

SECTION 7

EMPLOYEE RELATIONS

7.04 GRIEVANCE PROCEDURE

AUTHORITY:	COLLECTIVE AGREEMENT BETWEEN THE PROVINCE OF PRINCE EDWARD ISLAND AND THE UNION OF PUBLIC SECTOR EMPLOYEES <i>CIVIL SERVICE ACT AND REGULATIONS</i>
ADMINISTRATION:	P.E.I. PUBLIC SERVICE COMMISSION GOVERNMENT DEPARTMENTS / AGENCIES

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1. PURPOSE

1.01 The grievance process provides a framework for conflicts to be explored and ultimately resolved while allowing work to continue and the parties to maintain a viable working relationship.

2. APPLICATION

2.01 The grievance process for unionized employees is contained in Article 26 of the Collective Agreement. These procedures apply to all employees covered as defined in Articles 2.01, 2.02 and 2.03 except that a probationary employee will not be permitted to file a grievance to adjudication against rejection during the initial probationary period which is served when entering the classified division.

2.02 Permanent Excluded Employees may grieve. Refer to - PART X & XI of the *Civil Service Act* Regulations for procedure.

3. POLICY

3.01 The Employer and the Union wish to provide for an orderly system of resolving differences so as to promote a harmonious and cooperative relationship between the Employer and its employees. Use of these procedures shall be free from interference, restraints, coercion or prejudice.

3.02 Grievance means a written complaint by an employee or group of employees:

- (1) arising out of a difference of opinion in respect of their employment, over the application, interpretation, administration or alleged violation of the Agreement, any provincial statute or regulation or approved policy or directive which affects his/her terms and conditions of employment; or
- (2) appealing dismissal, demotion, suspension, or other disciplinary action imposed for disciplinary reasons; or
- (3) appealing a financial penalty.

Types of grievances:

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(a) Policy grievances (Union grievances)

Employer action affecting all employees or a group of individuals, such as adoption of a new policy, can be the subject of policy grievance. Refer to Article 26.13(c).

A policy grievance cannot be used to reopen individual grievances that have been abandoned or settled.

(b) Individual Grievances

The union brings forward grievances on behalf of an individual or may be a group of individuals who are adversely affected by a particular interpretation or application of a Collective Agreement provision.

Although the grievance relates to a particular member of the bargaining unit, it is the Union that carries the grievance. Individuals cannot bring a grievance without the union consent. The Collective Agreement is between the Employer and the Bargaining Agent (Union), not between the Employer and the employees.

(c) Employer grievances

The Employer can grieve an alleged violation of the Collective Agreement by the Union. If an individual violates the Collective Agreement, discipline may be administered.

(d) Rights v. Interest Disputes

(i) Rights disputes arise from grievances under a Collective Agreement.

(ii) Interest disputes arise from the collective bargaining process.

3.03 Time limits for grievances:

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(a) Mandatory

The time limits for filing a grievance are mandatory time limits: 14 calendar days for an individual grievance; 14 calendar days for a policy (Union or Employer) grievance. This is because the Collective Agreement clearly indicates that if the time limits are not followed, the grievance is deemed abandoned.

(b) Withdrawal or Abandonment of Grievance

If an employee does not submit a grievance to the next higher level within the time limits stipulated in the preceding sections, then the grievance shall be deemed to be abandoned and all rights of recourse to the grievance procedure for that particular grievance shall be at an end. This provision shall not apply in cases where circumstances beyond the control of the grievor prevented compliance with the time limits.

Therefore, if the grievance is not filed or advanced through the steps of the process within the allowed time, that is the end of the matter. An exception to this is when either the Union or the Employer obtains the consent of the other party to extend the time limits.

(c) Extension of Time Limits

The time limits fixed in these procedures may be extended by mutual written consent.

Normally, extensions are sought only in those cases where essential information needs to be found, or circumstances have arose that are outside of the control of the Union/Employer/grievor. An extension must be obtained prior to the expiry of the time limits.

3.04 Grievance and Adjudication Procedures

Article 26 sets out the rules for discussing and possibly resolving the dispute. It gives the parties an opportunity to exchange information and state their positions.

The Collective Agreement sets out the procedure. Most grievances go

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through several levels requiring discussions and responses to the dispute at progressively higher levels of management.

3.05 Variance from Normal Grievance Procedure

An exception to this process is found in Article 26.13 where grievances against suspension, demotion or dismissal are to be submitted to the final level (usually Level 3) of the grievance process within 10 days of notice of the disciplinary action.

Another exception to the normal grievance process is the process around policy grievances. The parties are obligated to meet and discuss the dispute before a grievance is filed. If unsatisfied with the outcome of the meeting, either party may submit the matter directly to adjudication within thirty (30) days of the date of the meeting. This time limit is also mandatory.

