

CUPE



**STEWARD
HANDBOOK**

CUPE education

cupe.ca

WELCOME STEWARDS!

LOCAL CONTACTS

	Name	Contact Information
President:		
Chief Steward:		
CUPE staff representative:		
Benefits:		
Pension:		
Health and Safety:		
Injured workers/return to work:		
Employee Assistance Program (EAP):		
Other:		

Private communication

Keep union communication private. Don't use the employer's email system, phone lines, cell phone, fax machine, laptop, or server for union work. Also, don't use any work-based social media accounts, for example, a Facebook account that you use as part of your job.

We acknowledge and thank:

- The Canadian Labour Congress for its booklet *The Steward Handbook*; and
- CUPE members and staff for their years of experience and many excellent ideas.

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To order more copies of this handbook, contact:

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Ottawa, Ontario K1G 0Z7
(613) 237-1590

Or order copies at cupe.ca

HELPFUL CONTACTS FOR STEWARDS

CUPE.CA

Employment Standards: _____

Human Rights: _____

Occupational Health and Safety: _____

Workers' Compensation: _____

CUPE Council: _____

District Council: _____

Federal Member of Parliament: _____

Elected provincial government representative: _____

Elected municipal government representative: _____

COMMUNITY RESOURCES:

Crisis Line: _____

Mental Health Association: _____

Addictions Counselling: _____

Women's Shelter: _____

Family Counselling: _____

Legal Aid: _____

Credit/Financial Planning: _____

Police: _____

Fire: _____

Other: _____

Other: _____

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THANK YOU...

Thanks for taking on the important job of union steward.

Whether you are a new steward or have been doing this work for many years, your role is to watch and listen to what is happening in your workplace. You will do this on behalf of all CUPE members. In fact, often when CUPE members think of their local union, they think of you and the work you do on our behalf.

The union needs you to represent our members and to protect the rights we have won in the collective agreement. Each clause in the collective agreement comes from negotiations with the employer, and every single clause is important.

This handbook will give you some good advice about how to approach your job as a steward. Your local may do certain things differently than we suggest in this handbook. That's OK. Treat it as a guide.

Each section is colour-coded to help you find what you need with greater ease.

The final section is a Glossary that defines many of the terms that stewards need to know. As you read through this handbook you will see words that appear in the glossary **highlighted like this**.

Carry this handbook with you or keep it nearby in the workplace. A PDF version is available at www.cupe.ca/stewards. If your job as steward ends, pass on this handbook and any notes you have made to the person who will replace you.

Thanks again for representing your members in your workplace, and for your important work on behalf of our union.



SECTION 1
STARTING OUT

SO NOW YOU ARE A STEWARD! WHAT SHOULD YOU DO FIRST?

- Talk with other stewards in your local, or the person who was doing the job before you. They can tell you what the job involves, give you a history of issues in your workplace, and provide answers to questions you may need to ask.
- Talk to your CUPE staff representative about steward education. CUPE offers workshops for both new and experienced stewards.
- Read every word in your **collective agreement** ! Go through it with someone who knows it well. Your job as a steward is to make sure the collective agreement is followed in the workplace.
- Meet with your union's leaders.

KEY QUESTIONS TO ASK YOUR LEADERS

Set a time to meet in person with your local's executive. Do your best to get answers to all these questions:

- What steps must our local follow to process a grievance? Who writes and submits grievances? Who attends grievance meetings? Who decides whether a grievance goes to **arbitration**?
- Who in our local has the authority to **bind** the union? If I am not someone who can bind the union, how will this affect my role? Who do I consult with?
- How does our local deal with problems that are not grievances?
- Who should I go to when I need to make sure I understand the wording (or **language**) in the collective agreement?
- What are the current issues in the workplace?
- Are there people in the local or committees that deal with equality issues? For example, is there a women's committee, a human rights committee, a **pink triangle committee**?
- What role do stewards play in bargaining, union communications, local campaigns, and other union activities?
- Where can I get:
 - > A list of the people I represent?
 - > A list of key contacts?
 - > Grievance forms?
 - > Grievance fact sheets?
- Does the local have older files that I can refer to? Where should I keep new files I create?
- When, where, and how often does the union hold its meetings?

HOW TO ESTABLISH YOURSELF AS A UNION STEWARD

The members you represent need to know who you are. They need to know how to reach you, and how a steward can help them solve their problems in the workplace.

Often, the best way to let people know you are a steward is for an executive member to introduce you to people. If this is not possible, you must do it yourself. Even if you already know everyone, take time to visit the members and let them know you are now a steward.

- Introduce yourself to everyone you represent.
- Give people written information about your role as a steward. You can do this by email, by making a flyer, or by posting details about you and your role on the union website, union Facebook page, or union bulletin board.
- Introduce yourself to the supervisors and managers you will be dealing with.
- Wear a CUPE steward pin in the workplace, or a decal on your hard hat or tool box.
- Find out when a new employee is hired and introduce yourself right away.



HERE'S WHAT YOU NEED TO GET STARTED AS A STEWARD...

- A copy of the collective agreement
- A list of all the members you represent (names, how to contact them, **seniority**, **job classification**, and wage rates)
- Workplace policies
- List of union contacts
- Labour legislation
- Human rights legislation
- Health and safety law
- WHMIS – Workplace Hazardous Materials Information System
- CUPE's National Constitution and your local By-laws
- Access to www.cupe.ca for information about issues CUPE works on
- Grievance forms
- Grievance fact sheets
- Arbitration decisions
- New members' kit
- Notebook and pen

A close-up photograph of a woman's hand holding a white rectangular card. The card features a logo in the top right corner, consisting of a stylized cross made of overlapping colored bars (blue, green, yellow, brown). Below the logo, the text on the card reads "SECTION 2" in a large, bold, teal font, followed by "THE ROLES AND RESPONSIBILITIES OF A STEWARD" in a smaller, bold, black font. The background is a blurred image of the woman's face and hair.

SECTION 2
**THE ROLES AND
RESPONSIBILITIES
OF A STEWARD**

WHERE DO I GET MY AUTHORITY AS A STEWARD?

You get your authority from labour laws. Labour laws give the union these basic rights:

- The right to be recognized as the legal representative of the members.
- The right to file a grievance.
- The right to have management respond to a grievance.
- The right to take a grievance to **arbitration** if the grievance is not resolved to the satisfaction of the union.

Laws that deal with health and safety, **human rights** and employment standards can also give the union rights in the workplace.

Your local's **collective agreement** might give you other rights in the workplace. For example, you may have the right to:

- Set deadlines for responses from management under the grievance procedure.
- Do union work on the employer's time.
- Meet with union members in the workplace.
- Attend meetings to investigate a problem.
- Attend meetings to represent a member who is being **disciplined**.

If your collective agreement is "silent" on an issue, the employer more or less has the right to do what they want (as long as they do not break the law).

WHAT DOES A STEWARD ACTUALLY DO?

It depends on your local union. Some locals have bylaws that list steward responsibilities. Others do not. Check with your local executive or your chief shop steward.

Depending on how your local works, you might:

- Investigate, write, and file grievances on behalf of members.
- Help to solve problems outside the grievance procedure.
- Ensure good communication between the members and the executive.
- Educate members about the collective agreement, about the union's role in the workplace – and about important social issues.
- Stand up as a strong **ally** with members from equity-seeking groups.
- Mobilize members to support the union's role in bargaining, to attend public rallies, etc.
- Act as a mediator when members are in conflict with each other.
- Help a member get accommodation or return to work after an injury or illness.

As a steward, your role is to watch and listen to what's happening in your workplace, on behalf of your local. As part of this role, you will want to inform the executive of issues that the local needs to deal with in bargaining; watch for early warning signs of privatization or contracting out; and stay alert for other problems.



BE PREPARED TO ACT AND REACT.

Sometimes, you will be reacting to problems that members bring to you. At other times, you will need to act on your own initiative, either because you notice a problem or because you want to prevent a problem from getting worse.

WAYS TO BECOME AN EFFECTIVE STEWARD

BE WELL INFORMED	BE CONNECTED
<ul style="list-style-type: none"> • Know the collective agreement and workplace policies. 	<ul style="list-style-type: none"> • Know when to go to someone else for help on an issue.
<ul style="list-style-type: none"> • Understand how laws and regulations affect your workplace and sector. This means learning about labour law, health and safety law, compensation for injured workers, human rights law, etc. Know that in some workplaces there is specific legislation that regulates how the employer operates. For example, it can regulate how assignments are made, how duties are performed etc. 	<ul style="list-style-type: none"> • Know who to go to. Sometimes it's the chief steward. Other times, it might be the local president or the CUPE staff representative.
<ul style="list-style-type: none"> • Know about the current issues in your union, such as when bargaining begins, what the main campaigns are, and when elections, hearings, and important arbitration decisions will happen, etc. 	<ul style="list-style-type: none"> • Take the time to reach out to members from marginalized groups in your workplace, such as racialized members, Indigenous members, new Canadians, casual workers, members with a disability, LGBTQ2+ members (lesbian, gay, bisexual, trans, queer, 2-spirit, plus), etc.
<ul style="list-style-type: none"> • Know what's going on in the workplace. Read the employer's notices, financial reports, etc. Check local news for stories about your workplace. 	<ul style="list-style-type: none"> • Stay in contact with other unions in your workplace.
<ul style="list-style-type: none"> • Monitor social media to get to know the members and find out about their issues and concerns. 	<ul style="list-style-type: none"> • Attend union meetings and steward meetings. • Use a variety of ways to communicate with members: face to face conversations, email, social media, bulletin board at work, local union website, etc.

ACT WITH HONESTY AND INTEGRITY

- Respect members' right to privacy.
- Don't gossip.
- Do not take sides in conflicts between members. Represent all members fairly.
- Be a champion for the **duty of fair representation** and the **duty to accommodate**.
- Use social media in a respectful and responsible way. Make sure not to say anything online that you would not say in public or to a person directly.
- Know your facts before you speak.
- Reflect on where you are strong and where you need to get stronger. Learn from how you are doing the job.
- Seek education and training in the areas where you would like to learn more.

CREATE AN EFFECTIVE WORKING RELATIONSHIP WITH SUPERVISORS

Under labour laws and the collective agreement, stewards and supervisors are equals. Each of you represents the interests of your side. Try to develop a good working relationship with the employer representatives you deal with.

Sometimes supervisors are also members of the **bargaining unit**. Talk to your local president or chief steward about how to handle this situation.

What if a supervisor refuses to work with me?

The employer does not always know if supervisors are doing a good job or not. If you cannot get a supervisor to work with you, let the employer know there is a problem, and how you have tried to solve it. Use the grievance procedure if the supervisor is violating the collective agreement. If the problem continues, talk to members of your local executive about how to put pressure on the employer to deal with the supervisor.

What if a supervisor asks me to pass a message to the members?

Ask the supervisor if this is formal communication with the union. If it is, tell them they must write to the correct union officer.

If the supervisor is asking you informally to let members know about something, ask them to communicate work rules directly to employees. For example, a supervisor might ask you to let people know they are taking too many breaks. You might want to help out because you want to avoid members being disciplined. But if you pass on a message of this kind, the danger is that members might start to wonder whether you are working on behalf of the union or the employer.

Can I be disciplined for doing my job as a steward?

Yes, but you are protected while performing your duties.

Members have the right to union representation, and you have a responsibility to defend members' rights and speak up to the employer on their behalf. You need to be able to act without fear of retaliation.

If there is any disagreement with the employer about your role, contact your local president or chief steward for advice.



CHECK YOUR COLLECTIVE AGREEMENT

Does the agreement give you the right to leave work to represent a member who is being disciplined? If not, and the employer orders you to stay on the job, keep working. Ask the employer to allow another union representative to represent the member.

In very exceptional situations, you might decide to disobey a supervisor and risk discipline to fulfill your duties as a steward.

For example:

- If the supervisor will not allow another union representative to attend a meeting instead of you.
- If the supervisor will not delay the meeting until someone from the union can attend.
- If the member would suffer “**irreparable harm**” because you could not attend the meeting.
- If the situation is time sensitive, such as when you learn about a collective agreement violation just before the deadline to file a grievance (and missing the deadline would mean losing the right to grieve the violation).
- There is a dangerous situation in the workplace.

If you decide to disobey a supervisor to fulfill your duties as steward, tell them – immediately – that you are acting as a steward in accordance with your union rights.

