

# CONTRACT INTERPRETATION MANUAL

## Article 17 VACANCY POSTING

### Interpretation Guidelines

#### Article 17.01 – Postings

New in 2019, all Nurse 3 and Nurse 4 positions are to be posted without the requirement of a BSN degree. When a position becomes vacant the Employer can either post the position as it was, or they have the following options:

1. Eliminate the position if they can demonstrate the work is no longer being done or can be done by other staff without increasing their workload,
2. Post the position with a higher or lower FTE than the original position if they can demonstrate how the work will be distributed with a reasonable rationale for the changes.

If the Employer eliminates the position or changes the FTE, please consult your Steward.

Employers are required to:

1. First consider whether there are displaced employees, employees on recall status who should be recalled, or employees who require an accommodation pursuant to the Duty to Accommodate process before posting the position (Article 19, Appendix A).
2. Include a description of the position, the department, the site, date of commencement, a summary of the job description and required qualifications.
3. Dual post all nursing vacancies for RNs and RPNs in mental health services, and Long Term Care (LTC).
4. Employers may utilize electronic postings and electronic employee applications in place of or in conjunction with paper postings providing:
  - (a) A copy of each new electronic posting is emailed to the Steward Coordinator or designate at the worksite.
  - (b) Employers ensure that employees have reasonable access to electronic posting information. Employees need to be advised where they can access electronic postings and given time while on duty to check for postings.

Employers have used or referred to outdated job descriptions on the vacancy postings and have used them to award the position to the senior applicant based on the qualifications specified in the outdated job description (Lillooet District Hospital and BCNU, July 23, 1985 (Greyall)).

However, if the Employer can show the actual duties of the position are not accurately reflected in the old job description, they may overcome the problems of referring to an outdated job description in the job posting (Lions Gate Hospital and BCNU, April 20, 1994 (Taylor)).

Problems have arisen where Employers have tried to take postings down once they have been posted. There are very limited circumstances where that can be done.

# CONTRACT INTERPRETATION MANUAL

In Chilliwack Hospital and BCNU, October 31, 1985 (McPhillips), the arbitrator ruled the Employer cannot withdraw and re-post positions without sufficient reason as this could potentially lead to an abuse in seniority rights. The arbitrator used three criteria in arriving at his decision:

1. Whether there was a vacancy;
2. Whether there was an abuse of the process (e.g. cancelled after the candidates are known);
3. Whether there was a “sound practical” reason to cancel the posting.

## Arbitration Awards

1. Lillooet District Hospital and BCNU, July 23, 1985 (Greyall). Use of outdated job description on the posting led to senior applicant getting the job.
2. Lions Gate Hospital and BCNU, April 20, 1994 (Taylor). Employers can overcome mistakes in using an outdated job description if they can show the job has changed and the actual duties in the job are different.
3. Chilliwack Hospital and BCNU, October 31, 1985 (McPhillips). The Employer cannot withdraw and repost vacancies without sufficient reason as it could lead to an abuse of seniority rights.

## Article 17.02 Temporary Appointments

In 2019 there were major changes to Article 17.02.

Article 17.02 (A) The Employer may still appoint without posting where the incumbent has terminated. The appointment shall not exceed 30 days.

Article 17.02 (B) The Employer must now post all temporary positions that are expected to exceed 9 months in duration. For periods of under 9 months the Employer may post or appoint into the positions. Posted temporary positions may not exceed 20 months unless there is agreement between the Union and the Employer and must include an end date on the posting.

Article 17.02 (C) Employees accepting a temporary position must commit to remaining in the position for the entire duration unless a bona fide reason to leave is provided. An employee may request to return to their previously held position from a temporary position, however this must be done within the first 30 days in the temporary position and they must provide 28 days notice. A casual who accepts a temporary position shall have their status changed to regular for the duration of the position, with all regular benefits with the exception of LTD. If the employee does go onto LTD the claim may run for a maximum of 2 years only and successive claims may not be made. A casual reverts back to casual status at the end of the temporary position. All banks and service accrued during the position remain frozen (e.g. vacation leave based on length of service), with the exception of vacation banks being paid out, for the employee to use when they either revert to regular or accept another temporary position.

