

# CONTRACT INTERPRETATION MANUAL

## Article 9 GRIEVANCES

### Interpretation Guidelines

#### Article 9.01 - Preamble

This clause sets out the “work now, grieve later” rule.

This rule can be broken in limited circumstances where an employee feels justified in disregarding direct orders because they have a reasonable expectation execution of the Employer’s instructions would be unsafe or illegal (e.g. WorkSafeBC right to refuse work) or where the grievance procedure does not afford a realistic hope of compensation for an incorrect order. (BC Telephone Co. and Federation of Telephone Workers of British Columbia (1976) 13 LAC (2nd) Arbitrator MacIntyre).

It also sets out the parties have a common interest in resolving any differences and provides the general rationale for the provision of information and documents (Article 9).

#### Article 9.02 - Grievance Procedure

Please see additional information on the grievance procedure in the Steward Resource Tool Kit.

The grievance procedure has been changed to include only 2 steps and much stricter timelines.

1. The employee must initiate the grievance process within 14 days of the occurrence of the issue or within 14 days of becoming aware of the issue. This step involves a meeting between the manager, the employee and the Steward. At the end of the meeting or within a specified timeline not to exceed 7 days the Steward and manager must determine if the grievance is resolved or unresolved.
2. The Steward then has 14 days from the time the employer informs them the issue is unresolved to submit a written grievance form.
3. The employer then has a further 7 days to provide to the Union a written explanation of the reasons the grievance was denied. The reasons must be specific and not a generic response that there was no breach of the PCA. The Employer must also provide all legally permissible documents at this time.
4. The Union and the Employer will meet within 21 days (or as otherwise agreed by the Parties) to discuss the reasons for denial and the differences.
5. If still unresolved at the step 2 meeting the Employer has 7 days to provide a written response to the Union on the denial and reasons for the denial. The Union then has 90 days to withdraw the grievance or refer it to the British Columbia Healthcare Office of Arbitration (BCHOA), or any other process as determined by GAC (Appendix FF). Some grievances are recommended for withdrawal post the step 2 meetings.
6. A grievance settled without prejudice under Article 9.02 means that neither party may reference the settlement at further grievances or arbitration hearings.

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## Article 9.03 - Single Employer Policy Dispute

These grievances are of a general nature and begin at step 2 of the grievance procedure and as such they are filed by the LRO as the remedy sought will apply to all employees at either a worksite or within a Health Authority.

It is recommended that individual grievances with named grievor(s) also be filed to support the Single Employer Policy Dispute (SEPD). The LRO responsible for the grievance should be consulted.

The language confirms that when an Employer policy applies to worksites throughout the Health Authority, the Employer is required to apply the resolution or third party decision on a grievance filed at one worksite to all the worksites in the Health Authority.

The Employer is required to advise the Union at the step 2 meeting to which worksites the policy applies.

## Article 9.04 - Application of Single Employer Arbitration Decisions

Arbitration decisions in these disputes are not binding on other Employers or Health Authorities covered by the PCA, or other Unions in the NBA unless the parties agree.

However, HEABC and the NBA can use these arbitrations to argue that they set a precedent in other arbitration hearings.

## Article 9.05 - Amending Time Limits

The onus is on the Union and member(s)/Steward(s) to ensure issues are brought to the attention of the Employer in a timely fashion. Ideally, an individual's disagreement is identified to the Employer immediately upon the assumed violation of the PCA. Should time limits appear to be at risk of being breached, keep careful note of the attempts to discuss with the Employer and any refusals to meet. In such cases, the Employer would likely be compelled to provide relief to the requisite time limits.

Arbitrators have jurisdiction under Section 89 of the Labour Relations Code to set aside violations of time limits by the Union. As a result, Employers are still required to address the merits of the grievance, on a without prejudice basis, even though time limits may have been violated.

In South Okanagan Hospital and BCNU, February 26, 1987, Arbitrator Thompson considered the following factors in determining whether the Union's failure to adhere to the time limits were grounds to dismiss the grievance:

1. The language of the PCA (whether the time limits in the grievance procedure were "mandatory" or "directory");
2. The "gravity" of the grievance (the seriousness of the matter being grieved);
3. The continuing nature of the grievance;
4. The loss suffered by either party because of the delay;
5. The reasons for the delay; and
6. The length of the delay.

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Where the analysis of these factors shows the delay is unreasonable under the circumstances or imposes undue hardship on the Employer, an arbitrator may choose to dismiss the grievance on the basis that it is “out of time”.

A grievance filed months after the grievor was denied payment for overtime may be considered to be out of time, whereas an arbitrator may decide to waive the time limits on a grievance filed months after a letter of discipline has been issued to a grievor.

## Article 9.06 - Resolution of Employee Dismissal and Suspension Disputes

In recognition of the serious nature and the potential ramifications for the employee the process for resolution is shortened.

Please ensure the Employer notifies the Union head office of any suspension or dismissal within 7 days of the occurrence so a grievance can be filed by the Union as quickly as possible. Steward should contact the LRO as soon as they become aware of suspensions or terminations.

Suspensions may be paid or unpaid time off work.

See Article 6.04 in the PCA and in this manual for more information about the employee's right to representation in discipline matters.