If you are disciplined for doing your job as a steward, have the union file a grievance.



THE 3 RS FOR STEWARDS

Be **respectful**, **responsible**, and **reasonable** in your job as steward. This will strengthen your case if the employer tries to discipline you.



GET A SECOND OPINION

If you think you might be disciplined for doing your job as a steward, try to reach the staff representative or your local president for advice before you act.

Although you and the employer are equals when you are doing your job as steward, being a steward does not change the fact that you are also an employee. Like other employees, you need to do the work that is assigned to you and follow the terms of the collective agreement. And you can be disciplined if the employer has **just cause**.

Can I represent myself in a grievance?

No. If the union files a grievance on your behalf, someone else (another steward, a local executive member or your staff representative) will need to represent you.

What if a member comes to me and I don't know the answer to their question? What if I don't know what to do?

Listen carefully, take detailed notes, and tell the member you will provide an answer as soon as you can. Talk to someone with more experience for advice. Give the member the answer as soon as you have it.

DEALING WITH UNION CRITICS

In most locals, some members are very positive about the union, some are very negative, and some are in the middle. The people in the middle do not have strong feelings either way.

Sometimes a member will criticize everything the union does. Listen to their complaints, point out the positive things the union does, and invite them to get involved to make things better.

If they are still negative and do not want to get involved, let it go. Spending your time and energy with members in the middle group is more likely to build union support.

See Section 6: Answers to common questions about unions.



**SECTION 3
GRIEVANCES**

A MEMBER COMES TO YOU WITH A PROBLEM.

LISTEN. ASK QUESTIONS. TAKE NOTES.

Ask yourself: Is this a violation of the collective agreement?

NO

Explain why.

Talk about other ways to solve the problem. Make notes about the issue and about the solutions you talked about. (Go to *Solving problems when it's not a grievance.*)

YES

Investigate.

(Go to *What is a grievance?*)

Is this a grievance?

NO

YES

(Go to *How to write a grievance.*)

WHAT IS A GRIEVANCE?

A grievance is a complaint about something the employer did or did not do:

- A violation of the **collective agreement**.
- A violation of federal or provincial employment-related laws.
- When the employer changes the way they apply collective agreement language. See Section 4 to learn more about **estoppel** and when this can be grieved.

Your collective agreement describes how the union and the employer have agreed to handle grievances. Make sure you follow the procedure so that the employer can't defeat the grievance on a technicality.

Your local might decide to file a grievance for strategic reasons. One example is when the local wants to let the employer know that a certain issue will be important in bargaining. Or the local might want to get the employer to pay more attention to a certain problem. In these cases, the union files the grievance knowing it will not go to **arbitration**. Make sure the members understand the strategy.

TYPES OF GRIEVANCES

Individual grievance: The union files a grievance on behalf of an individual employee.

Examples: a worker gets **disciplined**, or someone does not get a **promotion**.

Group grievance: The union files a grievance on behalf of a group of members affected in the same way and at the same time by an action the employer has taken.

Examples: the employer does not pay a shift premium to a group of members who worked an eligible shift, or the employer does not let a group of members take family leave, even though the collective agreement says they can. Not all collective agreements have group grievance provisions.

Policy/Union grievance: The union files a grievance because the employer did or did not do something that could have an impact on all workers covered by the collective agreement. This is usually a general (rather than individual) complaint.

Examples: the employer is not letting union members know about vacant positions, or the employer is not submitting union dues.

Employer grievance: Employers can also allege the union has violated the collective agreement. Employer grievances are unusual. If you get one, seek advice from your local president, chief steward or staff representative.



CHECK THE GRIEVANCE SECTION IN YOUR COLLECTIVE AGREEMENT

- How does it define “grievance?”
- Does it mention different types of grievances?
- How does your grievance procedure work?
- How many steps are there?
- Who deals with grievances at each step?
- What are the time limits at each step?

Know how the procedure works and follow it carefully.

If you think you might be disciplined for doing your job as a steward, try to reach the staff representative or your local president for advice before you act.

HOW TO INVESTIGATE A GRIEVANCE

First, get the facts.

To do this, you will need to ask many questions. Listen carefully to the answers. Get as many details as you can. Take notes.

- Ask the member to write down their story and give it to you. Or you can write down what they tell you, read it back to them, and ask them to sign it.
- Talk to witnesses. Take notes about what they say. Ask them to write their version of events or to sign what you write (after they tell you their story and you read it back to them).
- Notice if you are making any assumptions about the member’s story, or about what the witnesses are saying or not saying and make sure you have it right.

CUPE has a grievance fact sheet that you can use to record your conversation with **grievors** and witnesses. Keep the completed fact sheet as a record of your fact finding.

Ask the member to give you authority to view their personnel file. Get their full employment record and ask if there was any discipline in the past that might not be in their personnel file anymore.

As you do your investigation, collect all documents that relate to the grievance and store them in a folder. It is easier to do it this way than to try to collect documents later.



NOTES ARE IMPORTANT

Take notes every time you talk with a possible grievor or with a **witness**. In your notes, write the date and who was present. If they give you an exact quote of what they said or what a supervisor said, put these words in quotation marks. They can be important evidence later. If you need to, talk to people more than once.

USING THE 6 WS

1. Who was involved? Who saw or heard what happened? Can anyone else who was there talk about what they saw—or what they did not see?
2. What happened? What else was happening at that time?
3. Where did it happen?
4. When did it happen? Make clear notes on the date, time, day or night shift, beginning or end of shift, etc.
5. Why is this a violation of the collective agreement, law, or past practice?
6. What does the member want the employer to do to fix the problem?

Once you have done your investigation, try to fix the problem before filing a grievance.

Remember that anything you or the grievor says to the employer before filing a grievance will be “on the record.” This means that the employer could use it as evidence at arbitration.

HOW TO WRITE A GRIEVANCE



KNOW THE GRIEVANCE TIMELINES IN YOUR COLLECTIVE AGREEMENT

Your collective agreement describes the deadlines for all the steps in the grievance procedure. These deadlines (or timelines) are very important. Give your grievances to the employer on time and meet the deadlines for each step in the procedure.

If you cannot meet a timeline, try to get the employer to agree to an extension before the deadline passes.

- If the employer agrees, confirm the new timeline in writing.
- If the employer will not extend the timeline, get advice (immediately) about how to proceed.

In some collective agreements, not meeting the timelines for filing, processing or referring a grievance to arbitration will mean that you lose the grievance.



WRITE THE GRIEVANCE STEP BY STEP

Write out the grievance in draft form first. When you have the wording you want, prepare a final copy and give it to the employer.

Most locals use an official CUPE grievance form to write the grievance.

Follow these steps:

1. Complete all the spaces at the top of the form (grievance number, local number, employer, employee name, department, job, employee number, seniority date, contact information). Include the supervisor's name and what step you are at in the grievance procedure.
2. Fill in the section that describes the complaint and why it is a violation of the collective agreement or a problem. Include the following information:
 - The date(s) the violation(s) happened.
 - If you mention a specific article in the collective agreement, add a reference to the whole collective agreement AND if there is a possible violation of legislation, mention the legislation.
 - For example, "On or about (date), I was not paid overtime in violation of Article 15 of the collective agreement and any other clause in the collective agreement or any law that may apply."

Do not include too many details, but cover the basic information (who, what, when and the violation). You will argue your case with more details, during the grievance procedure.

3. Fill in the section that says what the grievor/union wants. This is called the "redress" or "remedy"—the solution that the union is seeking. Once again, be general in what you say so that the redress can be as full as possible and best fix what happened.

For example, you could write: "That the grievor be made whole, with paid overtime at the applicable rate, and appropriate adjustments to seniority and any and all benefits provided by the collective agreement and any employer policies, and any other remedy appropriate under the circumstances."

4. Sign and date the form at the bottom. Ask the grievor to sign the form, too.
5. Take a minute to review the form and make sure it is complete. Make copies for yourself, the grievor, and the union executive/chief steward. Submit the form to the person who receives grievances on behalf of the employer. Remember to give the grievor their copy.
6. Make a note in your file and your calendar about the time limit for the employer to respond. Be prepared to move the grievance to the next step if the employer does not respond, or if you disagree with the employer's response.



DO YOU NEED TO USE REGISTERED MAIL?

Check whether your collective agreement requires that grievances be delivered in a certain way, such as by registered mail. You may want to bargain language that adds other methods of delivery, e.g. email, fax, courier, etc.

GRIEVANCE MEETINGS

When you and a supervisor meet in a grievance meeting, you meet as equals. You represent the union. The supervisor represents the employer. Some supervisors and some stewards find it difficult to get used to this. But the fact is that labour laws and the collective agreement give you equal status in labour relations at your workplace.



KEEP THE GRIEVOR INFORMED

If a grievor cannot attend the meeting, let them know it is happening and tell them the results when it is over.

BEFORE THE MEETING

- Be prepared. Know your facts.
- List the information you want to get from the employer, including facts, witness names and documents. Think about whether you should ask for any of these things before the meeting.
- If the grievor will attend the meeting, decide in advance who will talk when, who will say what, who will answer questions from the supervisor.
- Explain to the grievor that you can call a caucus if you need to talk with the grievor alone during the meeting, or if the grievor wants to talk to you alone. Plan how you will signal to each other that you want to call a caucus.
- Decide which facts you will present, and the solution you want to propose.
- Decide if there are facts you are not going to mention, either because they do not matter or because they might harm your case. You do not have to tell the supervisor everything you learned during your investigation.

DURING THE MEETING

- Be honest and respectful.
- Remember you don't have to say everything you know. If you are not sure whether to say something or not, say that you will get back to the employer later with the answer.
- Remember that many frontline supervisors do not have the authority to agree to a settlement. If the person you are meeting with does not have the authority to make decisions, you might want to wait until you are meeting with someone with authority before you let the employer know your whole case.
- Be sure of yourself and be clear without being aggressive or hostile. Avoid threats, insults, and bluffing. Be reasonable. Do not exaggerate. Stay calm and respectful, even if someone says something that upsets you. Keep the focus on the topic at hand.
- Let the supervisor prove their case. Get them to explain why they did what they did.
- If someone in the meeting says that they don't know something, but will find out, set a deadline. If necessary, negotiate extensions to steps in the grievance procedure while waiting for the information.
- Take good notes. Record the date and the full names of everyone at the meeting, even the names of people who do not speak. Review your notes right after and fill in any extra details you did not write down.
- Try to focus the discussion on how to solve the problem. The sooner you can find a solution, the better. As time goes on, both sides can become more entrenched in their position.
- Propose a second meeting at this step of the grievance procedure if you think it would help.



GRIEVANCE MEETINGS ARE “OFF THE RECORD”

Let the grievor know that what is said in a grievance meeting is “off the record” and on a “without prejudice” basis. It cannot be used against them, or the union, or the employer, at arbitration.

AFTER THE MEETING

- Make a note about the next deadline in the grievance procedure, and any follow up required.
- If you have agreed to any extensions or other things, confirm the agreement in writing.
- Be prepared to move to the next step if no settlement, answer, or a denial, comes out of the meeting.



PROTECT THE GRIEVOR'S PRIVACY

You must get special permission from the grievor before you tell the employer any of the grievor's personal information (such as difficulties in their personal life, a medical condition or an addiction).

WHAT IS ARBITRATION?

If the union and the employer go through the steps in the grievance procedure and cannot resolve the grievance, either side can choose to send the grievance to arbitration.

This is when an independent single arbitrator, or an **arbitration panel**, listens to the union and the employer and then makes a decision that both sides must follow.



ARBITRATION IS NOT "GOING TO COURT"

Grievances do not "go to court." When the union and the employer cannot resolve a grievance, the grievance goes to an arbitration process.

HOW WILL AN ARBITRATOR MAKE THEIR DECISION?

If a grievance goes to arbitration, an arbitrator or panel will make a decision based on these things:

- What the collective agreement and the law say
- The facts of the grievance
- Evidence presented
- Witness credibility
- How similar cases that have gone to arbitration were decided (we call this “**case law**” or “jurisprudence”)

Sometimes the union and the employer disagree about what the wording in the collective agreement means. Here are some general rules for interpreting the wording (or **language**) in a collective agreement.

