE?

(Violation of contract? Supplement? Law? Past Practice? Safety Regulations? Rulings of Awards? Unjust treatment? Etc.)

WANT GRIEVANCE SETTLED HOW?

(Redress in full – adjustments necessary to completely correct situation – i.e. Back Pay, etc.)

EMPLOYER CONTENDS: _____

EMPLOYER RECORD OF CONDUCT

(Warnings and/or penalties for lateness, absenteeism, quantity or quality of work, etc. Include dates & reasons)

Verbal Warnings: _____

Written Warnings: _____

Other Penalties Imposed: _____

Other Related Information: _____

ADDITIONAL INFORMATION

Information given by witnesses followed by a summary of what each saw and heard. Get a signed witness statement if possible.)

Documentary evidence, i. e. Seniority List, Wage Schedule, Record of similar grievances, etc.)

DATE: _____

SIGNATURE OF STEWARD: _____

SIGNATURE OF GRIEVOR: _____

Please attach additional pages as required including specific grievance investigation forms.

CHECKLIST OF ADDITIONAL FORMS RE SPECIFIC GRIEVANCES:

- Discharge/Dismissal and Suspensions
- Job Posting
- Improper Pay
- Overtime
- Layoff
- Vacations
- Reassignment
- Attendance
- Statutory Holidays
- Demotion
- Harassment/Poison Workplace
- Sexual Harassment
- Sick Leave

ADDITIONAL NOTES

Discharge/Dismissal and Suspensions

- ❑ ***What is the employee's past record of discipline? Be precise, noting any warnings, reprimands or previous penalties, including dates and reasons given:***

In applying discipline, the employer may be justifying the action it has taken by claiming that it is following a procedure known as *Progressive Discipline*. In other words, each disciplinary action taken is greater than the last, and the earlier actions justify the severity of the following ones.

- ❑ ***What is the employee's personal relationship to their immediate supervisor or other managers involved? Is there a personal conflict between them?***

This is important in establishing whether there may have been any prejudice or bias applied by the employer in issuing the dismissal or suspension. You will want to determine if issues unrelated to the employee's work contaminated the decision to take disciplinary action.

- ❑ ***Are there extraordinary circumstances involved? i.e. Does the employee have an alcohol, drug, or gambling addiction?***

If the employee does have some addiction problem, or some other mitigating circumstances that may have lead to their conduct which resulted in the discipline, the employer may be obligated to try some other course of action aimed at recovery or relief of those mitigating circumstances, prior to resorting to

discipline. Also, if there are appropriate reasons for the employee's conduct, such as a health and safety concern, the discipline may be unwarranted.

- ❑ ***Has the employer addressed the area of concern with the employee prior to the dismissal or suspension? If so, how?***

It is important to note if the area of concern resulting in discipline was ever brought to the employee's attention before. If the employee was never made aware of a need to correct a situation and what the employer's expectations were in correcting it, the discipline may have been inappropriate.

- ❑ ***Are there other employees doing the same thing without being disciplined? If so, who and how many?***

If the employer is taking action against one employee, but not others, it may indicate that discrimination is taking place.

- ❑ ***Does the disciplinary action appropriate in the circumstances? Is there Just Cause for the employer to act on?***

Establish whether the issued discipline is reasonable in terms of the alleged conduct. In order to satisfy the "Just Cause" provisions of the collective agreement, the employer's action must be well grounded, fair, equitable, and proper.

There are seven tests that can be applied to determine whether "Just Cause" requirements have been met:

1. Did management adequately warn the employee of the consequences of his conduct?

2. Was management's rule or order reasonably related to efficient and safe operations?
3. Did management investigate before administering the discipline?
4. Was the investigation fair and objective?
5. Did the investigation produce substantive evidence or proof of guilt?
6. Were the rules, orders and penalties applied even-handedly and without discrimination to all employees?
7. Was the penalty reasonably related to the seriousness of the offence and past record?

**NOVA SCOTIA GOVERNMENT EMPLOYEES UNION
UNION FACT SHEET
APPENDIX 1**

Discharge/Dismissal and Suspensions

What is the employee's past record of discipline? Be precise, noting any warnings, reprimands or previous penalties, including dates and reasons given:

What is the employee's personal relationship to their immediate supervisor or other managers involved? Is there a personal conflict between them?

