

**NOVA SCOTIA UNION**  
**NSUPE**  
OF PUBLIC & PRIVATE EMPLOYEES

NOVA SCOTIA UNION OF PUBLIC & PRIVATE EMPLOYEES

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# **Union Advocates and Officers Manual**

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103 Thorne Avenue, Dartmouth, Nova Scotia, Canada B3B 0A4  
T: 902.422.9495 F: 902.454.4924  
[www.nsupe.ca](http://www.nsupe.ca)

# **NSUPE Union Advocates' Manual**

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## Introduction

This manual is intended to assist NSUPE representatives, officers and union advocates who represent the NSUPE membership. If the membership is the body of the union then you are the backbone of the union. Without a backbone, the body cannot stand.

You have an ongoing daily relationship with the members in the workplace. The union depends on your sound judgment and enthusiasm to serve the membership and how well you do your job has a direct impact on how the members view the union. The union has a responsibility to prepare you for the role you have taken on.

This manual has been prepared to assist in our endeavors to remain the best servicing union around. As an ongoing draft, it is open for criticism, review and adjustment. Feel free to make suggestions on format, language, usefulness or anything else. It has been designed primarily as a tool in the grievance procedure, but we have included general information on NSUPE, union philosophy and responsibilities, organizational structure and affiliations.

As an official representative of NSUPE, you stand for the membership. You represent the union in your discussions with your fellow workers and with your employer. Your dedication to serving the interests of the membership is what gives NSUPE its strength.

Thank you for all you do for NSUPE and NSUPE members.

## NSUPE - WHO WE ARE & STRUCTURE

NSUPE has been representing Nova Scotian workers since 1974. NSUPE is a member of the Confederation of Canadian Unions (CCU), a nation-wide labour central dedicated to building a democratic, Canadian labour movement.

### LOCALS

NSUPE currently has nine Locals with a total membership of approximately 2000:

<b>Local 2:</b>	Custodial and maintenance workers at the Halifax Regional School Board
<b>Local 12:</b>	Blood collection workers at Canadian Blood Services (NS)
<b>Local 13:</b>	Clerical, administrative, technical and professional employees at the Halifax Regional Municipality
<b>Local 14:</b>	Library assistants, librarians, administrative, technical and maintenance staff at Halifax Public Libraries
<b>Local 15:</b>	Life skills coaches at the Homes for Independent Living
<b>Local 16:</b>	Vocational and residential instructors of the Conway Workshop Association
<b>Local 17:</b>	Attendants and guest service representatives at Quality Inn Halifax Airport Hotel
<b>Local 19:</b>	Blood collection workers at Canadian Blood Services (PEI)
<b>Local 22:</b>	Operations workers at Cole Harbour Place

Each NSUPE Local has its own executive that runs the Local day-to-day in accordance with directions received from the membership.

### EXECUTIVE COUNCIL

Each NSUPE Local also has representatives who sit on NSUPE's executive Council, the body which oversees the entire union. Executive Council is responsible for:

- ensuring a high level of in-the-workplace service continues
- bringing Locals together for co-operative purposes
- coordinating the finances and activities of the whole union for the benefit of the Locals and the membership
- organizing new Locals
- hiring union staff and other professional assistance
- being a liaison with other organizations such as the Confederation of Canadian Unions (CCU) and the Atlantic Council of the CCU.

NSUPE is managed entirely by volunteers assisted by a small staff and legal team.

In NSUPE, NSUPE itself is the certified bargaining agent for the members of all the Locals. It's the overall union, as opposed to the Local, that is responsible for ensuring that members are properly represented and for any liabilities that occur. In many other unions, each Local holds its own certification and the Local itself is responsible for ensuring members are properly represented and for its own liabilities.

What this structure means is that in NSUPE, all the union dues of every member go into a single pot and then NSUPE pays for each Local's needs – everything from strikes, business agent/lawyers, arbitrations, and organizing to printing, executive expenses and meeting spaces. In other unions, dues are often split (not necessarily evenly) between the Local and the parent union, and then the Local is responsible for many of its own costs. That means in some cases that small and even medium-sized Locals may not have enough money to pay for an arbitration hearing or to have a lawyer assist with negotiations or have its representatives attend union conventions. In NSUPE, no matter what size Local you're in, you receive the same services.

## NSUPE'S PHILOSOPHY

NSUPE is a trade union dedicated to bettering and protecting the livelihood and the social and economic well-being of its members, their families and fellow citizens. We are non-apologetic in our representation of our members. We are co-operative wherever and whenever possible but are adamantly opposed to becoming mere puppets of the employer. We believe the collective agreement should be enforced and only changed with membership approval according to established and proper procedures.

We believe that working people have more of a vested interest in the workplace than do managers (particularly senior management), owners or politicians. Managers, owners, and politicians move on to other things when times are tough and when they make bad decisions it costs workers their jobs. Working people need their jobs and want to remain in a stable working environment with the promise of a healthy retirement at the end. Therefore, we encourage working people, collectively and through their union, to participate actively in the management of the work place and to take control of their own destiny. Most often this is done through contractual provisions which are decided on by the membership and which can be legally enforced.