1. What was the intent of the union and the employer when they negotiated the language? Check with someone on the bargaining committee. Look at previous collective agreement language.
2. Look at the collective agreement as a whole. The position the union takes in a grievance or in arbitration must be supported by the whole agreement, not just one part of it.
3. If the wording in your agreement is clear, it will usually stand up in arbitration without other evidence.
4. If the wording is unclear (ambiguous), an arbitrator is allowed to look at the way both the union and the employer have used the language in the past, and to look at the bargaining history.
5. Decisions from similar cases in the past might show how an arbitrator will decide a current case – especially if the same union and employer are involved.
6. A reasonable interpretation of wording will prevail over one that is unreasonable or absurd. The arbitrator decides what is “reasonable.”



WRITTEN, UNWRITTEN, GENERAL, AND SPECIFIC PROVISIONS IN A COLLECTIVE AGREEMENT

- If something is not mentioned in a written provision (also called an “**express provision**”) this tells you that it is not included in the collective agreement. For example, if a list of statutory holidays does not mention Boxing Day, it implies that Boxing Day is not considered a statutory holiday.
- Unwritten provisions (also called “**implied provisions**”) may be part of your collective agreement if they are consistent with written provisions. For example, if one part of the collective agreement talks about breaks during a shift and another part talks about overtime but does not mention breaks, it implies that the workers have breaks during an overtime shift.
- If there is a general provision and a specific provision on the same issue, the specific provision will prevail. For example, if one part of your collective agreement says that normal hours of work are from 9 a.m. to 5 p.m. and another part says that the night shift is from 7 p.m. to 7 a.m., the second (more specific) language will apply to workers working on the night shift. Sometimes the collective agreement will say “except where otherwise provided.” In that case, make sure you look for the specific provision.

COMMON QUESTIONS ABOUT GRIEVANCES AND ARBITRATION

What does “work now, grieve later” mean?

In the past, if workers did not like something the employer did, they would “down tools” and go on strike. Today’s labour laws do not allow strikes while a collective agreement is in effect. Instead, the union and the employer must resolve disputes through the grievance and arbitration process, and the process is **binding** on them (both parties).

If a member thinks they should not have to follow an order from their supervisor, or another person in authority, you should usually tell them, “Work now, grieve later;” unless whatever they are being asked to do can’t be fixed at arbitration. For example:

- They are being ordered to do something that is illegal, unsafe, or unhealthy.
- The order affects personal and private aspects of an employee’s life, such as if the employer orders someone who wears a turban to remove it, or if the employer orders someone to provide unreasonable amounts of medical information.

If a member refuses an order for one of these reasons, your job as steward is to tell them to explain to the supervisor why they cannot obey the supervisor’s order. If a member has difficulty communicating, you may have to assist them. It’s also a good idea for a member to have a witness when telling supervisors what they are doing or not doing.

Can I leave my work assignment to represent a member who is being disciplined, even if a supervisor says I cannot?

If your collective agreement gives stewards the right to leave work to represent members, remind the supervisor of this. Explain that the member has a right to union representation. In a polite way, you could encourage the supervisor to check with their superior about your right to represent the member.

If the supervisor still refuses to let you leave your assignment, ask if another union representative can attend, or if the employer will delay the meeting until the member can have someone from the union present.

If the supervisor still refuses, and if not having union representation would do irreparable harm to the member who is being disciplined, you can consider disobeying the supervisor's order. Your reason would be to prevent the member from being unrepresented.

If a member is not allowed a steward, the denial of union representation should also be part of the individual grievance you file on behalf of the member who is being disciplined. As well, the union can file a grievance on your behalf as steward and a policy grievance on behalf of the union.

What if I am not sure whether something is a valid grievance, but I do not want to miss the time limit?

Ask the employer to extend the deadline. If they refuse to do this, complete the grievance form and submit it within the time limit to preserve the union's rights. You can always withdraw it later if you decide the grievance is not valid. It is much easier to withdraw a grievance than try to file one after the time limit has expired.

Also, it is sometimes possible to amend a grievance after you get more information. Get advice if you want to amend a grievance after it's filed.

What if there has been a clear violation of the collective agreement and the member does not want to sign a grievance?

Your job is to safeguard the collective agreement. If you do not grieve a violation of the collective agreement, the employer can argue that the rights no longer exist because the union has not enforced them.

If your collective agreement allows policy grievances (sometimes called union grievances), you can sometimes file a grievance about the incident without the member's consent. If not, you can write to the employer saying "due to the particular (or special or unique) circumstances, the union is not grieving this violation. But this is **without prejudice** to our position that you have violated the collective agreement."

Does management have to meet with me about grievances?

Most grievance procedures include formal meetings to discuss grievances. Sometimes, these meetings give people a real chance to solve the problem. Other times, they are just about “going through the motions.” In some cases, you might be able to have informal meetings with supervisors, especially frontline supervisors, to prevent or settle grievances.

If the employer refuses to meet with you at all, treat it as though the meeting occurred and the formal reply was “grievance denied.” Then go to the next step in the grievance procedure.

Who “owns” a grievance – the union or the grievor?

The collective agreement is a contract between the employer and the bargaining agent. The union owns the grievance, not the individual employee.

Do I always have to file a grievance if the member wants me to?

No, because the union “owns” grievances. On the other hand, the union has a legal duty to fairly represent all of its members. This is known as the **Duty of Fair Representation**. When a member comes to you with a complaint, you need to listen to the member and fully investigate the complaint before you decide whether or not to file a grievance. If you decide not to file a grievance, explain why to the member(s) involved, and talk about other ways to solve the problem. Be sure to also give the member(s) information about their right to appeal the decision. You can find this information in your local bylaws.

Who decides whether a grievance goes to arbitration?

It depends on your local. It could be you, a grievance committee, a chief steward, the president of your local, or the local executive. In CUPE, local autonomy means that locals, not union staff, decide whether a grievance goes to arbitration. But your staff representative will be able to give the local good advice about whether a grievance should go to arbitration or not.

What if I tell a member there are no grounds for a grievance, or that we are not going to take their grievance to arbitration, but they say they want a legal opinion?

The union’s duty to fairly represent our members means that we must carefully consider whether a grievance goes to arbitration or not. You might want to ask the local or the staff representative to get a written opinion. The local will decide whether to do this and who to approach. In some situations, a local might ask the staff representative to write an opinion. In some cases, a local staff representative might seek a written opinion, either from a CUPE lawyer or a lawyer outside the union.

Even though the decision to seek a written opinion is usually beyond the role of the steward, you can ask the member what their concerns are and why they think a written opinion is important. Then, you should pass that information on to the people who are making the decision.

Does the member have a right to get their own lawyer and have the union pay for it?

No. As long as the union is treating the member fairly and responsibly, we have no obligation to pay for a member's lawyer.

The union does not pay if a member hires their own lawyer.

The local is the bargaining agent in the workplace and only the local can represent members in meetings with the employer and in arbitration. If a member hires their own lawyer, that lawyer does not have the right to represent the member in meetings or in arbitration, although the member might bring them along.

The union does not have to take advice from the member's lawyer. If the employer reaches an agreement with a member's lawyer against the wishes of the union, the union is not bound by this agreement. (See **binding** in the Glossary.)

If a member refuses union representation, get their direction in writing. If the member tells you they have their own lawyer, tell your local president, chief steward or staff representative.

In special cases, the union might decide to provide a lawyer for a member, or the **labour board** might order the union to do so. This could happen, for example, if a conflict of interest exists, or if the union has done something that makes it impossible for it to provide fair representation to a member.

Are we allowed to amend a grievance after the deadline for filing?

This can happen, but only to fix a "typo" or to make something clearer. You cannot use an amendment to expand the scope of a grievance, unless the employer agrees.

There are different ways to amend a grievance. Find out what the practice is in your local. Some locals write a letter amending the grievance. Others submit a new grievance form, crossing out the words they want to delete, and using bold or underlining to highlight the changes they want to add.

Give an amended copy of the grievance form to all those who got a copy of the original grievance form. Refer to it as "Grievance No. X, as amended." If the original time limit for filing the grievance has passed, get advice about how to amend it.

Are we allowed to withdraw a grievance?

Yes. The first step is to make sure the grievor (if there is one) knows before you tell the employer. If the grievor disagrees with the union's decision to withdraw the grievance, make sure your local's appeal process is completed before you withdraw the grievance. After completing these steps, write a letter to the employer saying, "After further investigation and based on unique circumstances in this case, the union is withdrawing Grievance No. X without prejudice. The union reserves all future rights."

What is my role once someone else in the union takes responsibility for a grievance?

Depending on how your local operates and your local grievance procedure, when a grievance cannot be settled, you will pass it on to someone else. This might be the chief steward, a local executive member, the staff representative or a union lawyer. At this point, your role changes. Instead of you being the one who is representing the member, you are now a support person for the member, and help for the advocate who has taken over the grievance.

What's my role when a grievance goes to arbitration?

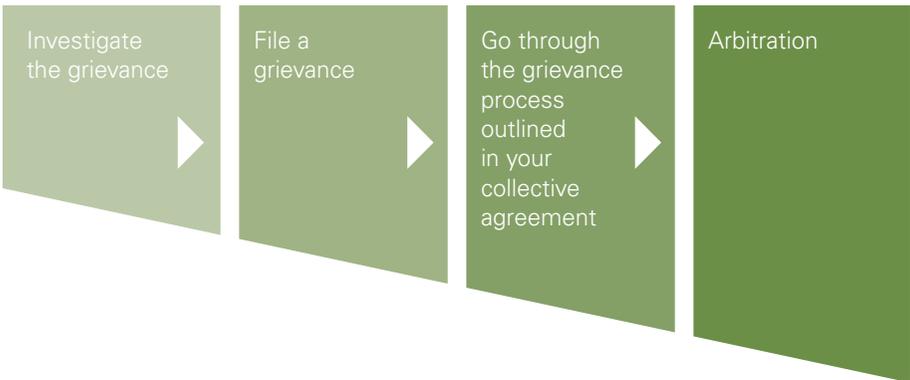
Your job is to pass along your complete file with:

- The grievance form that you submitted.
- All correspondence between the union and the employer.
- All your notes.
- Your record of interviews.
- Completed fact sheets.
- Any other items that relate to the grievance.

Keep a copy of the file for your own records.

You might continue as a support person for the grievor. Sometimes, a steward will be called as a **witness** in arbitration.

GRIEVANCE PROCEDURE:



MOBILIZING MEMBERS TO WIN GRIEVANCES

It's a good idea to involve the members in everything you do as a steward. Every workplace problem has the potential to build collective power. When a member comes to you with a problem, ask them what they would like to see happen, what role they would like to play, and whether they would like other members to be involved.

Connect members who are experiencing the same or similar problems. Remember to celebrate victories – this builds hope that change is possible.

This approach builds participation in the union, and helps members become more confident when dealing with the employer.

SOLVING PROBLEMS WHEN IT'S NOT A GRIEVANCE

Not every problem that the members bring to you is a grievance. There are many ways to solve problems:

- You can talk informally to a supervisor about the problem.
- You can pass problems on to the union executive, so they can deal with them in bargaining or at labour-management committee meetings, health and safety committee meetings, etc.
- You can organize group actions in the workplace, such as a petition to management, wearing ribbons or clothing of the same colour to bring attention to an issue, setting up Lunch-and-Learn sessions, etc.



REMEMBER...

Do:

- ask questions
- ask for advice
- listen

Do not:

- make promises you cannot keep
- pretend you know more than you do
- make threats
- lie

SECTION 4
OTHER WAYS
TO PROTECT
MEMBERS' RIGHTS



LAWS THAT PROTECT WORKERS' RIGHTS

Workers have rights under legislation, whether or not these rights are mentioned in the **collective agreement**.



LAWS THAT APPLY IN ALL WORKPLACES

- **Human rights**
- Health and safety
- Workers' compensation
- **Labour standards** or **employment standards**
- Labour relations legislation
- Pension benefits



LAWS THAT MAY APPLY IN YOUR WORKPLACE

Some laws or regulations relate to a specific sector (such as health care, drinking water, child care, etc.). They might mandate staffing levels or other specific rules that apply to your workplace.

Use this space to note any laws or regulations that may apply to your workplace.

NAME OF LEGISLATION/REGULATION	WHAT IT COVERS	WEBSITES

HUMAN RIGHTS

Members are protected by human rights laws that ban **discrimination** on the basis of things like gender, race, religion/creed, sexual orientation and disability. Check the human rights law that applies at your workplace to see who it covers.