Are there extraordinary circumstances involved? i. e. Does the employee have an alcohol, drug, or gambling addiction?

Has the employer addressed the area of concern with the employee prior to the dismissal or suspension? If so, how?

Job Posting

☐ ***What is the grievor's current classification and seniority?***

Knowing the current classification and seniority, or length of service, is important, as it may directly relate to the manner in which any vacancies were to be filled in the first place. This information is usually also available from the union, if the member does not know.

☐ ***Who was the successful applicant, and what is their classification and seniority?***

In order to compare whether the grievor should have been awarded the job, you must know who was successful in getting the vacancy, their classification and seniority or length of service.

☐ ***What are the qualifications of the grievor and the successful applicant?***

You must also know the qualifications of the grievor and the successful applicant, so that you can fairly compare whether the grievor should have been awarded the position.

- ☐ ***According to the Collective Agreement, what is the determining factor in awarding positions – ability? seniority or length of service? other?***

Check your contract to see what it says about how vacancies, promotions, etc. are to be awarded. For instance, if they are awarded solely on length of service, then that will be the most important information for you to gather. If they are awarded primarily on interview scores or if seniority only applies when candidates are of “equal merit” then there is more information needed.

- ☐ ***How was the competition conducted and by whom? What questions were posed during the interview and what were the expected answers? Obtain copies if possible.***

Ask the grievor about the competition. Was it done by interview? written test? other? Was it conducted by the same panel throughout? It is important to establish that the competition was consistent and directly related to the applicants’ ability to do the job. It is most useful to actually get a copy of the competition, including the expected answers, from the employer, whenever possible. This will allow you to make a fair comparison of what was expected and what was given by the grievor and the successful applicant. Obtain competition scores where possible for the same reason.

- ☐ ***What is the disciplinary record of the grievor?***

Ask the grievor about any prior disciplinary actions, including what the action was, why it was taken, and how long ago. This is useful as you may discover that failure to award a job was a form of punishment for alleged misconduct in the past.

□ ***Is there any evidence of discrimination against the grievor?***

You should also look into any evidence of any other form of discrimination against the grievor. For example, is there evidence that the grievor's rights were violated under the Human Rights Act, or was there a personal grudge held against the grievor.

**NOVA SCOTIA GOVERNMENT EMPLOYEES UNION
UNION FACT SHEET
APPENDIX 2**

Job Posting

What is the grievor's current classification and seniority?

Who was the successful applicant, and what is their classification and seniority?

What are the qualifications of the grievor and the successful applicant?

According to the Collective Agreement, what is the determining factor in awarding positions – ability? seniority or length of service? other?

How was the competition conducted and by whom? What questions were posed during the interview and what were the expected answers? Obtain copies if possible.



What is the disciplinary record of the grievor?



Is there any evidence of discrimination against the grievor?

Improper Pay

- ❑ ***What is the grievor's regularly posted classification and pay grade?***
In order to establish an irregularity in the amount paid to the grievor, you must first establish what the grievor's regular pay is.

- ❑ ***What was the grievor's work assignment for the period in question?***
For the period that the grievor was not properly paid, you will need to determine what their work assignment was. This will be necessary to establish that the work was not expected as part of the grievor's normal classification and responsibilities.

- ❑ ***What is the rate of pay applicable to the work assignment given?***
Determine what the appropriate rate of pay should have been for the work performed by the grievor. This may be found by checking the Acting Pay provisions of your collective agreement, or under the classification and pay plan.

- ❑ ***What is the exact work that was performed, and what were the instructions of the supervisor for the period in question?***
Determining the exact work completed by the grievor will help in ensuring that it was indeed outside of the grievor's normal work assignment. Also, being specific about what the grievor was instructed to do by the supervisor may strengthen the case for a different rate of pay for the grievor, whether they actually performed the other work or not.



How long did the grievor perform the work?

How long the grievor performed the other work will be important in determining how much pay they should receive, and may impact on whether the employee qualifies for additional pay. For example, in order to receive acting pay, an employee sometimes has to act in the other classification for some minimum period of time.