Casuals in temporary appointments may apply on any regular position that becomes available during the term on the appointment. If they are the successful candidate then the position shall be held for the casual until the temporary position is complete.

Regular employees in temporary positions may apply on any regular positions that become available on the unit where the temporary position exists.

# CONTRACT INTERPRETATION MANUAL

Regular employees may also apply on any regular positions outside the unit the temporary position exists if the position results in a 0.08 or greater increase in their permanent FTE or it is a promotion. They may apply on any vacancy within 8 weeks of the expiry of the temporary appointment.

Employers may release the employee into the regular position that they have been awarded or may post and fill the regular position as per the language in this Article until the successful applicant is released from their temporary position.

Article 17.02 (E) It is the Union's position that for the 4 weeks unavailability to come into play, it must be because the employee is not available to start the position. The Employer stating they cannot release the employee to start the position for over 4 weeks does not trigger this clause.

## Article 17.03 Temporary Positions

The criteria for "temporary project positions" are as follows:

1. The intent of this language is that it is designed to cover special grant-funded positions. It is not to be used for expansion of services such as opening new units as these are not "project positions".
2. These positions can only be renewed after the end date if there is mutual agreement between the Union (i.e. Provincial Head Office) and Employer.
3. Casuals filling vacation relief or temporary project positions will have their status changed to regular for the duration of the position and will revert to casual status when the term of the position is over.
4. This means that casuals will either take earned vacation while they are in the temporary position, or have it paid out when they revert back to casual status. Any other earned banks (e.g. sick and special leave) and service entitlements (e.g. vacation accrual and severance) are frozen and can be accessed if a casual successfully posts into a regular position in future with the same Employer.
5. Internal regular employees will go back to their previous position when the temporary position is over.
  - (a) External candidates will return to their pre-employment status (i.e. they are not covered by the layoff provisions).
  - (b) The Employer is required to give a minimum of 10 days notice of any change to the projected end date of the position. This is similar to the 10 days notice required for a change in schedule.

## Article 17.04 - Seasonal Part time Positions

New in 2019 seasonal part time positions were added to the contract, the requirement for the posting and positions are laid out in the article.

## Article 17.05 – Regular Relief Positions

This language originated in 1998 bargaining. The purpose was to encourage Employers to develop float pools primarily to cover vacation and temporary increases in workload.

The Employer can also use float pools to cover work such as sick relief, and the other leaves set out in Article 11.04 (A) instead of calling in a casual.

# CONTRACT INTERPRETATION MANUAL

The Union encourages the creation of float pools as one of the strategies to address high workloads and the excessive reliance on overtime and casuals through the creation of regular positions. Increasing the percentage of regular positions enhances continuity of care and provides the health system with a more stable workforce.

## Article 17.06 – Multi-Site Relief Positions

In order for a position to be designated as a multi-site relief, it must be posted as a multi-site relief position, all sites covered by the position must be listed in the posting, and a home site must be designated.

## Article 17.07 – Regular Flex Positions

The purpose of these positions is to fill short or long-term vacancies. The positions will be posted as a 0.8 FTE and employees working in the Flex positions will be booked 6 weeks in advance for 0.4 of the FTE and may be scheduled short notice shifts for the remaining 0.4 of the FTE. Insufficient Notice as per Article 25.08 will not apply to these positions. The Employees in the flex positions will be paid 1.0 FTE salary and benefits. The positions will be included in the Master work rotation.

## Article 17.08 – Advance Hire Positions

These positions may be posted in anticipation of expected needs or vacancies. The Employer will not need to post the expected vacancy as per Article 17.01 once the vacancy occurs. Advance Hire positions will not be posted until the completion of the Internal schedule change process outlined in Article 25.03 occurs and the Advance Hire will not participate in the Internal Schedule change process.

Advance hires may be placed in a regular or temporary vacancy with 28 days notice as long it matches their owned FTE (FT to FT or PT to PT within 0.08).

