

### **Article 32: Grievance Procedure and Arbitration**

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Collegial governance is key to our work at the University, but our workplace is also governed by an employer/employee relationship. The Collective Agreement is the document that regulates much of that relationship. One of the most important things we do between rounds of collective bargaining is protecting our rights under the CA by challenging the administration when they run afoul of what's been agreed – rights left unprotected erode.

Working at a University means our grievance process is a little different than at other workplaces, and knowing that process is the first step in protecting yourself and your rights.

At the UM resolving workplace issues can take one of several different avenues: **appeals** of tenure and promotion decisions; **claims of unjust treatment**; and a four-step **grievance process**, including third-party **arbitration**.

A **claim of unjust treatment** is an allegation by an UMFA Member that an administrator has exercised their authority in an unreasonable manner in carrying out University policies or in regard to terms and conditions of employment not covered in the CA.

A **grievance** is an allegation that the Collective Agreement has been violated, misapplied or misinterpreted. The CA allows for three types of grievances: grievances from an individual Member or a group of Members against the Administration; Association grievances against the Administration; and Administration grievances against the Association. If a resolution to a grievance can't be found within the walls of the university, the grievance can be argued before a professional arbitrator who will make a third-party ruling.

If at the end of the grievance process an arbitrator makes a decision that appears unreasonable or unlawful that decision can be submitted to the Court of Queen's Bench for **judicial review**. As that's something that UMFA rarely has to do, no more will be said about that here.

While they're related to violations of the collective agreement, **Unfair Labour Practice (ULP) complaints** are filed in the face of violations of the Manitoba Labour Relations Act and are heard by the Manitoba Labour Board. As that process is also rarely used no more will be said about that here, either.

This primer focuses on the process most commonly used at the UM – filing grievances.

Your Grievance Officers (GOs) work with UMFA's In-House Legal Counsel and the Executive Director to resolve

claims of unjust treatment and grievances against administrators who are alleged to have violated your rights. GOs and staff also provide consultation, advice, and representation for you when you're accused of violating University policies (for example, The Respectful Work and Learning Environment Policy and The Responsible Conduct of Research Policy), when you're threatened with discipline, and when you experience difficulty with the tenure or promotion processes, among other things. Whatever the issue, whenever you have a problem call the office ASAP.

### **Individual and Group Grievances**

The primary purpose of the grievance process is to solve problems with the backing of your union: you're not in this alone. Unlike some other union locals, you have a lot of control over your own grievance. UMFA staff and Grievance Officers will work with you to find solutions each step of the way.

If the problem you're facing is shared by several fellow Members, you can also file a grievance together. That process is the same as the individual grievance process, which is as follows:

- **Stage 1** – The first step in solving a problem you're having is to arrange a meeting with your department head and have an informal discussion about your concern. If you don't have a department head, you approach your dean/director. While a rep can't attend the meeting with you, it's always best to consult with the Association before going to one of these meetings: UMFA Grievance Officers and staff can give advice on how to approach different issues with your department head, dean, or director.
- **Stage 2** - If there is no resolution at Stage 1, a formal grievance is prepared in consultation with UMFA's In-House Legal Counsel and a GO and filed with the dean, the director of your faculty or school, or the University Librarian (if you're an academic librarian or archivist). A meeting is then called to discuss the problem and potential resolutions. Those meetings include you, an UMFA Grievance Officer, UMFA In-House Counsel, one of UM's Staff Relations Officers and your dean, director, or the University Librarian.
- **Stage 3** - If there is no resolution at Stage 2, the matter is referred to the Provost and Vice-President (Academic), who most often delegates it to the Vice-Provost. A meeting is then held between the Vice-Provost, a Human Resources Officer, UMFA's In-House Counsel, and an UMFA Grievance Officer in an attempt to resolve the matter.
- **Stage 4** - If Stage 3 fails to produce a satisfactory resolution, grievances can be submitted to binding arbitration. The decision to proceed to arbitration, however, rests with the UMFA Executive, which normally seeks an outside legal opinion to assist in its decision. Arbitrators are chosen from a list of names agreed upon by the Association and the administration, and are considered neutral third parties. In an arbitration hearing the arbitrator hears from both sides, considers the facts and arguments they're presented, and eventually gives a written decision. Their decisions are binding on all parties (you, the Association, and the administration).