3.06 Privilege/Without Prejudice:

The substance of the parties' discussions during the grievance procedure is considered privileged and inadmissible at adjudication. The philosophy behind this practice is that the parties can have open and frank discussions with a view to resolving the dispute without prejudicing their case at a hearing. To have the subject and content of these discussions revealed at adjudication would compromise settlement attempts in future grievances.

3.07 The Grievance:

(a) Form

A grievance must be put in writing and must be signed by the grievor or their representative. Also, a grievance must have the signed approval of the Union before the Employer need respond to it. A Grievance shall meet the following criteria:

- * the grievance must be in writing
- * it must relate to the application, administration or interpretation of the Collective Agreement, a provincial statute or regulation or approved policy or directive which affects their terms and conditions of employment

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- * must have the mailing address of the grievor
- * shall state the facts giving rise to the grievance
- * shall identify the specific article, or section of the *Civil Service Act* or *Civil Service Act Regulations* alleged to be violated
- * state the contention of the employee regarding the article
- * state the recourse requested
- * be signed by the employee
- * be signed by a Union Officer or Union Employee indicating approval to process grievance

(b) Content

To be subject to the adjudication process, the grievance must claim a breach of the Collective Agreement, the *Civil Service Act* or Regulations, or even the *Human Rights Act*.

3.08 Work Now, Grieve Later:

There is a longstanding principle of labour relations which holds that an employee who believes they have a grievance cannot stop work until their grievance is resolved. This is called the “work now, grieve later” principle. To allow a work stoppage is considered too disruptive to the workplace. Grieving employees are expected to continue doing their jobs well and efficiently pending the outcome of the grievance and adjudication process.

The only exception to this principle is found within the provisions of the Occupational Health and Safety legislation, which allows an employee to refuse to work where the refusal is based on reasonable grounds that the work is likely to endanger the health or safety of the employee or other employees.

3.09 Grievance Meetings:

- (a) The Employer and the Union may meet for a number of reasons:
- to verify agreed facts (can reduce length of a hearing);
 - to identify facts in dispute;
 - to review all pertinent documents and agree, if possible, on documents that could be entered by consent at hearing;
 - to discuss in detail any underlying or peripheral issues related to the grievance;

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- to discuss, without prejudice, any alternatives to a hearing or settlement options.

(b) Disclosure, pursuant to article 26.01(b)

The parties agree that the principles of disclosure and the exchange of clear relevant information relating to a grievance are key elements in resolving differences between the Employer and its Employees.

The parties agree that either party upon request shall receive from the other disclosure of relevant information connected to the issues in dispute. The production of information requested should not cause either party undue hardship.

3.10 Past Practice:

When there is a dispute over Collective Agreement interpretation, it is essential to understand not just the Collective Agreement language but to examine past practices by the parties.

Where the Collective Agreement is found to be clear on its face, and a party consistently and over time, behaves in a manner at odds with the agreement, a past practice is formed. If this practice was known and relied upon by the other party, usually the Union, a unilateral change by the Employer to revert to the Collective Agreement can be grieved by the Union and the Employer may be prevented from changing its practice until the next round of collective bargaining.

Where the language of the agreement can be said to be ambiguous, evidence of a well-established past practice can be used as a tool in the proper interpretation of the particular article in dispute.

If the Employer's policy or practice relates to a matter not covered by the Collective Agreement, the Employer must communicate its intent to change the policy and ensure that the Union and all employees are aware of the change and its implications prior to implementation. If not covered by or outlined in the Collective Agreement, nor a violation of another clause in the Collective Agreement or stated otherwise in protected statute or legislation, the interpretation of the policy/practice shall be considered and covered under Management Rights (Article 4).

3.11 Outcome of Grievance Procedure:

(a) Abandonment

Where there has been no action in processing the grievance, and no intention of putting the matter forward.

Because the Union carries the grievance, if a Union representative does not appear on the date of the hearing, the Union is deemed to have abandoned the grievance, even if the grievor shows up for the hearing.

Or, if no action has occurred for an extended period of time and then the Union tries to proceed, the Employer can argue the Union should be found to have abandoned the grievance.

(b) Settlement

Where the parties agree to a resolution of the matter. Settlements do not require ratification of the full membership. The parties may mutually agree that the settlement will not form a precedent for future disputes, and denote the settlement as “without prejudice”.

While only the Union has the authority to enter into a settlement with the Employer, it will usually do so only if the grievor is agreeable to the settlement.

(c) Grievance Adjudication

The Collective Agreement allows for grievances to be heard by either a single adjudicator or a board of three. The single adjudicator, or the Chair of a board of three, is most often a lawyer with considerable experience in labour relations. The remaining two members of a board of three are nominees, one appointed by each of the Employer and the Union.