- If your collective agreement has better **language** than the law, the collective agreement will prevail.
- If the law is stronger (provides more protection) than your collective agreement, it overrides your collective agreement.

ENFORCING THE LAW

Sometimes it makes sense to file a grievance when the employer has done something to violate a human rights or health and safety law. Other times, it makes sense to launch a complaint with the government agency itself. Sometimes, your local might want to do both.

If your local is considering a strategy that involves a member filing a complaint to a human rights or health and safety body, your local executive and staff representative will be involved. Usually, the individual member has to file these complaints instead of the union.

PAST PRACTICE

When the employer has been doing something one way for a long time, and then changes what they are doing, it can have a negative impact on the members.

STOPPING THE CHANGE

Sometimes the employer will agree to change things back, or at least delay the change, if you talk to them about how the change is affecting the members.

If having a conversation doesn't work, the members may want the union to file a grievance because the employer has changed a "past practice."

WHAT DOES YOUR COLLECTIVE AGREEMENT SAY?

To file a grievance, you must find a provision in the collective agreement that the employer has violated. Often when an employer changes a past practice, that practice is not something covered by the collective agreement. In such cases, the change cannot be grieved.

Example: The employer has supplied a microwave oven in the break room for the past 35 years. The latest one breaks, and the employer says they won't replace it. Your first step is to look for a specific provision in the collective agreement that says the employer must provide a microwave oven for the break room.

If you can't find a specific collective agreement article, the next step is to look for a "past practice" article.

Past practice language says that the employer will maintain a “past practice” and continue doing something (or not doing something). Sometimes “current practice” or similar words are used. Where there is past practice language it often says the practice can only be changed if the union agrees.

There are general past practice clauses, which say the employer will maintain all past practices. There are also more specific past practice clauses. They list the past practices the employer will maintain. Many collective agreements don't have any kind of past practice language.

GRIEVING PAST PRACTICE

Your collective agreement spells out the rights and obligations of the employer and the union. Your collective agreement will have a management rights clause. This gives the employer **residual rights**.

This means that the employer had all the rights to begin with, and they have only given up what is specifically given up in the collective agreement. In other words, they have kept every other right that they haven't given up.

Normally this means that if the collective agreement doesn't require the employer to do something (like buy a microwave) they don't have to.

This can change if you have past practice language. If you have past practice language in your collective agreement, it will say what past practices are protected. This limits the employer's residual rights.

OTHER USES OF PAST PRACTICE

Employers are allowed to have reasonable rules and policies, but they must enforce them fairly. Sometimes the union will file a grievance that says the way a rule or policy operates violates the collective agreement. Then evidence of past practices can demonstrate how the rule or policy works. If you want to file a grievance to challenge a rule or a policy, get advice first.

Sometimes grievances are filed because the union and employer can't agree on what the words in the collective agreement mean. If the grievance goes to arbitration, an arbitrator has to interpret the collective agreement wording. Sometimes the arbitrator will hear evidence about what the parties did (or didn't do) before, to figure out what the words mean.

Example: The collective agreement says “3 work days” off for paid bereavement leave. The employer says that means 3 consecutive weekdays, but a member who works part-time and also works on weekends, wants to claim leave on Wednesday, Thursday and Saturday. Witnesses might give evidence of how the language worked before. This isn't a past practice grievance, but the “past practice” evidence may be used to help interpret the collective agreement.

Evidence of what the parties have done in the past can also be important if there is a grievance that involves “estoppel!” (See next section.)

ESTOPPEL GRIEVANCES

Sometimes employers and unions start to do something in a different way than the collective agreement says. And the different practice works for both sides, so the parties don't follow the collective agreement.

Example:

The collective agreement requires the employer to offer overtime according to seniority on a bargaining unit-wide basis. The employer starts to assign overtime according to seniority by department. Everyone likes this practice, because the employer gets workers who are familiar with the department, and the members prefer to work overtime in their own department. This goes on for a long time.

A dispute arises later when one side decides it wants to go back to following the language in the collective agreement and the other doesn't. In this example when the employer wants to go back to following the terms of the collective agreement, the union might be able to delay it by filing an **estoppel** grievance.

You can file an "estoppel" grievance if:

- the employer said or did something that made the union believe the employer was not going to follow the language, and the union relied on it.
- language in the collective agreement has not been followed by the parties for more than one collective agreement.
- a chance for the union to change the language in bargaining has passed, and the union did not table new wording because the union was content with the way the parties were operating.

In other words, you can file an estoppel grievance if the employer led the union to believe the employer would do something or not do something (even though it meant not following the exact language in the collective agreement), and the union relied on this, and lost a chance to bargain what they wanted.



ASK FOR HELP

If your employer changes an established practice, ask for advice about how to respond.

Here's an example of when a local might file an estoppel grievance:

By law, there are nine statutory holidays in your province, but your collective agreement lists 12 paid holidays. The collective agreement clearly states that employees get paid time and a half for hours worked on "statutory holidays". However, over the life of many collective agreements, the employer has always paid time and a half for time worked on all 12 paid holidays. Now, the employer has decided they will follow the exact wording in the collective agreement and only pay time and a half for the nine statutory holidays.

You could file an estoppel grievance because the employer was not following the wording in the collective agreement and the union relied on that and did not try to bargain a change to the wording that would reflect the practice of paying time and a half for all 12 holidays.

If you win an estoppel case, the employer has to keep doing what they were doing (in spite of what the wording in the collective agreement says) until the union has had a reasonable amount of time to adjust. If the employer and union can't agree on how long the adjustment period should be, an arbitrator will decide. But this "estoppel" will never last longer than the duration of the current collective agreement.

If you do not have a valid estoppel grievance, the union has to wait for bargaining to fix the problem.

Estoppel cuts both ways – the union and the employer can both make an estoppel argument.

SECTION 5
ADVICE TO
HELP YOU IN
CHALLENGING
SITUATIONS



MEMBER-TO-MEMBER CONFLICT

There are many sources of conflict in the workplace: downsizing, growing workloads, lack of clear expectations, work assignments that seem unfair, **stereotypes**, past events, etc.

Sometimes conflict goes away with time, or when someone leaves. But sometimes conflict can make the environment at work dysfunctional, hostile or even toxic. At some point, the employer will have to get involved, because they are responsible for providing a safe, healthy workplace.

Conflict is not always a bad thing. In fact, conflict is a natural part of life and can give us a chance to make things better. The way we choose to deal with a conflict makes it either a positive or negative experience.

People respond to conflict in five different ways. Each of these ways may or may not help someone get what they want. Each response may or may not help to build a relationship with the other person.

Let's look at how people tend to respond to conflict. Do any of these sound like you?

1. Avoid the conflict and hope it goes away. (You probably do not get what you want, and it does not help the relationship.)
2. Give in to the other person. (This might be good for the relationship, but you do not get what you want.)
3. Find a compromise. (Quick and easy: both of you get something, and it does some good for the relationship.)
4. Use your power to attack, control, or compete. (You might get your way, but this approach is bad for the relationship.)
5. Use a problem-solving approach and find a solution that works for both people. (You get something you want and this approach is good for the relationship.)

All of us have habits (or a default mode) that we tend to use when we find ourselves in conflict. In fact, all five responses make sense, depending on the situation.



WHAT IS YOUR CONFLICT STYLE?

- Do you prefer to avoid conflict? Maybe you need to find better ways to solve problems.
- Or do you act in aggressive ways to get what you want? If so, try to slow down and choose which response will work best in each conflict situation.

How can I help if a member comes to me about a conflict they are having with another member?

- You could coach the member about how to deal with the conflict. Find out whether they can understand the other member's point of view. Help them separate the person from the problem. Ask them to think about why the conflict is really bothering them. Suggest that they approach the other person in a respectful way. You could even rehearse the kind of talk that they might have with the other person, OR
- You could offer to mediate a conversation between the two members. (First, ask the other person if they are open to you playing this role.) Choose a good time and a neutral place for the meeting. Follow these steps:
 1. Introductions – Introduce yourself, describe the process you are going to use, confirm that both people want you to help, and make a list of ground rules.
 2. Fact finding – Ask each person to tell their story. Give each side the same amount of time. Listen for feelings and restate them in neutral **language**. State and confirm the facts that both people agree on.
 3. Identify interests – Ask open-ended questions to figure out what the issues are behind the position that each person is taking. For example: Why do you want to do that? What does it mean to you? What is this conflict about? (An open-ended question cannot be answered by a simple YES or NO. A closed question only allows for a YES or NO answer.)
 4. Find a solution – Start by brainstorming all the possible solutions that both people can think of (without judging the merit of the ideas). Help the members choose the best solution for both sides. If needed, talk to each of the members alone to try to find a solution.
 5. Follow up by checking with the members to see if things have improved.

Three good reasons to help members resolve their conflicts in a productive way:

- To build solidarity in the union and the workplace.
- To protect members from a toxic workplace.
- To prevent the employer from taking disciplinary action.



WHEN TO TAKE SIDES

As steward, try to avoid taking sides in member-to-member conflict—unless the collective agreement or laws (like **human rights** or health and safety) clearly support one person's position. An example would be if a member refuses to obey a "no scents" policy, or if a member says something **homophobic**.



WHEN YOU ARE INVOLVED IN MEDIATION...

Do

- Make sure both people want to participate
- Start by making a list of ground rules to keep the conversation respectful and confidential
- Keep the lines of communication open
- Keep the discussion focused on the topic
- Try to bring out the interests that are underneath each person's position
- Make sure both members get to express themselves and be heard

Do not

- Take sides
- Try to impose your solution
- Criticize or tell one side they are unreasonable
- Make threats

WORKPLACE HARASSMENT

Harassment is using real or perceived power to abuse, devalue or humiliate someone. The person being harassed does not welcome the actions or words. They are harmed by them.

Sometimes a harasser doesn't know their actions are unwelcome. They might not intend to harm the other person. Intent doesn't matter, impact does.

Harassment can happen once or often.

Here are some examples of workplace harassment:

- name-calling, insults, threats
- jokes and teasing (about a person's culture, religion, body, way of speaking, work performance, etc.)
- graffiti, sharing offensive pictures
- written, verbal, or physical abuse, including inappropriate or unwelcome touching and leering

Someone who is the target of harassment does not have to tell the harasser to stop, in order to prove the conduct was unwelcome. Even if the harasser didn't intend to harm the target, the harasser is responsible.

All types of harassment are against the law.

- Human rights laws make it illegal to treat a person differently because of things like race, ethnic background, sex, age, sexual orientation, gender, disability, family or marital status, class, political affiliation, religion, or language.
- More and more, health and safety laws also ban harassment, including cases that involve violence.
- Some workplaces also ban personal harassment, which covers words or actions that are hostile or intimidating but do not fall under human rights prohibited grounds.

Sexual harassment involves unwelcome conduct of a sexual nature that damages the work environment or negatively impacts the person being harassed. Sexual harassment is often used to leverage power and make someone do (or not do) something or is intended to embarrass the target. It can happen between people who are the same gender or different genders. It can include physical touching or assault, jokes, compliments or insults, if they refer to someone's physical appearance, sexual activity or their sexual attractiveness or undesirability.

Under Human Rights law, sexual harassment is discrimination on the basis of sex or gender. Some sexual harassment is also criminal sexual assault. Employers are responsible for preventing sexual harassment. If it does happen, the employer has to respond, whether the **alleged** harasser is a manager, supervisor, coworker, client, patient, student or member of the public.

Examples:

- Crude or sexualized language, sexual innuendo, leering.
- Displaying or circulating sexual jokes, objects, graffiti, nudity, pornographic images or text.
- Repeated requests to date, or participate in sexual activity.
- Persisting in sexual overtures after a consensual interaction or relationship ends
- Offering benefits in exchange for sexual attention, or threats if advances are refused.
- Vandalism with reference to sexual characteristics – e.g. drawing genitalia on lunch table or someone's locker.
- Spreading rumours/gossip about someone's sexual activities (or inactivity).

Your employer has a legal obligation to provide a workplace that is free from all kinds of harassment. That is why we can file a harassment grievance against the employer, even when the alleged harasser is a union member, or a member of the public.



BE AWARE SO YOU CAN ACT

Check the human rights and health and safety laws that cover your workplace to learn how they define harassment.

What does your collective agreement say about harassment? What does the anti-harassment policy in your workplace say? How does it define harassment? What happens when there is a harassment complaint? How will it be investigated? What is the union's role in the investigation?