The collective agreement also sets out **timelines** as to when these steps have to be taken. Generally speaking, when you have an issue it has to be brought to the administration within twenty working days, so it's important to talk to a fellow UMFA member or UMFA staff as soon as a problem arises. However, there are often good reasons why a grievance should be heard even if the timeline has been exceeded. Never assume it's been too long – call the UMFA office ASAP.

### **Association Grievances**

Often the administration enacts policies or takes actions that run contrary to the CA and affect many Members

at once. In these cases no single individual has to bring forward a grievance – the Association can file a grievance with the President of the University. If a discussion with the President or their designate doesn't resolve the problem, the Association can forward the dispute to an arbitrator.

For example, if the Association learns that a faculty's tenure and promotion guidelines are not in compliance with the collective agreement, the Association will file a grievance explaining the violation and demanding the offending guideline be altered accordingly.

### **University Grievances**

While they are exceedingly rare, the University does have the right to file a grievance with the Association if the Association is seen to be violating the CA. This shouldn't be confused with the **discipline process**, outlined in articles 17, 19, and 34 (for Librarians, Professors, and Instructors, respectively), when the administration seeks to discipline a Member for something they're alleged to have done. See "Know your CA: 19.B.1.8" for more information [click here](#).

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As always, when in doubt the language in the collective agreement prevails. Below is the language for article 32: Grievance Procedure and Arbitration.

## **ARTICLE 32. GRIEVANCE PROCEDURE AND ARBITRATION**

**Proviso** Provisions of the Preamble to and Objectives of this Agreement shall not be subject to this Article. Grievances filed in accordance with this Article concerning Articles which make provision for an appeal of a negative recommendation shall be limited to claims of noncompliance with the procedural requirements (including bias and denial of natural justice) of those Articles.

A matter that could lead to the filing of a grievance shall not be the subject of a claim of unjust treatment.

### 32.1 **Definitions**

In this Article:

- 32.1.1 A "grievance" is a claim by a Member or group of Members, by the Association or by the University, that there has been a violation, misinterpretation or improper application of the terms and conditions of this Agreement.
- 32.1.2 A "claim of unjust treatment" is a claim filed by a Member, relating to terms and conditions of employment not covered by this Agreement, that an omission or a discretionary act by a department head, director, dean or the President or by their designates in the exercise of his/her administrative authority is unreasonable.
- 32.1.3 "Working days" as used in this Article shall mean Monday through Friday excluding holidays.

### 32.2 **Obligation of the Parties**

Should any dispute arise between the University and the Association as to the meaning and

application of the provisions of this Agreement, it is agreed by the parties to this Agreement that there shall be no slowdown or stoppage of work on account of such dispute, but an earnest effort shall be made to settle immediately and without delay any such dispute in accordance with the procedure herein provided.

### 32.3 **Procedure for Handling Grievances and Claims of Unjust Treatment**

#### 32.3.1 **University Grievances**

In the event that the University believes that the terms and conditions of this Agreement have been violated, misinterpreted, or improperly applied, the dean/director, or where appropriate, a vice-president, shall present a grievance in writing to the President of the Association, within ten (10) working days of the event giving rise thereto or the date on which the University first knew or reasonably should have known of such event if that date is later.

If the matter is not resolved to the satisfaction of the University within twenty (20) working days of the Association having received the grievance, the University may submit the grievance to binding arbitration as provided by this Article. The Association shall be notified in writing of such action.

#### 32.3.2 **Association Grievances**

32.3.2.1 In the event that the Association believes that the terms and conditions of this Agreement have been violated, misinterpreted, or improperly applied, the President of the Association shall present a grievance in writing to the President, with a copy to the Staff Relations Officer, Human Resources of the University, within twenty (20) working days of the event giving rise thereto or the date on which the Association first knew or reasonably should have known of such event if that date is later.

32.3.2.2 If the matter is not resolved to the satisfaction of the Association within twenty (20) working days of the University having received the grievance, the Association may submit the grievance to binding arbitration as provided by this Article. The University shall be notified in writing of such action.

#### 32.3.3 **Employee Grievances and Claims of Unjust Treatment**

32.3.3.1 **Stage 1** - It is understood and expected that a Member will discuss with his/her department head any matter relating to an alleged grievance or claim of unjust treatment. The department head shall notify his/her dean of any complaint giving rise to such a discussion. This discussion is to be informal in nature and directed at improving communication and solving problems. The department head shall notify his/her dean/director of the result of this discussion. In cases where there is no department head, such informal discussion shall be held with the dean/director.

