

**REPORT OF THE  
GRIEVANCE & APPEALS COMMITTEE  
TO THE MGEU 65<sup>TH</sup> CONVENTION 2018**

**COMMITTEE MEMBERS**

**Area 1** Carole Reimer

**Area 2** Leann Oakley

**Area 3** Brian Parley / Nelson Bean

**Area 4** Brian Wilson

**Area 5** Barry Lachuta / Rebecca Clifton

**Area 6** Kevin Thompson

**Area 7** Kevin Jacobs / Pamela Narynski

**Area 8** Jeanette Kimball

**Chair** Robert Wells

**Staff** Marc Payette, Staff Representative  
Karla Steele, Member Services Manager  
Miranda Lawrence, Staff Representative  
Lorraine Clark, Legal Assistant

**PURPOSE OF COMMITTEE**

This Committee gives the members a final opportunity to further a grievance to arbitration or an appeal to the Civil Service Commission (CSC) where the Screening Committee has denied the advancement of their grievance or appeal.

**MAKE-UP OF COMMITTEE**

The Committee is made up of elected members from the union membership at each of the eight Area Councils. The Chair of the Committee is elected from the MGEU Board of Directors. There is a staff liaison assigned to the Committee.

**HOW THE COMMITTEE WORKS**

The Committee normally meets about every six weeks. When a case comes forward to the Committee, a Screening Committee representative provides the rationale for the decision to not proceed to arbitration or appeal to the Civil Service Commission (CSC). The grievor and their Staff Representative present the Committee with evidence they feel may be relevant to their appeal. The Committee members have the opportunity to ask questions during the presentation.

Once the grievor has had every opportunity to present their case, the Committee reviews the case in-camera and reaches a decision on whether or not to proceed to arbitration or appeal to the CSC.

In cases where other employees are affected, this Committee may hear presentations from those employees.

Every case heard by the Committee is different and the decision on whether or not to proceed to arbitration or appeal to the CSC is based on the facts of each case, and on the information that is presented to the

Committee during the hearings. Other factors could include how such an arbitration or appeal to the CSC would impact on our membership as a whole or would it be establishing a negative precedent.

The Grievance and Appeals Committee continues to review policies and make recommendations on an ongoing basis.

## **EDUCATION**

The Committee continues to look for educational opportunities that are beneficial for carrying out the duties required of them.

Since the last convention, this includes:

- Committee members and the Chair of the Committee were provided with the opportunity to attend the Mel Myers Labour Conference in 2017 and 2018;
- Two committee members attended the Accommodation Law Conference in March, 2017;
- Two committee members attended the Labour Law Review in November, 2017;
- The Committee is provided with the opportunity to attend and observe the screening process;
- The Committee reviews the arbitration awards and CSC decisions on an ongoing basis;
- The Committee receives a presentation from Paul McKenna of Myers Weinberg which provides the Committee members with valuable information regarding the duty of fair representation.

The Grievance and Appeals Committee recognizes that the arbitration process is not the only method of resolving grievances. The MGEU is increasing the use of the alternative methods for resolving disputes.

### **1. Negotiated Settlements**

A very high percentage of grievances are settled this way without proceeding to arbitration. This process allows for a compromise between the Union and the employer to reach a mutually agreed settlement without the necessity of a lengthy arbitration process.

### **2. Mediation / Arbitration**

A very effective method that has an arbitrator hear the case as a mediator. The mediator meets with both sides and attempts to forge an agreement. If the parties cannot agree or come to a resolve, the case then goes to arbitration.

### **3. Neutral Opinion**

This is a very good option to use for technical questions. The Union and the employer formulate a question; the question is then presented to an arbitrator. The case is presented without the need for questioning of witnesses or detailed evidence. This third party opinion is given by someone who knows the law and it can be binding if agreed to by both parties.

#### 4. Expedited Arbitration

This process can be used in any grievance. The Labour Board appoints an arbitrator with time limits placed upon the hearing and the issuance of a decision.

These methods of resolving grievances allow for the most cost effective and efficient resolutions to workplace disputes. The MGEU is constantly evaluating the alternatives to best represent its members.

#### GRIEVANCES

An overview of grievance activities has revealed that, in 2017, there were a total of 627 grievances filed. Of those grievances:

- o 287 were discipline
- o 105 were pay
- o 48 were application of agreement
- o 42 were selection
- o 32 were leave issues
- o 30 were accommodation
- o 83 were other (see attachment)

The components with the highest number of grievances filed in 2017 were Health Care Support Services (120) and Community Support (64).

