



## CFPA Members Guide to Grievances

The grievance procedure is a clearly defined dispute resolution process empowered by law and imbedded in all *Public Service* contracts. Its primary purpose is to provide a fair mechanism for resolution of disputes relating to labour contracts and employee working conditions. There are some equally important ancillary benefits to the grievance procedure such as establishing clarity in interpretation and consistency in application of the collective agreement, the identification of weak points in the agreement and the discovery of recurring areas of conflict that can be resolved in future agreements. Many grievances are related to provisions in the collective agreement but grievances can be filed for other issues. Generally speaking, a grievance can be filed over any breach of the terms and conditions of employment unless another administrative process for redress exists under an Act of Parliament.

For the purposes of the members of the *Canadian Federal Pilots Association* there are 5 types of grievances:

**NJC Grievance** – used for issues that relate to the interpretation or implementation of directives agreed to at the *National Joint Council* – e.g. Travel Directive, Relocation Directive, Workforce Adjustment Directive.

**Policy Grievance** - these involve matters of general application of the collective agreement or affecting the *Association* as a whole. Policy grievances belong to the *Association* (not the individual member) and are signed by a member of the local or national executive. One example is an interpretation of union leave.

**Group Grievance** - filed in instances where a group of employees have been affected in the same way by a decision of management and seek the same redress. In this instance, all of the group's names are attached to the grievance, for example - cancellation of vacation leave.

**Individual Classification Grievance** - a written complaint by an employee against the classification of the description of work which is assigned by the Department and he or she performs. For purposes of this grievance process, "Classification" does not include the work description content or the effective date of the classification decision.

**Individual Staff Relations Grievance** - filed where none of the situations listed above apply and an employee feels that an action or inaction by the employer detrimentally affects his/her terms or conditions of employment. This would be the case whether or not the issue relates to a provision of the collective agreement or an arbitral award. This type constitutes the majority of grievances initiated by *CFPA* members.



The following information relates specifically to the **Individual Staff Relations Grievance**:

### **The Basic Rules:**

- **Contact a CFPA representative** – Your *CFPA* representative will help you determine if a formal grievance is required and if your issue could be dealt with through an informal dispute resolution process. The *CFPA* representative will also help you understand your options and what is required before you file a grievance.
- **Keep track of the details** – When filing a grievance, it is very important to document the events, copy relevant emails, take notes of relevant phone conversations, meetings and establish a timeline. The more information you collect up front, the greater likelihood of early success. Your *CFPA* representative can help you with this.
- **Don't wait** – There are strict deadlines for filing grievances. The amount of work that needs to be done before filing varies depending on the nature of the grievance so it is very important to contact your *CFPA* representative as soon as you believe you may have something to grieve.
- **Don't try to go it alone** – Some grievances must be approved by the *CFPA* before they are filed. Even in cases where you don't need formal *CFPA* approval, we can help you prepare your grievance to ensure it is received and dealt with appropriately.
- **Do keep track of time and deadlines** – too many grievances go stale and are rejected on timeliness. It is your grievance and your responsibility to keep it alive.

### **The Grievance Procedure:**

Article 35 of the *CFPA* collective agreement (Appendix 1) details the grievance process. It includes clauses that clearly outline the number of steps to be taken, the management representative at each level of the procedure and the time limits for filing a grievance and transmitting to higher levels.

A typical grievance procedure has three steps where the grievance is presented to increasingly senior management representatives.\* Underlying this procedure is the belief that those closest to the dispute should first try to reach a settlement. If they are unsuccessful, then representatives with more authority from both sides are brought in as the grievance progresses through the steps ending at the Deputy Minister.

\*(In some cases, by agreement, the grievor may skip any or all steps of the grievance levels except the final one.)



### **The Grievance Procedure cont'd:**

At each level of the grievance process there will normally be a hearing. This is the opportunity for the grievor to present his/her case, usually through the *CFPA* representative. You and/or your representative may present statements, supporting documents and arguments to support your claim. This is not a legal environment and although it is important that the information and statements provided be accurate, they are not subject to the rules of evidence nor is there sworn testimony. The employer's representative is typically in "listening mode" and may ask questions but will normally not provide comment or rebuttal. The employer's response to your grievance should be forwarded to you and your representative, in writing, within the timeframe specified in the collective agreement. If you are not satisfied with the response, it is your obligation to move (transmit) the grievance to the next level within the prescribed time. In the case of delayed, or no response from the employer, this obligation remains with you.

