

CONTRACT INTERPRETATION MANUAL

Article 6 UNION RIGHTS

Interpretation Guidelines

Article 6.01 – Individual Agreement

The significance of representation by bargaining agents is that Employers cannot enter into agreements or contracts directly with employees that could alter the terms of the PCA.

Discussions with individual employees which attempt to circumvent the PCA provisions are prohibited.

For example, without the agreement of both the Union and HEABC, the Employer cannot avoid the requirement to pay overtime pursuant to Article 25.08 if ten calendar days notice is not given. It is not adequate to simply obtain the voluntary agreement of the employee to waive overtime (Greater Victoria Hospital Society and BCNU, September 4, 1996 (Kinzie)).

Another typical example of an individual agreement is illustrated by the following Q&A:

- Q. If a regular employee wants to reduce the number of hours they work on a permanent basis, can they just negotiate this with the Employer?
- A. No. The only way a regular employee can adjust their hours is to apply for a vacancy or consider job-sharing. Also, if the employee is displaced, they can consider jobs with a reduced FTE.

Provisions that can be altered at the request of the employee, if agreed to by the Employer, are identified in certain articles, examples of which are:

Article 25. 06 (C) (D) and (F) – Requirements of Work Schedules. It is important to note that waivers of certain collective agreement provisions are either initiated by the employee, where the wording used is: “unless requested by the employee and agreed to by the Employer” or by mutual agreement “except by agreement between the Employer and the employee”. Where it says “by mutual agreement between the Employer and the Union” an individual employee and the Employer cannot negotiate a waiver of a provision without the involvement of the head office of the Union.

Article 25. 06 (E) – requires the Union to negotiate a waiver of the requirement to schedule an average of three weekends off in each nine-week period.

A Steward does not have the authority to enter into a local agreement that is inconsistent with the terms of the collective agreement unless the Union advises the Employer that the Steward has the authority to make an agreement. In the arbitration, HEABC (Menno Hospital) and BCNU, April 16, 1999 (Larson), the arbitrator stated: “... the usual mandate of a shop steward is to administer the collective agreement and to ensure it is properly applied. They can intervene and make agreements on behalf of employees but, without more, their authority does not extend beyond the collective agreement”.

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Arbitration Awards

1. Greater Victoria Hospital Society and BCNU, April 9, 1996 (Kinzie). Employee agreed to waive entitlement to overtime when the Employer changed the shift schedule with less than 10 days notice. The arbitrator ruled that the employee's agreement did not relieve the Employer of its obligation to pay overtime.
2. HEABC (Menno Hospital) and BCNU, April 16, 1999 (Larson). In this situation two DC2 (Level 4) nurses volunteered to waive their DC2 (Level 4) classification in exchange for saving their permanent night shift jobs and stated that they had discussed this with the Steward. The arbitrator ruled that while Stewards can intervene and make agreements, they cannot go beyond the collective agreement without authority from the Union.

Article 6.02 Contracting Out

The Health and Social Services Delivery Improvement Act (2002) Bill 29 nullified contracting out language in health sector collective agreements and allowed employers to contract out bargaining unit work defined as "non-clinical services".

Non-clinical services were defined as "services other than medical, diagnostic or therapeutic services provided by a designated health services professional to a person who is currently admitted to a bed in an inpatient unit in an acute care hospital, and includes any other services designated by regulation".

As a result of Bill 29 Employers had an ability to contract out operating room services, emergency services and implemented plans to contract out nursing work in long term care facilities.

In 2019 the BC government passed Bill 47 which repealed the original Bill 29.

The primary function of this Article is to protect our bargaining unit work by ensuring that the bargaining unit is not eroded by contracting nursing work in or out.

The arbitration "St. Judes Anglican Home, February 1, 1996 (Larson)" deals with the situation where nursing work was contracted out when they hired an agency nurse to cover casual shifts. Arbitrator Larson stated, "As the agency employees are slotted into the Employer's work system and the client Employer maintains control and as the introduction of the agency employee is not designed to change any existing work structure, the nurses sent by the agency must be considered to be under the Collective Agreement." This means that when an Employer hires an agency nurse, they are required to:

1. Submit dues to the Union on the employee's behalf;
2. The employee needs to receive the same wages and premiums as set out in the PCA; and
3. The agency employee has access to the grievance process.

