

Re: Grievances, Part IV - My grievance is filed. Now what?

FROM THE "Did You Know?" E-MAIL SERIES PROVIDED BY THE NOVA SCOTIA UNION OF PUBLIC & PRIVATE EMPLOYEES

You've received a three-day unpaid suspension for taking three two-hour lunches in a week when you only get a half-hour lunch. The union has filed a grievance. What you don't remember all this? Well, then go back and read Part III of our series on grievances to find out how we got to this point. Then read below to find out what happens next.

1. The grievance is filed and it goes through the grievance steps quite quickly, with the employer denying the grievance all the way along. It's referred to arbitration.
2. The union and the employer send letters back and forth trying to agree on an arbitrator. This is an important step – we don't want to agree to an arbitrator who has heard a similar case before and decided against the union. Finally, an arbitrator is agreed to. Then it turns out that the lawyers and the arbitrator can't find a hearing date that they and you and all the witnesses are available until five months down the road.
3. The months pass and it's only two more days until the arbitration. Then you hear that the employer's lawyer has called the union's lawyer to offer to settle the grievance by reducing the three-day suspension to a one-day suspension. You've waited all this time and now you want your hearing. You don't agree with settling at all.
4. The union lawyer consults the Local Executive about management's proposal. She explains that you want to go ahead. She explains that the evidence that she can present at arbitration isn't all that strong because your co-workers who've agreed to testify can say that they saw you come in early or stay late a few times but, if questioned, they'll have to agree that you did take long lunches, and not just on those three occasions either. The lawyer explains that realistically, the best we can hope for from an arbitrator – if the evidence goes well – is to have the suspension reduced but not to have the discipline removed altogether.
5. The Executive knows from experience that it's usually better to go with a settlement that's reasonable and that you have some control over rather than take a chance with arbitration. The Executive instructs the union lawyer that, even though you don't agree with settling, she should try to have the discipline reduced to a written warning but if that's not possible to accept the one-day suspension.
6. Because you've been a good employee and there is no other discipline on your record, the employer agrees to a written warning. You're called and told the grievance is settled and the reasons for the Executive's decision. You're not very happy that the union went against your wishes but you are glad to hear that it's only another 18 months before the discipline comes off your record. And you're even happier when you get your three days' pay back.

7. You're surprised to later find out that the union and the employer each had to pay the arbitrator approximately \$1100 in fees and disbursements to cancel the arbitration, and that it would have cost at least three times that much if the arbitration had gone ahead.

So what should we take away from the above example?

– As with the decision on whether a grievance is filed in the first place, it's up to the Local executive, whether an arbitration goes ahead. (As stated before, NSUPE's Executive Council could overrule a Local executive decision, but that hasn't happened to date.)

– There are a lot of factors for an Executive to take into account in making its decision, including legal advice, the available evidence, the grievor's wishes, and cost. In other cases, a Local Executive might also have to consider whether other employees would be affected, the union's credibility, and what other issues the union is dealing with.

– Grievances and arbitrations are emotional for the people involved. Executive members sometimes have to make tough decisions.

– A grievance may be settled at any point up until an arbitrator has made a decision on the case. Sometimes the union will withdraw a grievance if it becomes aware of new facts or legal research discloses there is no likelihood of being successful.

– It would be unusual for a Local Executive not to agree to settle a grievance if a grievor wanted to settle. That's because the outcome of arbitrations are so uncertain that the Local Executive wouldn't risk you ending up with less than what is being offered as a settlement. In rare circumstances, if there were a policy issue involved, a Local Executive might insist that an arbitration go ahead against a grievor's wishes.

– Grievances and arbitrations are expensive and the union has a responsibility to ensure union funds are used wisely.

– Go through the example again, and this time instead of thinking about it being you who is the grievor, think about it being another union member that you don't know. Doesn't it now seem like the Local Executive made the right decision?

Our series on grievances isn't over yet. Part V will talk about what happens when you actually go to an arbitration.

NOTE: The Did You Know? series is general information only. For advice specific to your workplace or personal circumstances, please contact a union representative. Comments are welcome at nsupe@ns.sympatico.ca. For back issues of Did You Know, look under "News" on the NSUPE website: www.nsupe.ca.