We believe working people should demand respect in the work place and should accept responsibility for making the place work. We believe that in work there is dignity, that all work should be respected and decently compensated, that every Canadian should be entitled to a job with dignity and that every Canadian should receive her/his fair share of the wealth of our country.

## **OFFICERS, REPRESENTATIVES AND UNION ADVOCATES: THE BACKBONE OF THE UNION**

The union steward system was originally developed to ensure that contracts were not just empty words. Years ago, during the great organizing drives of the 1930's, new unions were being set up in great numbers. After helping a new Local negotiate a first contract, the organizer would move on.

The members of the new Local assumed that since the contract was all signed, sealed and delivered, all of the benefits of the union and its contract would automatically follow. So they sat back and waited.

Months later, after the organizer returned, he found that the Local had fallen apart. The contract was not being followed and the workplace had reverted to its former non-unionized state. This happened again and again, Local after Local. The members simply failed to realize that a permanent structure of dedicated people would be needed to protect and enforce workers' rights under the contract.

Where the members did establish a steward system, the unions survived; where they didn't, the Locals collapsed and fell to pieces. It is the steward system which guaranteed and continues to guarantee the survival of the union and the integrity of our collective agreements.

In a grass roots, bottom-up organization like NSUPE, union stewards (which we now call advocates) are the brick and mortar that enables the strength of the union to grow. Union advocates and officers are on the front lines in actively upholding the principles of labour democracy and control in the workplace.

## MAIN DUTIES OF A UNION ADVOCATE

1. Identify problems as they develop. Be the eyes and ears of the Union.
2. Ensure members get assistance as soon as possible.
3. Conduct a preliminary investigation of the facts and report them to appropriate union officials, ie. Local executive.
4. Provide representation for members in preliminary meetings with management and further steps along the way as necessary.
5. Orient new members to the Union

## DUTY OF FAIR REPRESENTATION

**NOTE:** The following notes on the duty of fair representation are taken from a Fact Sheet prepared by the Nova Scotia Labour Board which can be found online at: <http://www.gov.ns.ca/lae/labourboard/docs/DFRFactSheet20110221.pdf>

### Duty of Fair Representation

Section 54A of the *Trade Union Act* prohibits trade unions, and persons acting on behalf of trade unions, from representing bargaining unit members (whether union members or not) in a manner that is arbitrary, discriminatory, or in bad faith, with respect to their rights under collective agreements. Breach of the duty of fair representation is an unfair labour practice under the Act.

### Unions' Authority and Responsibility for Grievances

Most duty of fair representation complaints arise in connection with grievances. Trade unions have exclusive authority to act on behalf of employees who file grievances under collective agreements. This authority gives the union:

- the power to decide whether grievances proceed to arbitration; and
- the power to decide whether to settle grievances, and on what terms.

As long as the union complies with the duty of fair representation, its decisions about grievances stand, even if the grievor disagrees. When employees make duty of fair representation complaints, the Board will consider the seriousness of the grievance when it examines a union's conduct. The Board will not interfere with the union's decisions about grievances as long as the union:

- investigates grievances fully;
- obtains full details about grievances, including the employee's side of the story; and
- makes reasonable assessments of the potential outcomes of arbitration.

Unions, or union representatives, may make honest mistakes or misjudgements regarding grievances without breaching the duty of fair representation. However, union conduct that is indifferent or grossly negligent may violate s. 54A of the *Trade Union Act*.

### Arbitrary Conduct

Arbitrary conduct has been defined to include conduct which is ill-informed, reckless, or indifferent to an employee's interests. An example of arbitrary conduct would be a situation where a union automatically accepted the employer's version of a grievance without giving the employee a chance to respond to it.

### Discriminatory Conduct

Discriminatory conduct has been defined to include different treatment due to personal characteristics such as the employee's race, sex, religion or disability. Discriminatory conduct also includes different treatment based on individual favoritism. Except where justified by the particular circumstances, similar situations should be treated in a similar manner. An example of discriminatory conduct would be a situation where a union refused to arbitrate grievances of bargaining unit members because of their religious practices.

### **Bad Faith**

Bad faith conduct has been defined to include conduct based on ill-will, hostility, or revenge toward an employee. An example of bad faith conduct would be a situation where a union refused to arbitrate a grievance because the grievor had opposed union officials in union elections.

### **When must duty of fair representation complaints be filed?**

Employees may not make duty of fair representation complaints until they have pursued internal union appeal or grievance processes, or they have been denied access to those processes. Duty of fair representation complaints must be made within 90 days of the date when:

- the union breached the duty of fair representation; or
- the employee ought to have known that the union breached the duty of fair representation, as determined by the Board.

### **How do employees make duty of fair representation complaints? Is there a complaint form?**

Employees must provide full reasons and particulars explaining why they believe a union, or union representative, has breached the duty of fair representation, when they make duty of fair representation complaints. Duty of fair representation complaints should be made using the Board's DFR-22 Complaint Form. The Board's Program Officer will review the complaint to determine if it contains the necessary information and evidence. Often, the Program Officer will interview complainants in-person or over the telephone. The Program Officer may highlight areas that need further explanation or evidence to back up the complaint. The Program Officer will then prepare a report that summarizes the employee's complaint. Employees are responsible for providing:

- information about the situation that caused them to file their complaint - when it happened, who was involved, and what the union did about the situation;
- information about how the union failed to represent them fairly (show that the Union's conduct was arbitrary, or discriminatory or in bad faith);
- evidence that details the union's conduct in the matter.