As of May 31, 2018, there were a total of 450 grievances filed. Of those grievances:

- o 153 were discipline
- o 147 were pay
- o 49 were application of agreement
- o 20 were leave issues
- o 17 were selection
- o 64 were other (see attachment)

The components with the highest number of grievances filed to date in 2018 are Health Care Support Services (207) and Golico (33).

In the last two years, the Committee has dealt with:

- o 16 appeals as follows:
  - 7 discipline – 3 terminations, 1 written warning, 3 written reprimand
  - 3 reclassifications
  - 1 probationary rejection
  - 1 selection
  - 1 sick leave
  - 1 vacation leave
  - 1 rescind resignation
  - 1 overpayment

and reviewed six MGEU Arbitration Awards (sample summaries attached) and CSC Decisions.

In the past two years, the Committee has upheld the Screening Committee's decision to not proceed further on 10 appeals and overturned the Screening Committee on 2 appeals. The Committee recommended 4 cases be referred back to the Screening Committee.

Elected representatives and staff encourage and educate our members to ensure that they are knowledgeable with respect to their rights in the workplace. This helps our members to stand up and hold employers accountable for workplace injustices that violate our respective Collective Agreements. Employer accountability is the key to improving our workplace environment.

Members of the Grievance and Appeals Committee encourage and expect our membership, their elected officers and Staff Representatives to work together to bring forth issues for resolve.

The Committee has attached to this Report a summary of the grievances filed throughout the Province.

### **IN APPRECIATION**

To all the members, stewards and staff who have appeared before the Committee, thank you.

To the Legal Department of the MGEU, Helen Krahn, David Lewis, and Lorraine Clark, for all their help, patience and guidance, thank you.

To Walter Fernandez, who provided all of the statistical data for the preparation of this report, thank you.

To Karla Steele, Member Services Manager and Marc Payette and Miranda Lawrence, MGEU Staff Representatives, for their assistance with the Committee, thank you.

On behalf of the Committee

In solidarity,

Robert Wells, Chairperson  
Grievance & Appeals Committee

**MGEU - GRIEVANCES BY TYPE**

Grievance Types	Year			
	2016	2017	2018*	Grand Total
Abandon Position		1	1	2
Allowance	11	7	1	19
Application of Agreement	29	48	49	126
Benefit Plan	5	3	2	10
Contract Out	1	4	1	6
Disability		2		2
Discipline	260	287	153	700
Discrimination	4	1		5
Duty to Accommodate	27	30	16	73
Harassment	1	4	2	7
Health and Safety	2	3	1	6
Hours of Work	11	17	13	41
Job Sharing	1			1
Lay-off		4		4
Leave	36	32	20	88
Pay	126	105	147	378
Personnel File	2			2
Reclassification	34	13	6	53
Relocation	1	2		3
Resignation	2		2	4
Selection	41	42	17	100
Seniority	66	11	16	93
Technological Change	2			2
Term Conversion	1	2		3
Unsatisfactory Working Cond.	8	5	3	16
WCB	1	1		2
Work Assignment	3	4	1	8
<b>Grand Total</b>	<b>675</b>	<b>628</b>	<b>451</b>	<b>1754</b>

\*January 31<sup>st</sup> to May 31<sup>st</sup> 2018

**MGEU - GRIEVANCES BY COMPONENT AND LOCAL**

Components / Local	Year			
	2016	2017	2018*	Grand Total
<b>Addictions Foundation</b>				
AFM, Area 2		1		1
AFM, Area 6	1	1	1	3
AFM, Area 8	1	1	1	3
<b>Addictions Foundation Total</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>7</b>
<b>Administration</b>				
Administration, Area 1	1			1
Administration, Area 3	2			2
Administration, Area 5		3		3
Administration, Area 7	8	16	5	29
Administration, Area 8	3	3		6
<b>Administration Total</b>	<b>14</b>	<b>22</b>	<b>5</b>	<b>41</b>
<b>Clerical</b>				
Clerical, Area 1	1			1
Clerical, Area 2		8		8
Clerical, Area 3			1	1
Clerical, Area 4			1	1
Clerical, Area 5	1	1		2
Clerical, Area 7	21	10	16	47
Clerical, Area 8	2	1		3
<b>Clerical Total</b>	<b>25</b>	<b>20</b>	<b>18</b>	<b>63</b>
<b>Community Support</b>				
Interlake-Eastern Community Support, Area 5	1	6	1	8
Northern Community Support, Area 1	3		3	6
Northern Community Support, Area 8		1		1
Prairie Mountain HCSS, Area 2		1		1
Prairie Mountain HCSS, Area 3		1		1
Southern Community Support, Area 4	10	1		11
Southern Community Support, Area 5	10	4	2	16
WRHA Home Care/Home Support	54	50	20	124
<b>Community Support Total</b>	<b>78</b>	<b>64</b>	<b>26</b>	<b>168</b>
<b>Community-Based Social Services</b>				
ANCR	2	3	4	9
Career Connections	1			1
Elizabeth Fry Society of Manitoba	1	2		3
Family Dynamics Community Staff	1			1
Family Visions	1			1
Macdonald Youth Services Crisis Stabilization		1	2	3
Main Street Project	2	5	2	9