32.3.3.2 **Stage 2** - A Member who is not satisfied with the solution arising from the informal discussion at Stage 1 and who believes that he/she has a grievance or a valid claim of unjust treatment shall, within twenty (20) working days of the event giving rise thereto or the date on which the Member first knew or reasonably should have known of such event if that date is later, consult the Association, and report to the dean/director in writing on the grievance form provided by the Association for that purpose. The report shall set forth, in the space provided, all of the

following:

- 32.3.3.2.1 whether the dispute involves a grievance or claim of unjust treatment;
- 32.3.3.2.2 the nature of the grievance or claim of unjust treatment;
- 32.3.3.2.3 the facts upon which the grievance or claim of unjust treatment is based;
- 32.3.3.2.4 the remedy sought;
- 32.3.3.2.5 the result of the informal stage; and
- 32.3.3.2.6 the Article(s) of this Agreement relied upon or claimed to have been violated, misinterpreted or improperly applied.

The Member shall sign the form and shall take the form, with or without an Association representative, directly to his/her dean/director. Alternatively, the Member may request an Association representative to present the signed grievance form to the dean/director on his/her behalf. The Member or the Association shall also provide a copy to the Staff Relations Officer in Human Resources. The dean/director or the Association representative may request the presence of the Member in any further process of the grievance. The dean/director shall have ten (10) working days from the date of receipt of the grievance form in which to render a decision in writing. The dean/director shall meet with the Member and, where the Association has presented the grievance form on the Member's behalf, with the Association representative, prior to rendering a decision. At any such meetings, the dean/director may include both the department head and a representative from human resources, and the Association may include a professional or technical advisor.

- 32.3.3.3 **Stage 3** - If the decision at Stage 2 does not resolve the grievance or claim of unjust treatment, the Member or the Association may refer the matter to the Provost and Vice-President (Academic) within ten (10) working days from the date of receipt of the Stage 2 decision. The appeal shall be in writing and shall include a copy of the grievance or claim of unjust treatment filed in Stage 2, a copy of the decision of the dean/director and a statement of the reasons for the disagreement with the decision. Within five (5) working days of the receipt of the appeal, the Provost and Vice-President (Academic) shall call a meeting with representatives of the Association. In any meeting between representatives of the Association and the Provost and Vice-President (Academic), the Association may include a professional or technical advisor and the Provost and Vice-President (Academic) may include a representative from human resources. The Provost and Vice-President (Academic) shall, within ten (10) working days after the final meeting, submit a decision in writing to the parties concerned.
- 32.3.3.4 **Stage 4 (Grievances)** - If the decision at Stage 3 does not resolve the grievance, the Association may, within ten (10) working days of the receipt of the decision, submit the matter to binding arbitration. The Association shall notify the Staff Relations Officer, Human Resources, in writing of such action.
- 32.3.3.5 **Stage 4 (Claims of Unjust Treatment)** - If the decision at Stage 3 does not resolve the claim of unjust treatment, the Association may, within ten (10) working days of the receipt of the

decision, submit the matter to an Inquiry Committee. The Association shall notify the Staff Relations Officer, Human Resources in writing of such action.

- 32.3.3.5.1 The Inquiry Committee shall consist of one (1) person from the agreed upon list of arbitrators as provided in s. 32.4.2 of this Article.
- 32.3.3.5.2 The Inquiry Committee shall receive a copy of the grievance form together with all documentation thereto relating. The proceedings of the Inquiry Committee shall be confidential unless both parties in writing agree otherwise. The terms of reference of the Inquiry Committee shall be limited to the claim of unjust treatment. The Inquiry Committee shall determine its own procedures.
- 32.3.3.5.3 After having completed its investigation, the Inquiry Committee shall within twenty (20) working days transmit to the Board of Governors its decision. The decision of the Inquiry Committee shall be binding upon the Association, the University and the Member(s) affected thereby.
- 32.3.3.5.4 Each party to this Agreement shall bear the costs of presenting its case but the parties shall share equally in the expenses, if any, of the single member of the Inquiry Committee appointed.

## 32.4 **Arbitration**

### 32.4.1 **Object of Arbitration**

It is understood that the object of arbitration is to resolve finally the real matter in dispute. To this end, technical irregularities may be waived so long as the other party's position is not thereby prejudiced.