Staff are not permitted to advise complainants about how to present their complaints. Please be advised that any information you provide to the Labour Board may be shared with other parties if you file a formal complaint under Section 54A(3).

## Complaint Process

The Board's Review Officer reviews all duty of fair representation complaints. The Officer's review will include the DFR-22 form, the Program Officer's report, and any evidence and submissions that the employee files. The Review Officer must dismiss complaints that do not contain sufficient evidence to establish that the duty of fair representation may have been breached. If the Review Officer does not dismiss a complaint after initial review, the Officer will notify the union of the complaint, and invite it to file a response. The Review Officer will review the complaint a second time in light of the union's response. The Officer will dismiss the complaint, if he/she is not satisfied that s. 54A may have been breached.

If the Review Officer does not dismiss the complaint after the second review, the Officer will ask the parties to meet, and try to help them settle the complaint.

If all parties agree to try the settlement process, the parties will meet with the Review Officer to express their views about the complaint, and develop options for settling it. The settlement process is confidential.

If the parties cannot settle the complaint, the Review Officer will refer it to the Board for a decision. The Board may decide duty of fair representation complaints with or without holding a hearing. The Board may refuse to hear and decide any s. 54A complaint it considers frivolous, vexatious, or otherwise not worthy of a hearing.

If a duty of fair representation complaint involves a grievance, the Board will not rule on the merits of the grievance. It will only rule on whether the union has failed to represent the employee fairly. If the Board finds that s. 54A has been breached, it may order that the grievance be taken to arbitration, and that time limits under the collective agreement be abridged or extended.

### Can duty of fair representation complaints be appealed?

The Review Officer's decisions are final and conclusive, and are not open to question or review. Generally, the Board's decisions are also final and conclusive and not open to appeal. However, the Board may reconsider its decisions or orders; and may confirm, vary, or revoke the decision or order in question. If you require information about your rights or how the law applies to your situation, you should seek legal advice.

**NOTE:** The above notes on the duty of fair representation are taken from a Fact Sheet prepared by the Nova Scotia Labour Board which can be found online at:  
<http://www.gov.ns.ca/lae/labourboard/docs/DFRFactSheet20110221.pdf>

## KNOWING THE UNION CONTRACT

The collective agreement spells out what the employer can and cannot do in specific detail. Most grievances are violations of the collective agreement so if you don't know the contract you won't be able to recognize a violation when it happens.

Read the contract over slowly. It is like your “bible” on the job. It may seem complicated but every sentence was put there during negotiations to cover some problem that might arise in the workplace. Take notice of what each section covers, i.e. job security, seniority, vacancies, pay and classifications, working hours, overtime, etc. It’s not necessary to memorize the contract from cover to cover but you must know where to look for the provisions that apply to any particular type of grievance. A handy hint is to open up your contract to the relevant provision every time you deal with a situation. Even if you think you know what a particular provision says, it is helpful to read it again as you approach a problem.

As a general rule, don’t be hasty in telling either the workers or the boss whether a grievance actually exists or not. Take your time to check the contract carefully and call a business agent/lawyer or executive member if you’re in doubt. In this way, your chances of winning the grievance will be increased. And winning complaints and grievances helps build the strength of the union.

Understanding weaknesses in your collective agreement is also very important. All members and union advocates should acquire a reasonable understanding of both the strengths and weaknesses of the contract and the historical reasons that explain those same strengths and weaknesses.

## GRIEVANCES

### A. BASIC TOOLS OF THE TRADE

Every union advocate should have the following:

1. Collective agreement
2. Seniority list
3. List of classifications and pay rates
4. Grievance investigation forms
5. Grievance master form
6. NSUPE Constitution

### B. THE UNION ADVOCATES' AND OFFICERS' RESPONSIBILITIES

While the grievor may be granted the opportunity to present their own grievance at each stage of the procedure, it is the legal obligation of NSUPE to provide help to the maximum extent possible.

Under most NSUPE contracts, the employee has a right to union representation at all stages of the grievance. It is to the advocate's and employee's benefit to have a NSUPE representative present when meeting with management to:

- be an emotionally uninvolved observer, and where appropriate, an advocate
- ensure that a member is treated fairly and respectfully by the employer
- ensure the member has an opportunity to, if appropriate, present their position in an appropriate way
- identify weaknesses in the employer's position.

A union advocate has the added protection of being a recognized representative of the union. The employer understands that it is the rep's job to present grievances and management is less likely to hold a grudge against the rep for doing his/her job.