What rights do nurses have when their work is contracted out? These are just a sample of the rights available:

1. The Health Authority is required to provide notice in accordance with Section 54 of the Labour Relations Code to the NBA at least 60 days before the change is to occur;

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2. Under Section 54 the Health Authority is required to provide certain information and to have a meeting(s) with the Union(s) affected; and
3. Employers are required to issue displacement notice and provide the nurses affected by the contracting out with bumping or displacement options at their own worksite and at all worksites within the Health Authority.

Please contact your LRO immediately if you hear of any plans to contract out any nursing work.

Arbitration Awards

1. HEABC (St. Jude's Anglican Home) and BCNU, February 1, 1996 (Larson). Agency nurses are covered by all the terms and conditions of the PCA including the necessity to submit union dues.

Additional Resources

BCLRB Decisions

1. BCLRB No. B505/98, Capital Regional District (Capital Health Region and CUPE Local 1978 and BCNU (Junker, Newman & Orr), December 1, 1998. Clarified the definition of a nurse for the purpose of representation in the NBA by stating that if the Employer asks for RN credentials, either as a mandatory or optional qualification for a position, and then hires an RN, they are part of the nurses' bargaining unit for the same position in future.

Article 6.03- Employer's Business

Employees are entitled to be paid (including where applicable: overtime, call-back and all other provisions of the collective agreement) for all time spent attending meetings or hearings on behalf of the Employer.

In addition, the Employer is required to reimburse employees for all expenses including reasonable travel time associated with attendance at these meetings or hearings.

Meetings may include disciplinary meetings; evaluation meetings; grievance meetings and investigations; compulsory staff meetings; mandatory in-services; and any other meetings an employee is required to attend by the Employer.

Meetings may also include orientation sessions where they are held at a location other than the employee's home worksite (Simon Fraser Health Region and BCNU (GAD), November 3, 2000 (McPhillips)).

Hearings may include British Columbia Healthcare Office of Arbitration hearings, (Article 10.01) for an employee who is a Steward assisting an Employee.

A Board established by the Employer may include a Board or a joint committee established under the PCA or by some other authority where the Employer requires an employee to sit as a representative. Examples may be a Board established by a Health Authority or the Provincial Government.

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Arbitration Awards

1. Simon Fraser Health Region and BCNU (GAD), November 3, 2000 (McPhillips). Employer was required to pay differential travel time and any additional expenses incurred by employees to attend orientation other than at their regular worksite.
2. Delta Hospital and BCNU, July 30, 2002 (Sullivan). Employer was required to pay mileage to a BCNU Regional Chairperson for attendance at Union/Management meetings called by the Employer (e.g. Regional Union/Management meetings) where the employee had been coded as being paid by the Employer as this was considered to be Employer business. This is a Troubleshooter award and therefore not precedential.

Article 6.04 - Stewards

This provision deals with Steward duties and responsibilities and the Employer's obligation to recognize employees who are authorized by the BCNU to act as Stewards on behalf of BCNU members.

Please notify the BCNU Membership Department immediately of any change of Steward, additional Stewards or changes in the address or phone numbers of current Stewards using the Steward Form.

Article 6.04 (C) Duties and Responsibilities

Under the terms of the collective agreement, Stewards are entitled to reasonable time at work to carry out their responsibilities (i.e. Union duties), without loss of pay or benefits.

Stewards can reduce volunteer time by fully utilizing the provisions of the collective agreement.

Stewards should ensure that when engaged in duties and responsibilities listed in this article that it is Employer paid time.

Article 6.04 (C) Right to Representation

Employees have the right to representation by a Steward of their choice at any meeting with an Employer under the following circumstances:

1. Any meeting involving discipline, or potential discipline (including an investigative meeting) (Article 6.04).
2. Any grievance meeting (Article 9.02)
3. Any meeting involving an employee's concerns about nursing conditions, safety of patients/clients/residents and nurses, and workload (Article 59.01/Appendix KK)
4. Any meetings regarding an employee's return to work after illness or injury (Appendix A).

