

New Language

Article 2.3

Procedures

(bold text indicates new language)

2.3.1 Local Informal Processes

The Parties agree that the local parties' where mutually agreeable, may first attempt to use local policies or processes to resolve complaints of harassment and sexual harassment prior to accessing the following procedures in Article 2.3.3 Mediation and 2.3.4 Investigation.

2.3.2 Right to Legal Counsel

The Union is the exclusive bargaining agent for the bargaining unit employee and as such has the exclusive right to represent the employee in all matters pertaining to his/her terms and conditions of employment, including matters that may lead to discipline by the Employer. An individual bargaining unit employee has no right to be represented by legal counsel during an Article 2 investigation involving an allegation of harassment.

2.3.3 Mediation

When a complaint is received by the Employer involving an individual covered by this collective agreement, the local parties will initiate a mediation procedure at the bargaining unit level. The mediation process is the recommended avenue of resolution.

Consensual mediation will require the agreement of the complainant and the alleged harasser to use the following process:

- (a) the local parties will discuss the nature of the complaint and agree upon who will conduct the mediation;
- (b) the mediation process and resolution will be kept strictly confidential by all participants;
- (c) where a resolution is reached, the complainant and the alleged harasser must agree in writing to the resolution and the matter will then be considered concluded;
- (d) no record of the mediation except the written agreed resolution will be placed on an employee's file. The written resolution will be removed from the employee's file after 12 months unless there has been a subsequent complaint of harassment against the employee within the 12 month period.

2.3.4 Investigation

Where either the complainant or alleged harasser does not agree to mediation, or no resolution is reached during the mediation, the complaint will be referred to an investigator selected from a list of investigators agreed upon by the local parties.

An investigator will be appointed within ten (10) working days of referral

Where the local parties are unable to agree on a list of investigators, JADRC will determine the list. (See Appendice B.)

The referral should, where possible, include a written statement from the complainant and the alleged harasser which succinctly outlines the issue(s) in dispute. The referral should be assembled by the Institution and forwarded to the Investigator with a copy sent to the Union(s) .

The appointment of an investigator does not preclude an investigator from mediating the dispute where possible **up to the time of submission of the Investigator's report to the local parties pursuant to Article 2.3.5(a) below.**

Any complaint of harassment will be kept confidential except as is necessary to investigate and resolve the issue. Investigators will stress the confidentiality of the investigation with the person(s) interviewed.

2.3.5 Terms of Reference of the Investigator

- (a) The purpose of the investigator will be to ascertain facts.
- (b) All persons quoted in the investigation will be named by initials.
- (c) The report of the Investigator will be given, in confidence, to the Union(s) and the Employer. It is the responsibility of the Employer to forward a copy of the report to the complainant and the alleged harasser. The Employer will state, in a covering letter, that the report is confidential. The report should refer to individuals involved by initials only. However, a key will be provided to the Employer and the Union(s) for internal use. This practice should be repeated at any subsequent arbitral proceeding.
- (d) The report will not be introduced as evidence or have standing in any arbitration, or other legal procedure. This does not preclude the parties from reaching an Agreed Statement of Fact based upon facts in the report in preparation for an arbitral proceeding.
- (e) Reliance on Report of Third Party Investigator Despite 2.3.3 (d), an institution is entitled to rely on the fact of mediation or the report of a third party investigator as evidence that may mitigate liability in a proceeding that follows receipt of the third party investigator's report.

The Employer is entitled to rely on the investigator's report as evidence that it acted in good faith in any disciplinary action that it undertook following receipt of the third party investigator's report where the issue of good faith is raised by a grievor or the union.

- (f) The investigator will not be compellable as a witness in any arbitration or other legal procedure which may result from the investigation.
- (g) The investigator will conclude her/his work within twenty (20) days of appointment and will render a report within a further ten (10) days. These timelines may be extended if deemed appropriate by the local parties. If a dispute arises with respect to the extension, the matter will be referred to JADRC. If requested by the investigator, the Employer will provide meeting space and contact information about persons to be interviewed.