### C. IDENTIFYING GRIEVANCES

As an advocate or union officer, you are likely to get complaints about every aspect of working conditions in your workplace. But they may be just that – complaints. For a legitimate grievance to have occurred, there must have been a violation of a provision of the collective agreement. It is your job as a union representative, in cooperation with Local executive members and Business Agents, to decide which rights have been violated and to determine whether a grievance exists. Employee and union rights arise in the following places:

1. **COLLECTIVE AGREEMENT.** Most rights are contained in the contract. This is the first place you look to see if there has been a violation of the contract. If the grievance is a clear-cut violation of the contract, it is easy to prove, provided that you stick to your guns. If it involves an interpretation of the contract, it will be a little harder to prove. A complaint involving a dispute or difference of opinion or interpretation between the company and the union about the collective agreement is a grievance. However, grievances can also occur outside the contract.
2. **FEDERAL OR PROVINCIAL LAW.** Laws relating to labour relations are often deemed to be incorporated into a collective agreement. You may have the option of filing a grievance or going to the appropriate government agency to get redress, ie, Occupational Health and Safety Act. Usually, you will only be able to have the case determined under one forum, so it is important to choose the one that is most likely to provide the desired remedy. Most unions include provincial law right in their contract, using the language as the minimum base and expanding and strengthening it in negotiations.
3. **PAST PRACTICE IN THE WORKPLACE.** This can be a basis for a grievance, particularly in areas where the contract is silent or unclear; where a past practice has been violated by the management, an employee may have a real grievance. But to be considered as a past practice, the circumstances must have been:
  1. Repeated over an extended period of time; and
  2. Accepted explicitly or implicitly by both workers and management, i.e. by verbal agreement or in writing, without either side formally objecting; or
  3. While violating the contract, neither side has demanded that this part of the contract be enforced.

The only relevance of past practice is to clarify (but not to alter) the collective agreement where it is ambiguous or unclear. In short, common practices in the workplace should be documented and agreed to in the contract so that there is no confusion over particular practices when grievances arise, and that we have a mechanism in place to fight any disputes arising under past practices.
4. **VIOLATION OF EMPLOYEES' RIGHTS.** The union must have a clear-cut, well-documented case. These kinds of grievances arise when workers are treated unfairly or unequally. These grievances are hard to fight and win so Locals should try to ensure that employees' rights are safeguarded in writing in the collective agreement.

#### D. TYPE OF GRIEVANCES

1. **INDIVIDUAL GRIEVANCES.** An individual grievance is a complaint that an action by the employer has violated the rights of an individual as set out in the collective agreement, law or some unfair practice. Examples of this type of grievance include discipline, demotion, classification disputes, denial of benefits, etc. The Business Agent should file the grievance, not the employee on his/her own, and only after instructions have been received from the Local Executive. When an individual's rights have been violated and that person refuses to file a grievance, the union should consider filing a grievance on behalf of the union. Remember, it is the union contract that is being violated. Management's arguments that the union cannot file an individual grievance on behalf of the union are false.
2. **GROUP GRIEVANCES.** A group grievance is a complaint by a group of individuals; for example, a department or a shift that has been affected the same way and at the same time by an action by the employer. An example of a group grievance would occur when the employer refuses to pay a shift premium to the employees who work a shift entitling them to shift premium. Clearly, they should grieve the matter as a group rather than proceeding by way of individual grievances.
3. **POLICY GRIEVANCES.** A policy grievance is a complaint by the union that an action of the employer (or its failure or refusal to act) is a violation of the agreement that could affect all who are covered by the agreement. A policy grievance normally relates to the interpretation of the contract rather than the complaint of an individual. A grievance may also arise out of circumstances that could also prompt an individual grievance, insofar as the union claims that the action taken by management implies an interpretation of the collective agreement that will work to the detriment of all employees. The point is the outcome or the precedence of the grievance may have a detrimental effect on the Local at some point in the future and the union must challenge it.
4. **UNION GRIEVANCES.** A union grievance may involve a dispute arising directly between the parties to the collective agreement. For example, the union would grieve on its own behalf if the employer failed to deduct union dues as specified in the collective agreement. In these cases, the union grievance is one in which the union considers its rights to have been violated and not just the rights of individuals in the union.
5. **EMPLOYER GRIEVANCES.** An employer grievance is a complaint by the employer that the union has violated the collective agreement (e.g. a wildcat strike).

**E. INVESTIGATING THE GRIEVANCE****Sources:**

1. The aggrieved worker
2. Witnesses
3. Management
4. Records
5. Aggrieved worker again, to recheck and review the facts.

**Checking the facts:**

1. Contract
2. Supplementary agreements
3. Precedents or past practice
4. Policies or department rules
5. Arbitration awards

**Conclusion:**

1. It is a grievance
2. It is not a grievance
3. It is doubtful

**F. INTERPRETING THE CONTRACT**

When faced with a dispute over the meaning of an agreement, the best rule is to look for the most reasonable interpretation. An argument which stretches the meaning of words beyond that which they will reasonably bear is not likely to find favour with the majority of arbitrators. Sometimes, however, genuine ambiguity will exist. In other words, the agreement will contain a provision that can be given two or more different interpretations that are equally reasonable.

In dealing with this situation, the first rule is to make sure that the reading of the disputed provision is within its proper context. Remember that the relevant sections may not always occur exactly where you expect them. It is, therefore, necessary to consider the whole contract before deciding whether or not a disputed provision actually applies.

If after careful consideration, it is decided that a provision is ambiguous, the next step is to consider the past practice under which the provisions have been administered. If the past practice is clear and consistent, this may influence the interpretation accepted by the arbitrator if the case cannot be resolved internally.

