

Session Four – Tools of the Trade

Grievance Arbitration for Equity

Grievances and Equity Issues

It is true that collective agreements, and employment-related legislation such as Human Rights Codes and Employment Standards Acts, set out powerful equity rights.

Unfortunately, there is no guarantee that these rights will be followed. As a result, in addition to the codification of these rights, there also needs to be a mechanism to enforce them. In unionized workplaces, the most important way to do this is by filing a grievance – which is the next equity tool we are going to examine.

What is a grievance?

- The ordinary meaning of the word “grievance” is a “ground of complaint”. In unionized workplaces the term takes on a narrower, technical meaning. In this context, a grievance is a formal allegation that there has been a violation of the legal terms and conditions of employment. The “legal terms and conditions of employment” include the collective agreement, employment-related legislation, and arbitral and judicial decisions.

What is the process for filing a grievance?

- A member may bring a concern to the attention of the union, or the union itself may discover a problem in the workplace. Once the union is aware of the problem, a volunteer Grievance Officer or an Association staff person will investigate the concern. If evidence indicates that there has been a violation of the legal terms and conditions of employment, the union may write up the grievance – a formal summary of the alleged violation – and submit it to the employer.

How are grievances resolved?

- The union and the employer meet and attempt to find a solution to the grievance. If they are unable to, the matter proceeds to arbitration. An arbitration is a hearing process specifically created to adjudicate disputes within a workplace. At the end of the hearing, the arbitrator issues a decision upholding the grievance and ordering a remedy or dismisses it.

How did the right to grieve come about?

- Until the 1930s, North American workplaces were governed by “Master and Servant Law”. This law required that employment disputes be resolved through complex, expensive civil court lawsuits, placing workplace justice beyond the reach of most workers.
- In response to the inequities of Master and Servant Law, and miserable working conditions generally, workers began to agitate for change. The futility of individuals bargaining with powerful corporations encouraged workers to join together in unions. This movement grew in strength through the late 1800s into the 1900s, giving rise to the eventual creation of “Labour Law” in the 1930s, new statute-based workplace rules that protected the right to unionize and created the right to grieve.

What is a grievance?

- A grievance is a formal allegation that there has been a violation of the legal terms and conditions of employment in a workplace.
- All grievances are complaints, but not all complaints are grievances. Complaints that contain an allegation that there has been a violation of the legal terms and conditions of employment enter the grievance arbitration route. Complaints that do not may still signal problems in the workplace and must be taken seriously – but they should not be grieved.

Equity & grievance & handling

Over the last 50 plus years, grievance arbitration has evolved into an imperfect but functional mechanism to resolve workplace disputes, especially over issues such as remuneration, job security, and unjust discipline. As academic staff demographics have transformed from relative homogeneity to a diversity better resembling Canadian society, these traditional disputes have increasingly intersected with equity issues. While grievances have successfully confronted discrimination in some instances, barriers remain to fully deploying the process to advance equity.

Before examining these barriers, what advantage does the grievance process bring to the equity struggle?

- Pursuing workplace justice includes engaging in expensive and time-consuming legal cases. Unions, through the dues checkoff and grievance systems they have established, are one of the few groups with the financial and institutional resources necessary to engage in such action.
- It is (near) mandatory. Pursuing equity grievances is not only the right thing to do, it is also the law. While the association does not have to automatically take every case forward, its conduct in grievance handling is governed by the Duty of Fair Representation. The essence of the duty is that every employee has an enforceable right to be fairly represented in the grievance process by their association in a manner that is neither arbitrary, discriminatory nor in bad faith. The degree of this duty depends on the facts of each case, but when a matter involves a serious threat to job security, the mental or physical health of a member, or human rights issues, the association is held to a particularly high standard of conduct.

What factors might inhibit the grievance process from more effectively confronting discriminatory practices?

- Awareness - Members with equity concerns may be unfamiliar with the association and the collective agreement, presenting a barrier to their participation in the grievance process. The solution is for associations to reach out, demonstrate a commitment to equity, and build more inclusive, activist organizations.
- Knowledge - The association and its members may lack familiarity with human rights law. This may leave members unable to frame their issue in a conventional legal analysis, and associations unable to move difficult cases forward. The solution is human rights training.