The Employer's responsibilities are:

1. If disciplinary action is anticipated, the Employer must inform the employee that discipline may result from that meeting and of their right to representation by a Steward. The employee can then decide

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- whether to request a Steward attend the meeting (Royal Columbian Hospital and BCNU, September 8, 1993 (Kinzie)).
2. The Employers have to consider the following factors if they plan to conduct an investigative meeting:
 - (a) The test is whether an Employer could reasonably foresee or expect disciplinary action prior to the meeting. Given that the Employer schedules the meeting and sets the agenda it would be unlikely they would succeed in convincing an arbitrator they had not foreseen the outcome (Chilliwack Hospital and BCNU, July 31, 1992 (Chertkow)).
 - (b) In cases where an employee declines Steward representation and discipline is imminent or likely, HEABC advises Employers to tell the Steward of the planned meeting in advance and provide sufficient time for the Steward to talk to the employee and advise them of their right to representation and why declining representation would not be in their best interest.
 3. Where an employee is denied representation:
 - (a) The Union can argue “void ab initio” to get the discipline overturned. “Void ab initio” means a contract or discipline can be considered null from the beginning if it seriously offends law or public policy.
 - (b) In some of these cases, the arbitrator will rule the discipline out of order without even hearing the merits of the case.
 - (c) Some arbitrators may still decide to hear the merits of the case and then weigh the seriousness of the offence against the employee’s right to representation to determine whether the Employer’s actions can be overturned or rendered “void ab initio” (BCLRB No. B230/95, Government of B.C. (Public Service Employer Relations Commission) and BCGSEU, June 15, 1995 (J. Hall, R. Germaine, B. Mullin, V. Carter, and J. New)).
 - (d) Employee awarded punitive damages and mitigation at least in part for the Employer’s failure to allow Union Representation (CMHA vs. BCGEU May 2019 (Marguerite Jackson)).

Article 6.04 (C) (7) Orientation of New Employees

Employers are required to provide time for Stewards to meet with new employees during the orientation process. Steward time is generally scheduled in advance as a regular part of the orientation process. Stewards who are on duty that day are released from duty to attend at the scheduled time during the orientation process. In worksites with FTE Stewards, orientation sessions will normally be attended by this individual.

It is important to take full advantage of this provision as it provides a great opportunity to ensure a new employee is made to feel welcome in the workplace by introducing them to the resources provided by the Union and the local Stewards.

Try to make the session as informal as possible. Refer to the Steward Toolkit and talk to other Stewards about what has worked well in their sessions with new employees. Provide information (e.g. BCNU publications, BCNU website, member portal) that will be of immediate interest to a new member, such as the names and contact information of the Stewards at the worksite, and other BCNU items to increase new members’ familiarity with their Union.

Allow plenty of time for questions and keep track of the questions asked at each session to see if there’s a pattern. You could prepare a question and answer sheet of these commonly asked questions to hand out.

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Make it a practice to follow up with the new employees at a later date to see how they are doing and whether they have any further questions or concerns. Please invite them to come to a Building Union Strength (BUS) course or an upcoming BCNU event.

Research has shown that personal contact with the Union during the first few months of employment is strongly related to whether the new member feels loyal to the Union over the long term.

An outline orientation presentation is available in the Steward Toolkit.

Article 6.04 (C) (8)

HEABC has recognized that the duties of a Steward involving meetings with management may include some Employer paid preparation time while on duty (Article 8).

Article 6.04 (C) (9)

Stewards are paid to accompany a member at the member's request to a respectful workplace meeting.

HEABC-NBA Provincial Collective Agreement - Joint Interpretation

ARTICLE 6.04 – STEWARDS

HEABC and the NBA agreed to one change to Article 6.04 in the 2014-2019 Provincial Collective Agreement, which is summarized below:

The parties have agreed that employees shall have the right to request that a union steward be present for respectful workplace meetings. A “respectful workplace meeting” is any meeting or conversation requested by the Employer and related to an alleged violation of the Employer’s Respectful Workplace Policy. The presence of a Steward is employee-driven; this provision does not put an onus on the Employer to ensure union representation if an employee does not request a steward.