Consult with other NSUPE union advocates, business agents, and lawyers. There may have been instances involving the same issue in another Local's contract.

## G. GRIEVANCE STEPS

The grievance procedure is established to provide an orderly method of settling disputes that may arise during the life of a collective agreement. These steps may vary depending on the collective agreement. It is important to know your grievance procedure. The very worst thing that can happen to a legitimate grievance is to lose it because time limits were missed. If necessary, obtain written agreement from the employer to extend the time limits.

The following is an example of a grievance procedure:

**Step 1:** The complaint is taken to the immediate supervisor, orally or in writing, either individually or through their representative. (Watch out for time limits setting out when a grievance must be filed from the date of knowledge of the occurrence.) If satisfaction is not obtained at Step 1, the grievance may be referred, in writing to Step 2.

**Step 2:** The complaint is referred to the Department Head (supervisors/ supervisor) or, in their absence, their replacement or superior, with a specific time limit. (Again, watch out for time limits. Not all contracts provide for the forgiving of missing out on time limits.). If satisfaction is not obtained at Step 2, the grievance may be referred, in writing to Step 3.

**Step 3:** The grievance is referred to the Management Committee. A request of either party for a meeting shall be convened to consider the grievance. The management committee shall respond, in writing, or in the event of a meeting, at the end of the meeting. If satisfaction is not obtained at Step 3, the union may refer the matter to an Arbitration Board.

**Step 4:** In many contracts, this is when the grievance is referred to arbitration.

## H. THE WRITTEN RECORD: WHY IT IS SO IMPORTANT

Once you have heard the grievor's story through, you should make a written record to ensure that key points are not forgotten or distorted when passed from one person to another. Remember months or years may elapse between the events giving rise to a grievance and its final settlement at arbitration. Other union representatives will be responsible for presenting the grievor's case and will need your factual account of the events to work with.

By committing the basic facts to writing at an early stage, you can help ensure that all relevant information can be properly presented at each stage of the grievance. Even if the matter is not taken to arbitration, a statement of the facts may be useful when preparing for subsequent negotiations. The written record may enable you to justify a new clause in the collective agreement to resolve a problem.

**I. THE EIGHT W'S OF EVERY GRIEVANCE**

**1. WHO is involved with the grievance?**

Name(s)  
Address  
Telephone numbers  
Work location  
Department  
Seniority date  
Classification  
Name of supervisor involved  
Witnesses

**2. WHAT happened?**

Reason for grievance  
What is involved  
Worker's job  
Seniority  
Health & Safety  
Benefits  
Entitlement, etc.

**3. WHY did it happen?**

From the worker's side  
From management's side

**4. WHEN did it happen?**

Time  
Date

**5. WHERE did it happen?**

Location where incident occurred  
Sketch (if necessary)

**6. WHAT provisions of the Agreement have been violated?**

**7. WHAT evidence do you have to prove?**

Innocence

Prejudice  
Provocation  
Discrimination  
Injustice  
Contract Violation  
Management at fault  
Penalty too severe

8. **WHAT** adjustments are necessary to correct the situation? What relief is wanted?

Always ask for full redress.

## J. PROS AND CONS OF GOING TO ARBITRATION

Going to arbitration is something the union tries to avoid. Arbitrations are costly and, due to the time delay to have the hearing, can be demoralizing to both the grievor and the union itself. Statistically, the chance of winning a grievance at arbitration is about 50/50. Some employers use the arbitration process to deliberately drag out a settlement and purposely increase costs to the union. Once a grievance leaves the work place, the legalistic process takes over. The arbitration structure can be likened to a court of law. Its job is to come to a decision on any question of interpretation or alleged violation of the collective agreement (contract law) which cannot be agreed upon between the union and the employer.

An arbitration is most often heard by a sole arbitrator, who is usually a lawyer. Alternatively, an arbitration may be heard by a three-person board consisting of an appointee chosen by the union, an appointee chosen by the employer and a person chosen by those two appointees to act as Chairperson. If agreement cannot be reached on a sole arbitrator or a chair for a three-person arbitration board, the provincial minister of labour will make the appointment on behalf of the parties to the dispute.

After the sole arbitrator or board is chosen, a hearing is called. Both parties present their arguments and evidence. Any precedents from other arbitrations may also be presented if the circumstances are comparable to the issue at hand. However, the arbitrator must deal directly with the matter in dispute and in the context of the collective agreement. They do not have the authority to amend, add to or subtract from the actual wording of the contract. It is important that contract language be clear and unambiguous in its meaning or someone else may interpret it for you. The findings of an arbitrator are final and binding unless it can be shown in a court of law that the Board exceeded its jurisdiction or acted upon a wrong principle in law.

