



UNION OF HEALTH AND ENVIRONMENT
WORKERS

SYNDICAT DES TRAVAILLEURS DE LA SANTÉ ET
DE L'ENVIRONNEMENT

GRIEVANCES IN GENERAL

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GRIEVANCES

The grievance is one of the most effective tools available to workers to protect their rights. Basically, a grievance is a written complaint against an action or lack of action, by the employer in matters relating to the terms and conditions of employment. The legal right to file a grievance is established under the [*Federal Public Sector Labour Relations Act \(FPSLRA\)*](#) and the specific procedure is outlined in your collective agreement.

INFORMAL DISCUSSION

We encourage members and Local Representatives to participate in informal discussion to resolve issues. Generally, informal discussion does not suspend the timelines for filing a grievance unless there are specific provisions in the collective agreement. Refer to the applicable collective agreement to determine if there are any specific provisions on informal discussion since timelines may be part of the informal discussion process. If in doubt, ensure the grievance is filed within the prescribed timelines of the applicable collective agreement.

TIMELINESS

Filing a grievance within the prescribed timelines is critical. Grievances have been lost solely on the basis of timeliness despite having merit, so it is essential to file and transmit grievances within the timelines outlined in the applicable collective agreement. There is a provision within the *FPSLRA Regulations* for the extension of timelines, but such applications are unlikely to succeed unless there are exceptional circumstances. Given the narrow scope of exceptional circumstances we cannot stress enough the importance of filing grievances within prescribed timelines.

It is, therefore, important that Local Representatives and grievors maintain ongoing communication so as to not miss any timelines.

The collective agreement provides for the extension of timelines by **mutual agreement**. It is a best practice to have any agreement to extend the timelines done in writing and placed on the grievance file. Please ensure this is done before the timeline has expired, otherwise you may run into timeliness issues. Where a timeline has expired, request an extension from management as soon as possible and be prepared to provide a good reason for the missed timeline.

Consult the relevant article of the applicable collective agreement for complete information on the grievance procedure and all timelines to be followed as provisions may vary from one collective agreement to the next.

THE GRIEVANCE PROCEDURE

Each collective agreement outlines the grievance procedure. It is important that local representatives become familiar with the collective agreements applicable to the members they represent. Normally there are three steps in the Labour Relations and National Joint Council (NJC) grievance processes. Classification and Policy grievances follow a one-step process.

The collective agreement requires the employer to post a copy of the list of managers who are designated to hear labour relations and NJC grievances at each level of the grievance procedure. This document is called a Grievance Step Chart. You can ask the employer's Labour Relations Advisors for a copy, if you are unsure.

We strongly encourage Local Stewards to take the PSAC Grievance Handling course to acquire the skills that are necessary for a sound understanding of effective grievance handling at each stage of the grievance process. Other courses are also available to assist Local Stewards in acquiring and developing their skills and expertise as Union Representatives.

PROCESSING GRIEVANCES

LOCAL GRIEVANCE RESPONSIBILITIES

When a member approaches you with a problem and it is determined that a grievance is appropriate, the Local will assist the member in writing the grievance. Here are some important considerations to remember when completing the grievance form:

DETAILS OF GRIEVANCE:

- Be short, simple and to the point;
- Do not include arguments ;
- you may cite an article of the collective agreement but do not include reference to a specific clause and always include the following statement in your grievance wording so as to not limit it:

“I rely on any and all relevant provisions of my collective agreement, applicable policies, directives and guidelines, as well as applicable legislation and regulations.”

CORRECTIVE MEASURES:

- State precisely and with details what the grievor wants in terms of remedy;

- The corrective measures should be comprehensive;
- In addition to the specific corrective measures, you must include the following statements:

“I request:

- any and all remedies deemed just and reasonable in the circumstances; and,
- that I be made whole.”