**NOVA SCOTIA GOVERNMENT EMPLOYEES UNION
UNION FACT SHEET
APPENDIX 3**

Improper Pay

What is the grievor's regularly posted classification and pay grade?

What was the grievor's work assignment for the period in question?

What is the rate of pay applicable to the work assignment given?

What is the exact work that was performed, and what were the instructions of the supervisor for the period in question?

How long did the grievor perform the work?

Overtime

- What is the grievor's regularly posted classification and pay grade?***
The grievor's classification is important in determining eligibility for overtime, as well as the appropriate compensation for overtime worked.
- What shift does the grievor normally work, and when was the overtime scheduled?***
What the grievor's normal shift schedule is, and when the overtime was scheduled, is important in determining the grievor's availability to work the overtime.
- What is the normal process for allocation of overtime, and who is eligible for the overtime?***
Check what the collective agreement says about the allocation of overtime, or what the normal practice has been in filling overtime shifts. Also, it is important to note who is eligible to work the overtime. Was the grievor eligible for the shift, or was it given to someone who was not eligible?
- Who worked the overtime?***
Get the name of the employee that worked the overtime, to verify if they were eligible for the overtime worked, and how and when they were notified of the requirement to work overtime.
- What was the work performed on the overtime shift?***
Find out the duties and work performed on the overtime shift. This again will be useful in establishing the eligibility for overtime of both the grievor, and the employee who worked it.

**NOVA SCOTIA GOVERNMENT EMPLOYEES UNION
UNION FACT SHEET
APPENDIX 4**

Overtime

What is the grievor's regularly posted classification and pay grade?

What shift does the grievor normally work, and when was the overtime scheduled?

What is the normal process for allocation of overtime, and who is eligible for the overtime?

Who worked the overtime?

What was the work performed on the overtime shift?

Layoff

- ❑ ***What is the grievor's regularly posted classification and pay grade?***
Knowing the grievor's regularly posted classification will be important in determining whether the right employee was laid off. For instance, if a Secretary's position was eliminated, but a Clerk was laid off, this may prove the contract violation.
- ❑ ***What is the grievor's seniority and length of service?***
Depending upon what your contract says about the order in which employees are to be laid off, either the grievor's seniority or length of service will be important to identify whether someone else should have been laid off instead.
- ❑ ***What are the names, classifications, and seniority and service of other employees in the work unit?***
Find out the names of all other employees in the work unit, what their classifications are, and how much seniority and service they have. Again, this will be required in making the determination of whether someone else should have been laid off.
- ❑ ***What is the location of the grievor's regular place of work?***
The grievor's exact work location may also be important in determining whether a different employee should have been laid off, and will also be important in exercising any applicable placement or displacement (bumping) rights.
- ❑ ***What is the disciplinary record of the grievor?***
The disciplinary record of the grievor will be important to ensure that layoff has not been applied as a form of discipline.

What has happened to the work previously performed by the grievor?

Finding out if the work done by the grievor previous to their layoff has been discontinued, reassigned, or perhaps even posted as a new position will be useful in determining whether there should have been any layoffs at all.

When is the layoff effective, and when was the grievor notified?

The collective agreement provides for a requirement of the employer to give a certain period of notice to employees being laid off. Failing that period of notice, the employees being laid off may be entitled to some pay in lieu of the notice required.

Was the Union notified of the layoff, and how many employees are being laid off?

The collective agreement also provides for the Union to be notified of any layoffs. The period of notification often depends on the number of employees being laid off, with a greater notice being required when a greater number are being laid off. Also, the employer may have been obligated by the collective agreement to undertake other processes before any layoff notice was given.

**NOVA SCOTIA GOVERNMENT EMPLOYEES UNION
UNION FACT SHEET
APPENDIX 5**

Layoff

What is the grievor's regularly posted classification and pay grade?

What is the grievor's seniority and length of service?

What are the names, classifications, and seniority and service of other employees in the work unit?

What is the location of the grievor's regular place of work?



What is the disciplinary record of the grievor?



What has happened to the work previously performed by the grievor?



When is the layoff effective, and when was the grievor notified?



Was the Union notified of the layoff, and how many employees are being laid off?