### 32.4.2 **Selection of an Arbitrator**

- 32.4.2.1 Promptly after the execution of this Agreement, the Association and the University shall establish an arbitration panel consisting of at least five (5) persons, who have been mutually agreed upon by both parties, each of whom shall serve in sequence.

The names which make up the panel of arbitrators may be reviewed annually in October at the request of either party to the Agreement. Names may be deleted from or added to the list only with the mutual consent of the parties to the Agreement. Names added to the panel shall be placed at the end of the sequence.

- 32.4.2.2 The arbitration panel shall be composed of persons from outside the University.
- 32.4.2.3 Within ten (10) working days after submission of the notice to arbitrate, the Association and the University shall meet to determine the arbitrator who is next in sequence. No person may be selected who has been involved in an attempt to negotiate or settle the grievance. Where the selected arbitrator is unable to serve, the next in sequence shall then be selected. If none of the panel is able to serve, the parties shall select an arbitrator by mutual agreement.
- 32.4.2.4 In grievances involving involuntary termination on any of the grounds set out in s. 19.B.1.2, s. 17.A.8.2, s. 34.10.2, s. 19.C.4.6, s. 17.A.7.3, s. 34.8.3, s. 19.C.5.5.1 (s. 17.A.4.1 and s. 34.1), s. 19.C.6.5.1 (s. 17.A.4.1 and s. 34.1) or s. 19.D.8.1 of Article 19, the Association or

the University may opt for a three (3) person arbitration board. In the event one of the parties opts for a three (3) person arbitration board, each party shall within ten (10) working days after submission of the notice to arbitrate, advise the other of its appointee. The chairperson of the arbitration board shall be selected by mutual agreement of the appointees but failing such agreement within ten (10) working days, shall be selected in accordance with the procedure outlined in s. 32.4.2.3 hereof from the arbitration panel established pursuant to this Agreement.

### 32.4.3 **Matters Subject to Arbitration**

32.4.3.1 Unless otherwise agreed, no matter may be submitted to arbitration which has not been properly carried through all the previous stages of the grievance procedure as detailed in this Article.

32.4.3.2 No matter shall be subject to arbitration which involves:

32.4.3.2.1 a request for modification of the Agreement;

32.4.3.2.2 a matter not covered by the Agreement;

32.4.3.2.3 a matter which by the terms of the Agreement is exclusively vested in the University;

32.4.3.2.4 a claim of unjust treatment which claim shall be dealt with by the Inquiry Committee as provided for in this Article.

### 32.4.4 **Authority of the Arbitrator**

32.4.4.1 The arbitrator shall have no power to add to, subtract from, modify or amend the provisions or terms of this Agreement.

32.4.4.2 The arbitrator shall confine him/herself to the grievance submitted for arbitration and shall have no authority to determine any other issues not so submitted.

32.4.4.3 The arbitrator shall not substitute his/her judgment for that of the University where the Agreement calls for the exercise of judgment by the University.

32.4.4.4 When dealing with grievances involving claims of non-compliance with the procedural requirements of an Article as set out in the Proviso of this Article, if the arbitrator finds that the procedural requirements have not been complied with, he/she shall be limited to directing that the matter be reconsidered by the appropriate body in accordance with the procedures specified in the appropriate Article.

### 32.4.5 **Effect of the Decision**

The decision or award by the arbitrator shall be final and binding upon the Association, the University and the Member(s) affected thereby.

### 32.4.6 **Fees and Expenses**

32.4.6.1 Each of the parties to this Agreement shall be responsible for the expense of presenting its

case, including the fees of its witnesses and its appointee to three (3) person arbitration boards.

32.4.6.2 Each of the parties to this Agreement shall jointly bear the expenses of the arbitrator or chairperson so appointed.

## 32.5 **Time Limits**

32.5.1 The time limits as established by this Article may be extended by mutual agreement between the University and the Member or the Association, as appropriate. Such agreement will not be unreasonably withheld.

32.5.2 Failure by the University to provide a response within the time limits allows the Member or the Association, as appropriate, to appeal to the next stage.

32.5.3 If the University, the Member or the Association, as appropriate, fails to file an appeal within the time limits provided in this Article, the grievance or the claim of unjust treatment shall be deemed to have been resolved by the response at the prior stage.

## 32.6 **Precedent**

Any grievances resolved at Stages 1, 2 or 3 shall not constitute a precedent in any arbitration proceeding unless agreed to in writing by the University and the Association.

Questions or Comments? Email **FAUM@UMFA.CA** or call the office at **204-474-8272**.