Article: XIII **Tab No.:** 13

Subject: GRIEVANCE PROCEDURE

Text:

ARTICLE XIII – GRIEVANCE PROCEDURES

Section 1:

A Grievance Committee shall be elected to consist of two (2) to four (4) employees elected by the Union members employed in the operation covered by this Agreement. Members of this Grievance Committee shall have completed their probationary period with the Company and shall have at least one (1) year's experience in the type of operation.

Wherever possible, members shall be selected on a departmental basis.

Meetings of the Grievance Committee shall, except in cases of emergency, and wherever possible, be held outside of working hours. In the event that a grievance should arise it shall be dealt with in the following manner, without stoppage of work:

Step 1
The individual employee involved with or without the Job Steward shall first take up the matter with the supervisor directly in charge of the work within fourteen (14) days from the occurrence of the event or events giving rise to the grievance or from the time when the employee has knowledge or may be reasonably presumed to have knowledge of such event or events.

Step 2
If a satisfactory settlement is not then reached, it shall be reduced to writing by both parties when the same employee and the Committee shall take up the Grievance with the Plant Superintendent. If desired the Union Business Agent shall accompany the Committee.

Step 3
If the grievance is not then satisfactorily solved, it shall be referred to the Local Union and the Management.

Step 4
If a satisfactory settlement is not then reached it shall be dealt with by arbitration as hereinafter provided.

Section 2:

a) If a grievance has not advanced to the next stage under Step 2, 3, or 4 within fourteen (14) days after completion of the preceding stage, then the grievance shall be deemed to be abandoned, and all rights of recourse to the grievance procedure shall be at an end. The fourteen (14) day limit may be extended by mutual consent of both parties.

b) The Parties agree that the operation of Section 87 of the Labour Relations Code is specifically excluded from this Agreement.

Guidelines:

ARTICLE XIII – GRIEVANCE PROCEDURE

Sections 1 and 2:

This Article outlines the specific steps and processes involved with the grievance procedure. A grievance can be defined as a cause for distress, due to a perceived unsatisfactory working condition or work-related situation, which generates a complaint or resistance. A grievance generally stems from the perception of a misinterpretation, misapplication, or violation of the Collective Agreement.

The Labour Relations Code of British Columbia requires that "every Collective Agreement must contain a provision for final and conclusive settlement without stoppage of work, by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation, or alleged violation, including a question as to whether a matter is arbitrable." The grievance procedure is typically engaged in prior to a matter being referred to interpretation or arbitration (Article XV). The purpose of the grievance procedure is to provide an avenue for employees, and employers (albeit rarely) to resolve their complaints in a rational, legal, non-disruptive fashion.

Section 1 spells out the distinct steps to be followed in an effort to resolve grievances. Step 1 involves the initiation of a grievance by an individual employee within 14 days of the event associated with the grievance. The individual must take up the matter with the relevant supervisor, with or without the presence of a job steward. The Union, or plant committee, can only grieve a matter of policy or general practice. When circumstances arise that give cause for a grievance regarding an individual employee, it must be that individual that initiates a grievance. Compliance with Step 1 does not call for extensive formality; however, some tangible discussion between the grievor and supervisor should take place, directed at resolving the grievance.

The 14 day time limit in Section 1 Step 1 is mandatory, meaning that the individual grievor or union must file a grievance within 14 days from the occurrence of event or events giving rise to the grievance. (*See Case Reference #1*). If Companies have developed a practice of allowing grievances to be filed later than 14 days, it is advised to notify the USW in writing that that this will no longer be acceptable.

> Note: Companies are encouraged to develop a grievance administration policy designed to require accurate recording (documentation) of the nature of the grievance, relevant facts, and responses provided to the grievor at all steps of the procedure. Companies should develop their own site-specific grievance tracking form for this purpose. Contact CONIFER for assistance.

Step 2 prescribes involvement of the grievance committee. The grievance committee consists of two (2) to four (4) employees elected by the members employed in the operation. The "grievance committee" is not necessarily the "plant committee", although in many operations they tend to be comprised of the same individuals. Contract language pertaining to the structure of the "plant committee" is found under Article XVI, General Provisions. Step 2 also calls for a statement of the matter in writing by both parties. In practice, this does not occur with much frequency or effectiveness. However, this should be encouraged as it serves to clarify the precise nature and scope of the grievance.

Failure to resolve the matter at Step 2 leads to the referral to the Local Union and Management: Step 3. Step 4 calls for arbitration, as provided under Article XV.

Section 2 defines what are known as "time limits" with respect to steps 2, 3, or 4, and require that progression to the next step of the grievance procedure must occur within 14 days, or the grievance is deemed to be abandoned. The practical reality of time limits is that they are sometimes difficult to strictly enforce. The Labour Relations Code, Section 89 (Authority of Arbitration Board), Subsection e) allows arbitrators to "relieve, on just and reasonable terms, against breeches of time limits or other procedural requirements set out in the Collective Agreement."

The application of this section has impacted arbitral jurisprudence in a manner that weakens the literal impact of time limits (Section 2 a)) (*See Case Reference #2-3*).

