

CONTRACT INTERPRETATION MANUAL

Article 3 MANAGEMENT RIGHTS

Interpretation Guidelines

Article 3.01 – General Rights

This provision deals with the scope of “management rights” which includes the ability to direct the work force and to hire, fire, promote or demote employees.

Management rights generally prevail unless obeying would place the nurse (or patient) in an unsafe situation, or the Union wins a grievance. In other words, employees are usually expected to obey the “work now, grieve later” rule.

The purpose of the provisions of the collective agreement is to limit or place conditions on the scope of management rights.

Examples of clauses that limit management rights are:

1. The use of casual nurses (Article 11) – Employers are required to call casuals in by seniority.
2. Job vacancies and postings (Article 17 and 18) – Employers are required to post all vacancies within a defined period of time and follow the criteria in the agreement in making their selections.
3. Layoff and Recall (Article 19) – layoff language utilizes the principle of seniority.

Article 3.02 – Employer Policies

It is management’s responsibility to ensure all employees are made aware of any new policies and that new employees are made aware of the Employer’s policies, rules and procedures as part of their orientation. Employer policies must be readily accessible for employees to read.

The Union is not always aware of changes to Employer policies. If you have any concerns, please contact your Steward or Labour Relations Officer (LRO).

Employer policies may be deemed invalid if they do not meet the test outlined by arbitration award Lumber and Sawmill Workers Union – Local 2537 and KVP (1965).

1. Cannot be arbitrary or conflict with provisions of the collective agreement.
2. Cannot be unreasonable. The test used by arbitrators to assess “unreasonableness” is whether the rule is “reasonable in light of all the facts available”.
3. Must be clear and unequivocal, they should not be vague or ambiguous.
4. Must be brought to the employee’s attention before the Employer can act on it.
5. The employee concerned must have been notified that a breach of such a rule could result in discipline if the rule is going to be used as the basis for discipline (including termination).
6. The rule must be consistently enforced by the Employer from the time it was introduced.

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An example of an Employer policy which put the Employer and Union at odds was the Attendance Management Program at Vancouver Coastal Health Authority (VCHA). The Union grieved the policy which led Arbitrator Ready to agree with the Unions that the VCHA must end the practice of denying overtime, reducing hours or threatening to fire workers for illness or injury. The Arbitrator's order took effect January 18, 2013.

Another example of an Employer policy which put the Employer and Union at odds was the Employer's flu vaccination policy. In 2019, BCNU and the Health Employers Association of BC (HEABC) worked collaboratively to end the punitive nature of the policy whereby nurses must receive a vaccination or wear a mask during flu season or face discipline. The decision to vaccinate or wear a mask is now left up to the individual nurse's professional judgement.

Arbitration Awards

1. VCHA vs BCGEU (2013) Ready. Ends automatic overtime (OT) limits and other restrictions on health care workers in Attendance Management Programs. http://lancasterhouse.com/pdf/decisions/up-Diebolt_BCHEAInfluenzaControl.pdf
2. BCNU & IHA (2006), Hickling. Attendance Enhancement Policy, Access to Sick Leave, Sick Leave Forms, and extent of Employer queries.
3. Lumber and Sawmill Workers Union – Local 2537 and KVP (1965), Robinson. Set out the above noted criteria to be used in evaluating Employer policies.
4. Rosewood Manor and HEU Local 180 (1990), Greyall. The arbitrator dealt with Employer sick leave and attendance management policies.

Footnotes

Article	3
Sub-Article	3.01, 3.02
Last Update	31-03-21
Related Articles	1, 14, 15, 17, 18, 19, 32