Article 6.04 (D) Conditions Governing Stewards

In order to carry out the responsibilities of a Steward during work time the following conditions must be met:

1. The work must fall within the duties outlined in 6.04 (C) and other related articles as set out above;
2. The Steward must receive prior consent from their supervisor;
3. The Steward must make every effort to complete their business in as short a time as possible;
4. The Steward must advise their supervisor of their return; and
5. Stewards shall not interrupt the normal operations of the worksite.

An Expedited Arbitration (FHA Eagle Ridge Hospital and BCNU (Doyle) 2014), although not precedential, noted discipline was not warranted for a leader’s failure to voice concerns that there were patient safety concerns when the Steward left the unit to attend a meeting.

Stewards are encouraged to try and group their activities such as grievance meetings, investigations and Union/Management meetings to the same day and get the Employer to provide backfill.

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The Employer bears the responsibility to show that their denial of the Steward's request to leave the work area to attend to Employer paid Union business was not unreasonable. HEABC has advised Employers that in some circumstances, such as a meeting regarding a serious discipline issue, operational requirements may have to take a back seat.

The Steward bears the responsibility to request permission before leaving their work area to attend to Union business. Leaving the work area without permission may result in discipline.

Following is specific Information for Stewards representing nurses who have a substance use disorder (SUD) or practice problems that may involve the BC College of Nurses and Midwives (BCCNM):

1. The law of privileged communications applies to those statements by certain persons in a protected relationship such as attorney-client which the law protects from forced disclosure. At common law, the Steward-member relationship is not identified as a protected relationship.
2. While there is a practice in labour law that Union officials representing members are allowed certain protections against forced disclosure of information provided by members in the course of an investigation, the practice of regarding this as privileged communication may be impacted by the duty to report under the Health Professions Act (HPA).

While some Employers are arguing that the HPA places an increased onus on the duty to report, their position is not supported by a plain reading of the wording in the HPA.

It may not be apparent in the initial stages of an investigation that the situation may involve a College complaint, professional misconduct, or illegal activity. In cases where this is a possibility, it is recommended that the Steward advise the member at the beginning that communication between a Steward and member may not be protected from forced disclosure to either the professional regulatory bodies or the legal authorities. This is important, particularly in circumstances where information provided by the member indicates potential criminal conduct.

BCNU members in these situations need to be immediately referred to the LEAP Officer who may then involve legal counsel (who are covered by the law on privileged communication) in the ongoing representation of the member.

Arbitration Awards

1. Royal Columbian Hospital and BCNU, September 8, 1993 (Kinzie). Leading case for employee's right to representation.
2. Chilliwack Hospital and BCNU, July 31, 1992 (Chertkow). Stewards must be made available to employees, even at an investigatory meeting which may result in discipline.

Additional Resources

Legislation

1. Health Professions Act - applies to designated health professions and includes provisions dealing with the regulatory responsibilities of the BCCNM.

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BCLRB Decisions

1. BCLRB No. B230/95, Government of B.C. (Public Service Employer Relations Commission) and BCGSEU, June 15, 1995 (J. Hall, R. Germaine, B. Mullin, V. Carter, and J. New). Arbitrators may still decide to hear the merits of the case even when the employee has been denied representation.

Article 6.05 - Union Representative Visits

Where a Union representative (i.e.. President) is denied access to the Employer's premises to conduct Union business, responsibility rests with the Employer to demonstrate clear evidence that the presence of the Union representative will interfere in the operation of the worksite.

Typically, job action is the time when Union representatives are denied entry to an employer's worksite. However, access during job action can be argued at the BCLRB as part of the requirements to monitor essential services.

Article 6.06 - Superior Benefits

This provision is most commonly used to negotiate the retention of provisions for newly certified employees or, in the past, for employees at worksites that were not previously covered by the PCA that are either better than those found in the PCA or unique but needed for the employee's work.

Interest Arbitrators have generally ruled against the retention of superior benefits, particularly in situations where overall the provisions of the collective agreement are better than those that covered the employees previously and where there are existing provisions on the same issue.

This is reflected by the Foley Recommendations for Settlement on standardization in 1998 which states, "There shall be no superior benefits maintained by any nurse who is standardized to the Provincial Collective Agreement on or after April 1, 1999 by virtue of the application of the foregoing provisions".