Adjudication may occur where the grievance is not resolved after the final stage of the grievance procedure. The adjudication hearing takes place before an impartial third party adjudicator appointed by the *Public Service Labour Relations Board (PSLRB)*. The adjudicator hears the case and writes a decision that is binding on all parties. The adjudicator has authority to interpret the collective agreement only as written. They are not allowed to amend, alter, add to or take away any provisions contained within the agreement. The adjudicator is also restricted to dealing with the grievances as presented. For this reason, the *CFPA* recommends only a general statement of the grievance on the grievance forms so they are not restricted to a single clause or section of the agreement.

### **How to submit your Grievance:**

**Don't wait** – You have twenty-five days to file from the date you were made aware of the circumstances that led to your grievance. If you decide to enter into an informal dispute resolution process this time can be extended by mutual agreement however it is more practical to file the grievance within the twenty-five days regardless. This will expedite the overall process. You can always rescind the grievance should you reach a satisfactory agreement in the mean time.

**What format** -The format of the grievance is not important as long as it is in writing and signed by you and the *CFPA* (as applicable). There is an official Individual Grievance Presentation form available on the *Treasury Board* web site: <http://www.tbs-sct.gc.ca/tbsf-fsct/340-55-eng.asp>. Use this form if possible, otherwise a written statement will do.



**Put your grievance in writing** – Using the form makes this easy. Define the problem clearly but without too much detail, there will be an opportunity for specific details at the hearing(s). Where at all possible reference the issue to a provision in the collective agreement or other binding agreement but don't be so specific that your arguments are unduly confined at a *PSLRB* adjudication. Be specific on corrective action requested. Discuss your grievance with a *CFPA* representative and have them sign off in Section 2 of the form. If you can't track down a *CFPA* rep. and the deadline is looming, don't delay submitting.

**Submit it** - Submit the written grievance (form) to your immediate supervisor. They will pass it on to the employer (your manager and HR). You should receive a notice that it was received. Keep a copy for your records and one for your *CFPA* representative.

**Track it** - Start the clock. Make sure that you react to the employer's response, or lack thereof, within the time limits stipulated. Use your calendar to set a reminder. Saturdays, Sundays and statutory holidays are excluded from the response periods. *Appendix 2* of this document contains a flowchart to assist you in establishing the deadlines to be tracked.

According to the contract, for the first two levels you can expect a response within 10 days from when the grievance was presented. If you receive an unsatisfactory response in writing, you have 10 days from when you are notified to move, or *transmit* the grievance to the next level. If you do not receive any response from the employer you only have to the 25<sup>th</sup> day after you presented your grievance at that level to submit the transmittal to the next. This is done using the Transmittal Form that can be found here: <http://www.tbs-sct.gc.ca/tbsf-fsct/340-54-eng.asp>. As in the case of the original grievance form, have the *CFPA* representative countersign and then after making copies, present it to your supervisor.

The Deputy Minister, through a delegate (normally the DGHR), hears the third and final level in Ottawa. Staff at the *CFPA* National Headquarters office will make the presentation on your behalf. In order to provide as much notice to the national representative it is important that you and your local *CFPA* representative forward all relevant information upon filing the transmittal to the third level, if not beforehand. The employer is expected to respond within 30 days of presentation at the third level.

**If you receive a satisfactory response** – you should advise your immediate supervisor in writing that you are withdrawing your grievance. Don't do this until you are assured and have written confirmation that all issues have been resolved to your satisfaction.

**If the final level response is not satisfactory** – depending on the type and content of your grievance it may be the end of the road, or you may be able to advance the issue to the *Public Service Labour Relations Board (PSLRB)* for mediation and/or adjudication. The *CFPA* National office will advise and assist you with this process if applicable.



## **Your obligations:**

- To be successful, a grievance must be well researched, supported with documentation (e-mails, letters, notes, contract etc.). You must gather and preserve all relevant information and carry out a preliminary review of the contract requirements and applicability.
- The grievance should be presented in person at each level. Although it is likely that the *CFPA* representative will make the presentation on your behalf, you must be prepared to attend at least the first two levels of the hearing process.
- Maintain a file of all information and correspondence you submit and receive regarding the grievance.
- Advise your *CFPA* representative of any related contact or conversation with the employer (supervisor, manager, HR) after the filing of the grievance.
- The quickest way to lose a grievance is to miss the filing deadline or to allow it to expire between levels. It is the grievor's responsibility to track the progress and file grievance transmittals when required. Use the flowchart at *Appendix 2* to track your grievance progress.
- If and when your grievance has been settled to your satisfaction you should advise your supervisor in writing that you are satisfied with the employer's response and that you are withdrawing the grievance.