REPRESENTATION

As it relates to grievance representation, the Local’s responsibilities include the following:

- Represent at 1st level for Labour Relations grievances and National Joint Council (NJC) grievances.
- Transmit all grievances to the 2nd level within the prescribed timelines as well as ensure forms are signed and dated by all parties (member, union and employer).
- Represent on 2nd level Labour Relations grievances.
- Transmit all grievances to the final/3rd level within the prescribed timelines as well as ensure forms are signed and dated by all parties (member, union and employer).
- Contact our National Office for the filing of a Policy Grievance as soon as possible to allow time for consultation with the PSAC who is responsible for approving and signing Policy Grievances. The National Office and PSAC require sufficient time to draft and submit the grievance to the employer within the prescribed timelines.
- Consult with other Local Representatives or your Regional Vice President for assistance and guidance.
- Send a full and comprehensive grievance file to the National Office. Please ensure you complete the PSAC Shop Steward Fact Sheet (SSFS) which will assist you in ensuring all relevant information and documentation are included in the grievance file. You can access the SSFS at:
http://psacunion.ca/sites/psac/files/attachments/pdfs/steward_factsheet_e_final_0.pdf.
- Where warranted, advise and assist members in filing Access to information and privacy (ATIP) requests to obtain all information and documentation relating to the grievance(s) at issue. Please refer to the following websites for information on ATIP requests:
 - Access to Information Request Form - <http://www.tbs-sct.gc.ca/tbsf-fsct/350-57-eng.asp>
 - Personal Information Request Form - <http://www.tbs-sct.gc.ca/tbsf-fsct/350-58-eng.asp> .

UHEW NATIONAL OFFICE - GRIEVANCE REPRESENTATION

UHEW NATIONAL OFFICE :

The Labour Relations Officers at the National Office are responsible for the representation of the following grievances:

- Third/final level *Labour Relations grievances*
- 2nd and 3rd level National Joint Council (NJC) grievances
- Demotion and termination grievance pursuant to paragraph 12 of the *Financial Administration Act*
- Policy grievances before the Treasury Board of Canada Secretariat (TBS)

PSAC REPRESENTATION SECTION :

The PSAC Representation Section is responsible for the representation of grievances at adjudication, mediation and expedited adjudication as well as the representation of classification grievances. The Local is responsible for providing the National Office with the full grievance file and where required to the PSAC for review and assessment for representation purposes.

GRIEVANCE WORDING

In response to numerous requests for grievance wording from our National Office, we are providing general sample wording to assist Locals. The proposed grievance wordings included herein are not meant to be comprehensive or specific since each case is different. Please take note the proposed grievance wordings include explanatory notes which should not be included in the grievance form submitted to the Employer. Locals and grievors should, therefore, review the wording provided and amend where required.

COMMON GRIEVANCES

- Denial of Compensation Claims
- Leave Denial
- Discipline: Verbal & Written Reprimand
- Discipline: Suspension & Financial Penalty
- Termination, Demotion & Rejection on Probation
- Termination, Demotion & Rejection on Probation Linked to Discrimination
- No Discrimination & Duty to Accommodate
- Statement of Duties, Acting Pay & Classification
- National Joint Council (NJC) Grievances

Here is proposed wording for most of these:

DENIAL OF COMPENSATION CLAIMS: Overtime, Premiums, Stand-By, etc

Details of Grievance:

I grieve the employer's denial of my claim for the period of _____ to _____ (**identify dates**) is in contravention of the provisions of my Collective Agreement.

I rely on any and all relevant provisions of my collective agreement, applicable policies, directives and guidelines, as well as applicable legislation and regulations.

Corrective Measures:

I request:

- 1) reimbursement/compensation in accordance with the provisions of my collective agreement;
 - 2) any and all other remedies deemed just and reasonable in the circumstances; and,
 - 3) that I be made whole.
-

LEAVE DENIAL

Details of Grievance:

I grieve the employer's denial of my leave request submitted on _____ (**specify date**). The refusal violates my collective agreement. I rely on any and all relevant provisions of my collective agreement, applicable policies, directives and guidelines, as well as applicable legislation and regulations.