**K. MISCELLANEOUS ADVICE**

1. **DON'T COMMIT THE UNION WITHOUT AUTHORITY TO DO SO.** Remember, how an issue is handled in one situation may affect many, many other members. Always make sure to state during any discussion of settlement that the settlement is subject to the approval of the Local executive. Say things like, "I'll discuss it with the union executive and business agents and get back to you", or "it sounds promising, but we would like a chance to think about it further before committing absolutely". If an employer says, "it has to be settled right now or there's no deal", then it's probably not a good settlement.
2. **KEEP THE MEMBER INFORMED.** If there's a delay because you're waiting for information, tell the member. If after looking into all the facts, you decided it's not a grievance, tell the member. The member may not like hearing that they don't have a grievance, but if you tell them the reasons why they are more likely to understand it.
3. **DON'T BE TOO QUICK TO SETTLE.** The employer agreeing to reduce a five-day suspension to two days may sound like a good deal – except if you later find out that no discipline at all was warranted. If a deal is offered, tell the supervisor that you will talk it over with the grievor and union executive and get back to him.
4. **DON'T TRY TO BE A HERO.** Don't promise the worker the moon. If it looks like a legitimate grievance, tell the member that you'll do your best to settle it. But promises like, "We're sure to win," may build the employee up to a big letdown.
5. **WHEN IN DOUBT...** Whenever there is a doubt in your mind, consult the Local Executive, or a business agent or take the complaint up with the supervisor. Sometimes you won't know whether it is, or isn't, a grievance until you have some additional facts.
6. **PREVENT GRIEVANCES** by addressing problems in your department before they cause grievances.
7. **BE A GOOD LISTENER.** Listen with patient interest even when you think the aggrieved worker is wrong. Do not reject anyone's statement until it has been examined. Try to understand what is being said from the point of view of the person who is speaking.
8. **KNOW YOUR FACTS. CHECK YOUR CONTRACT.** Know how previous grievances of the same kind were settled.
9. **USE A POSITIVE FRIENDLY APPROACH.**
10. **BE CALM.** Try to wait to hold meetings until after emotions have had a chance to calm. If someone becomes emotional during a meeting, take a break. And anger doesn't help – shouting and pounding the desk rarely settles anything, and usually makes things worse.



11. **AVOID PERSONALITIES.** It is not who is right, it is what is right that counts. Stay focused on the issue at hand.
12. **DISAGREE WITH DIGNITY.** When you must disagree with what the supervisor says, do so with dignity. Remember that you and the supervisor (or at least the union and the employer) are going to have to work together and resolve issues in the future. Remember, you are seeking agreement, not conquest.
13. **KEEP AN OPEN MIND.** You may not know all the facts.
14. **DON'T MAKE EMPTY THREATS** that both you and the supervisor know you can't carry out. If you and the supervisor can't come to an agreement, there are further steps to be followed, including arbitration.
15. **KEEP IN MIND WHO YOU REPRESENT.** Whenever you refer to the employees, use the terminology "our members", not "my". This brings the union and its contract into perspective, both for the supervisor and the advocate.
16. **KNOW WHEN TO LEAVE.** Once a positive outcome has been reached in your discussion of the situation, don't continue to hash it over.
17. **BE DISCREET.** Union Advocates are often privy to confidential and sensitive information about union members. Treat that information on a strict need-to-know basis.
18. **PERMIT THE UNION MEMBER TO TALK and TO APOLOGIZE.** Having the grievor explain things themselves often helps managers to better understand what happened. Where an employee has made a mistake, if they take responsibility for it and apologize, it will nearly always help and nearly never backfire.
19. **TALK TO AN EMPLOYEE BEFORE MEETING WITH MANAGERS.** Make sure to tell the grievor to be honest and forthright. Dishonesty with an employer can turn something minor into something very major.
20. **REMEMBER THERE IS AN ONGOING RELATIONSHIP.** Unions and employers can't get a divorce. They have to work with one another. Even when there's disagreement, it's important to try to keep communications flowing.

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## HOW TO BE A GOOD LISTENER

Listening well is critical to performing well as a union advocate. It's an art, just like communicating with confidence. And, like speaking, it is an active process.

What is involved with listening well?

1. You must hear what the other person is saying.
2. You must understand what is being said.
3. You must remember what has been said.

How does one do this?

1. **ENCOURAGE DIALOGUE WITH EYE CONTACT AND EXPRESSION.** One way to get dialogue started is to ask questions. Once you begin to get answers, encourage the person to continue talking by asking more questions. You can show interest in a variety of ways. Maintaining eye contact is one of the most important. A nod of the head when a good point is made confirms listening and understanding. Give your full concentration to the person speaking. Few things discourage dialogue more quickly than looking away or interrupting a person to whom you've addressed a question.
2. **LISTEN INTENTLY, CONCENTRATING ON THE INDIVIDUAL AND WHAT IS BEING SAID, AND LET THE SPEAKER FINISH.** If you think you know what a person is going to say or are trying to figure out what you're going to say next, you probably won't listen actively. Try to listen to the main point without evaluating or judging what is being said. Once you start evaluating, you'll be formulating your own ideas instead of listening to the speaker's ideas.
3. **SEEK CLARIFICATION AND CONFIRMATION.** Actively seek clarification and confirmation. This not only helps prevent misunderstandings, it shows the speaker that you're interested in what they are saying. The best method of seeking clarification is to ask questions immediately if something the speaker says is unclear. You might say: "Could you go back over that one more time?" or, "Wait a second, I'm getting lost. Can you explain that in a little more detail?" Seeking confirmation is a little different from seeking clarification in that you think you've understood what the speaker has said but you want to confirm that you really have. An excellent way of confirming is to paraphrase. Paraphrasing means repeating to the speaker what they have said in your own words. Seeking clarification and confirmation are critical to active listening because they serve as a check to make sure you leave the conversation having really understood what the speaker has said.