## Article 17.09 - Increasing/Decreasing Regular Part-Time Employee FTE Status

Under PCA the Employer has the right to create either full or part time positions.

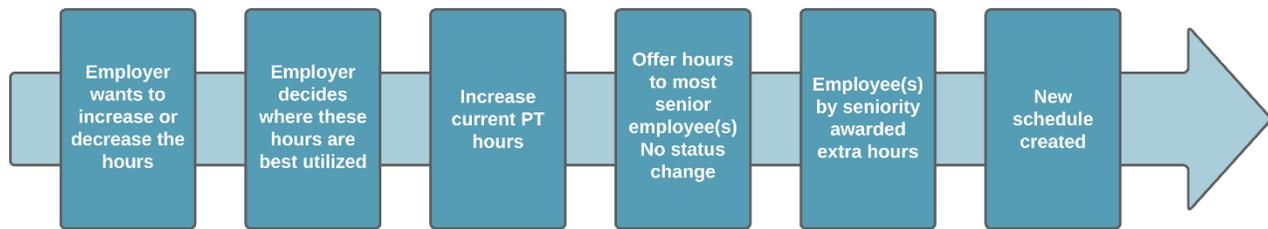
### Article 17.09 (A)

When an increase or decrease in hours is needed in a unit, department, or program the Employer, after determining the scheduling needs, will offer RPT employees by seniority, the opportunity to increase or decrease their hours. If the RPT employees agrees there is no displacement notice or vacancy posting required. There can be no change in status as a result of the increase or decrease.

### Article 17.09 (B)

When there is an ongoing change in the scheduled hours the Employer may only increase or decrease a RPT employee's FTE by 0.08 FTE per year, unless waived by mutual agreement. Increases or decreases greater than 0.08 trigger displacement unless the employee waives the displacement and selects a line on the rotation.

# CONTRACT INTERPRETATION MANUAL



## Article 17.10 - Posting of Successful Candidate

Employers are required to post the name of the successful candidate at the worksite within 7 days of making the selection.

## Arbitration Awards

1. Lillooet District Hospital and BCNU, July 23, 1985 (Greyall). Use of outdated job description on the posting led to senior applicant getting the job.
2. Lions Gate Hospital and BCNU, April 20, 1994 (Taylor). Employers can overcome mistakes in using an outdated job description if they can show the job has changed and the actual duties in the job are different.
3. Chilliwack Hospital and BCNU, October 31, 1985 (McPhillips). The Employer cannot withdraw and repost vacancies without sufficient reason as it could lead to an abuse of seniority rights.
4. Vancouver General Hospital and BCNU, September 29, 1987 (Hope). The period of time for a temporary appointment was exceeded by the Employer and the agreement with the employee to extend was nullified as an individual agreement.
5. Greater Victoria Hospital Society and BCNU, April 16, 1996 (Chertkow). The Employer failed to provide sufficient evidence that it could make temporary assignments outside the limitations of the collective agreement.
6. Vancouver Health Board and BCNU, November 25, 1996 (Gordon). This was a general application dispute filed prior to the negotiation of Article 17.03 dealing with breaches of the posting language in the filling of special project positions.
7. Vancouver Hospital and Health Sciences Centre and BCNU, HSA, April 10, 1997 (Ready). Employers, in certain restricted circumstances, can establish time-limited positions, posted pursuant to the Collective Agreement and the ESLA, with employees returning to previous status and positions upon the expiration of the specific projects jobs rather than assessing employment security.
8. New Vista Care Society and BCNU, May 12, 2003 (Gordon). Award is related to eligibility for and calculation of SEB payments but also established the precedent that an employee must work at least a day in a position before they are considered to own the position.

# CONTRACT INTERPRETATION MANUAL

## Footnotes

Article	17
Sub-Article	17.01, 17.02, 17.03, 17.04, 17.05, 17.06, 17.07, 17.08, 17.09, 17.10
Last Update	31-03-21
Related Articles	11, 18, 19, 23, 25