Corrective Measures:

I request:

- 1) that my leave be approved;
 - 2) any and all other remedies deemed just and reasonable in the circumstances; and,
 - 3) that I be made whole.
-

DISCIPLINE: VERBAL & WRITTEN REPRIMAND

Details of grievance:

I grieve the discipline issued to me by the employer on _____ (identify date). I rely on any and all relevant provisions of my collective agreement, applicable policies, directives and guidelines, as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) the employer immediately revoke the discipline;
 - 2) any and all references in relation to this disciplinary action be removed from my personnel file including any other employer files and that these be destroyed in both my presence and that of my union representative's;
 - 3) full disclosure of all documentation and information relevant to this grievance to my union representatives;
 - 4) any and all remedies deemed just and reasonable in the circumstances, and,
 - 5) that I be made whole.
-

DISCIPLINE: SUSPENSION & FINANCIAL PENALTY

Details of grievance:

I grieve the discipline issued to me by the employer on _____ (identify date). I rely on any and all relevant provisions of my collective agreement, applicable policies, directives and guidelines, as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) the employer immediately revokes the discipline;
- 2) any and all salaries, monies, leave and benefits lost as a result of the employer's actions be immediately reimbursed/reinstated;
- 3) any and all references in relation to this disciplinary action be removed from my personnel file including any other employer files and that all documentation be destroyed in both my presence and that of my union representative;
- 4) full disclosure of all documentation and information relevant to this grievance to my union representatives;
- 5) any and all remedies deemed just and reasonable in the circumstances, and,
- 6) that I be made whole.

TERMINATION, DEMOTION & REJECTION ON PROBATION

Grievances concerning demotion and termination for cause go directly to the final level and will be represented by the Labour Relations Officer. However, rejection on probation grievances generally go through the first and second levels before going to the final level.

It is important for Locals representing grievors on rejection on probation grievances to be aware of the significant jurisdictional barrier to overcome. Adjudicators will assess jurisdiction by applying the two following legal principles as outlined in *Parsons v. Deputy Head (Department of National Defence) 2012 PSLRB 5*:

- i. *First, the adjudicator must examine whether the termination was employment-related. The employer simply has to provide credible evidence that the rejection on probation related to employment issues or that it was dissatisfied with the suitability of the employee; it need not establish just cause.*
- ii. *Second, the adjudicator must examine whether the employer used probation as a sham or camouflage to hide another motive for the termination. The grievor bears the legal and evidentiary burden of establishing the employer's decision to terminate was not employment-related but was a camouflage or sham or was made in bad faith. This burden imposes a very high standard or threshold for the grievor to demonstrate the rejection was not employment-related.*

Locals should thus advise their members that rejection on probation grievances are hampered by significant challenges. Also, Locals must ensure the grievance **does not use the term "rejection on probation"**. The grievance wording should simply refer to the "termination of employment".

The proposed grievance wording for termination, demotion and rejection on probation which follows is strictly for grievances which do not involve any prohibited ground under the *Canadian Human Rights Act* and the No Discrimination Article of the applicable collective agreement.

TERMINATION & DEMOTION & REJECTION ON PROBATION

Details of grievance:

I grieve my termination of employment or demotion (**select applicable situation**) as affected in the employer's letter of _____ (**identify date**). I rely on any and all relevant provisions of my collective agreement, applicable employer policies and directives as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) the employer immediately revoke my termination or demotion (**select applicable situation**);
- 2) that I immediately be reinstated at my former group and level retroactive to the date the employer's decision took effect;
- 3) any and all salaries, monies, leave and benefits lost as a result of the employer's actions be immediately reimbursed/reinstated retroactively;
- 4) any and all references in relation to this disciplinary action be removed from my personnel file including any other employer files and that all documentation be destroyed in both my presence and that of my union representative's;
- 5) full disclosure of all documentation and information relevant to this grievance to my union representatives;
- 6) any and all remedies deemed just in the circumstances, and,
- 7) that I be made whole.

TERMINATION & DEMOTION & REJECTION ON PROBATION LINKED TO DISCRIMINATION

Where the termination or demotion involves a discriminatory element involving a prohibited ground as defined under the *Canadian Human Rights Act (CHRA)* and the *No Discrimination Article* of the Collective Agreement, please ensure the grievance wording below is used.

