

## Carriage Rights

One of the core responsibilities of an academic staff association to its members is to ensure that the employer abides by the collective agreement. The grievance arbitration process is the ultimate means of ensuring such compliance, and for this reason association carriage of grievances is an essential feature of collective agreements. Grievance carriage is the right to initiate, withdraw, and proceed with a given grievance. A grievance is usually defined in collective agreements along the lines of the definitions in the relevant labour relations act such as being a claim or complaint involving the interpretation, application or alleged violation of the collective agreement or any other policy/practice of the employer.

The legal framework of certification gives unions the exclusive right to bargain terms and conditions of employment on behalf of all members of the bargaining unit. This status as exclusive bargaining agent, also provides the rationale for exclusive association carriage rights. However, associations can, through their constitutions and collective agreements, redistribute or circumscribe carriage. In many cases, academic staff associations, unlike virtually all other unions in Canada, have allowed for individual carriage.

There are several significant problems that arise from individual carriage. This advisory will explain the necessity for union carriage at all stages of the grievance and arbitration process and suggest collective agreement language to achieve this goal.

### **The Imperative of Staff Association Carriage**

The union has a responsibility to negotiate and defend the collective agreement. Grievances are the first line in this defence and as such the grievance procedure is a natural extension of collective bargaining.

### **Democracy**

In the same way that the collective agreement represents a group of members (however diverse a group of individuals they may be) the disposition of any grievance affects not only an individual who may be directly involved, but the entire bargaining unit. Fundamentally, all grievances are the responsibility of the association as the representative of all members of the bargaining unit.

Assessing the merits and deficiencies of grievances is an essential association responsibility. This assessment is a necessary safeguard for the rights of the rest of the bargaining unit and the member sanctioned mandate of the union. The exclusive power of the association to act as the delegate for the bargaining unit involves an analogous obligation on the part of the association to fairly represent all employees in the unit. However, individual members cannot expect to have their

grievances arbitrated as a matter of right. The association must negotiate the tension between collective interests and the individual rights of their members, and also evaluate the merits of each grievance.

Simply put, it is the association that is best positioned to assess the impact of a potential grievance on the entire membership, not the individual members themselves. For this reason association carriage is essential.

### **Expertise**

Another crucial reason for association carriage is the expertise of association representatives. Association officers have the experience and information necessary to deal with grievances effectively. This knowledge of grievance process and the nuances of the collective agreement help to forestall technical and substantive errors which can otherwise invalidate a legitimate grievance.

### **Pitfalls of Individual Carriage**

In practice, individual carriage takes a variety of forms. In some cases, individuals can carry a grievance only to a certain stage in the grievance procedure at which point the association's authorization is required. In other cases, individuals can proceed with a grievance through arbitration, sometimes even without informing the union.

One of the significant problems with individual carriage is that it can force individual members into a position where they are responsible for defending their individual interests which may conflict with the best interest of the bargaining unit.

Further because grievances must be evaluated based on their relative merits for the good of both the individuals involved and the bargaining unit as a whole, individual grievances pursued without the consideration of collective interests can become an enormous and unnecessary financial drain on association resources.

Alternatively, in some cases where individuals have carriage through arbitration, individual members are responsible for half of the costs of arbitration. The enormous costs of arbitration effectively act to deter the pursuit of grievance arbitration. This individual liability is antithetical to the purpose of an association whose role is to defend the collective interests of the membership and not to leave them to take on an employer single-handedly.

Finally, an individual case taken to arbitration is as precedent setting as one carried forward by the association. Without association authorization and carriage such precedents could contravene the mandate established by the bargaining unit and compromise the union's ability to enforce what has been collectively negotiated.

## **Duty of Fair Representation**

Under trade union law in all jurisdictions in Canada, unions have a duty to provide fair representation. This duty mandates that the union must treat all members of the bargaining unit fairly and must avoid conduct towards them that is "arbitrary, discriminatory or in bad faith". The duty also involves a responsibility to evaluate all grievances carefully and to determine whether or not to carry them forward. This right to union representation exists even in the absence of explicit contract language.

Despite this law, where there is explicit contract language establishing individual carriage, it is not certain that the individual member is entitled to a union representative to assist them through the grievance process. Thus, individual carriage not only undermines the authority of the association as overseer of the collective agreement, but simultaneously threatens the rights of individual members to union representation, undercutting the basic tenet of a unionized workplace.

## **Union carriage – No exceptions!**

Beyond the basic imperative of union carriage, there are two further components necessary to safeguard the union's ability to protect the collective agreement:

First, it is essential that the union has the authority to grieve any and all disputes arising from the collective agreement. No limitations whatsoever should be placed on the subject matter open to grievance and arbitration proceedings. Indeed, such restrictions contravene labour law, which establishes that any dispute arising from the collective agreement may be grieved and brought to arbitration. If it is left to individuals to decide which grievances are carried forward, this fundamental principle is undermined.

Second, it is necessary to include in collective agreements language that explicitly defines the three essential types of grievance: Individual, Group, and Union/Policy. These definitions should be explicit so as to ensure that a grievance may be initiated by the union on its own behalf as well as on the behalf of individual members and groups of members. This language guarantees the union's authority to determine and proceed with the best form of grievance for the particular case at hand.

## **Recommendations**

The association's ability to protect the collective agreement is contained in the grievance and arbitration articles of the contract. Ideal language should include:

### **1. Full union carriage**

The following is an example of contract language that ensures complete association carriage at all stages of the grievance and arbitration process.

*The Union shall have carriage of all grievances. The University shall deal only with the Union with respect to a grievance. A representative of the Union shall be present at all stages of the formal complaint, grievance and arbitration. [Brock University Faculty Association and Brock University]*

## **2. No limitations on the subject matter of grievances**

The following are examples of contract language which ensures that any matter relating to the collective agreement may be grieved by the association.

*A Grievance is a dispute regarding the interpretation, meaning, operation, or application of this Collective Agreement, including any question as to whether a matter is arbitrable or not, any allegation that this Collective Agreement has been violated, or any other dispute arising out of the administration of this Collective Agreement. [Memorial University of Newfoundland Faculty Association and Memorial University of Newfoundland]*

*A grievance is any difference that arises between the Parties relating to the interpretation, application, administration or alleged violation of this Agreement including any question as to whether a matter is arbitrable. [Brock University Faculty Association and Brock University]*

## **3. Clearly stated grievance types**

The following is an example of contract language which makes explicit the various types of grievance that may be filed, thereby safeguarding the union's right to determine and proceed with the appropriate form of grievance.

- a) An individual grievance is a grievance initiated by the Union on behalf of an individual Employee;*
- b) A group grievance is a grievance initiated by the Union on behalf of a group of Employees similarly affected by the Employer's actions;*
- c) A policy grievance is a grievance by the Union which may involve a matter of general policy or of general application of the Collective Agreement;*
- d) A union grievance is a grievance which directly affects the Union;*
- e) An Employer grievance is a grievance initiated by the Employer. [Saint Mary's University Faculty Union and Saint Mary's University]*

These three principles should be uncompromisingly incorporated in the language of academic staff association collective agreements. With full association carriage, no limitations on the subject matter of grievances, and clearly stated types of grievances, the association is in the strongest position to effectively defend the collective agreement and the bargaining unit membership.