

Dispute Resolution Process

Disclosure of Information

This document will attempt to clarify best practices relating to common types of disclosure and the timing of that disclosure. Disclosure involves a careful balance of confidentiality and transparency. In general, both parties should exercise their rights fairly, professionally and reasonably. If the Labour Relations Officer (LRO) and HR are unable to resolve differences, they may request assistance from a Dispute Resolution Advisory Committee (DRAC). DRAC will convene at the earliest opportunity to resolve disclosure disputes.

An essential component of any effort to resolve disputes will be the information available to each party. Disputes will often linger longer than necessary if the two sides are not considering the same information. This is one of the reasons courts and arbitration processes contemplate a disclosure process prior to hearing. Senior members of Labour Relations from UNA and the Employer have noted numerous files where sharing of information was a significant factor in achieving resolution at DRAC. Likewise, legal teams from UNA and the Employer have made similar observations.

The UNA-Multi-Employer Collective Agreement recognizes the importance of sharing information to facilitate open, face-to-face dialogue; achieve timely and equitable resolutions to identified issues as close to the source as possible; and minimize the time and costs involved in resolving disputes.

The grievance is the first formal opportunity for the Union to share relevant information. This is the document the Employer will rely on to prepare for the resolution meeting. The Union is encouraged to provide sufficient information to facilitate an informed handling of the grievance.

The Employer's written response is another opportunity for the Employer to clearly state its position or interpretation and to specify the information relied upon. The Union needs to understand the position of the Employer in making a decision whether or not to proceed. Responses which simply state the grievance is denied without providing rationale are not helpful.

Witnesses and Witness Statements

During disciplinary investigations, the Employer often speaks with witnesses or obtains written witness statements regarding the allegations. During an investigation, an Employee who is being investigated (Respondent) is entitled to know the allegations and to have an opportunity to fully respond to the allegations. Upon request, the Employer will disclose the particulars of the concern or complaint against the Employee, including the identity of the person(s) bringing the complaint forward, if known. This applies to all complaints including those relating to safe nursing practice, the Employer Code of Ethics, and Abuse and Harassment.

If the Employer believes there is a significant safety risk that prevents the disclosure of the identity of the complainant, the parties should explore what information can be disclosed. The parties may also consider whether disclosure can be provided solely to the Union to balance the safety risk with an open and informed process.

Formal complaints are not the only source of information that forms part of the record. The Employer will generally interview witnesses and take notes as part of an investigation process. These notes are relevant to the Employer's decision and should be disclosed to the Union prior to the Resolution Meeting. This will facilitate open, honest, informed dialogue between the parties.

Forms

The Employer uses a variety of forms to administer rights and obligations set out in the Collective Agreement. The Employer should share copies of these forms, when requested, such as "unable to accommodate," LOA requests, overtime submissions and vacation requests.

Policies and Procedures (Unit, AHS, Professional Standards, UNA)

Often times, the Employer will rely upon or reference Policies and Procedures (either Unit, Program or Employer-wide) as part of its decision. The Employer should provide a copy of any policies or procedures at the earliest opportunity, and occasionally the Union or Employee will reference a policy or procedure as part of its explanation and they should share a copy at the earliest opportunity.

Likewise, the Union or Employer may rely upon Professional Standards, Professional Code of Ethics, or legislation when discussing a dispute. Both parties should share these documents at the earliest opportunity.

Finally, UNA may have a policy or procedure that provides helpful insight to the decision making process. The Union should share the relevant wording of the policy or procedure at the earliest opportunity.

Interview Tool and Interview Results including Scores

In order to assess whether to grieve or whether to advance a grievance, the Union must have an opportunity to review the information relied upon by the Employer. In a Competition grievance, this usually includes a copy of the job posting, applicants, interviewees, interview tool and interview results, including scores of the grievor and the successful candidate(s). AHS agrees that LROs should be provided with these documents for review at the earliest opportunity.

Joint Statements, Past Practice, Case Law and Other Interpretive Aides

LROs and HR may rely upon interpretive aides when attempting to resolve a dispute. Joint Statements may not be used as evidence at an arbitration hearing but they are intended to provide the Parties with guidance by outlining mutually agreed upon interpretations and applications of the Collective Agreement.

Occasionally, one of the Parties will reference Past Practice and take the position the other Party is estopped from changing its past practice until the next bargaining round. The Parties should be cautious not to over-state the impact of Past Practice. With a province-wide Employer and bargaining unit, it will be common for practices to vary. Case law can be assistive where an issue has already been addressed for the parties by an arbitrator. Case law can be fact specific and may lead individuals to be positional rather than focus on problem solving and sharing information. We encourage caution when sharing case law as part of initial problem solving or resolution meeting discussions. Where necessary, we strongly urge sharing a case prior to a resolution meeting so the other party has an opportunity to review it and obtain additional input.