Details of grievance:

I grieve my termination of employment or demotion (**select applicable situation**) as affected in the employer's letter of _____ (**identify date**). The employer's actions constitute discrimination which is a violation of my collective agreement and the CHRA. I rely on any and all relevant provisions of my collective agreement, applicable employer policies and directives as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) the employer immediately revoke my termination or demotion (**select applicable situation**);
- 2) that the employer cease any and all discrimination toward me and (**if applicable**) provide me with full accommodation;
- 3) that I be reinstated at my former group and level retroactive to the date the employer's decision took effect;
- 4) any and all salaries, monies, leave and benefits lost as a result of the employer's actions be immediately reimbursed/reinstated retroactively;

- 5) damages and interest;
 - 6) any and all references in relation to this disciplinary action be removed from my personnel file as well as any other employer files and that these be destroyed in both my presence and that of my union representative;
 - 7) full disclosure of all documentation and information relevant to this grievance to my union representatives;
 - 8) any and all remedies deemed just in the circumstances, and,
 - 9) that I be made whole.
-

NO DISCRIMINATION AND DUTY TO ACCOMMODATE

Where the employer fails to fulfill their legal obligation or discriminates against employees, grievances should be filed to contest the employer's actions. The following proposed grievance wording should be modified to address each situation. Specifically, if there are no issues pertaining to accommodation, reference to this should be removed from the grievance wording.

Details of grievance:

I grieve the Employer's actions constitute discrimination on the basis of _____ (**identify human rights ground(s)**). I further grieve the Employer's failure to fulfill its duty to accommodate me to the point of undue hardship. This violates Article ____ (**identify Article**) - No Discrimination of my collective agreement and the Canadian Human Rights Act. I rely on any and all other relevant provisions of my collective agreement, applicable employer policies, directives and guidelines as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) that the employer cease discriminating against me;
 - 2) that the employer fulfills its duty to accommodate and provide me with the required accommodation measures;
 - 3) any and all salaries, monies, leave and benefits lost as a result of the employer's discriminatory actions be reimbursed to me retroactive to the date the actions occurred;
 - 4) damages and interests for the pain and suffering I was subjected to by the employer;
 - 5) damages and interests for the employer's reckless and willful discrimination towards me;
 - 6) full disclosure of all documentation and information relevant to this grievance to my union representatives;
 - 7) any and all other remedies deemed just and reasonable in the circumstances; and,
 - 8) that I be made whole.
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It is also highly recommended that our members file a Human Rights Complaint to completely avail themselves of every recourse possible which could impact any potential compensation under the Canadian Human Rights Act. Such a complaint can be filed in multiple formats like paper, online, etc. Please visit this site for more information and on how to proceed. <https://www.chrc-ccdp.gc.ca/eng>

STATEMENT OF DUTIES/JOB CONTENT, ACTING PAY AND CLASSIFICATION GRIEVANCES

For information on presenting statement of duties/job content grievances including effective date and classification grievances, please continue further on the next page for details on this complex subject.

Although all union representatives should address effective date issues during the job content grievance process by including an effective date as part of the remedy requested, the Union also recommends filing an acting pay grievance concurrently with the statement of duties/job content and classification grievances. Filing an acting pay grievance may, in some cases, safeguard our member's right to pursue their acting pay grievance when their job content grievance does not succeed at the final level or is not referred to adjudication for representation purposes. You will find below proposed wording for an acting pay grievance.

ACTING PAY

Details of grievance:

I grieve the Employer is not paying me appropriately for the duties I am performing. I am asked to substantially perform the duties of a higher position without proper compensation which is a violation of my collective agreement, Article ____ (identify Article) - Pay Administration.

In addition to the Pay Administration Article, I rely on any and all relevant provisions of my collective agreement, applicable policies and directives as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) that I be paid in accordance with my collective agreement for the performance of the duties mentioned above, retroactive to _____ (specify date or period);
- 2) any and all remedies deemed just in the circumstances; and,
- 3) to be made whole.