In general, the individual grievor or union must be quite negligent regarding timelines in order for an arbitrator to uphold time limits. The party that seeks relief under 89 (e) bears the burden of showing why the arbitrator should grant it, with consideration for:

- the degree of force with which the parties have given contractual expression to the time limits
- whether the breach of the time limits was in the early stages or later stages of the grievance procedure
- the length of the delay
- whether the applicant for relief has reasonable explanation for the delay
- the nature of the grievance; i.e.: the impact on the grievor of a refusal to grant relief against time limits
- whether the employer would suffer prejudice by the granting of such relief; and
- any other factors peculiar to the circumstances at hand.
  (See Case Reference #4)

The employer may consider writing to the Union upon the expiration of the time limit subsequent to a step in the procedure to advise the Union (grievor) of the passing of the time limit and confirmation that the grievance is considered abandoned, if that is the case.

There are cases when time limits are enforced by arbitrators (*See Case Reference #5)* and Companies should be reminded that with due care and attention to the grievance time limits in the collective agreement and well as diligent documentation, the outcome of "time limits" arbitrations can lead to positive arbitration results (*See Case Reference #6).*

In many cases employers respond to the filing of a grievance with statements such as "that is not grieveable", or "that is not a grievance", or simply "grievance

denied". These are not productive responses. The ultimate determination of whether the subject of a grievance falls under the scope of the Collective Agreement, and is in fact arbitrable, is up to an arbitrator. It is advisable to give clear feedback to the grievor outlining the employer's position on the matter and, if applicable, state that the Company does not perceive a violation of the collective agreement. The grievance procedure functions more efficiently when matters are resolved at the initial stages of the process.

Section 2 b) spells out the agreement of the parties that Section 87 of the Labour Relations Code is specifically excluded from the Agreement. Section 87 allows for the appointment of a Settlement Officer from the Labour Relations Board after exhaustion of the grievance procedure.

If any company receives notification under Section 87 regarding the appointment of an officer, they should contact CONIFER immediately.

A discussion paper is available to provide a reference for solutions to problems commonly encountered in administration of the grievance procedure. It is titled "Enforcing Compliance with Grievance Procedure Steps". Contact staff at CONIFER if you require a copy.

Case References – Article XIII, Grievance Procedure, Section 1 and 2:

1. IFLRA VS USW LOCALS-1-417, 1-423 AND 1-405
   Interpreter: John Hall, September 15, 2021
   Click here to read this case reference

   CONCLUSION: The interpreter concluded the 14 Day time limit in Step 1 of Article XV, Section 1 to the Southern Interior Master Agreement (same language as Step 1 of Article XIII, Section 1 of northern interior collective agreements) is mandatory. In comparison to the time limits in Article XIII, Section 2, the interpreter states that "until a grievance has been filed, there is nothing to be "advanced" or "abandoned". Stated somewhat differently, and in the express language of Section 1, there is no "grievance" to abandon until Step 1 has been initiated. The initial Step contemplates the "matter" being taken up with the foreman and the resulting "grievance" may then be pursued through the remaining Steps."

2. FRASER LAKE SAWMILLS AND IWA LOCAL 1-424
   Arbitrator: Ben Van Der Woerd, March 7, 1990
   Click here to read this case reference

   CONCLUSION: The arbitrator relieved against the delay. In doing so he stated: "The language contained in the Collective Agreement indicating that a grievance shall be advanced within 14 days or otherwise be deemed to be abandoned, must be read against an arbitrator's statutory authority to relieve against that time limit in proper circumstances."

3. CANFOR AND IWA, LOCAL 1-424
   Arbitrator: Vincent L. Ready, April 30, 1991
   Click here to read this case reference

   CONCLUSION: TIME limits waived and grievance allowed. "With respect to the issue of time limits, the nature of the grievance is such that it ought to be heard as the grievance goes to a fundamental provision of the Collective Agreement

and the delay occurred at the later stage of the grievance procedure and the grievor was not in any way responsible for the delay."

4. PACIFIC FOREST PRODUCTS AND IWA LOCAL 1-118
Arbitrator: Donald Munroe, August 31, 1984
Click here to read this case reference

CONCLUSION: This case outlines the considerations for applying Section 89 (e) of Labour Relations Code in the context of when time limits are exceeded.

5. LAKELAND MILLS LTD AND IWA CANADA LOCAL 1-424
Arbitrator: Alex Brokenshire, JUNE 11, 2001
Click here to read this case reference

CONCLUSION: This case is complicated and to be clearly understood must be read in its entirety. It does illustrate that arbitrators will uphold time limits in certain circumstances. In his conclusion Arbitrator Brokenshire writes, "Failure to progress the grievance from step 3 to step 4 of the grievance procedure caused it to be abandoned under the terms of Article XIII, Section 2 (a) of the collective agreement and all rights of recourse to the grievance procedure are at an end."

6. TOLKO INDUSTRIES LTD. – LAKEVIEW LUMBER AND USW LOCAL 1-2017
Arbitrator: Robert Blasina, FEBRUARY 10, 2020
Click here to read this case reference

CONCLUSION: In this case, Step 1 of the grievance procedure was not invoked within the 14-day time limit mandated in the collective agreement and is another example of an arbitrator upholding time limits. Arbitrator Blasina states that, "The Union's argument that the Employer has not insisted on strict adherence in the past is not itself an explanation for why a timely grievance was not initiated in this case." Further, Arbitrator Blasina writes, "There is an onus on the Union, on behalf of the Grievor, to explain why there was a delay. Failing a reasonable explanation, it is not the arbitrator's default position to

exercise discretion under s.89 (e) and relieve against the time limit." The grievance was dismissed.