## HOW TO MIX WORK AND UNION

As a NSUPE advocate or officer and an employee, you face the problem of being two people at the same time and having to decide which way to act.

First of all, you are a worker which means that the supervisor is your boss and, according to your legally binding contract, you are obligated to do what management directs you to do. That's what you're paid for. But you are also an official representative of NSUPE, which means that sometimes you have to speak up and stand your ground with your supervisor; and occasionally, you must do exactly the opposite of what the employer wants you to do.

The key to your effectiveness is in being able to start thinking and acting like an official union representative, automatically, when the occasion arises and to be able to impart this role to the supervisor so that they respond accordingly. Let's look at a brief illustration:

- At 9 o'clock in the morning, the supervisor speaks to you for making a boneheaded mistake. You deserve the criticism, so you take it... as a worker.
- At 9:30, a member comes to you with a complaint. You then search out the supervisor to discuss the problem and have it rectified...as the union advocate.

It is extremely important to both the union's and your credibility as a union advocate to be as much of a role model as possible in the workplace. This most certainly does not mean sucking up to management. But it does mean that you should fully fulfill your employment contract – show up on time, do your job properly without shortcuts, think before you speak or act (especially when it comes to jokes that could be perceived by someone else as belittling or harassment), etc.

## STEWARD MISTAKES

Everyone makes mistakes, even NSUPE Union Advocates. But here, in no particular order, are a few to try and avoid:

- 1. Fail to represent fairly:** Sometimes, it's all too easy to dismiss someone's concerns based on who they are and what you know or have heard about someone. Sometimes, in amongst all the complaints a chronic complainer makes, is a legitimate complaint that should be addressed. Failure to address a legitimate complaint is not only unfair to that member, but also leaves the union open to liability. And don't play favourites either – just because it's your friend that's involved doesn't make the complaint any more legitimate or mean that you should make a bigger deal out of it.
- 2. Promise the member you'll win:** It's a promise you should never make, even when the member is completely in the right and it's an issue that's already been won. There may be facts you're unaware of, or we may just get a bad decision from an arbitrator.
- 3. Make deals without authority:** In NSUPE, nearly all grievance settlements are subject to final approval by the Local Executive. At the very least, before making a deal, the grievor's opinion should be sought – if the grievor doesn't agree with the resolution, you may see your deal turn into a complaint of failure of fair representation.
- 4. Meet with or talk to management alone:** Managers will want to try and tell you their side of the story. What they tell you may be entirely true and relevant and be needed information, but it is far better to have the grievor and/or another witness there to hear exactly what was and wasn't said. Closed door meetings without the grievor can lead to distrust about your representation.
- 5. Fail to follow grievance procedures and time limits:** There's nothing worse than having a really good case, only to have the merits never heard because you missed your time limit. But if you do happen to miss the time limit, don't just give up. Move it on and see if the employer objects.
- 6. Shoot from the hip:** If you don't know the answer, tell the person you will find out the answer and get back to the person. And don't be embarrassed by not knowing – labour and employment issues are constantly evolving and the difference of one little fact from a previous situation may change everything.
- 7. Try to help everyone:** A union advocate can't always give the member the answer the member wants to hear. If the member doesn't have a legitimate complaint, it's better to tell the member that and give as thorough an explanation as possible. If

the member still isn't satisfied, direct her/him to a Local Executive member or a Business Agent.

8. **Don't keep notes:** When the matter finally gets to arbitration six months or a year or a longer down the road, the notes you kept at the very beginning and during each meeting and telephone conversation will come in mighty handy. Don't worry about your messy handwriting or not getting everything down, just do the best you can.
9. **Gossip and release members' confidential information:** Nothing but nothing can blow an Advocate's trust from members more quickly. Both those you're talking about and those you're talking to will think you can't be trusted with their sensitive issues.
10. **Try to do it all yourself:** If you're feeling overwhelmed, go to another union advocate or an Executive member or a business agent for help. If you need time to deal with your own issues right now and need to step back from your union advocate role for a time, then do that.
11. **Beat yourself up:** Even experienced advocates occasionally screw up. Do your best to deal with the mistake and then don't dwell on it. You've taken on a volunteer responsibility that lots of others haven't, and all anyone can expect is that you do the best you can.

## **EMPLOYEE DISCIPLINE**

### **JUST CAUSE**

Nearly all collective agreements provide that an employee can only be disciplined for “just cause” or “reasonable cause”. Even where it’s not spelled out in the collective agreement, most arbitrators will imply a just cause requirement for an employer to discipline. Defining what “just cause” means is not always easy, but most arbitrators agree that it means that there has been misconduct which is inconsistent with the legitimate business interests of the employer.

When a case goes to arbitration, the employer has the burden of proving that it had just cause to discipline. The standard of proof the employer must meet is called “proof on a balance of probabilities”. The standard is less than the “proof beyond a reasonable doubt” used in criminal cases. The question is, is it more likely that the misconduct occurred than that it didn’t.