Components / Local	Year			
	2016	2017	2018*	Grand Total
Metis CFCS, Area 6	3	10	7	20
Metis Child & Family Services Authority		1		1
Michif CFS, Area 1		1		1
Michif CFS, Area 2		2		2
Michif CFS, Area 3	1			1
Parkland Crisis Centre			1	1
Parkland Res & Voc Services Inc			1	1
ROSE	2			2
Sara Riel Inc		2		2
Southeast Child & Family Services	4	3		7
Special People in Kildonan East	3	1	1	5
St Amant Community Residential Program	1		4	5
YWCA Residence Inc		1		1
<b>Community-Based Social Services Total</b>	<b>22</b>	<b>32</b>	<b>22</b>	<b>76</b>
<b>Corrections</b>				
Corrections, Area 1	3	9	1	13
Corrections, Area 2	1		3	4
Corrections, Area 3	6	11	1	18
Corrections, Area 4	16	9	8	33
Corrections, Area 5	3	4	2	9
Corrections, Area 7	23	24	12	59
<b>Corrections Total</b>	<b>52</b>	<b>57</b>	<b>27</b>	<b>136</b>
<b>Emergency Medical Services</b>				
Interlake-Eastern EMS, Area 5	33	9	3	45
Medical Transportation Coordination Centre	2	1		3
Paramedics of Winnipeg	9	8	3	20
Prairie Mountain EMS, Area 2	4	2	1	7
Prairie Mountain EMS, Area 3	5	11	1	17
Southern EMS, Area 4	4	5	3	12
Southern EMS, Area 5	2			2
<b>Emergency Medical Services Total</b>	<b>59</b>	<b>36</b>	<b>11</b>	<b>106</b>
<b>Golico</b>				
Golico, Area 1		1		1
Golico, Area 3	3			3
Golico, Area 4	2	1		3
Golico, Area 5		1	1	2
Golico, Area 7	10	24	9	43
Liquor and Gaming Authority, Area 3		1	5	6
Liquor and Gaming Authority, Area 7	4		8	12
Manitoba Lotteries Food & Beverage	4	13	10	27
<b>Golico Total</b>	<b>23</b>	<b>41</b>	<b>33</b>	<b>97</b>

Components / Local	Year			
	2016	2017	2018*	Grand Total
<b>Government Community Workers</b>				
Government Community Workers, Area 6		2		2
<b>Government Community Workers Total</b>		<b>2</b>		<b>2</b>
<b>Health</b>				
Health, Area 3		1		1
Health, Area 4	3	5	1	9
Health, Area 5	3	6	1	10
Health, Area 7		3	1	4
Health Total	6	15	3	24
<b>Health Care Support Services</b>				
Actionmarguerite (Saint-Boniface)	11	4	3	18
Actionmarguerite (Saint-Vital)	7	11	2	20
Beacon Hill Lodge	1	3	1	5
Convalescent Home	1			1
Dr Gendreau	1	2	3	6
Eden Mental Health Centre HCSS	1	2		3
Fred Douglas Lodge	39	4	3	46
Golden Door Geriatric Centre	4			4
Golden Links Lodge		2		2
Holy Family		1		1
Interlake-Eastern HCSS, Area 5	16	16	13	45
Nisichawayasihk Personal Care Home	1	2	1	4
Pinaow Wachi PCH, Area 8		1		1
Poseidon Care Centre	1	2		3
Prairie Mountain HCSS, Area 2	14	19	132	165
Prairie Mountain HCSS, Area 3	57	28	43	128
Sharon Home	1	1		2
Southeast Personal Care Home	2	1	1	4
St Amant Support	1	1		2
St Boniface General Hospital Maintenance & Trades	3	7		10
St Norbert Personal Care Home		2	1	3
Ste Rose Hospital		1		1
Victoria Hospital Support	3	4	3	10
Victoria Hospital Trades	4			4
Villa Youville	2	2	1	5
WRHA Pan Am Clinic		1		1
WRHA Selkirk Laundry Operations	2	3		5
<b>Health Care Support Services Total</b>	<b>172</b>	<b>120</b>	<b>207</b>	<b>499</b>
<b>Legal</b>				
Legal, Area 1		1		1
Legal, Area 3		1		1