STOPPING HARASSMENT IN THE UNION

As a steward, you and other union officials should take steps to prevent harassment at union meetings and events.

What should I do if a member comes to me saying that another member has harassed them?

Start by finding out if the conflict is the result of a workplace issue. If it is, let the member know that it is the employer's responsibility to provide a workplace free of harassment and that you will investigate their complaint as a potential grievance. Before starting your investigation, find out how your local handles member-to-member harassment complaints.

If a member wants to file a harassment grievance that involves another union member, and if your investigation shows that they have a valid grievance, file the grievance against the employer for not providing a harassment-free workplace.

What if a member comes to me because the employer has disciplined them for harassing another member?

Treat the member's issue like you would other **discipline** issues. Your job is to investigate and make sure the employer uses a fair process in their response to the harassment complaint. See "Discipline and discharge cases" at the end of this section in the handbook.

How can the union represent members on different sides of a harassment case?

In member-to-member harassment cases, the union might file a grievance on behalf of one member, or both, depending on how the employer is responding to a harassment complaint.

If both members come to the union, the union has an ethical and legal duty to represent both members. But a single steward or union official cannot represent both members. This would be a conflict of interest.

Here are possible ways for the union to meet its duty to represent both members:

- The union can assign a different steward or executive member to represent each member, or
- Union staff can represent one or both of the members.

It is easy for harassment complaints to become gossip within the workplace. Treat this kind of complaint with respect for its private nature. If other members ask you about it, do not confirm or deny that there is a complaint. Let them know that it would never be right for you to discuss specific complaints with them. At the same time, be open to other members who might be coming to you because they have also experienced harassment.



TAKE HARASSMENT COMPLAINTS SERIOUSLY

If you are not sure how to proceed, ask for support from the chief steward, the grievance committee, a local executive member, or the staff representative.

What if a member who has been accused of harassment says, “I didn’t mean it” or “It was just a joke”?

With harassment cases, it is the impact on the person who is harassed that matters, not the intention of the alleged harasser.

Sometimes an apology goes a long way to repairing the damage done. Explore whether the harasser understands why what they did was hurtful and if they are less likely to do it again.



QUESTIONS TO ASK IN A HARASSMENT INVESTIGATION

- What was the date, time, and place of the incident(s)?
- What kind of harassment was it (personal, racial, sexual, or something else)? Was there physical contact?
- What was the effect of the alleged harassment? (The member feels unsafe at work, was denied a **promotion**, had their position downgraded, was the subject of unfair discipline, part of a toxic work environment, etc.)
- Are there any physical or **mental health** effects?
- Did the person with the complaint do or say anything to show that the harassing words or actions were not welcome? (Please note: A member who has been harassed does not have to object in order to have a valid harassment complaint. But it is important for you to know whether they objected when you build a case for harassment.)
- Who is the alleged harasser: a supervisor, a co-worker, or someone the member works with (such as a client, resident, patient)?
- Are there witnesses? What did they see or hear?
- Are there documents, e.g. emails, texts, social media posts, etc.?
- Is this something that has happened more than once?
- Has the person with the complaint told management about it in the past?

WORKPLACE VIOLENCE

Health and safety laws across Canada require employers to provide safe workplaces. Employers are expected to notice early warning signs of violence, prevent violence, and deal with violence and threats of violence when they happen. Harassment is a form of violence.

Stewards can play an important role in early detection.

Workplace violence includes what people say as well as what they do.

Here are some examples of workplace violence:

- Verbal threats
- Writing threatening notes or sending threatening emails
- Transmitting photos using social media
- Shaking a fist in someone's face
- Having or threatening to use a weapon
- Pushing, hitting or trying to push or hit someone
- Throwing something
- Spitting, biting, yelling
- Sexual violence
- Hitting, kicking or throwing an object
- Using a vehicle or piece of equipment to try to threaten or harm someone
- Domestic violence when there's a connection to the workplace

As a steward you should know:

- How to get help quickly to stop any violence.
- Security measures that exist in the workplace, such as whether there are lockdown procedures, how to contact security staff, when to set off alarms, etc.
- How to officially report threats of violence or violent events to the employer and health and safety committee. (Do you fill out a form? Whom do you report to?)
- How the employer will investigate and deal with threats of violence or violent events.
- Whether there are any rules in the workplace to protect workers from violence, such as "no fighting" or no "horseplay."
- How to follow up with the health and safety committee
- When to call the police or 911.



YOUR DUTY AS A STEWARD

Canada's Criminal Code covers violent acts, threats of violence, and actions like stalking. If these things happen at work, call the police right away. Report all cases of violence, or threats of violence, to the employer, the union, and the health and safety committee.



KNOW YOUR MEMBERS' RIGHTS

Workers have a right to refuse unsafe work. That includes when there is a threat of physical violence—from co-workers, clients, or the public—unless they are in a type of job where the risk of violence is considered part of the job. See "Refusing unsafe work" in this section of the handbook.

DISABILITIES IN THE WORKPLACE, INCLUDING MENTAL ILLNESS



DEFINING DISABILITY

A disability is typically defined as a health condition or problem that has a degree of permanence and impairs one's ability to carry out day-to-day activities. A disability is created when this impairment comes up against a disabling environment.

The United Nations' Convention on the Rights of Persons with Disabilities (CRPD) recognizes that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others."

One of your roles as steward is to protect human rights in the workplace. This includes the rights of members with disabilities. There are many kinds of disabilities:

- Physical
- Mental
- Permanent
- Temporary
- Episodic (they come and go)
- Visible
- Invisible
- Total and partial disabilities

Almost every workplace includes people with invisible disabilities. Although many of these disabilities might not affect the way someone performs their job, the start or return of a disability may affect the way a person functions on the job. Some examples of invisible disabilities are:

- Fibromyalgia
- Epilepsy
- Multiple Chemical Sensitivities (MCS)
- Diabetes
- Lupus
- Substance use disorder
- Colitis
- Addictions

As well, mental and cognitive disabilities may or may not affect job performance. Some examples of mental and cognitive disabilities are:

- post-traumatic stress disorder
- social anxiety disorder
- depression
- bipolar disorder
- schizophrenia
- attention deficit hyperactivity disorder (ADHD)
- anxiety

Often, as a steward, you will become aware of a disability when the employer disciplines someone for performance issues. Under human rights laws, employers have a legal **duty to accommodate** workers with disabilities up to the point of **undue hardship**. See the section on “Duty to Accommodate.”



KNOW WHAT APPLIES IN YOUR LOCAL

Check your collective agreement and human rights legislation for definitions of “disability” and “duty to accommodate.”

What should I do if I suspect that disability might be a factor in a discipline case, but the member has not actually told me this?

Many workers with disabilities do not want to share medical details with the employer or the union. They might not want co-workers to know about their disability. They may be afraid of what might happen if details about their disability are known to others. In some cases, a **mental illness** can prevent the member from realizing they have a disability or a substance use disorder.

Do all you can to build trust, or have the member choose a union representative that they trust. Ask if there is anything else you should know so you can represent them well. Make sure they understand the employer’s duty to accommodate and that workers with disabilities have rights.

How much medical information do I need to share with the employer if I am representing a member with a disability?

Check your collective agreement and workplace policies to find out what medical information the employer has the right to know.

Your job is to find the right balance between how much medical information the employer needs to know and what should stay private. If you are not sure, get advice before providing information or advising the member to provide information.

A member who is seeking accommodation must provide enough information to support their request. The employer does not always need to know the medical condition or have access to medical details. But, in every case, they do need to know what the employee can and cannot do at work, and how long the accommodation might last.

If a member is being disciplined for poor performance or misconduct, and wants to use a disability to explain the problem, the member needs to share enough medical details to prove that the disability caused the problem.



YOU ARE NOT THE DOCTOR

It is not the union's (or the employer's) role to judge if a member is disabled or if a disability is affecting their work. This information should come from their health care provider—with the member's written permission.



BUILDING TRUST

Ask the member, "What would you like me to share with the employer?"

Write down what you are planning to say to the employer, let the member see what you have written, and then ask them to sign the page. By signing their name, they are giving you the authority to provide this information to the employer.



ALWAYS RESPECT YOUR MEMBERS' RIGHT TO PRIVACY

Respect for privacy is extremely important in building a relationship of trust with the members and the employer.

DUTY TO ACCOMMODATE

Employers and unions have a legal duty to accommodate workers who fall under the terms listed in human rights laws. While the laws differ from province to province, some common items covered by human rights laws are:

- Disability
- Gender
- Religion
- Family status

The effect of human rights laws is that the employer must remove all barriers to employment in the workplace. The main barriers that exist are:

- Attitudinal (such as a belief that deaf people or single mothers cannot work here),
- Physical (such as the need to lift heavy items), or
- Structural (such as shift times).

The most common accommodations are for:

- disabilities,
- family/parental status (such as accommodation for pregnant workers), and
- religious beliefs (time for religious observances and dress codes).

The employer or union can only refuse to accommodate someone if they can prove that it would cause “undue hardship” in terms of cost, or health and safety, or the balancing of other interests, or the impact on the collective agreement.

Note that the limit is undue hardship. This means that an accommodation that creates some hardship can be acceptable.

The employer’s obligation

When someone requests accommodation, the employer must:

- Consult the union,
- Determine what barriers might affect the person making the request,
- Explore options to remove those barriers, and
- Accommodate to the point of undue hardship.

The union’s obligation

While the employer has the primary duty to accommodate its employees, the union must:

- Help find a reasonable accommodation that will suit the worker.
- Protect the worker’s privacy as much as possible.
- Make sure the collective agreement contains no sources of **discrimination**, such as hours of work that discriminate against people whose religion says they cannot work on the Sabbath or pray during the workday.
- Not block efforts by the employer to accommodate an employee.
- Look after the needs of all members in the bargaining unit.
- Suggest an alternative if we cannot agree with what the employer proposes.



DID YOU KNOW?

Accommodations must be reasonable, not perfect.

The law says the employer, the union and the member who is seeking accommodation must all be involved in finding a reasonable accommodation. As steward, you might be involved in finding ways to accommodate members of your local, or you might send these cases to someone else in your local. There is no single way to provide accommodation, but here are some examples:

PHYSICAL ACCOMMODATION	CHANGING THE TERMS OR CONDITIONS OF EMPLOYMENT
<ul style="list-style-type: none">• Create more space to allow wheelchairs in the workplace• Use assistive devices• Install special computer equipment or software• Install audio cues in street crossings and elevators	<ul style="list-style-type: none">• Adapt, or adjust existing jobs• Study the standards and practices in the workplace to see if they result in unequal treatment; rewrite if needed• Change the way work is organized, demands of the job, methods used to do the work
WORK ASSIGNMENTS	LEAVE OF ABSENCE
<p>Consider in this order:</p> <ul style="list-style-type: none">• Modify member's job• Move member to a different job• Modify the different job• Create a new assignment by bundling tasks from different jobs• As a last resort, look for work outside the bargaining unit	<ul style="list-style-type: none">• The employer might grant a one-time or recurring leave of absence, for example, leave to attend and recover from chemotherapy treatments.• The employer is expected to hold the person's job, so they can return to it after the leave of absence.

How does the union balance seniority rights with the duty to accommodate?

Sometimes the duty to accommodate can conflict with the **seniority** rights of other workers covered by the collective agreement. Seniority rights do not automatically trump the duty to accommodate. On a case-by-case basis, the union can override seniority rights to find a reasonable accommodation if it doesn't create undue hardship.

Can an accommodation plan displace someone who is in a permanent job?

A temporary reassignment might be considered "reasonable" as part of an accommodation. But the union would probably not consider it reasonable for a person in a permanent job to be displaced permanently due to an accommodation. This would usually be an undue hardship. However, placing someone who needs accommodation in a vacant position is a common accommodation that does not usually create undue hardship, even though a posting is waived.

Does the employee have a right to choose the accommodation they want?

No, but they have a right to a reasonable accommodation. They should be allowed to give their opinion.

What if other members want to know why someone is being accommodated?

Always protect the member's right to privacy. Keep details and even general information about a disability or another reason for accommodation private.

You can only say, "X is being accommodated." Do not say more. If you do, you are breaching the member's right to privacy.

What if the member being accommodated wants to tell co-workers about their condition?

The member can tell people what they wish. Make sure they understand the risk that they will have no control over what other people say, including to the employer.