STATEMENT OF DUTIES (JOB CONTENT) GRIEVANCES

The “Statement of Duties” clause common to PSAC collective agreements gives members the right, upon request, to be provided with a complete and current statement of their duties and responsibilities.

Depending on the circumstances, it may be appropriate for a member to file a statement of duties grievance either: when,

- (1) the duties they are performing are not accurately reflected in the work description for the position; or
- (2) when a member has never seen his or her work description and wants to see it.

While in the latter case it might seem to make sense for the member to ask to see his or her work description before filing a grievance, remember our advice: “when you feel it, file it,” because the member’s rights are only triggered once the grievance has been filed.

If the member feels that the received work description does not accurately reflect the duties that they are performing, or that duties and responsibilities have been overlooked or omitted, the member should file a grievance. Make sure the grievance is filed within the time limits set out in the collective agreement and that the grievance is worded properly:

Details of grievance:

I grieve the employer’s failure to provide me with a complete and current statement of duties and responsibilities. This violates Article ____ (Statement of duties) of my collective agreement.

Corrective Action:

I request:

That I be provided with a complete and current statement of the duties of my position, effective from X date.

Documentation

The member will be required to specify the duties and responsibilities he or she feels are missing from the statement of duties. This list should be given to the Union Representative. It is NOT to be attached to the grievance form.

Remember, a work description is not simply a list of tasks. The work description should describe the various functions that the member performs in the course of his or her job. The information

filed in support of the grievance should be simple, clear, and concise. The member will also have to provide evidence that the additional functions being performed are being performed on a regular basis and at the request or under the direction of the employer.

Special considerations for Generic (and/or National) Work Descriptions

In the PSAC's view, a National Generic Work Description must capture all of the functions of positions listed under it. We want to avoid the necessity of creating addendums that only apply to certain regions or centers. If a particular region or center is required to perform unique job functions, those functions should be reflected in the body of the generic work description itself. We feel this is the best and only way to protect our members' long-term interests.

Mediation

We recommend that statement of duties grievances be handled through the mediation process and/or through informal discussions with the immediate manager. Experience has proven that ICMS/mediation achieves better results than adjudication.

Mediation is also the best forum to deal with "effective date" issues. If a mediated settlement on job content is reached, the effective date should be included as part of the Memorandum of Agreement (MOA).

Adjudication

Experience shows that seeking to resolve statement of duties grievances at adjudication is an uphill battle. Adjudicators are generally not interested in developing a nuanced understanding of a grievor's job. Instead, they are looking for clear, concise evidence of a problem with the work description.

Impact of a new work description on classification

Having duties added to a work description is a success in itself. However, that said, having new duties added to the work description does not guarantee that the position will be reclassified upwards. It is important to have members understand that upward reclassifications are difficult to achieve.

Once this process has been completed, the work description must be reviewed, and a new classification decision must also be rendered whether or not any changes were made to the work description. Receipt of that written notification constitutes notice of a classification action on the member's position and serves as the trigger to file a classification grievance. Members under the Public Service Labour Relations Act (PSLRA) have 35 calendar days from the date they receive the notification to submit a classification grievance.

CLASSIFICATION GRIEVANCES

To file a classification grievance, there has to be a classification “action” on the position. As noted above, for members who went through the job content process, the trigger for a grievance is the receipt of the written notification of a classification decision. However, if job content is not an issue, the trigger to grieve is when the member gets notice from the employer of a classification review affecting his or her position.

Details of grievance:

I grieve the classification of my position.

Corrective Action:

That my position be reclassified upwards effective X date.

While we believe that effective date should be dealt with through the job content grievance process where applicable, we continue to recommend that the effective date be repeated in the classification grievance wording on corrective action.

Classification grievances are not handled by the National Office, they are sent directly to PSAC’s Representation Section, where a Grievance and Adjudication Officer (G&A), specialized in Classification will analyze the merits of the grievance.