Arbitration Awards

1. Barriere and District Health Society and BCNU, October 7, 1991 (Munroe). The Union cannot seek retention of superior provisions for worksites covered after they are covered by the master collective agreement.
2. HEABC and BCNU, HEU, IUOE, BCGEU and HSA (Melding Award), February 28, 1997 (Ready). Set out criteria for all unions in the health sector to use in arguing for the retention of superior benefits that essentially restricted them to those needed for operational reasons.
3. HEABC and BCNU (Melding Award), May 21, 1997, (Ready). Dealt with BCNU's arguments for retention of superior benefits for those nurses who were previously covered by collective agreements that were being brought into the PCA as a result of the Melding process.
4. Foley Recommendations for Settlement (1998). Standardization to the Provincial Collective Agreement.

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Article 6.07 - Personnel File

The employee must be advised about all documents placed in their personnel file. The Employer cannot use documents from the personnel file against an employee of which the employee was previously unaware. There should be no surprises!

The rules governing an employee's personnel file are as follows:

1. The Employer may keep only one centrally located personnel file (apart from payroll or health services files) regarding an employee.
2. Employees are entitled to read and review their personnel file on reasonable notice, which is 24-48 hours. Employers may say they need more time to provide the file to an employee, citing centralization of files. This may be unreasonable, as the intent is that employees have ready access to their personnel file.
3. Employees are entitled on request to receive copies of all the documents on their personnel file.
4. A Union Steward or LRO may have access to read and review an employee's personnel file with the employee's written consent as part of a grievance investigation.
5. Employers must also provide copies of documents on the file to Union representatives on request.
6. Personnel files may include documents such as:
 - (a) Performance evaluations;
 - (b) Applications for vacancies;
 - (c) Forms signed by the employee at the time of hire;
 - (d) Written censures, letters of reprimand and other adverse reports;
 - (e) Any letter delivered to the employee associated with work performance such as attendance management reports; or
 - (f) Notes of verbal warnings provided the note is limited to the date and subject of the warning.

The Supervisor may maintain a separate personal file regarding an employee. The personal file may be kept separate from, but must be noted in, the Employer HR personnel file. The personal file may contain the following documents:

1. Notes and diaries for evaluation purposes, provided no grievances are filed within 14 days of the evaluation taking place and the notes do not contain information which may lead to further action such as discipline, which should be destroyed after the 14-day time limit has passed;
2. Notes on investigations into incidents, provided they are destroyed if the matter does not result in employer action;
3. Grievance files that contain documents which outline various meetings with the Union or other individuals involved, including privileged documents;
4. Records relating to job postings such as interview notes, examinations, noted on presentations and all documents related to the selection process;
5. Documents in accordance with the insurance, legislative accreditation and quality assurance/risk management concerns of health care facilities (worksites), such as incident reports or reports relating to medication errors; and
6. Other files in accordance with the PCA and policies and practices agreed to between the Employer and the Union which are consistent with the consent award in St. Paul's Hospital, Terrace Regional Health Care Society and BCNU, February 15, 1994 (Taylor).

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Article 6.07 (C) - Confidential Nature of Personnel File

The comments related to Freedom of Information and Protection of Privacy Act (FIPPA) have an application to documents created or in the possession of the Steward and/or the Union associated with the representation of a BCNU member (Article 9).

1. Stewards should also be aware of the scope of access under FIPPA and Personal Information Protection Act (PIPA). The purpose of the retention of documents is to allow access. The Employer could be required to disclose any of the below-noted documents as a result of a request from a third party (or the employee themselves) under FIPPA.
2. Any records, notes, diary entries made by supervisory or other staff during the course of employment describing an incident or another event at the workplace could be subject to disclosure. Under FIPPA, information about an employee or former employee must be kept for one year from the last time that information was used to make a decision that directly affects the employee.
3. However, there are certain documents and records that the Employer need not disclose under FIPPA. These include:
 - (a) Documents containing legal advice given to the Employer pertaining to the employee;
 - (b) Documents where disclosure could interfere or be harmful to a law enforcement matter, including documents relating to grievances or arbitrations currently in progress;
 - (c) Records containing advice about a recommended course of action with respect to an employee;
 - (d) Records containing personal privacy information concerning another person; and
 - (e) Records containing references or evaluations done by others where the references were provided implicitly or explicitly in confidence, such as reference letters. (If it is possible to disclose all or a portion of the record without breaching confidentiality, then it may be disclosed).

