

1. QUFA Protocol Regarding Representation: Carriage, Confidentiality, Disclosure, Duty of Fair Representation and Referral to Arbitration

Approved by QUFA Executive Committee, July 2011

Amended and approved by QUFA Grievance Committee, September 2013.

Amended and approved by QUFA Executive Committee and Council, October 2013

Approved as Amended by QUFA Grievance Committee, February 2021

Approved by QUFA Executive Committee and Council, March 2021

Carriage

When a Member brings a complaint or inquiry about their terms and conditions of work to QUFA for assistance, QUFA assumes carriage of the process. Carriage means that QUFA decides the strategy, mode, substance of representation and advocacy, and how far to take the matter. At each step in the process, QUFA will seek and seriously consider input from the Member.

If Members take complaints to forums where QUFA does not have carriage (for example, the Human Rights Tribunal of Ontario), this Protocol does not apply. In forums where QUFA does not have carriage, there is also no duty for QUFA to represent the Member.

Confidentiality

Confidentiality is important to QUFA's work. QUFA will treat information provided by the Member as confidential. This does not mean that the information will remain only between the Member and the QUFA person contacted. It means that the information will be shared only with those who need to know.

Some of the people who may need to know as the process unfolds are:

- QUFA staff dealing with member services: Grievance Officer, Office Administrator, Labour Relations or Member Services Officer, and Executive Director;
- Grievance Committee volunteers who are asked by the Member to attend meetings for note-taking purposes;
- Grievance Committee or JCAA (Joint Committee to Administer the Agreement) members;
- Faculty Relations Office staff and anybody they might have to contact at the university to achieve resolution of the issue.

Everyone involved in this process is aware of or made aware of the requirement of confidentiality. Nonetheless, it is important that Members realize that other people at the university may come to know about issues and attempts to resolve them.

Breach of confidentiality can have serious repercussions, including tainting the process or

jeopardizing resolution of the matter. IF QUFA has carriage of a matter, then the Member must treat all information about the case as confidential unless given permission by QUFA to discuss specific issues with designated persons.

Disclosure

The Member must provide QUFA all relevant information, whether favourable or unfavourable, so that QUFA can represent Members effectively. Early disclosure of all facts will ensure informed decisions are made.

Duty of Fair Representation

The union owes a duty of fair representation (DFR) to Members and this is described in the *Ontario Labour Relations Act*:

74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

In simple terms, *arbitrary* representation is where the Union seems to have made a decision for no good reason and without consideration of all relevant information. *Discriminatory* representation is where the Union treats employees in the same position differently for no good reasons, or for reasons prohibited under the Ontario Human Rights Code. *Bad faith* representation is where the Union makes its decision for an improper purpose.

This is a procedural right rather than a right to a particular outcome. It may be that a Member is dissatisfied with the outcome of a grievance process, for example, but that does not necessarily mean that the union (QUFA) acted in a manner contrary to the DFR provision. It is necessary to keep in mind that QUFA represents the whole Membership, so that sometimes the best interests of the bargaining unit as a whole might override the best interests of a particular Member.

Step 2, Arbitration

The Executive Committee decides whether to move a grievance to Arbitration on the basis of recommendations from the Grievance Committee and in accordance with their Duty of Fair Representation set out above. In addition to the nature of the allegation, consideration will also be given to particular facts and outcomes of the action for the Member, seriousness, costs, the nature of available remedies, and the certainty or uncertainty of the outcome.

Arbitration (Step 2 of the grievance process) is normally reserved for the most serious of cases, including, but not limited to, the following:

1. Job threatening decisions;
2. serious violations of non-discrimination provisions;
3. violations of academic freedom;
4. interpretations of the Collective Agreement that significantly threaten the integrity of the Collective Agreement;
5. excessively punitive action against Member(s);
6. abuse of management rights;
7. any other University action that in the circumstances is deemed to require QUFA assistance.

If a Member does not agree with the final decision of the QUFA Executive, they have a right to appeal as set out below. If a Member believes QUFA has not represented them fairly as per the

Duty of Fair Representation, the Member has a right to file a complaint with the Ontario Labour Relations Board.