After analysis of the file, PSAC could recommend that a classification grievance not be transmitted to a Classification Grievance Committee or ask that the classification grievance be withdrawn. It is important to note that PSAC does not provide representation in all cases. In those instances where PSAC will not provide representation, if the member wishes to pursue with his/her classification grievance, he/she can do so by presenting their own arguments whether in person and/or through a written submission to the CGC.

PSAC does not provide representation in all cases — only when plausible, defensible arguments can be made for an upwards reclassification. It is important to remember that the classification standards used to evaluate positions were developed by the employer and we are restricted to making arguments based on those standards. Keeping that in mind, where arguments for an upward reclassification can be made based on those standards, PSAC will provide representation.

The scheduling of classification grievances should be done in consultation with all the parties involved in the same way that other cases are scheduled. Hearings for classification grievances are conducted by Classification Grievance Committees (CGC). The CGC is made up of two employer representatives and a representative from the Treasury Board Secretariat. PSAC’s G&A will make

a presentation to this committee and the grievor can be present. There are three possible outcomes from the CGC:

1. The rating is confirmed
2. Reclassification upwards (including a change in group and/or level)
3. Reclassification downwards (including a change in group and/or level)

The decision of the CGC is final and binding and is not adjudicable. For more information on filing classification grievances, please consult the Directive on Classification <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=28698>

NATIONAL JOINT COUNCIL GRIEVANCES (NJC)

The most common National Joint Council (NJC) grievances involve the NJC Travel Directive and NJC Relocation Directive. Please refer to your collective agreement for a list of all National Joint Council Directives when filing NJC grievances. The NJC Directives can be found at the following website: <http://www.njc-cnm.gc.ca/directive/index.php?lang=eng>.

It is important when filing a NJC grievance that the correct box be checked on the grievance form. Please ensure you check the NJC grievance box and not the Labour Relations Grievance box.

NATIONAL JOINT COUNCIL GRIEVANCES

Details of Grievance:

I grieve the employer's denial of my _____ (identify NJC subject) expense claim for the period of _____ to _____ (identify dates). The employer's decision is contrary to the intent and provisions of the NJC _____ Directive (identify appropriate NJC Directive(s)). I rely on all relevant provisions of my collective agreement, NJC and Employer policies, directives and guidelines, as well as applicable legislation and regulations.

Corrective Action:

I request:

- 1) reimbursement and payment of all of my entitlements as per the applicable NJC Directive(s);
- 2) any and all remedies deemed just in the circumstances; and,
- 3) that I be made whole.

FINAL LEVEL RESPONSE AND ADJUDICATION

The Labour Relations Officer provides final level grievance representation before our various employers and to TBS for policy grievances. A final level decision is issued to the grievor with a copy to the Labour Relations Officer. It is important grievors note the date they receive the employer's response since the deadline to refer the grievance to adjudication is calculated from that date not the date of the grievance response.

The Federal Public Sector Labour Relations Act (FPSLRA) outlines clearly those cases that can be heard before the Federal Public Sector Labour Relations and Employment Board (FPSLREB). Sub-section 209 (1) of the FPSLRA provides:

209. (1) An employee who is not a member as defined in subsection 2(1) of the Royal Canadian Mounted Police Act may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration,

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required; or

(d) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

Where the grievance does not fall within the ambit of Section 209. (1), the adjudicator must declare himself incompetent to hear the case.

The Labour Relations Officer is responsible for reviewing the full grievance file to determine whether or not the file should be forwarded to the PSAC for review for possible referral to adjudication.

- Where the grievance does not fall within the ambit of Section 209. (1), the final level grievance response is deemed final and binding and the file is closed.
- Where the grievance appears to fall under the ambit of *Section 209. (1)* and appears to have merit, the file is sent to the PSAC Representation Section with a request that they review and assess the grievance file for purposes of referral to adjudication. The PSAC will provide a written response including rationale to the Component and grievor advising if the grievance will be referred to adjudication.

The PSLREB is an independent quasi-judicial statutory tribunal established by the *Federal Public Sector Labour Relations and Employment Board* to administer the grievance adjudication systems and collective bargaining in the federal public service.

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