Arbitration Awards

Consent Award

1. St. Paul's Hospital, Terrace Regional Health Care Society and BCNU, February 15, 1994 (Taylor). Sets out the criteria describing the conditions under which the Employer can keep a separate personal file on an employee and what documents may be kept by a supervisor on this separate personal file.

Additional Resources

Legislation

1. Freedom of Information and Privacy Act (FIPPA):
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00
2. Personal Information Protection Act (PIPA):
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03063_01
3. Personal Information Protection Act Regulations:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_473_2003

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Other Information

1. BCNU Privacy Access Request Form
2. Office of the Information and Privacy Commissioner of BC: <https://www.oipc.bc.ca/>
3. Government of BC Guide to FIPPA

Article 6.08 - Copies of the Provincial Collective Agreement

The Employer must provide all employees with a copy of the PCA in booklet form both at the time of hire and when a new collective agreement is negotiated.

The importance of this provision is that it recognizes that there is a shared obligation on both the Employer and the Union to ensure familiarity with the provisions of the PCA.

Stewards need to ensure, as part of their meeting with new employees during orientation, that the Employer has fulfilled their obligation to supply collective agreements to all new employees.

When a new collective agreement is negotiated the Union usually coordinates with HEABC and asks Stewards to assist in order to expedite the distribution of the new agreements to all the Union members in each worksite.

The HEABC has the responsibility to make sure Employers have enough copies of the PCA to provide to both existing and new employees at the time of hire. In order to conserve copies of the PCA, it is suggested that new employees who have transferred from another PCA worksite be asked if they already have a copy of the current collective agreement.

What happens if the Employer at your worksite runs out of copies of the PCA?

1. Ask your Employer to contact HEABC for more copies, note the date you made the request and follow up.
2. Check the BCNU website and contract resources.
3. Check with the local Full-Time Steward for available copies of the Contract(s), as the Employer may have supplied them with additional resources.
4. Find a member of your local Regional Executive through the member portal, for additional assistance.

Article 6.09 - New Employees

The onus is on the Employer, rather than the Union, to acquaint new employees at the time of hire with the conditions of employment as set out in the Articles dealing with Union Recognition, Union Security, Union Rights and Activities.

The Employer is obligated to provide new employees with a copy of the PCA as well as a list of the Stewards in the worksite.

Stewards must be notified of new employees and be given an opportunity to talk to them during orientation. The Employer is obligated to provide the Steward with the date, time and place of the orientation.

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Stewards who are already on duty at the time of the orientation for new employees should be the ones attending as it is clear that Steward time at this orientation is Employer paid. HEABC has advised its members that Stewards attending on their time off should not be paid by the Employer.

Stewards should discuss with the Employer in advance of the orientation when the Steward plans to attend and the amount of time the Steward requires to adequately inform new employees about the Union in order to get time away from their regular work duties. However, new employees required to attend orientation sessions on their time off do receive the appropriate rate of pay (Article 18). It is very important that Stewards participate in orientation sessions. An outline/online presentation is available from the BCNU Education Department.

Article 6.10 - List of New and Terminating Employees

The Employer is required to provide the Union with a list of new and terminating employees each month specifying the employment status, position and wage classification of each employee.

While the original intent was that these lists were to be sent to the BCNU office, Stewards gets lists from the Employer.

Stewards need to ensure they receive this list every month as it provides necessary information for meeting with new employees during orientation. As well it may provide useful information for other purposes (e.g. employee turnover, displacements).

Article 6.11 - Bulletin Boards

The Employer is required to provide at least one Union bulletin board at each worksite in an easily accessible place so that all employees can access information about Union business.

It is recommended that Stewards make it a practice to check the BCNU bulletin boards at least once a week to ensure only BCNU notices are posted on the board and to remove any outdated information. In larger worksites, one Steward is often assigned this task.

Footnotes

Article	6
Sub-Article	6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.09, 6.10, 6.11
Last Update	31-03-21
Related Articles	4,5,6,8,9,10,13,14,15,16,17,18,19,20,32,35,42,44,46,47,51,52,53,57, Appendix H, Appendix BB, Appendix CC