

Membership Representation Policy

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Membership Representation

Preamble

A primary responsibility of the Association is the fair representation of academic staff members with respect to their rights under the collective agreement (*Labour Relations Code*, ss 58.3, 153).

The Association has carriage of all grievances, and individual members are obliged to cooperate with the Association in its representation of them. The Association and represented members will communicate with each other, and individual members are obliged to maintain their contact information current with the Association.

The Association's representation is governed by the statutory "duty of fair representation" which may be defined as the responsibility to act in a manner that is neither arbitrary, discriminatory, in bad faith or seriously negligent.

The scope of the representation includes, but is not limited to, representations related to matters arising out of the collective agreement before:

- Chairs, Deans and other administrative officials;
- Vice-Presidents, especially with regard to Agreement-related matters involving questions about the assignment and performance of responsibilities, supplementary professional activity, sabbatical and other leaves, vacations, charges of unacceptable academic performance, and discipline matters;
- Supervisors, FECs or equivalent, and GACs on matters of performance evaluation;
- Investigating authorities in allegations leading potentially to discipline; and
- Arbitration tribunals.

This Policy is not applicable to grievances that have been adjudicated and a related arbitral award issued. Subsequent treatment of such arbitral awards shall be determined by the Executive exercising its "ultimate authority to manage grievances, legal matters, and any litigation involving the Association" pursuant to Bylaws Article 7.2.15, considering the Association's duty of fair representation. Subsequent treatment of arbitral award includes, but is not limited to: deciding whether or not to seek review of arbitral awards by the Alberta Labour Relations Board; deciding whether or not to seek reconsideration by the Alberta Labour Relations Board of its arbitral review decisions; deciding whether or not to seek judicial review of, and/or leave to appeal, arbitral review decisions of the Alberta Labour Relations Board to the Court of King's Bench of Alberta and/or the Alberta Court of Appeal, respectively; and whether or not to seek leave to appeal to the Supreme Court of Canada of appellate decisions of the Alberta Court of Appeal.

A. *Assistance to Members*

- A1 In seeking assistance, members are encouraged to approach the AASUA Executive Director, or to use the “[Assistance with a Potential Grievance or Advice](#)” link on the AASUA website, and the Executive Director will assign appropriate staff, or deal with the request as appropriate.
- A1.1 Matters involving the performance of duties and evaluation, questions of discipline, grievance, or other actions potentially leading to formal grievance or arbitration and any other matters arising out of the collective agreement will normally be assigned by the Executive Director to a Labour Relations Officer.
- A1.2 The Executive Director shall notify the Chair of the Grievances Committee (“GC”) of any complaint the Executive Director believes may lead to a formal grievance.
- A1.3 All cases will be handled with complete confidentiality and consideration of grievance matters at Executive or at the GC that involves the discussion of individuals shall be held *in camera*. The names of individuals and personal details are disclosed only as necessary for representation in a complaint resolution process or for seeking legal advice.
- A2 External legal counsel may be consulted by the Executive under its authority to manage the business and affairs of the Association.
- A3 The Association has carriage of all grievances. Should GC disagree with the preliminary decision of the Executive Director not to represent a member, or to discontinue representation of a member, the GC has the sole authority to decide whether a grievance shall be submitted. The GC may solicit the advice of external legal counsel respecting a potential grievance before making a decision. The final decision to advance a grievance to arbitration shall be approved by the Executive Committee. Executive shall receive regular progress reports on GC’s work, and regular progress reports on the course and costs of any arbitration that it approves.
- A4 Where the member’s complaint relates to a matter governed by or arising from the collective agreement, the following rules apply:
- A4.1 In cases where the Association has the right to appeal (e.g., cases arising under Article 16 of the Faculty Agreement (Discipline)) and so decides, all expenditures will be at the discretion of the Association.
- A4.2 In cases where the member personally has the right to appeal (e.g., cases arising under Article 14 (Unacceptable Academic Performance) or Article 15 (General Appeals Committee) of the Faculty Agreement and

so decides, the Association does not have standing to initiate the process unless the member requests representation. Therefore, the Association will not provide financial and/or legal assistance to the member in the appeal, except in the following case:

A4.2.1 Where the Association determines that it shall act to discharge its duty of fair representation, or that the appeal will set a precedent or concerns a principle of broad importance to the AASUA and its members, the GC has the authority to approve legal assistance for and on behalf of the member. If the member or the Executive Director disagrees with a decision of the GC, either may appeal the decision to the Executive which decision is final and binding.

A5 Where a member's complaint may lead to a policy grievance, the following rules apply:

A5.1 A policy grievance is defined as a pleading by the Association that an action of the employer (or its failure or refusal to act) is a violation of the collective agreement that could affect the Association in its own right, or the members as a whole in circumstances where an individual or group grievance would be inappropriate.

A5.2 The member shall bring forward their recommendation for the policy grievance to either the President or the Chair of the GC. The President, Chair of the GC and the Executive Director shall discuss the matter and after reaching consensus, shall make a recommendation for a policy grievance to the Executive within two weeks of receiving the recommendation from the member. If consensus cannot be reached, this will be reported to the Executive.

A5.3 The President, Chair of GC or the Executive Director may bring a recommendation for a policy grievance to Executive at any time.

B. The Use of External Legal Counsel for Grievances

General Authority

B1 The Executive Director shall have authority to submit questions to the Association's external legal counsel appropriate to the circumstances, where such questions arise in the routine conduct of grievances.

B2 The Executive Director shall have the authority to retain external legal counsel appropriate to the circumstances involving representation of members.