- Visibility - Some discrimination arises from blatant bigotry (for example, racism, homophobia, misogyny), but a larger proportion stems from systemic exclusion and unconscious behaviors that, even if detected, are difficult to prove. On top of that, not all disabilities or memberships in marginalized groups are immediately apparent. Associations and members may encounter difficulty bringing forward grievances in such cases. The solution is increased equity awareness and vigilance, and a willingness to think and advocate creatively.
- Fear - Even with association support, it can be difficult for members to challenge the employer's actions. This task can be particularly difficult for those with additional workplace vulnerability, including members with precarious employment security and those from marginalized groups. The solution is extra effort by the union to welcome and support all members in the grievance process.
- Resistance - Pursuing equity cases through the grievance process has not always been a priority for associations. The solution is for associations to build more inclusive, activist organizations that work to ensure all members enjoy equal access to the Association and to workplace rights.

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Member Engagement for Equity

Organizing vs. Mobilizing

Academic staff associations derive power from one source – members' commitment to the association. To win big changes for our members and the post-secondary sector more broadly, associations are moving beyond the narrow box of conventional labour relations.

In order to further strengthen the capacity of our associations for effective collective action, we must review our member engagement strategies through a lens of growing the association's base of active and engaged members.

Associations can fall into a trap of focusing only on mobilization strategies, to increase participation in episodic moments of engagement with members who already support the association– for example, a higher turnout at the AGM or more signatures on a pledge.

Though these can be important and energizing moments, associations must also be doing work to effectively engage members who do not already agree with the association in order to grow its base.

It is through organizing that we can expand our bases. As Jane McAlevey states:

"[Organizing means] waking up in the morning with an explicit plan to build the universe of people who are not yet part of your organizing, who are not in your social media feed, who you don't talk to, who might even think that they don't like you, who might even think that they're opposed to you— that's the work of organizers and organizing, going out to build unity, and solidarity, and expand the universe of people in our movement."

Organizing is about building power

Talking about increasing and exercising power in the workplace can be uncomfortable, at least at first.

A part of this discomfort is the recognition that: (1) the employer has a lot of power, and (2) the employer will sometimes use that power in ways that harm us (or our colleagues).

Talking about power requires acknowledging that we are vulnerable on the job. But talking about power is necessary because the only effective way to protect ourselves is to develop our own countervailing source of power. We need to have the ability to attach costs to employer's behaviour that we don't like, so that the employer will behave differently.

In her writings and trainings, Jane McAlevey repeatedly stresses that unions need to have at least 75% of their membership engaged in job action to have a hope of winning their demands.

While we may never get to 100% of members involved in a job action, we need to aim to get as close to it as possible. Our power, and what we can win, depends on it.

Questions

- What might be the challenges and opportunities of moving to an organizing model for your association?
- How might that make our efforts to promote equity more effective?

The Ladder of Engagement

When thinking about membership engagement strategies, it is important to identify the difference between organizing events and organizing members.

Associations organize a range of activities – whether a panel, social event, AGM, or professional development workshop – but they are not necessarily using these events as an opportunity to engage and organize the membership.

All association activities – whether in-person or online – are relationship building and organizing opportunities. For all association activities and events, ask yourself:

- Are you collecting the contact information of participants? Are you tracking this information in a membership database system?
- Are you following up with participants after the event and providing an additional way to engage in the work of the association?
- In online spaces, are you monitoring the Question and Chat features to see who is engaging and on what topics?

Provide Multiple Ways to Engage

As your association engages in one-on-one conversations and identifies the organic leaders who can effectively attract more members, the association needs to provide a variety of ways for members to engage and take action.

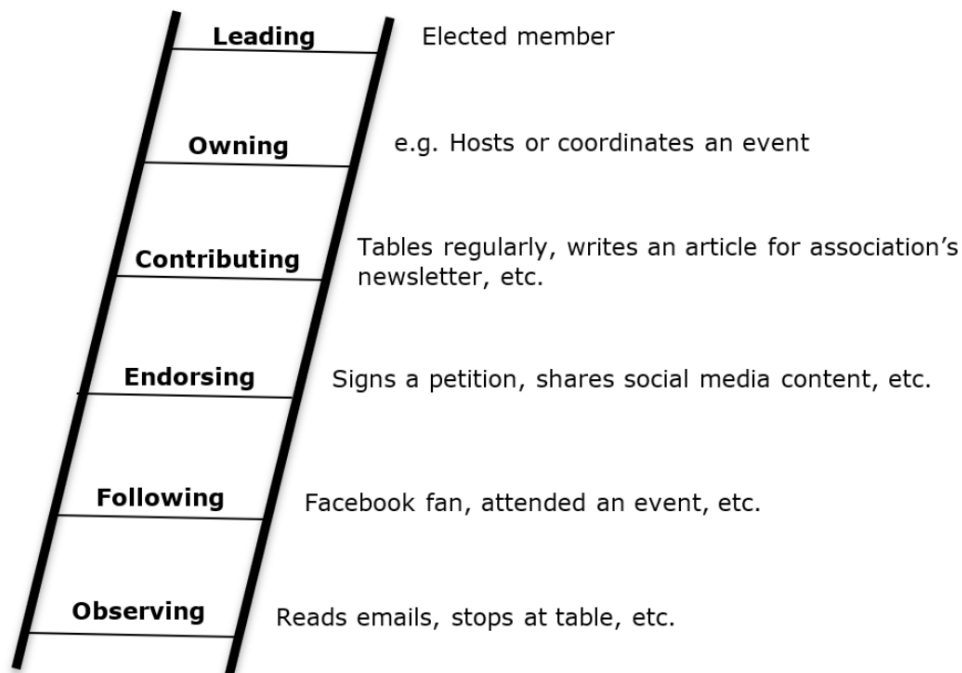
Associations need to move beyond a position-based approach to member involvement, in which the only opportunities for members to engage is to fill existing positions. In this case, the association only looks to recruit new volunteers when an existing position has become vacant.