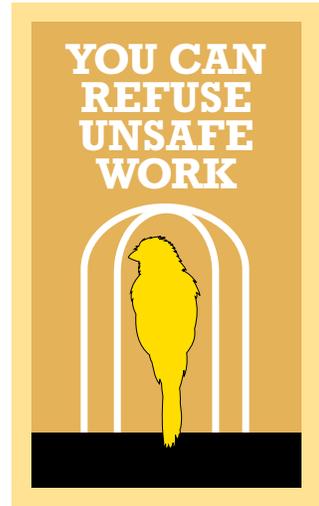
What the member tells the employer, the employer must keep private.

REFUSING UNSAFE WORK

Health and safety laws give workers the right to refuse work that they believe is unsafe for them or another worker.

Here are some examples of working conditions that could be unsafe:

- Faulty machinery
- A problem with air quality
- Something in the environment that causes allergic or other physical reactions
- Too few workers to do the job (unsafe staffing levels)
- Violence or the threat of violence that could cause physical harm



LIMITS ON THE RIGHT TO REFUSE:

Workers cannot refuse when faced with aspects of the job that are normal, and acceptable precautions are in place (such as a lab worker with proper protective equipment working with an infectious disease). Additionally, a worker cannot refuse if their refusal to perform their duties directly endangers the life or health of another person (a security guard must follow procedures during an incident).

Procedures and circumstances around the right to refuse vary from province to province, and it is important that workers are trained in the procedures before they are faced with dangerous situations.



YOUR ROLE AS A STEWARD

If you know of a situation in your workplace that might cause harm to a worker, talk to the health and safety committee or your local executive about ways to make the employer fix the problem. If the employer doesn't take appropriate steps to protect workers, you can help make members more aware of the proper way to use their right to refuse unsafe work.

Right to refuse cards for your specific province can be ordered for free on cupe.ca.

If a member contacts you because they want to refuse unsafe work, here's what you need to do.

Stage 1:

- Start by trying to reach someone in the local. In this order: the union co-chair of the Health and Safety Committee, another union member on the Health and Safety Committee, or the local president—in that order.
- If you cannot reach anyone, ask the member why they think the work is unsafe. They must have a reason to believe that something they are supposed to do, or something in the workplace, such as equipment, might pose a danger to themselves or someone else. Find out why they are concerned.
- Under the law workers have to follow certain steps if they are refusing unsafe work. The first step is to tell a supervisor. Advise the worker to talk to their supervisor immediately. **Tell them they must be very clear with the supervisor that they are refusing unsafe work because of a danger** and not just reporting a problem. This is important because it's only when a worker says these words to a supervisor that they have a legal right to refuse work and the right to have the union involved in supporting them.
- Tell the worker to stay in a safe place near their workstation until the investigation is finished. If the work refusal goes to the second stage (see below), the employer has the right to assign the worker other reasonable work.
- While the worker is reporting to the supervisor, continue to attempt to report the event to your local's representatives on the health and safety committee members.
- The supervisor should investigate the problem right away in the presence of the worker. In some jurisdictions, the Health and Safety Committee, or a worker representative, participates in the first investigation. In others, the first step is an investigation involving only the worker and supervisor. The worker representative could be a union member on the Health and Safety Committee, a union health and safety staff representative, a steward, a member of the local union executive or someone else the union appoints. The preference is a local union member of the Health and Safety Committee.
- If you are the worker representative in the investigation, make sure the supervisor's investigation is complete and deals with the real concerns of the worker who has refused work.

Most problems are solved at the first stage. If not...

Stage 2:

- If the supervisor refuses to investigate or correct the problem, and orders the worker back to work, and if the worker still has reason to believe that the work would be a danger to themselves or others, they can continue to refuse the work a second time.

If you are still handling the case when this happens, make sure the member understands that this time they must have stronger proof for continuing to refuse work. In other words, they must have a very strong reason to believe that the work is not safe.

In most jurisdictions, the Health and Safety Committee investigates at this step (if they were not involved in the first phase investigation) to see if they can resolve the situation. If the committee cannot agree, or the situation cannot be resolved to the satisfaction of the refusing worker, the refusal continues and moves to the next step.

- At this stage, someone (the worker, the union, the supervisor, or the employer) will notify the government office that is responsible for workplace health and safety. An inspector will come to the workplace and conduct an official investigation. They will speak with the supervisor, the worker, and the union representative. Then, they will provide a written decision. If the inspector agrees that there is a problem, they have the power (under legislation) to order the employer to fix it. If the inspector says it is safe to return to work the member is legally required to resume work.

If a worker contacts you after refusing to work, here's what you need to do:

Contact a union representative on the Health and Safety Committee to report the work refusal.

Under health and safety laws:

- If the worker has good reason to believe that the work is dangerous and has followed the proper procedure, the employer cannot discipline them in any way, or threaten them with discipline for refusing unsafe work. (Point #3 in Stage 1 above describes the proper way to refuse work.)
- If the worker did not follow the proper procedure, they could face discipline. Be sure to inform your Health and Safety Committee and local executive if this happens.

If the worker has followed proper procedures and the employer still decides to discipline them for legally refusing to do unsafe work, the worker can file a grievance and/or file a complaint with the appropriate government agency. (See sections on "Grievances," "Discipline and discharge cases," and "Laws that protect workers rights.")



HEALTH AND SAFETY IS SO IMPORTANT

Build strong relationships with your local health and safety representatives. Your job is to work together to protect health and safety rights in your workplace.

DISCIPLINE AND DISCHARGE CASES

Many stewards find these cases to be the most difficult to deal with. The outcomes might be more serious than with other kinds of grievances. The worst outcome is that someone could be **discharged** and lose their job. The employer could also warn or suspend them. Often, a worker who is being disciplined is upset, angry, and anxious when they even think about losing their job.

Sometimes, it can be difficult to know what really happened. Sometimes, the story changes over time. Sadly, not everyone tells the truth all the time.

When a member is being disciplined, the union has a duty and obligation to represent that worker. It does not matter whether you personally believe that the worker did something wrong or not. Your job is to protect the worker's rights, and to make sure the employer is using a fair process. If the employer has taken action against a member that is not fair or violates language in the collective agreement, you should investigate and consider grieving the employer's actions.



WHAT MAKES DISCIPLINE AND DISCHARGE CASES DIFFERENT ?

In discipline and discharge cases, it is the employer's obligation to prove that they had **just cause** to impose the discipline. This is different from other grievances where the union has to prove that the employer did something wrong.

When you are representing a member who is being disciplined, you need to find answers to these questions (check the Glossary for the meaning of terms highlighted in yellow):

- Does the employer have just cause?
- Is the employer using **progressive discipline** ?
- Does the punishment "fit the crime" ?
- What else might be a factor? (For instance, if there is a performance issue, could it be related to an illness or disability?)
- If the employer is accusing the worker of **insubordination** , did the employer give clear directions to the worker?
- Are there **mitigating factors** , such as when an employee has worked for the employer for a long time with no previous disciplines on record, or an employee who has had recent personal problems (such as a death or illness in the family, a new health problem, etc.)?
- Are there **aggravating factors** (e.g. grievor ignored previous warnings)?

Refer to the section on "Grievances" for tips about how to investigate your case.

Once you have fully investigated the case, decide which information should be disclosed at which stage in the grievance process.



SOMETIMES, YOU DON'T WANT TO KNOW EVERYTHING!

Most of the time, we want members to tell us everything. But if you suspect that the member has committed a crime, do not let the member tell you—or the employer—their story. Tell them they have a right to remain silent and if they tell you the story, they are giving up that right because you (or the employer) could be called as a witness in a criminal case. Help them find a criminal lawyer for advice.

If you are going to a discipline meeting, always plan your strategy with the grievor before the meeting. Decide who will say what. Decide if there are things you will not say in the meeting. If a meeting is called on short notice, ask for a few minutes to talk with the member before the meeting starts.

In some locals, only the steward talks during grievance meetings. Sometimes, it makes sense for the grievor to tell their side of the story and apologize personally.

If the employer has solid evidence that the grievor did something wrong, it is usually a good idea to admit this and to say that it will not happen again.

What if the worker being disciplined admits they did something wrong and says they want to accept the discipline?

It depends on the case. If you think the discipline is fair, then you can choose to let it go. If you think the discipline is too severe or if the employer did not follow the proper process, talk to the member about filing a grievance to make sure they understand their rights. Write a letter to the member confirming that this was the union's advice and letting them know the deadline for filing a grievance if they change their minds.

What if you think the union should file a grievance and the member does not want to. What should you do?

If the union does not challenge a discipline, the record of warnings and suspensions can grow in the member's file. Unless your collective agreement says that each member's personnel file will be cleared (such as after 12, 18 or 24 months), the employer can use the member's entire history to justify severe discipline by arguing that something is a "culminating incident." (This reflects the saying, "the straw that broke the camel's back.")

If you advise a member to file a grievance and they still refuse, write to the employer to say that the union is not grieving “without prejudice.” Then write to the member saying that you advised them to file a grievance and that they refused. This will provide the union with a written record that it was the member—and not the union—who did not want to file a grievance. This will help the union later if the member complains that the union did not represent them, or the employer tries to argue that the union can’t grieve something else later because it didn’t grieve it now.

THE INTERNET, SOCIAL MEDIA AND DISCIPLINE CASES

Many workers are using email and social media to talk to family, friends and co-workers about their lives and about things that happen at work. Some believe they can say whatever they want because they are “off duty” and communicating with people they know. In fact, this is not the case. Please review social media guidelines on cupe.ca.

Workers are being disciplined for using social media to complain about their supervisor, employer, co-workers or workplace. Some workers have also faced discipline for failing to respect the privacy rights of the clients or patients they work with.

Employers are winning these cases. Arbitrators and the courts have decided that the Internet is public space. The result is that employees are not allowed to say negative things about work when posting on social media platforms. Even positive things can violate privacy and confidentiality.

If a member is being disciplined for something they wrote online, treat it like any other discipline case. (See the section on Discipline and discharge cases.)

Your local may want to make members more aware of the fact that discipline cases involving use of social media are hard to fight. An ounce of prevention could be worth a pound of cure!

SECTION 6
ANSWERS
TO COMMON
QUESTIONS
ABOUT UNIONS



As a steward, you will find yourself talking to union members who support the union and those who do not. Here are some common questions and comments you may hear from members. We hope the answers will be helpful to you in your conversations with members.

WHY DOES THE UNION ALWAYS WANT TO GO ON STRIKE?

- No union wants a strike. A strike means hardship for members and their families and people we provide services to.
- The union always holds a vote before going on strike.
- Workers will not vote to strike unless the issue is so important that they are willing to face the financial hardship that a strike will bring.
- The vast majority of **collective agreements** are negotiated without a strike.
- As workers, we trade our labour for our wages. The right to withhold our labour is what gives us power in the relationship with our employer.
- The right to strike—to legally withhold our labour—is a key part of Canada’s democracy.
- Some members work in sectors where they can’t strike.

UNIONS WERE GOOD IN THE PAST BUT HOW USEFUL ARE THEY NOW?

- Without unions, how many workers would have decent wages? Benefits? Vacation?
- The working conditions in our collective agreements benefit non-union workers as well as union members. When we win rights like maternity leave, pensions or paid overtime, those working conditions often spread into the non-union workforce.
- Unions fought for and enforce the Health and Safety and the Human Rights legislation.
- With globalization and international trade agreements, many employers want us to compete with lower paid workers in other countries. Collective bargaining is a way to protect working conditions here, as well as push for better working conditions for our comrades in other countries.

WHY DOES THE UNION PROTECT BAD OR LAZY WORKERS? THEY SHOULD BE FIRED.

- Without a union, the employer could decide to favour the workers they like and **discipline** or fire those they do not like. In extreme cases, this could mean getting rid of an older worker because they are not as productive as someone younger. Or giving a pregnant woman a lay-off notice.
- Everyone is entitled to a fair process, even if they do something wrong. Representing all members keeps the employer accountable.
- The employer still has the right to discipline workers who steal, abuse trust, do not do their jobs properly, are lazy, or never come to work. This includes firing (dismissing) them.
- The union’s job is to make sure there is “**just cause**” for discipline and that the discipline that is imposed “fits the crime.”
- Unions exist to protect our members from unfair treatment. In fact, the union has a legal **duty to represent** our members fairly.

WHY DO WE NEED SENIORITY?