Legal Counsel Privately Retained by Members

B3 The Association will not provide financial support for legal counsel privately retained by members.

B3.1 The Association has carriage of all grievances arising from the collective agreement and the right to grieve on behalf of members as the exclusive bargaining agent; and the exclusive right to be the signatory on behalf of the member on any settlements or agreements negotiated with the University.

B3.2 The Association has a legal obligation to continue to represent a member who has consulted with their own external counsel. The Association may choose to cooperate with external legal counsel retained by the member, subject to recovery of reasonable costs incurred in that cooperation.

B4 Costs of legal proceedings incurred by a member in litigation involving the University will not be supported nor paid by the Association.

C. Representation Decisions and Appeal Policy

C1 The AASUA recognizes its duty of fair representation and undertakes to represent its members fairly, in good faith, and without discrimination. There will be situations when the AASUA must, for specific reasons, make the decision not to represent a member on a particular matter, or to cease to represent a member in a particular matter.

C1.1 The GC may make the decision not to represent a member in a particular matter or to cease to represent a member in a particular matter in any of the following circumstances:

- The matter which the member is bringing forward is not within the ambit of the collective agreement, or the matter is not one that would be arbitrable;
- A grievance on the matter lacks merit and is not likely to succeed at arbitration;
- The member has acted in an abusive manner toward their AASUA representative or toward AASUA staff;
- The member refuses to follow reasonable advice given by their AASUA representative;

- The member refuses to accept a settlement agreement or an accommodation plan which is judged to be, taking into account all the circumstances of the case, reasonable and acceptable by the AASUA;
- The member has a duty to cooperate with the AASUA but fails to do so;
- or other reasons deemed sufficient by the President, the GC, or Executive.

C2 The Executive Director may advance grievances to the arbitral stage without first obtaining a decision of the GC for the purposes of obtaining records production through the powers of an appointed labour arbitrator as part of the Association's investigations into the merits of grievances.

The Preliminary Decision

C3 Preliminary decisions not to represent a member or a particular matter or cessation of representation of a member or on a particular matter will be made by the Executive Director.

C4 Should a preliminary decision be made by the Executive Director not to represent or to discontinue representation of a member on a particular matter, the matter will be forwarded to (GC) for its consideration and decision.

C5 After reviewing the written or oral recommendation of the Executive Director, or their designated Labour Relations Officer(s), the GC will make one of the following decisions:

- a) Agree with the preliminary decision not to represent or to discontinue representation

OR

- b) Disagree with the preliminary decision, in which case representation of the member will proceed.

C6 The Chair of the GC shall provide the member with a written record of the decision. If the GC agrees with the preliminary decision, the letter will also include instructions for appealing the decision.

Appeal of the Preliminary Decision

C7 When the GC agrees with the preliminary decision, the member will have the right of appeal to a sub-committee of the Executive (Executive Appeal

Committee “EAC”).

C8 The Executive Director shall maintain a roster of labour relations practitioners who are neither members or staff of the Association.

C9 EACs shall be appointed *ad hoc*, and shall be comprised of:

C9.1 A labour relations practitioner appointed from the roster established under C8, who shall chair EAC meetings and proceedings, and who shall have voice but not vote.

C9.2 Three members of the Executive appointed by the Executive, who have not been involved in the member’s representation up to that point, and who do not have another conflict (e.g., work in the same department as the member, related to the member).

Appeal of a decision of the Grievances Committee to the Executive Appeal Committee

C10 A member may appeal a decision of the GC to the EAC.

Process

C11 Should a member wish to appeal the decision of the GC, the member must notify the AASUA President, in writing, within 10 working days of the date of the decision letter from the GC Chair.

C12 The EAC will conduct a hearing where they will hear from the member and/or the member’s representative, (a representative may be their legal counsel, a family member, or colleague) and from the Chair of the GC and/or the Executive Director or designate and/or legal counsel.

C13 The hearing will be scheduled as soon as possible following the GC’s decision. Reasonable notice will be given to the parties.

C14 The member may bring their representative to the hearing. Any costs incurred for the member’s representation will be the responsibility of the member.

C15 Hearing participants may provide the Chair of the EAC with written submissions. In order to be considered, the appealing member shall provide their written submission to the Chair and the other party between 6 and 4 working days prior to the scheduled hearing date; and the GC Chair shall provide their written submission to the Chair and the other party between 4 and 2 working days prior to the scheduled hearing date. Depending on the volume of materials, the Chair of the EAC may, at their discretion, reschedule the hearing date to allow for sufficient time for the EAC to fully review the materials prior to the hearing, in which case the Chair shall notify the parties in writing as soon as practicable.

- C16 The EAC is not bound by rules of evidence or procedures applicable to courts of law. All hearing and decisions of the EAC are guided by and in accordance with principles of natural justice and procedural fairness. The Chair shall make procedural rulings including rulings on extensions of time limits.
- C17 The hearing format shall be as follows:
- a) AASUA presentation: maximum 60 minutes
 - b) Member's presentation: maximum 60 minutes
 - c) AASUA rebuttal: maximum 30 minutes
 - d) Member's rebuttal: maximum 30 minutes
 - e) Questions from the EAC.
- C18 The EAC may provide an oral decision at the conclusion of a deliberation period following the hearing. The EAC will provide its decision along with brief written reasons to the member, the Chair of the GC, the President, and the Executive Director normally within 5 working days of the hearing.
- C19 The decision of the EAC is final and binding and not subject to further appeal.
- C20 The Chair of the EAC shall report the outcome of the hearing to the Executive.