In order to grow the base of engaged members, the association must instead provide a diversity of opportunities for members to build their involvement and trust in the association.

Remember that moving towards an organizing model will come with some growing pains as the association outgrows its current positions; however, in the long run, it will make for a stronger association.

A ladder of engagement is a strategy to better engage people in the work of the association and increase the involvement and investment of members. It describes six levels of increasing involvement of members in the work of your association.

Here is an example of the Ladder of Engagement for an association:



Think of your current association's work. At which rungs are your members most active and engaged? What could you do to provide more opportunities to engage at different levels of the ladder?

Tips for Using a Ladder of Engagement

1. For each level, build in different ways someone can participate in order to support individual development.
2. Match increasingly high-bar asks to each rung of the ladder of engagement.
3. Define your ladders of engagement by role and audience.
4. Remember the importance of building relationships for both volunteer recruitment and retention. Organic leaders can make all the difference in moving someone up a ladder of engagement. Use your workplace map to determine who should be reaching out to the member.
5. Don't be afraid to re-evaluate your ladder of engagement. If you notice that people are not engaging or moving up the levels, listen, be flexible, and make some changes.
6. Always analyze your levels of engagement over time, particularly paying attention to where folks may be getting stuck.
7. If you have a lot of people signing a petition or attending an event, but you aren't seeing that translate into increased participation in the organizing committee, you may need to add another step to help build people up to that rung of the ladder.

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Communicating Equity Effectively

Communications Strategy

The ultimate goal of effective organizational communications is to make the target audience believe/act. Well-executed “communications” is powerful, not passive: it moves people to your side in thought and action.

Why does your academic staff association communicate?

Effective communicating should have purpose. Your association has many reasons to communicate with both your members and the public. Whether mobilizing for a strike vote, challenging budget cuts, or responding to a controversial story, your communications can help plant ideas, shift discourse, mobilize, and even create social change.

Remember that, with the above goals in mind, communicating is not a one-way street. Using careful crafting and strategic delivery will help you motivate your targeted audiences to feel so connected to your message that they take collective action.

What happens when you communicate without a strategy?

- Risk losing time & resources
- Can lose credibility
- Become irrelevant with key audiences
- Fail to meet missions & goals
- Lose support for your causes

Identifying Your Audiences

Before crafting your communications strategy, it is important to stop and identify your core audience – or more often “core audiences”. This includes both the individuals and organizations that you are wanting to influence, as well as other individuals, groups and organizations that may be able to influence them. Your audiences may include allies who are sympathetic to your cause, opponents who not supportive, as well as bystanders who may not currently have an opinion, but who might be persuaded to support you. For each audience, consider who they are, what specific messages they might be particularly receptive to and what is the best means or channel to reach them. Remember that while your core message will stay the same, the way that you present it to each audience may vary subtly.

2. The Message Box

The message box is a useful tool to chart out how different parties in a conflict will communicate their positions and those of their opponents.

US ON US	THEM ON US
US ON THEM	THEM ON THEM

Example:

The GNUC's administration (THEM) recently announced the closure of Disability Studies. The Association (US) then created the following Message Box to identify how each group might frame each other's stances on the controversy.