Seniority gives employees more rights and protection the longer they have worked there. This is more fair than letting the employer favour the employees they like. Seniority can be used to decide who will be transferred, promoted, laid off or recalled, and/or who will get the first chance to choose a vacation slot or overtime. In some situations, unions negotiate provisions to balance seniority rights with important objectives, like employment equity.

I CARE ABOUT THE PEOPLE I WORK WITH. IF WE ASK FOR HIGHER WAGES OR GO ON STRIKE, THIS WILL HURT THEM.

- Public sector workers often struggle with the idea of putting themselves and their working conditions ahead of the needs of the people they work with (patients, residents, students, clients, etc.).
- When governments need money they often choose to cut public services (and funds that support good working conditions), instead of raising taxes. These kinds of funding cuts seem to make us, as workers, compete with the people who depend on our services.
- Good working conditions for public sector workers translate into better public services for the people we serve.
- We need to join with the people who use our services to fight for stronger public services. This includes proper staffing and better working conditions for public sector workers.

WHAT DO I GET FOR MY UNION DUES?

- The benefits contained in the collective agreement, such as wages, health benefits, pensions, **job security**, etc., as well as the protection of the union when you need it
- Educational resources, like this handbook, and courses
- Support for **arbitration**, bargaining and legal cases
- Campaigns on issues that matter to CUPE members, such as the fight for public health care, the fight against **privatization** of public services, support for pensions and child care, etc.
- A tax deduction. (As public sector workers, we also support our tax system and the public services it provides!)

**SECTION 7
GLOSSARY**



Ableism

A system of oppression that includes discrimination and exclusion of people with disabilities.

Aboriginal Peoples

First Nations, Métis and Inuit. (see Indigenous peoples)

Alleged

Said, without proof, to have taken place or to have a specified illegal or undesirable quality.

Aggravating Factors

An aggravating factor is something that the member does that makes their situation worse. For example, they ignore earlier warnings or lie about what happened.

Ally

Someone from an advantaged social group who takes a stand against injustice directed at people from oppressed groups and who joins with others in their struggle against oppression. For example, a white steward helps educate white members about racism.

Arbitrary

Abrupt, insensitive, indifferent, something that is done or said without much thought or investigation.

Arbitration

A process for deciding a grievance using a single arbitrator or a three-person panel.

Arbitrator

An independent person (or chair of a panel), usually chosen by both the employer and union, and sometimes appointed by government. Sometimes, the arbitrator is described as a "third party," with the union and the employer being the other two parties. An arbitrator's decision is final or binding. The employer, the union, and any affected employees must follow the arbitrator's ruling. Sometimes unions and employers agree to a list of arbitrators in their collective agreement.

Arbitration Panel

In some collective agreements, unresolved grievances are decided by a three-person panel (or "board"). The union and the employer each appoint one person and agree on the Chair who is neutral.

Bad Faith

An act done for the wrong reason. For example, you would be acting in bad faith if you did something because you wanted to harm or degrade someone, or you wanted revenge. Lying is an act of bad faith.

Bargaining Unit

Unit of employees grouped together for purposes of collective bargaining and covered by the same collective agreement.

Bind/binding

A decision or agreement that you must follow. For example, the sections and wording of collective agreements are binding on the employer and the union; and a grievance settlement and an arbitration decision are binding on the employer, the union, and any affected employees.

Bona Fide occupational requirement (BFOR)

The employer is allowed to maintain a barrier in the workplace if the requirement has a legitimate link to the job, was adopted in good faith, and removing the barrier creates undue hardship. Examples: The employer hires only women to work in a women's shelter. Residents in a long-term care facility can request to be bathed by an aide of the same gender. Language skills may be needed in some jobs. A faith-based employer hires people of the same religion for some jobs. This is sometimes called a bona fide occupational qualification (BFOQ).

Bumping

A worker who is laid off takes over the job of a worker with less seniority.

Case Law

Decisions made in the past (by courts, arbitrators, tribunals, human rights commissions or labour boards) that tell us how someone might decide a new case. Sometimes called "jurisprudence," "precedents" or "common law."

Check-off

A clause in a collective agreement or labour law that requires the employer to deduct dues from workers' pay and send those dues to the union.

Collective Agreement

A written agreement between the union and employer that tells workers and the employer what their rights and responsibilities are. It is also called a "contract." The collective agreement covers such things as:

- wages
- benefits
- hours of work
- conditions of work
- seniority
- how to handle disagreements

Critical Incident

An act of misconduct that is so serious an employer can skip the progressive discipline steps and suspend or even fire someone, even if they had no record of being disciplined before the incident.

Culminating Incident

In a discipline case, the employer argues that a final act of misconduct deserves a severe response (usually dismissal) because the employee has been disciplined before and the employer has followed the process for progressive discipline. This is sometimes called "the last straw," or "the straw that broke the camel's back." This is individual: another employee who did the same thing, but with a better employment record might attract less discipline.

Disability

A health condition that has a degree of permanence and impairs one's ability to carry out day-to-day activities. A disability is created when this impairment comes up against a disabling environment. A disability is also shaped by physical, institutional and social barriers, including attitudes and assumptions about differences and impairments.

Demotion

A worker is moved to a job with lower pay and/or responsibility and/or to a job that is less desirable (for example, a new location, new shifts or different tasks). It can be disciplinary or non-disciplinary.

Discharge/dismissal

When an employer terminates an employee; usually used to describe situations where the employer says there has been misconduct or poor performance.

Discipline

When an employee is penalized by the employer for doing something wrong. Discipline can take the form of verbal and written warnings, paid and unpaid suspension, demotion, and dismissal. It is supposed to correct behaviour, not punish it.

Discrimination/discriminatory

Treating a person or group of people differently from others. Some discrimination is allowed, for example, seniority rules "discriminate" against junior workers. Other kinds of discrimination are illegal and violate the collective agreement and human rights laws. You cannot treat someone differently because of their race, sex, religion, etc. (see the human rights law that covers your workplace for the list that applies to you.) **Indirect discrimination** is also illegal. This is when a rule or policy is applied the same way to everyone but has the effect of treating people in different groups differently. For example, a rule that everyone must work on Saturdays seems to treat everyone equally. However, it discriminates against people who must observe their Sabbath on Saturday. A failure to accommodate someone who is entitled to accommodation is also discrimination.

Duty of Fair Representation (DFR)

The union has a legal duty to provide fair representation to all employees in a bargaining unit. The way the union represents members cannot be arbitrary, discriminatory, or in bad faith. The DFR can be greater if the person is dismissed or has a disability.

Duty to Accommodate

The employer and the union have a legal duty under human rights law to remove all barriers to employment for groups listed in human rights legislation. See the handbook section on Duty to Accommodate. Common grounds listed in human rights law include: disability, religion, race, gender and family/parental status.

Employment Equity

A plan to bring designated groups who are underrepresented in the workplace to equality in hiring, promotion, wages, and other aspects of employment.

Estoppel

A complex legal principle. Look at the section on Estoppel for an explanation.

Expedited Arbitration

A way to get certain grievances to arbitration more quickly. Expedited means “to move more quickly.” Some collective agreements and some labour laws allow for expedited arbitration. Your local executive and often the staff representative would be involved in deciding whether to use expedited arbitration for a certain grievance.

Express provisions

Provisions that are written in the collective agreement. The opposite is “implied provisions.” When we’re talking about express provisions, the word “express” does not mean “quick delivery.” Instead, it means that something is written in the collective agreement.

Final Offer Selection (FOS)

Is a process for imposing the terms of a collective agreement when the parties cannot reach a settlement in collective bargaining.

The union and the employer each create a package of collective agreement terms they want and argue why their package is the best. The selector listens to the arguments and picks one package or the other.

Grandparenting

When a new collective agreement provision or rule does not apply to existing workers. For example, new workers may need to have a certain level of education, while workers already in the job do not.

Grievor

A member who has a grievance that is going through the grievance and potentially the arbitration procedure.

Harassment

Using real or perceived power to abuse, devalue or humiliate someone. It is not welcome, and it hurts the person who is being harassed. Also see Sexual Harassment.

Harassment can include name calling, jokes, graffiti, insults, threats, rude treatment, or written, verbal, or physical abuse. It can happen once or often. Harassment is a form of discrimination. Human rights laws make it illegal to treat a person differently because of things like race, ethnic background, sex, age, sexual orientation, disability, family or marital status, class, political affiliation, religion, or language. Some provinces and workplaces also ban personal harassment, which covers words or actions that are hostile or may intimidate someone.

Homophobia

The fear, hatred, and intolerance of people who identify or are perceived as being gay or lesbian. This can be expressed through prejudice, discrimination, harassment, shunning, acts of violence.

Human Rights

Legal protection against discrimination on certain prohibited grounds.
See Discrimination and Duty to Accommodate.

Implied provisions

Protections in the collective agreement that exist but are not written out in a precise and clear way. The opposite is “express provisions.” For example, a collective agreement has language that allows members on a regular shift to take a break after they have worked a certain amount of time. It also has language that describes overtime. It is therefore implied (and everyone will be correct in assuming) that members working an overtime shift also get a break, even if this is not written in the collective agreement.

Imposed Agreement

A process for imposing the terms of a collective agreement when the parties cannot reach a settlement in collective bargaining.

Some labour relations acts allow a party to apply to the labour board to have the terms of the collective agreement imposed. If collective bargaining breaks down, and certain criteria are met, the parties have a labour board hearing to decide what the terms of the collective agreement will be. The process is similar to an interest arbitration (see below) but the decision is made by the labour board, not an arbitrator.

Indigenous Peoples

The descendants of the original inhabitants of North America. The Canadian Constitution recognizes three groups of Indigenous people as Indians (First Nations), Métis people and Inuit. These are three separate people with unique heritages, languages, cultural practices and spiritual beliefs. (See “Aboriginal Peoples”)

Insubordination

Refusing to carry out an instruction given by a supervisor or manager. This is “just cause” for discipline if all of the following are true:

- The supervisor gave the employee an order.
- The order was clearly communicated to the employee.
- The order was given by someone in a position of authority.
- The employee refused to obey without having an acceptable legal reason.

Interest Arbitration

A process for imposing the terms of a collective agreement when the parties cannot reach a settlement in collective bargaining.

The union and employer each create a package which sets out their positions on all outstanding items. Each side argues why their position is best. The arbitrator writes the terms of the collective agreement but is not required to adopt one party’s position or the other and can impose the arbitrator’s own terms. (For example, the Union wants a 2% wage increase and the employer wants 0%, the arbitrator can impose 1.5%) Interest arbitration can be voluntary, required under the collective agreement or imposed by law, sometimes by back-to-work legislation.

Irreparable Harm

Harm done to someone that cannot be fixed with any amount of money. Examples are if the employer orders an employee to work overtime when the employee needs to attend their mother's funeral or will not grant time away from work for religious services, or prayer, or directs them to do something that will cause injury, or force them to break the law, or violates their medical or other privacy.

Job Classification

A group of jobs paid at the same wage rate, or that do the same kind of work.

Job Description

A written summary of the duties and qualifications of a job.

Job Evaluation

A process used to assess the value of jobs (not the people holding the jobs). It is usually done when the employer and the union agree that the wage rates in the bargaining unit might not be appropriate, for example, if female and male employees do not have pay equity. The most common way to do an evaluation involves giving points for skill, effort, responsibility, and working conditions.

Job Posting

A notice that a job is vacant and will be filled. The notice usually contains a job description, short summary of the duties, qualifications, rate of pay, and deadline for applying.

Job Security

Using the collective agreement to protect jobs. It may include a ban or limits on contracting out or layoffs.

Just Cause

A valid reason to discipline or fire a worker. The worker must have done something wrong, and the punishment must "fit the crime."

Labour Relations Board or Labour Board (LRB)

A body created by law whose job is to interpret and rule on labour law. For example, a labour board has the power to certify unions as bargaining agents, hear complaints, and decide unfair labour practices. Sometimes called Industrial Relations Board.

Labour Standards or Employment Standards

The minimum employment rights that workers have. These laws usually set minimum wages, maximum hours of work, vacation, statutory holidays, and other working conditions. They apply to both union and non-union workers. Workers who are covered by collective agreements often enjoy higher standards than those set out by law (such as fewer hours of work, bereavement leave, paid family leave, more holidays, etc.). Some non-union workers, mainly farmers, fishers, babysitters, and domestic workers, are not covered by even these minimum rights.