Vacations

- What is the process for requesting/scheduling vacations, and how and when did the grievor submit their request?***

You must first establish how vacations are supposed to be booked, and whether the grievor followed the appropriate procedures. If not, find out why, as there may be circumstances that prevented the grievor from doing so.

- What is the determining factor in scheduling vacation?***

It is important to establish if vacation is granted on the basis of seniority, length of service, etc., to measure whether the grievor's vacation should have been granted.

- What is the grievor's seniority, length of service, etc., and what is that of the other employees in the work group?***

You will have to determine where the grievor places on the list for vacation preference, and find out if employees lower on that list were granted vacation that the grievor was denied.

- How many employees are in the work group, and what is the availability of replacement employees to cover the period of vacation?***

The employer should not unreasonably withhold granting of vacation requests. Knowing the number of employees available to replace the grievor during their vacation will help you in making a case of whether the employer has acted reasonably or not.

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Vacations

What is the process for requesting/scheduling vacations, and how and when did the grievor submit their request?

What is the determining factor in scheduling vacation?

What is the grievor's seniority, length of service, etc., and what is that of the other employees in the work group?

How many employees are in the work group, and what is the availability of replacement employees to cover the period of vacation?

Reassignment

- What are the current classification, department, and location of the grievor?***

The employer may be limited by these factors in reassigning employees. It may be that the employer can only reassign employees within the same classification, department, and geographic location, for example.
- What other employees were, or could have been reassigned?***

The employer should not exercise reassignment in an unreasonable or arbitrary manner. Find out whether any favouritism or discrimination may have taken place in determining who would be reassigned.
- Did the employer seek any expressions of interest in reassignment from the employees who may have been reassigned?***

The employer may have been obligated by the collective agreement to see if any employees were interested in the reassignment, rather than simply choosing who would be reassigned.
- Has the reassignment resulted in any undue hardship to the grievor?***

An employee may have an option under the collective agreement to address reassignment concerns where the reassignment results in undue hardship. Undue hardship does not mean simply inconvenience, however, so there must be significant circumstances involved.
- Has the Union been notified or consulted about the reassignment?***

There may be requirements in the collective agreement for the employer to explore other alternatives before reassignment takes place. Check with the grievor and Union officials to see whether this has taken place.

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Reassignment

What are the current classification, department, and location of the grievor?

What other employees were, or could have been reassigned?

Did the employer seek any expressions of interest in reassignment from the employees who may have been reassigned?



Has the reassignment resulted in any undue hardship to the grievor?



Has the Union been notified or consulted about the reassignment?

Attendance

What are the specific instances of absence or tardiness being addressed by the employer?

Gather information on the grievor's attendance record, including all instances of absence and tardiness. Determine what action the employer took in each of these instances, to see if they acted consistently throughout. You may find that the employer is trying to use attendance as a means to deal with the grievor on an unrelated issue.

Are there extenuating circumstances that lead to the grievor's absence or tardiness?

The individual circumstances of each instance of absence or tardiness may have been things that were beyond the grievor's control, or may have been such that they were unable to notify the employer of their absence or tardiness. You may also discover that the cause of the grievor's attendance problem is something that the employer should have taken other measures to deal with.

What steps has the employer taken to address the concerns in the past?

You must determine what the employer has done to address attendance issues with the grievor in the past. This is so that you can assess if the employer has acted consistently, if the employer has followed a progressive process in addressing the concern, and if the employer has attempted to assist the employee with any underlying causes for the attendance problem.

Are there other employees who are being treated differently in regards to absence or tardiness?

Finding out if other employees have similar records of attendance, and how management has dealt with them, is important in ensuring that the grievor is being treated consistently, and without discrimination.

□ ***What adverse effect has the grievor's absence or tardiness had on the employer?***

If the grievor's absence or tardiness has not had an adverse effect on the employer, you will want to raise this point through the grievance procedure. Put the onus on the employer to show that the grievor's attendance record truly is a problem.

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Attendance

What are the specific instances of absence or tardiness being addressed by the employer?

Are there extenuating circumstances that lead to the grievor's absence or tardiness?

What steps has the employer taken to address the concerns in the past?

Are there other employees who are being treated differently in regards to absence or tardiness?

What adverse affect has the grievor's absence or tardiness had on the employer?