<p>US ON US</p> <ul style="list-style-type: none"> • GNUCASA fights for its members and the academic integrity of GNUC. • We are challenging the closure of Disability Studies and working to protect the program's students, staff and social justice purposes from this ill-conceived plan. • We speak for our members and they are united behind us on this. 	<p>THEM ON US</p> <ul style="list-style-type: none"> • GNUCASA is always resistant to change. They are holding back GNUC's advancement. • GNUCASA does not understand the fiscal reality. These are difficult economic times. • No jobs will be lost.
<p>US ON THEM</p> <ul style="list-style-type: none"> • By closing down Disability Studies the GNUC administration is betraying its academic mission. • Closure of the program will hurt students and staff and damage the reputation of GNUC. • The administration, as always, is exaggerating the economic difficulties facing the institution. 	<p>THEM ON THEM</p> <ul style="list-style-type: none"> • GNUC is proud to announce the merger of Disability Studies with the Sociology Department. • This merger will improve program delivery and increase enrolment. • With the establishment of a world-class School of Sociology, GNUC lead the development of this important discipline.

From the exercise, possible core messages emerged, such as: *The administration has a bad plan. By closing the acclaimed Disability Studies Program, GNUC is betraying its commitment to equity. GNUCASA is challenging the closure and working to save disability studies, defend the students in the program, and protect its members from layoffs.*

NB: The Message Box is a living document and that as situations evolve, new voices emerge, and additional information becomes available, the Message Box and the Core Message may evolve over time.

3. Writing a News Release

When you release a report, respond to a policy, or introduce a new campaign, issue a news release to generate more attention.

More specifically - issue a **clear**, **concise**, and **captivating** news release. A well-written release will increase your chances of getting a news story published or aired.

Tips for crafting your news release:

a) Have something newsworthy

When you announce an event or action, react to a government or university decision, or release a report, send out a release to pique attention.

b) Include a catchy title

Grab the reader's attention with a strong headline that is both engaging and accurate.

c) Get to the point in the first paragraph

Every important point should be in the first few sentences. Following paragraphs are for quotes and supporting information.

d) Keep it short! Under one page long

Condense your most salient information into maximum one page. Your news release will be more likely to be picked up.

e) Include quotes from your spokesperson

Not only does it add human element and personality to your message, but catchy quotes can be easily picked up by journalists for their story.

The structure of your news release

Here is a simple template for drafting a News Release

1. City/Date
2. Catchy title
3. Paragraph 1: What's the deal?
4. Paragraph 2: Quote
5. Paragraph 3: Background info
6. Paragraph 4: Quote
7. Paragraph 5: Wrap it up
8. Mark the end of the release
9. Provide contact information

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Collective Bargaining

What is Collective Bargaining?

Of the various tools available to the association to advance equity, collective bargaining is one of the most important. It provides the ability to set the terms and conditions of employment, something that can play a huge role in overcoming discriminatory practices in the workplace.

Just some of the collective agreement articles that relate to equity are:

- Hiring (employment equity, affirmative action, advertising)
- Tenure and promotion timelines and criteria
- Non-discrimination and anti-harassment
- Pay equity and salary discrimination
- Leaves (maternity, parental, caregiver, cultural, gender-affirming care)
- Pension and benefits
- Accommodation and other disability rights
- Childcare
- Student evaluation
- Merit review and pay
- Workload and scheduling
- Access to demographic information and data of staff
- Definition of family
- Fairness for Contract Academic Staff

How can collective bargaining strengthen equity in the workplace?

It can confront discrimination directly – for example, by negotiating or strengthening anti-discrimination, anti-harassment, employment equity, and duty to accommodate clauses.

Collective bargaining can also address equity through broader issues, such as pension rights, entitlement to leaves, and tenure requirements, where marginalized academic staff may face additional challenges.

Despite its importance, not all bargaining unit members are fully aware of the collective agreement, and the steps required to negotiate one. The basics are:

- Collective bargaining is a process overseen by the law with steps and timelines that enable employees as a group to negotiate, through their association, with their employer.
- The point of these negotiations is to reach a legally enforceable collective agreement containing the terms and conditions of employment.
- Collective agreements typically have a term of two or three years, after which they expire and must be renegotiated.

- The negotiation process is led on the association side by a bargaining team consisting of elected or appointed individuals with the job of implementing the will of the membership at the negotiating table.

Collective bargaining is a power relationship. Its success requires shifting power in the employees' favour through group action. To accomplish this, the association must represent all constituencies effectively and give the membership ownership of the process. This requires a strategy based on equity, inclusion, and democratic participation.

2. Discussion

- What terms or concepts require further clarification?
- What concepts in this presentation resonated with your own experience? What was different?
- Who here has participated on a bargaining team? How was the experience?
- Who here has participated in the broader collective bargaining process (e.g., surveys, meetings, strike preparation, etc.)? How was the experience?
- What can be best done through collective bargaining to advance equity?
- What are some of the challenges of addressing equity issues through collective bargaining?
- What additional supports or resources do academic associations need to better address equity issues in the collective bargaining process?