Components / Local	Year			
	2016	2017	2018*	Grand Total
Legal, Area 4	2			2
Legal, Area 5	1		1	2
Legal, Area 7	18	18	2	38
Legal, Area 8	7	1	1	9
<b>Legal Total</b>	<b>28</b>	<b>21</b>	<b>4</b>	<b>53</b>
<b>MPI</b>				
MPI, Area 1	1			1
MPI, Area 4	1			1
MPI, Area 7	5	7	4	16
<b>MPI Total</b>	<b>7</b>	<b>7</b>	<b>4</b>	<b>18</b>
<b>Physical Sciences</b>				
Physical Sciences, Area 2	1	2		3
Physical Sciences, Area 3	2	3		5
Physical Sciences, Area 4	17	2	1	20
Physical Sciences, Area 5	5	4	1	10
Physical Sciences, Area 7	11	12	2	25
Physical Sciences, Area 8	3	1	1	5
<b>Physical Sciences Total</b>	<b>39</b>	<b>24</b>	<b>5</b>	<b>68</b>
<b>Post Secondary Education</b>				
Assiniboine Community College	1		1	2
Red River College	10	10	18	38
Universite de Saint-Boniface Professors (APPUSB)	1			1
University College of the North, Area 1		4	2	6
University College of the North, Area 8	8	5	2	15
<b>Post Secondary Education Total</b>	<b>20</b>	<b>19</b>	<b>23</b>	<b>62</b>
<b>Social Sciences</b>				
Social Sciences, Area 1	1		2	3
Social Sciences, Area 2		1		1
Social Sciences, Area 3		1		1
Social Sciences, Area 4	4			4
Social Sciences, Area 5	1	3	2	6
Social Sciences, Area 7	19	14	8	41
Social Sciences, Area 8	1	2	1	4
<b>Social Sciences Total</b>	<b>26</b>	<b>21</b>	<b>13</b>	<b>60</b>
<b>Technical/Professional</b>				
Diagnostic Services Manitoba Facility Support, Area 2		1		1
Diagnostic Services Manitoba Facility Support, Area 5		2		2
Diagnostic Services Manitoba Technical, Area 2	1	6		7
Diagnostic Services Manitoba Technical, Area 3	1	3	2	6
Diagnostic Services Manitoba Technical, Area 4	1	2	2	5
Diagnostic Services Manitoba Technical, Area 5	7		2	9
Interlake-Eastern T/P, Area 5	7	5	2	14

Components / Local	Year			
	2016	2017	2018*	Grand Total
Prairie Mountain T/P, Area 2	1	1	1	3
Prairie Mountain T/P, Area 3	7	2	2	11
Southern T/P, Area 4	2	4	2	8
Southern T/P, Area 5	4	4	1	9
Westman Lab	1	4	3	8
<b>Technical/Professional Total</b>	<b>32</b>	<b>34</b>	<b>17</b>	<b>83</b>
<b>Trades</b>				
Trades, Area 1	2	1	1	4
Trades, Area 2	2	2	1	5
Trades, Area 3	1	2		3
Trades, Area 4	3	3		6
Trades, Area 5	18	11	9	38
Trades, Area 7	2	17	7	26
Trades, Area 8	7			7
<b>Trades Total</b>	<b>35</b>	<b>36</b>	<b>18</b>	<b>89</b>
<b>Local with No Component</b>				
Adjustors	1			1
Allied Wings	1		2	3
Canadian Blood Services, Area 6	1	11		12
Churchill RHA	3	1		4
Dakota Ojibway Child & Family Services, Area 4	1			1
Deaf Centre Manitoba		1		1
Impark Lot Attendants		1		1
Impark Services		1	1	2
Knowles Centre SAIL		1		1
Manitoba Centennial Centre	2	1		3
Manitoba Housing Authority, Brandon	1	1		2
Manitoba Housing Authority, Dauphin	1	1		2
Manitoba Housing Authority, The Pas		1		1
Manitoba Housing Authority, Winnipeg	2	4	2	8
Manitoba Museum			1	1
MATC		1		1
Peak of the Market	7	2		9
Sandy Bay Ojibway First Nation		6		6
Seine River School Division Trades		1		1
Southern EMS Superintendents		1		1
UnionWare Inc	1			1
Winnipeg Clinic	3	5	2	10
WRHA Community Programs	9	11	4	24
WRHA HSC Security	2	2		4
Local with No Component Total	35	53	12	100
<b>Grand Total</b>	<b>675</b>	<b>627</b>	<b>450</b>	<b>1752</b>