Statutory Holidays

- ❑ ***What is the grievor's regularly posted classification and pay grade?***
The grievor's regularly posted classification and pay grade are important in determining eligibility for compensation for work on a statutory holiday and what the appropriate compensation would be.
- ❑ ***What is the grievor's regularly scheduled shift, and how does it involve the statutory holiday?***
You must determine what hours the grievor actually worked, including how many of them fell on the statutory holiday itself, to ensure that the hours worked qualify for holiday pay.
- ❑ ***What is the definition of a holiday according to the collective agreement?***
Consult the collective agreement as well, to ensure that the hours worked qualify for holiday pay. Different collective agreements may define the holiday different ways.
- ❑ ***What is the normal practice for scheduling work on a holiday?***
Find out what the normal process for scheduling work on a statutory holiday is to make sure that the grievor was not improperly scheduled to, or improperly denied the opportunity to work on the holiday.
- ❑ ***How much was the grievor paid for work on the holiday and what should have they been paid?***
Get copies of pay stubs to show what the grievor was paid, and calculate what the grievor was actually paid. This will assist you in formulating the redress of the grievance.

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Statutory Holidays

What is the grievor's regularly posted classification and pay grade?

What is the grievor's regularly scheduled shift, and how does it involve the statutory holiday?

What is the definition of a holiday according to the collective agreement?

FORM #UFSA9/00

What is the normal practice for scheduling work on a holiday?

How much was the grievor paid for work on the holiday and what should have they been paid?

Demotion

- ❑ ***What is the grievor's classification, pay grade, and seniority?***

You will need to know the grievor's classification, pay grade and seniority to determine whether there was indeed a demotion, and whether the demotion was made in accordance with the collective agreement. It is possible that a demotion could occur for reasons other than discipline, and your contract may provide for the process by which demotions take place, such as by seniority.
- ❑ ***What is the classification and pay grade of the position demoted to?***

You will need the new classification and pay grade for the same reasons as above. You will have to determine if the demotion was done in accordance with the process outlined in your collective agreement.
- ❑ ***What are the grievor's qualifications?***

Find out the grievor's qualifications so you can determine if someone other than the grievor should have been demoted, especially if the collective agreement provides that qualifications are a determining factor in demotion. It is also possible that the employer is not giving consideration to the grievor's overall qualifications in enacting the demotion.
- ❑ ***Are there other employees that should have been demoted instead of the grievor?***

Find out if there are other employees that could have been demoted, by looking at their classification and qualifications. You may find that the grievor was improperly demoted.

☐ ***What is the disciplinary record of the grievor?***

If the demotion was not done for disciplinary reasons, you will want to know the disciplinary record of the grievor to ensure that their disciplinary record was not held against them. If the demotion was disciplinary, you will need the record to determine if the employer is following progressive discipline in carrying out the demotion.

☐ ***Who is performing the grievor's old job, and what are their qualifications and seniority?***

Find out if someone has been placed in the grievor's old job. If so, find out what their qualifications and seniority are. This is so that you can ensure that they were placed in the job in accordance with the collective agreement, and to compare their qualifications and seniority with that of the grievor.

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Demotion

What is the grievor's classification, pay grade, and seniority?

What is the classification and pay grade of the position demoted to?

What are the grievor's qualifications?

Are there other employees that should have been demoted instead of the grievor?

What is the disciplinary record of the grievor?

Who is performing the grievor's old job, and what are their qualifications and seniority?

Harassment/Poison Workplace

What is the harassing behaviour that the grievor says took place?

You must get a detailed account of the actions that the grievor considers harassment. Harassment grievances are amongst the most difficult to prove, and therefore demand a great deal of detail.

Who does the grievor say was harassing him/her?

Find out whom the harassment has been coming from. In order to properly constitute a grievance, there has to have been a violation of the grievor's rights by the employer. Therefore, a supervisor or other manager should have done the harassing behaviour, or it may be a case where the harassment is coming from another source, and the employer has failed to prevent or correct it.

It is important to note that if the harassment is coming from a fellow Union member, it is most advisable for the Steward to intervene and make an effort to resolve the situation, rather than leaving it to management to address.

How long has the harassment taken place?

