

PRIMER ON THE GRIEVANCE PROCEDURE

The word 'grievance' can conjure up an unpleasant association with intractable conflict between an employee and his/her employer. While there are certainly grievances that exemplify this dynamic there are many more that are resolved informally without conflict. In fact, according to the contract, the administration and the union are required to exhaust all informal means of resolving a conflict between a member and the Administration before the union can proceed with the formal grievance process. It is during this informal process that most disputes are resolved. So perhaps the best way to think of a grievance is less as a forum for inflaming conflict and more as a way for the union and the Administration to come to a better understanding of the proper way to implement the collective bargaining agreement. That is, whenever there is a differing interpretation of the contract the grievance procedure can allow both parties to come to an agreement on what the proper contract interpretation should be.

What is the contractual definition of a grievance? The contract states that a grievance is 'an allegation or complaint by a member or members of the bargaining unit or the Union that there has been a violation, misinterpretation or improper application of the terms and conditions of this Agreement by an administrative official'.

Who can file a grievance or pursue a grievance related claim? Any bargaining unit member who feels that their contract rights have been violated, whether by intention or by misinterpretation of the contract, has the right to pursue resolution via the grievance procedure. Bargaining unit members may always seek the help of the FSU in resolving a grievance matter but they can also pursue resolution without the help of the FSU. It is commonly thought that the union must represent all bargaining unit members in grievance matters regardless of the substance of the claim. That is not true. When a grievance matter is brought to the attention of the FSU, the appropriate FSU staffers and officers will analyze the claim and determine whether or not it warrants going forward. If it is deemed to be without merit the unit member can still opt to pursue their claim with Admin on their own. In addition to any grievance claims made by individuals, the FSU may also bring 'policy grievances' to the Administration's attention for resolution. A policy grievance is one that is not specific to any one person- it may involve a broadly applied policy that infringes upon the rights of large numbers of bargaining unit members, for example.

When should a bargaining unit member pursue a grievance claim? Certainly, if a member feels that their contract rights are being violated they should contact the FSU office and/or a grievance officer (see contact info below) to determine the best course of action. We also recommend contacting the FSU office and/or FSU grievance officer if there are questions as to whether or not contract rights are being violated or if a member seeks clarity on what may or may not be a contract violation. Remember, the stated goal of the grievance procedure is to attempt to resolve all conflicts informally so working with a grievance officer does not automatically mean that a formal process will be engaged in. In addition, all consultations with FSU staffers and/or FSU grievance officers can be confidential—members will not be forced to pursue grievance claims that they wish not to pursue.

What happens if informal resolution of grievance matters cannot be reached? Once informal methods are exhausted members have the option of filing a level I grievance. This is a grievance that will be heard at the UMB campus level. The Administration, the FSU, and the grievant will meet for a formal level I hearing where all relevant information will be presented. Admin will issue a decision within 21 days of

the filing or by a mutually agreed upon date. If the decision is against the grievant, he/she may decide to pursue the grievance at the level two setting. This will be a hearing between the FSU, grievant, and representatives of the UMass President's Office. If the decision at level II is goes against the grievant, a third level arbitration is possible. At arbitration a third party neutral hears the case and will issue a final, binding agreement that both parties will be obligated to adhere to. It is important to note that the decision on whether or not to pursue arbitration is not made by the individual grievant—it can only be made by the union itself. The reason for this is simple: decisions rendered via arbitration can set binding precedent that can be applied to ALL members regardless of whether or not they are involved in the individual grievance. So in order to protect its members and avoid negative results from a precedent setting ruling, the union reserves the right to determine whether or not grievances should be considered for arbitration.

What are some of the more common employment issues that can be addressed via the grievance procedure? Again, any workplace issue that arises can be addressed and resolved informally though there are certain issues that may commonly result in formally filed grievances. These include underpayments, hostile work environments, improper course or work assignments, infringement on academic freedom, just to name a few (see below for some of the restrictions on the grievance procedure).

Are there some employment issues that cannot be grieved? The contract does stipulate a number of specific areas where the grievance procedure does not apply. The most important of these are merit awards, the offering of courses (or lack thereof) to probationary lecturers, and any personnel or promotional decisions (to determine whether or not a particular area of concern is subject to the grievance procedure please check the relevant article in the contract- if there are grievance limitations, the contract language in that particular article will reflect that). This last point is very important- members cannot grieve a tenure decision, for example. However, if there are deemed to have been procedural violations in the promotional process, a grievance may be filed but only over the process, not the decision itself.

When do I have to file a grievance? A grievance must be filed within 60 days of the occurrence of an infraction or within 60 days of learning of the infraction or within 60 days from when a member or the union should have learned of the infraction (whichever is later). In either case, a grievance cannot be filed more than 1 year after the initial infraction occurred.

Do I have to worry about retaliation if I have to file a grievance? No one can say with certainty how an Administrative official will react to the filing of a grievance. However, one thing needs to be made clear- the contract is unambiguous about the issue of retaliation. No member can be retaliated against for filing a grievance, engaging in any union related activity, or simply asserting their contractual rights. The union takes the issue of retaliation very seriously and will do everything in its power to protect members who experience retaliation due to the filing of a grievance. Ultimately, only you can decide if it is worth contesting a violation of your contract rights. But just remember that if you decide to assert your rights and seek redress of grievance, you will have the combined strength of the contract and the union on your side.