The Union then has 14 calendar days to file a grievance on the issue, such grievances will start at step 2 of the process.

Stewards should ensure that BCNU members who are reported to the BCCNM are provided with information to contact LEAP through the BCNU office (Article 5).

## Article 9.07 - Industry Wide Application Dispute (new in 2001)

Industry Wide Application Disputes (IWAD) are only filed by the NBA through the BCNU head office as the resolution of these disputes will apply to all HEABC members covered by the PCA and the members of all the Unions in the NBA. An example of an IWAD is the EDMP IWAD HEABC and BCNU March 3, 2016 (Ready).

## Article 9.09 - Deviation from the Grievance Procedure

Once the grievance has been committed to writing at step 2, the Employer cannot attempt to settle it without the consent of the Union. If the Employer does attempt to settle the grievance with the grievor(s), especially through coercion or intimidation, the Steward needs to call their LRO who can file a grievance if necessary.

Members are advised to seek taxation advice regarding any monetary settlements that are part of a resolution to the grievance process.

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## Article 9.10 Other Processes

Certain Articles and Appendices are excluded from referral to the BCHOA.

## Article 9.11 - Information sharing and referral to the Registrar

With the development of the BCHOA, if the Union feels the Employer is not providing relevant information or material, the Union, through the LRO, may apply to the registrar to have the information released.

## Impact of the Freedom of Information Protection of Privacy Act (FIPPA) on the Grievance Process

Does FIPPA prevent the Employer from disclosing information to the Union during the grievance procedure that would otherwise be required by the Collective Agreement?

Employers have been taking the position that in the absence of permission from the individuals concerned, FIPPA prevents them from releasing personal information such as the interview and other notes that are part of a selection process.

This was the subject of an arbitration and the Union's entitlement to this information was upheld (Board of School Trustees of School District No.33 (Chilliwack) and Chilliwack Teacher's Association, March 12, 2004 (Korbin)).

The Arbitrator ruled as follows:

"Disclosure of information sought in this case under the collective agreement is permitted particularly by the exceptions identified in ss22(4)(c) and 33(c) and (d) of the FIPPA.

This conclusion is in keeping with the interpretive principle that statutes be construed harmoniously.

It does not undermine or detract from the policy objectives of the Code and is consistent with the jurisprudence that recognizes the public interest in expeditious, cost effective methods for resolving labour disputes.

It is also consistent with the public interest rationale for the exceptions in the Act. It permits the parties to comply with their Collective Agreement obligations as well as enabling them to fulfill their statutory obligations under the Code and the FIPPA.

It is in accord with the reasonable expectations of the parties in a selection grievance. As well, s.3(2) conceptually operates to confirm the information requested is available to the Union.

Finally, on submissions of the Union, I am satisfied the grievance procedure affords a reasonable level of protection of privacy for the individuals directly affected."

While this arbitration case specifically addressed access to information in a selection dispute, it could have application to other disputes being addressed by the grievance procedure where, in order to properly represent members, the Union requires information in the Employer's possession.

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The Employer's application for appeal was dismissed.

## Arbitration Awards

1. BC Telephone Co. and Federation of Telephone Workers of British Columbia (1976) 13 LAC (2nd) (MacIntyre). The "work now, grieve later" rule can be broken in limited circumstances e.g. where obeying the Employer's instructions would be unsafe or illegal or where the grievance procedure does not afford a realistic hope of compensation for an incorrect order.
2. South Okanagan Hospital and BCNU, February 26, 1987, (Thompson). Sets out the criteria considered by arbitrators in determining whether to waive the violation of grievance time limits.
3. Board of School Trustees of School District No.33 (Chilliwack) and Chilliwack Teacher's Association, March 12, 2004 (Korbin). Confirmed the right of the Union to be provided with information such as interview and other notes in the possession of the Employer concerning the filling of a posted vacancy.

Court of Appeal of British Columbia

1. Board of School Trustees of School District No.33 (Chilliwack) v Chilliwack Teacher's Association, The Court Of Appeal of British Columbia, August 11, 2005 (The Honourable Mr. Justice Esson, The Honourable Mr. Justice Thackray, The Honourable Madame Justice Newbury), 2005 BCCA 411 – Employer's application for appeal of the Korbin decision was dismissed.

## Additional Resources

Legislation

1. Labour Relations Code, Section 89

Other Information

1. Grievance Handling Diagram – Steward Resources Toolkit, [https://www.bcnu.org/Learning-Development/Steward-Resource-Toolkit/Documents/Steward\\_Resource\\_Toolkit/Labour\\_Relations/GRH000\\_Article-9\\_Diagram-Grievance\\_Process.pdf](https://www.bcnu.org/Learning-Development/Steward-Resource-Toolkit/Documents/Steward_Resource_Toolkit/Labour_Relations/GRH000_Article-9_Diagram-Grievance_Process.pdf)

## Footnotes

<b>Article</b>	9
<b>Sub-Article</b>	9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07, 9.10, 9.11, 9.12
<b>Last Update</b>	16-09-21
<b>Related Articles</b>	6, 8, 10, 15, 16, 60, Appendix FF

The interpretations in this manual are provided on a *without prejudice, errors and omissions* basis to any position Unions in the Nurses' Association of Bargaining Agents may take in any arbitral proceeding or any other forum.