Establishing a pattern of harassment will help in proving your case when presenting a harassment grievance.

What has the grievor done about the harassment prior to approaching you?

Find out if the grievor has taken any steps to address the harassment prior to speaking to you. It is important for the grievor to have told the harasser to stop the harassing behaviour, and it is also important to find out whether management has been made aware of the situation, and what steps they have taken to address it.

Are there any witnesses to the harassment?

Harassing behaviours often occur in front of other people. It may be that the grievor has been demeaned or belittled in front of others, for example, giving rise to the harassment. Find out who the witnesses are, and be sure to get statements from them if possible. They will also be useful in helping you to verify the information you receive from the grievor and from management.

□ **Does the grievor have documentation of the harassment?**

As harassment is so difficult to prove, it is important to have thorough documentation of the harassing behaviour. This should include exactly when the harassment took place, where it occurred, who may have witnessed it, and what the harassing behaviour was. If the grievor does not have thorough documentation of the harassment, advise them to begin documenting it from that point forward. Also ask the grievor to write down the particulars of the harassment that has already occurred to the best of their recollection.

***Special Note** – *Harassment is a very personal issue, as what may be harassment to one, may not be to another. It can include but is not limited to such things as belittling and/or demeaning comments, assignment of undesirable work, or denial of privileges that others receive. Because it is a very personal issue, be careful not to be judgmental of the grievor for feeling harassed, and also be careful not to allow the employer to minimize the situation.*

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Harassment/Poison Workplace

What is the harassing behaviour that the grievor says took place?

Who does the grievor say was harassing him/her?

How long has the harassment taken place?

What has the grievor done about the harassment prior to approaching you?

Are there any witnesses to the harassment?

Does the grievor have documentation of the harassment?

Sexual Harassment

☐ ***What is the sexually harassing behaviour that the grievor says took place?***

You must get a detailed account of the actions that the grievor considers to be sexual harassment. Sexual Harassment grievances are very difficult to prove, and therefore demand a great deal of detail.

☐ ***Who does the grievor say committed the sexual harassment?***

Find out whom the sexual harassment has been coming from. In order to properly constitute a grievance, there has to have been a violation of the grievor's rights by the employer. Therefore, a supervisor or other manager should have done the sexually harassing behaviour, or it may be a case where the sexual harassment is coming from another source, and the employer has failed to prevent or correct it.

It is important to note that if the sexual harassment is coming from a fellow Union member, it may be advisable for the Steward to intervene and make an effort to resolve the situation, rather than leaving it to management to address. However, this may not be possible, as sexual harassment cases have legal implications that may differ from other types of harassment.

☐ ***How long has the sexual harassment taken place?***

Establishing a pattern of sexual harassment will help in proving your case when presenting a sexual harassment grievance.

What has the grievor done about the sexual harassment prior to approaching you?

Find out if the grievor has taken any steps to address the sexual harassment prior to speaking to you. It is important for the grievor to have told the harasser to stop the sexually harassing behaviour, and it is also important to find out whether management has been made aware of the situation, and what steps they have taken to address it.

Are there any witnesses to the sexual harassment?

It is extremely important to determine if there were any witnesses to the sexual harassment. Be sure to get statements from those witnesses as soon as possible, in order to ensure accuracy of information and to get the information before there is an opportunity for their statements to be influenced.

Does the grievor have documentation of the sexual harassment?

As sexual harassment may be very difficult to prove, it is important to have thorough documentation of the sexually harassing behaviour. This should include exactly when the sexual harassment took place, where it occurred, who may have witnessed it, and what the harassing behaviour was. If the grievor does not have thorough documentation of the sexual harassment, advise them to begin documenting it from that point forward. Also ask the grievor to write down the particulars of the sexual harassment that has already occurred to the best of their recollection.

****Special Note – Sexual Harassment grievances may differ from grievances regarding other types of harassment. Quite often the collective agreement will specify a separate process for dealing with complaints of sexual harassment. It is especially important to lend as much support as possible to the grievor, and to handle their grievance with the utmost of confidence. Also, you should check into whether the situation has legal implications. Consult with your Chief Steward and Employee Relations Officer as necessary.***

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Sexual Harassment

What is the sexually harassing behaviour that the grievor says took place?