### **DISCIPLINARY PENALTIES**

Except where specific penalties are spelled out in the collective agreement, the employer can decide what penalty for discipline can be used in the specific circumstance. Possible penalties usually include:

- verbal warning
- written warning
- suspensions
- dismissal

In some cases, other penalties may also be available to the employer such as demotion or requiring restitution. The main purpose of the penalty is supposed to be for the purpose of correcting the employee’s behaviour so misconduct doesn’t occur again.

### **MITIGATION**

Once an employer shows just cause for discipline and if there is the ability under the specific terms of the collective agreement to alter the penalty, (and in most cases there are,) the union will look to see whether there are mitigating factors that warrant there being no discipline at all or a reduced penalty. The burden of proving mitigating factors lies on the union. Once the union proves those mitigating factors on a balance of probabilities, it will be up to the employer to rebut or explain why the mitigating factors should not affect the penalty imposed.

There are many mitigating factors, but some things that may affect the severity of the penalty are:

5. Employee's length of service – a long-term employee may receive less discipline than a newer employee.
6. Employee's disciplinary record – if the employee has an unblemished record, then an isolated incident of misconduct may attract less discipline.
7. Preplanned act or a momentary lapse in judgement – if the employee had an emotional response or was provoked, that may attract less discipline than if the employee premeditated the misconduct.
8. Medical condition – if an employee has a physical or mental problem (including an addiction) that explains the behaviour and that can be treated so that the behaviour is less likely to occur in future, the discipline may be reduced.
9. Personal issues – if an employee is going through a relationship breakup, having difficulties with a child, or dealing with the serious illness of a close relative, then that may serve to reduce discipline.
10. Apprehension of acceptable behaviour – if the employee was under an honest mistake or misunderstanding, that may reduce discipline.
11. Employer's conduct – if the employer has a lax atmosphere, or there were conflicting instructions, or rules were not communicated or were poorly communicated, an employee may be treated more leniently.
12. Attitude – an employee who is honest and forthright during an investigation and/or who immediately apologizes for wrongdoing, may receive less discipline.
13. Rehabilitative potential – arbitrators will look to see whether it is likely the employee will conform to acceptable standards in future, taking into account factors such as past discipline and the employee's conduct at the time and following the discipline.
14. Economic hardship – sometimes where the discipline will be especially harsh given the employee's financial situation, the discipline will be reduced.
15. Seriousness of the misconduct – misconduct that tarnishes the employer's reputation or public confidence may be treated more harshly.
16. Inhibiting effect – where an employer is able to show that its business interests require an example to be made (eg. where warnings and previous communication have been ineffective), it is less likely that discipline will be reduced.

### GRIEVANCE FORM

Most NSUPE grievances are filed on a form similar to that below, although it may be adjusted depending on the specific Local. The form will often be accompanied by a letter setting out the Union’s position. Sometimes a grievance will be started through a letter or an e-mail without a form.



### GRIEVANCE

NSUPE LOCAL:

GRIEVANCE NUMBER:

UNION ADVOCATE(S):

GRIEVOR(S):

CLASSIFICATION(S):

EMPLOYER:

STEP 1 TO:

DATE:

STEP 2 TO:

DATE:

STEP 3 TO:

DATE:

REFERRED TO ARBITRATION:

VIOLATION(S): Such Articles and violations of the collective agreement and statutes as may become apparent including:

DETAILS:

REMEDY SOUGHT: Full redress for all losses, including:

- 1.
- 2.

SIGNATURE: \_\_\_\_\_ DATE:

# NOVA SCOTIA UNION OF PUBLIC & PRIVATE EMPLOYEES

## INVESTIGATION SHEET FOR GRIEVANCES & COMPLAINTS

THIS DOCUMENT IS THE PROPERTY OF AND PREPARED FOR THE UNION. THE INFORMATION CONTAINED HEREIN WAS OBTAINED FOR UNION COUNSEL IN ANTICIPATION OF LITIGATION AND IS CONFIDENTIAL AND PRIVILEGED.

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NSUPE Local:

Prepared by:

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### 1. Information on member making grievance or complaint:

Member's name:

Job Classification:

Length of service with employer:

Telephone    - Work:  
                  - Home:  
                  - Cell:  
                  - Other:

E-mail: - Work:  
          - Other:

Home mailing address:

Work location:

Employer:

Department:

Management names & title (line of command):

- Immediate supervisor:

- Next supervisor:

- Director or Manager:

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**2. Record of events:**

Date of event:

Time of event:

Location of event:

Witnesses or people with relevant information. Include contact information (e-mail or telephone) where available:

Member's version of events:

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**3. Grievance / Complaint details:**

What is the violation? (Collective agreement provision, law, policy, etc.)

What is the remedy you propose?

Is there anything relevant on the employee's record? (Previous discipline, performance appraisals, meritorious notations, etc.)

What date was the grievance or complaint first reported?

Have there been any attempts to resolve the grievance or complaint? (Discussions with managers, meetings, etc.) If so, please include details.

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I agree the information in this form is accurate and complete to the best of my knowledge:

Grievor's/complainant's signature:

Date:

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**This document and the information in it is confidential and gathered in anticipation of litigation. Do not copy or provide this information to any person except the grievor/complainant except with the permission of the union.**