Language

The words used in the collective agreement to define the rights and obligations that the union and the employer have agreed to. Sometimes the wording is clear but sometimes the union and the employer do not agree on what the wording means. If the union and the employer disagree about what some language means, either side can use the grievance procedure to resolve the dispute. This can include asking an arbitrator to decide what the language means.

Last-Chance Agreement

A written agreement between the union and employer that gives someone who is fired, or about to be fired, one last chance. To settle or prevent a grievance, usually for a dismissal. Sometimes the worker signs it too. The agreement sets out what the worker must do to keep their job.

Sometimes arbitrators will impose “last chance” rules to allow a grievor who has been fired to go back to their job. In these situations, the grievor, the employer and the union are all bound by the arbitrator’s ruling, even if one of them does not agree with it.

Last-chance agreements must be done differently if a worker is entitled to an accommodation. Get advice if you are drafting an agreement for a worker with a disability or someone who is entitled to other protection under human rights law.

Layoff

The employer reduces the number of workers for financial reasons or because of a shortage of work. A layoff can be for a short or long time, or it can be permanent. Sometimes, a reduction of hours is a layoff.

Leave of Absence

A period of time when an employee is away from work, with the employer’s permission, or because the leave is permitted authorized by law, for example, maternity or family leave. The worker may or may not be paid or earn seniority, depending on the collective agreement and the type of leave. The person is still considered an employee while on leave.

Management Rights

The employer’s right to control and direct the workplace. Management rights are usually set out in one article of the collective agreement. They are only limited by other articles in the collective agreement, and by legislation.

Mental Health

A state of well-being. A person’s ability to realize their own potential, cope with the normal stresses of life, work productively and fruitfully, and make a contribution to their community. Connected to physical health, for example, a physical injury can lead to poor mental health, or trigger a mental illness.

Mental Illness

Patterns of thinking, feeling or acting, sustained over a period of time, that may interfere with daily functioning. Defined by scientific consensus that changes over time. Cause may be primarily biological, psychological, social or a combination – it can come from your brain (biology), from your mind (your thinking), or from your environment.

Mitigating Factors

In discipline cases, reasons that might justify or explain someone's behavior, or result in a removal of, or reduced, penalty. Examples of mitigating factors might be if the person has no previous record of being disciplined, or has suffered personal problems in recent times, or lashed out at a co-worker because they were being harassed.

Partial Disability

An employee is unable to perform some of their job duties because of an injury or illness.

Past Practice

How a union and/or employer acted in the past. An arbitrator may might consider past practice when deciding a grievance. See the sections in the handbook on Past Practice and Estoppel.

Pay Equity

Pay Equity is equal pay for work of equal value.

Per Diem

A daily allowance, usually for expenses such as meals.

Pink Triangle Committee

A union committee that works to promote and defend the rights and freedoms of lesbian, gay, bisexual, trans, queer, 2-spirit, plus (LGBTQ2+) members.

Precedent

A past decision by an arbitrator, labour board, court, or other body. What was decided in the past (the precedent) can be used to help decide similar disputes now.

Prejudice

Forming a negative opinion of a person, group, or issue based on little or no knowledge. Prejudice is often based on stereotypes. See Discrimination.

Also refers to the harm caused to a person by their decision, action, or failure to act. For example, refusing to grieve unfair discipline can prejudice the union's case if the employer disciplines the member again. See also Without Prejudice

Privatization

When work or services are moved from the public sector to the for-profit sector. Includes contracting out, public-private partnerships, and corporatization.

Privilege

Privilege has two meanings:

1. The legal right of lawyers to not disclose what a client has told them. Stewards and other union representatives do not have privilege. You may be asked to produce your notes as part of an arbitration hearing and you can be called to testify in such a hearing about what people said to you during an investigation even if they wanted to be "off the record".
2. The social, economic, and political advantages or rights held by people from dominant groups, on the basis of gender, race, sexual orientation, social class, etc.

Probation Period

The time (set out in the collective agreement) during which an employer decides whether a newly-hired worker is suitable. During this period, the employer can terminate the worker without just cause; but the employer is not allowed to discriminate under human rights laws. For example, the employer cannot fire an employee on probation because she is pregnant, but they can if she is not a good fit or suitable for the job. Workers have greater protection against being fired after they complete the probationary period.

Progressive Discipline

A step-by-step approach to discipline. The process often starts with verbal warnings and then moves to written warnings, paid or unpaid suspension, and finally discharge. In general, employers are expected to have just cause and to use progressive discipline and use it to correct misconduct. In cases of serious misconduct, employers can skip some of the normal steps or move directly to dismissal. See Critical Incident, Culminating Incident, Discipline, and Just Cause.

Promotion

A worker moves to a job that pays more. This may be in or out of the bargaining unit.

Qualifications

What workers must have to do a particular job. The qualifications may include skills, ability, knowledge, experience, education, training, licensing, language skills, or membership in a professional group. See Bona Fide

Racism

A system of economic, social, political and cultural oppression based on race. It includes attitudes and actions that benefit white people, and disadvantage racialized and Indigenous people.

Rand Formula

A legal requirement that all workers in a bargaining unit pay union dues, whether or not they are members of the union. Named for Judge Rand who ruled that everyone who is covered by a collective agreement has to pay union dues, because they benefit from the collective agreement. In other words, "no free rides."

Recall

The process for bringing laid-off workers back to work.

Red Circling

The worker keeps their higher wage rate when they are moved into a job that pays less. Their wages do not go up until the wage rate for the job they're in has caught up, or a set period of time has passed.

Redress

See Remedy.

Reinstatement

A return to work after someone was fired. The terms of a reinstatement can be set out as part of a grievance settlement, or they may be ordered by an arbitrator or labour board or human rights tribunal.

Religious Exemption

Labour law excuses a worker from union membership and paying dues because of religious beliefs. In order to get an exemption, the worker must prove they cannot belong to a union because an article of their faith prevents it. Normally the exempted worker is excused from union membership but is required to pay an amount equal to dues to a charity that the union approves. If there is a dispute over the exemption, usually the labour board decides.

Remedy/redress

In a grievance, what we ask the employer to do to fix the problem we are complaining about. Sometimes we think about it as “making the member whole,” in other words, taking action that will make it like the member never experienced the problem.

Residual rights

All rights not modified by a collective agreement language. When a collective agreement is silent on a point, the employer could successfully argue that it has residual management rights.

Retroactive

A change that comes into effect on a date in the past. For example, workers who receive back pay when a collective agreement is ratified are being paid retroactively. Or if the union wins a grievance for someone who did not get a promotion, the member could receive the higher pay rate as of the day the job posting closed. This is called getting the higher rate retroactively.

Rights Arbitration

A rights arbitration is an arbitration that decides the outcome of a grievance. It enforces the “rights” set out in the collective agreement. It can decide an individual, group or policy grievance.

Scope of the Bargaining Unit

A description of who is and who isn't in the bargaining unit represented by the union.

Seniority

Seniority is a way to measure how long someone has been employed in a workplace. When there is a union, seniority gives employees more rights and protection the longer they have worked there. Unions believe this is fairer than letting the employer favour the employees they like. Your collective agreement may define seniority in a different way from other CUPE locals. For example, sometimes seniority is based on length of service or time worked for the employer, in a classification, a bargaining unit, or a department. Seniority can be used to decide who will be transferred, promoted, laid off or recalled, and/or who will get the first chance to choose a vacation slot or overtime. See Service.

Service

The length of time you have worked for an employer, not just your time in the bargaining unit. Benefits such as vacation are often linked to length of service.

Sexism

A set of beliefs, actions, and institutions that give men social and economic power over women. Sexism may exist in the attitudes and actions of individuals and shape the policies and practices of organizations. See Discrimination.

Sexual Harassment

Conduct, including touching and written or verbal comments of a sexual nature that the harasser knows are unwelcome, or that a reasonable person would know are unwelcome. Sexual harassment affects the targeted person's dignity and self-respect. Employers are responsible for protecting employees from sexual harassment.

Shift Differential

Higher pay or premium rate that workers earn for working certain hours, usually less desirable shifts.

Split Shift

When the time you work each day is broken into two or more periods of work. For example, if you work from 8 a.m. to 11 a.m. and then from 4 p.m. to 7 p.m. in the same day, you have worked a split shift.

Stereotype

A belief that someone has certain qualities or behaves in a certain way because of their race, gender, disability or other characteristic. Stereotypes can lead to discrimination. See Discrimination.

Substance Use Disorder

A medical condition where using substance(s) leads to a significant impairment or distress. Often it is disabling in which case a member's human rights must be protected. A substance use disorder includes what was formally known as "addiction" or "dependent use" but can also include using substances such as drugs or alcohol in a way that is not an addiction or dependent. Also known as "drug use disorder" but applies to alcohol use too.

Suspension

A time when an employee is not allowed to work. This usually occurs during an investigation, or as a form of discipline. A suspension can be paid or unpaid.

Termination

When employment ends for any reason. Includes lay-off, discharge or dismissal for just cause, non-disciplinary termination, or the employee's resignation.

Total, full or complete disability

An employee is unable to perform any of their job duties, or perhaps any job at all, because of an injury or illness. It can be permanent, temporary, or episodic.

Training Period

The time that a worker has to learn a new skill or job. Sometimes, extra training time can be negotiated to prevent discipline or resolve a grievance. See Trial Period.

Transfer

To move to another position, job, department, classification, location, etc, with the same employer.

Transgender/Trans

An umbrella term for people whose gender identity differs from the sex they were assigned at birth. The term transgender is not about how people dress, sexual orientation, hormonal makeup, physical anatomy, or how one is perceived in daily life.

Transphobia

Discrimination, fear, or hatred of transgender/trans people.

Trial Period

The time during which an employer decides whether a worker is suitable in a new job, or a worker decides whether to stay in a new job. This is not the same as probation, which happens when you are first hired. Instead, a trial period applies where someone who has passed probation moves to a new job with the same employer. See Training Period.

Undue Hardship

Under the Duty to Accommodate, an employer and a union must accommodate someone who is entitled to accommodation, unless doing so would cause “undue hardship.” An employer must prove undue hardship. It means:

- Costs would be so high that they would significantly affect the employer’s ability to do business/provide services; and/or
- A change in operations would be so disruptive that the employer could not survive; and/or
- There would be too many negative impacts on the rights of co-workers under the collective agreement; and/or
- Health and safety concerns would outweigh the benefits of the accommodation.

Unfair Labour Practice

When a union or employer breaks a labour law. For example, the union might complain that the employer is discriminating against the local president. Or the employer might complain that union members are taking illegal strike action. Labour laws lay out the process for filing a complaint with the labour board. A member who files a DFR is filing an unfair labour practice against the union.

Without prejudice/without precedent

A statement that what we are doing now will not affect future rights and actions, even if the facts are the same. It means you can have discussions and settle things one way today without locking the union into a bad position in the future.

Witness

Witness has two meanings:

1. In a grievance investigation: Someone who saw or heard something.
2. In an arbitration hearing: Someone who presents evidence.

WHMIS (Workplace Hazardous Materials Information System)

A Canada-wide system developed by employers and labour to provide information about hazardous materials in the workplace. It includes labels on hazardous materials (such as cleaning supplies or explosives); Material Safety Data Sheets (MSDS); and education and training for workers.

EQUALITY STATEMENT

Union solidarity is based on the principle that union members are equal and deserve mutual respect at all levels. Any behaviour that creates conflict prevents us from working together to strengthen our union.

As unionists, mutual respect, cooperation and understanding are our goals. We should neither condone nor tolerate behaviour that undermines the dignity or self-esteem of any individual or creates an intimidating, hostile or offensive environment.

Discriminatory speech or conduct which is racist, sexist, transphobic or homophobic hurts and thereby divides us. So too, does discrimination on the basis of ability, age, class, religion, language and ethnic origin.

Sometimes discrimination takes the form of harassment. Harassment means using real or perceived power to abuse, devalue or humiliate. Harassment should not be treated as a joke. The uneasiness and resentment that it creates are not feelings that help us grow as a union.

Discrimination and harassment focus on characteristics that make us different; and they reduce our capacity to work together on shared concerns such as decent wages, safe working conditions, and justice in the workplace, society and in our union.

CUPE's policies and practices must reflect our commitment to equality. Members, staff and elected officers must be mindful that all persons deserve dignity, equality and respect.

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