Who does the grievor say committed the sexual harassment?

How long has the sexual harassment taken place?

What has the grievor done about the sexual harassment prior to approaching you?

Are there any witnesses to the sexual harassment?

Does the grievor have documentation of the sexual harassment?

Sick Leave

☐ ***When was the grievor absent due to illness and for how long?***

To ensure that the grievor is properly paid for each day of sick leave, it is imperative to know when the grievor was away from work. Some collective agreements may identify a reduction in salary after a certain number of days of sick leave. You will need to determine the length of the absence so you can determine whether it is general illness, short term illness, or long term disability.

☐ ***When did the grievor report that he/she would be absent from work, and to whom?***

You should determine how and when the grievor reported to the employer that he/she would be absent due to illness. This is so that you can make certain that the employer was notified, and to check that it was done in the normally expected manner. If it was not, then determine if there were circumstances beyond the grievor's control, which prevented reporting the illness to the employer.

☐ ***Has the grievor seen a doctor?***

Some collective agreements require that an employee seek "appropriate" medical treatment when an illness causes him/her to be absent from work. Also, it may be necessary to seek medical information in processing the grievance, and the name of the attending physician will therefore be needed. It may be a good idea to have the grievor sign a release form, to permit the appropriate Union officials to access that medical information. Finally, you may identify a connection between the illness leading to this absence and previous illnesses for which leave was approved.

☐ ***What is the grievor's sick leave entitlement?***

Ensure that the grievor has the appropriate leave credits available to cover the period of absence due to illness. In some cases, it may be accumulated leave, kept in a sick leave bank, or it may be an annual entitlement, automatically renewed. Consult the collective agreement.

Was there any part of the grievor's job that he/she could have performed?

The employee may have been able to perform a modified job during the period of recovery, and there may have been a requirement on the employer to make such provisions.

Will the grievor require any accommodation in order to return to work?

Following recovery, the employer may be bound by the “*duty to accommodate*” the grievor in returning to the workplace. The “*duty to accommodate*” requires the employer to make whatever adjustments necessary, up to the point of undue hardship, to allow the grievor to return to work. This duty stems from human rights legislation, preventing the employer from discriminating against employees on the basis of prohibited grounds, such as disability. Therefore, adjustments such as a change of work hours, work load, moving the work location, etc. may be possible to allow the grievor to return to work, and the employer would be required to make such accommodations. The only times that the employer would not be bound to make these accommodations, are when there is a bona fide occupational requirement for performance of specific tasks that the grievor would be unable to perform, or when the employer would suffer undue hardship in making the accommodation. Undue hardship means excessive disruption or interference in the employer's operation, not simply that the accommodation is inconvenient.

□ ***Could the absence lead to a claim for Long Term Disability benefits?***

If the illness is of such nature that the grievor may be making a claim for LTD, the process of application should be identified to the grievor, including the timing of application, so as to ensure no disruption of income.

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Sick Leave

When was the grievor absent due to illness and for how long?

When did the grievor report that he/she would be absent from work, and to whom?

Has the grievor seen a doctor?



What is the grievor's sick leave entitlement?



Was there any part of the grievor's job that he/she could have performed?



Will the grievor require any accommodation in order to return to work?



Could the absence lead to a claim for Long Term Disability benefits?

Afterword

This reference guide has been developed with the hope that it will help steer the Steward, in the investigation of grievances.

It is very important to note, however, that it is intended only to be a reference guide. It is imperative that you consult **your** collective agreement when dealing with complaints and grievances on behalf of the membership. At the first opportunity you should enrol in a New Activist and Steward I Course.

Also, calling the union help line, (just call the union, those people who answer the phone are not switchboard operators but highly trained union representatives who can assist you over the phone.) your Chief Steward, other members of your Local Executive, and your Employee Relations Officer can serve as invaluable resources.

At the same time, it is important to recognize that you, as the Steward, are the front line responder to the questions and complaints of the membership. By providing that front line response, you and the Union are providing the best possible service to the members, and are helping to strengthen the Union overall.

The Executive of the NSGEU would like to take this opportunity to thank you for your time and dedication to fulfilling the duties of the Steward, and wish you all the best in doing so in the future.