\*January 31<sup>st</sup> to May 31<sup>st</sup> 2018

**ARBITRATION/APPEAL SUMMARY SHEET**

Grievor: **Corrections Policy Grievance**  
File No.: **197-014-2015**  
Issue: **Sick Leave on Statutory Holidays**  
Employer: **Province of Manitoba**  
Agreement: **GEMA**  
Arbitrator: **Mr. Michael Werier**  
Date of Award: **October 24, 2017**

**Summary of Decision****Facts**

The Union filed a policy grievance that Corrections was improperly paying Correctional Officers who called in sick on a statutory holiday. Since at least 1999 and the introduction of the SAP payroll system, the Province would pay a 12 hour employee who called in sick on a statutory holiday, 8 hours of stat pay for that stat and 4 hours of sick leave. The Union became aware of the practice in 2015 and immediately filed a grievance. The Union argued that the employee was entitled to 12 hours of sick leave and 8 hours in lieu for the stat. The Employer argued that this would amount to double payment and if they were incorrect on that, that the Union was estopped from advancing such an interpretation given the silence of the Union over the lengthy period of time that the practice had been in place.

**Decision**

Arbitrator Werier accepted the Union's argument that the payment of sick leave and statutory pay are separate forms of compensation negotiated by the parties in the agreement. Absent language in the agreement to the contrary, there is a presumption prevalent in the case law that both benefits must be paid. This was consistent with the holidays and sick leave article, as well as the Corrections Component MOA dealing with sick leave and holidays.

However, the Union was estopped from asserting their strict rights under the agreement. Although there was not specific knowledge by the Union of the 18 year practice, the arbitrator found that knowledge could have been obtained quite easily. Although the grievance was filed during bargaining and could have been dealt with by the parties at that time, the arbitrator found bargaining was well underway and it would be unfair to go back in time. The arbitrator accepted the Union's argument that at minimum, the date of the Award should end the practice and on a go forward basis, the Employer is obligated to interpret the agreement properly.

**Grievance allowed**

**ARBITRATION/APPEAL SUMMARY SHEET**

Grievor: **MGEU Local 911 – Policy Grievance**  
File No.: **463-911-2016**  
Issue: **Respectful Workplace Complaint**  
Employer: **City of Winnipeg**  
Agreement: **Local 911 Collective Agreement**  
Arbitrator: **Mr. Arne Peltz**  
Date of Award: **February 28, 2018**

**Summary of Decision****Facts**

The Union filed a policy grievance as a result of the Fire Chief addressing a conference with the president of the Fire Fighters union, where the topic was described in the conference brochure in provocative language that said single role EMS providers and their misinformed leaders continuously threaten the fire-based model of service delivery and how the speakers (the Chief and president of UFFW) use facts to thwart rhetoric and protect the service they provide. The brochure description was shared on social media and was met with immediate outrage among members of the Union. A RWP complaint was filed and investigated by a third party. She found there had been a breach of the policy and thereafter the Chief issued a letter of apology to the members, but not until 3 months later. The Union not satisfied with the apology, redrafted the apology letter but the Chief did not sign and the matter proceeded to hearing. The Union requested among other things, an apology and damages.

**Decision**

The Arbitrator found there had been a violation of the Respectful Workplace Policy by the Chief as found by the independent investigator, however, did not make a finding of bad faith. He found the Chief handled the matter poorly from the outset by failing to give a sincere apology at the earliest opportunity. He found the apology was late, insufficient and insincere. Nothing prevented him from immediately apologizing, nor did the Arbitrator find that the Chief had been told by HR to wait. Even after the investigation, there was further delay in issuing an apology and when it came, it was too late, compounding the damage. The apology itself was incomplete and misleading. It launched fresh criticism against the Union Executive while apologizing for the original misconduct. He found there is a difference between accepting full responsibility and offering to apologize only if you are found to be wrong. He prevaricated on whether the language in the brochure was even provocative. Therefore, the apology was found to be insincere. Damages were ordered in favour of the Union in the amount of \$10,000.00 and \$300.00 to each member of the bargaining unit at the time. He also ordered that the parties meet 6 weeks subsequent to this decision led by an external professional workplace facilitator to make efforts to repair the damage to the working relationship, at the City's expense.

**Grievance allowed**