## **What you can expect from the *CFPA* –**

- Advice on the interpretation of the collective agreement.
- Advice on the use of the informal dispute resolution process, where applicable.
- Assistance in the drafting of the grievance.
- An assignment of a *CFPA* representative to assist in preparing and presenting the grievance.
- Keeping you informed of any developments regarding your grievance.
- Technical and legal advice from *CFPA* National office as required.
- Presentation of the grievance at the third level by the *CFPA* Labour Relations Officer.
- Assistance in presenting the grievance to the *PSLRB* when appropriate.



## Appendix 1

### **35.09 Number of Grievance Levels**

There shall be three (3) levels in the grievance procedure. These levels shall be as follows:

- (a) Level 1 - first (1st) level of management;
- (b) Level 2 - intermediate level;
- (c) Final level - the Deputy Minister (or his equivalent) or his delegated representative.

### **35.10 Management Representatives**

(a) The Employer shall designate a representative at each level in the grievance procedure and shall inform each employee to whom the procedure applies of the title of the person so designated together with the title and address of the immediate supervisor or local officer-in-charge to whom a grievance is to be presented.

(b) This information shall be communicated to employees by means of notices posted by the Employer in places where such notices are most likely to come to the attention of the employees to whom the grievance procedure applies, or otherwise as determined by agreement between the Employer and the Union.

### **35.11 Union Assistance/Representation**

An employee may be assisted and/or represented by the Union when presenting a grievance at any level. The Union shall have the right to consult with the Employer with respect to a grievance at each or any level of the grievance procedure.

### **35.12 Deadline to Initiate Grievance / Timeliness**

An employee may present a grievance to the first (1st) level of the procedure in the manner prescribed in clause 35.07, not later than the twenty-fifth (25th) day after the date on which he is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to grievance.

### **35.13 Transmittal to Subsequent Level**

An employee may present a grievance at each succeeding level in the grievance procedure beyond the first (1st) level either:

- (a) where the decision or offer for settlement is not satisfactory to the employee, within ten (10) days after that decision or offer for settlement has been conveyed in writing to the employee by the Employer, or
- (b) where the Employer has not conveyed a decision to the employee within the time prescribed in clause 35.14, within twenty-five (25) days after he presented the grievance at the previous level.

### **35.14 Time to Reply**

The Employer will normally reply to an employee's grievance at any level of the grievance procedure, except the final level, within ten (10) days after the grievance is presented, and within thirty (30) days when the grievance is presented at the final level.

### **35.15 Copy of Decision to Union**

Where an employee has been represented by the Union in the presentation of his grievance, the Employer will provide the Union with a copy of the Employer's decision at each level of the grievance procedure at the same time that the Employer's decision is conveyed to the employee.

### **35.16 Grievances not based on Contract or Arbitral Awards**

Where a grievance has been presented up to and including the final level in the grievance process, and the grievance is not one that may be referred to adjudication in accordance with clause 35.22, the decision on the grievance taken at the final level in the grievance



process is final and binding and no further action may be taken under the *Public Service Labour Relations Act*.

### **35.17 Advance to Higher Level**

Where it appears that the nature of the grievance is such that a decision cannot be given below a particular level of authority, any or all the levels except the final level may be eliminated by agreement of the Employer and the employee, and, where applicable, the Union.

### **35.19 Withdrawal**

An employee may by written notice to his immediate supervisor or officer-in-charge withdraw a grievance.

### **35.20 Abandonment**

Any employee who fails to present a grievance to the next higher level within the prescribed time limits shall be deemed to have abandoned the grievance unless, due to circumstances beyond his control, he was unable to comply with the prescribed time limits.

### **35.21 Interference**

No person shall seek by intimidation, by threat of dismissal or by any other kind of threat to cause an employee to abandon his grievance or refrain from exercising his right to present a grievance, as provided in this Collective Agreement.

### **35.22 Reference to Adjudication**

(1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to:

- (a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;
- (b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;
- (c) demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct; or
- (d) deployment under the *Public Service Employment Act* without the employee's consent where consent is required.

(2) When an individual grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission.

(3) The Canadian Human Rights Commission has standing in adjudication proceedings for the purpose of making submissions regarding an issue referred to in subsection (2).

(4) Nothing in subsection (1) above is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to:

- (a) any termination of employment under the *Public Service Employment Act*; or
- (b) any deployment under the *Public Service Employment Act*, other than the deployment of the employee who presented the grievance.

### **35.23 Union Approval**

Before referring an individual grievance related to matters referred to in paragraph 35.22(1)(a), the employee must obtain the approval of the Union.



\* Time periods do not include Saturdays, Sundays or statutory holidays

## Appendix 2

