Article 10

Article 10 - Arbitration

Related Articles: 9, 10.06

Interpretation Guidelines:

LROs, in conjunction with the Coordinators and legal counsel are responsible for arranging arbitrations.

The Union has carriage of all grievances filed, which means the final decision about whether to refer the grievance to a third party is made by the Union, not the grievor. The decision whether to commit a grievance to full arbitration, expedited arbitration, or Troubleshooter is made by the **Grievance Assessment Committee (GAC)** that meets two Mondays each month to review grievances past Step 3.

Since the formation of the NBA in 1998, all grievances having an Industry Wide Application (IWAD) have to be reviewed by a committee made up of representatives of the Unions that are part of the NBA for final determination with respect to referral to arbitration.

Grievors have the right to appeal the decisions of the GAC in accordance with Council Policy. Current Council policies can be accessed through the BCNU website**:** **www.bcnu.org** located under Key Documents.

Where the decision of the GAC is to not refer the grievance to third party, a letter is sent to the grievor(s) advising about the process they need to follow if they want to appeal the GAC decision.

New language was added in 2006 that will apply effective January 1, 2007:

The new language in Article 10.06 (A) restricts the type of grievances that can be referred to a full arbitration to the following:

- Dismissals
- Suspensions over 5 days
- Single employer policy disputes (SEPDs)
- Industry wide application disputes (IWADs)

The Employer and the Union can mutually agree to deal with the issues listed above by expedited arbitration if necessary. However, it is intended that all other unresolved grievances will now be dealt with by either the Expedited Arbitration or the Industry Troubleshooter process, unless the parties mutually agree that the issue needs to go to full arbitration.

These changes are intended to shorten the length of time it takes to deal with grievance disputes.

Article 10

Article 10.06 - Expedited Arbitration

Effective January 1, 2007 it is intended that all grievance issues except the four categories listed above in 10.06 (A) will be dealt with by expedited arbitration.

New language in 2006

Clarifies that the party referring an issue to expedited arbitration or wishing to remove an issue from the expedited arbitration process and refer it to a full arbitration is required to notify the other party **at the time of referral**.

Changes were made to facilitate the expedited arbitration process:

- There will be two expedited hearing dates scheduled for each month (likely a year in advance) at a central location within a particular Health Authority.
- The right to refuse a proposed expedited arbitration dates has been restricted in order to address the problems with scheduling hearings i.e. either party can only refuse the first date proposed. They have to agree to the second date.
- Expedited arbitrations will be scheduled on a first referred, first heard basis
- The parties will continue to use their staff to present cases; however, this definition of staff was expanded to include staff of member employers e.g. Human Resources staff in the Health Authorities.
- At least ten days before the hearing the Union will provide the Employer with a brief summary of its case, including particulars and any jurisprudence the Union intends to use.
- The Employer is required to provide the Union with their summary within 5 days of receipt of the Union's summary. e.g. If the Union sends the Employer their summary a month before the hearing, the Employer is required to respond in kind within 5 days.
- Three names were added to the list of expedited arbitrators to facilitate the scheduling of hearings.

These hearings are informal, but unlike Troubleshooter hearings the **results are binding on the parties.** However the **decisions are not to be used as a precedent** at other hearings.

Usually the expedited arbitrator will try to mediate the dispute. The **use of legal jurisprudence is discouraged** and like Troubleshooter hearings the use of lawyers in their capacity as a lawyer is prohibited.

Expedited arbitration awards are usually not lengthy and typically the award will not include reasons, but simply summarize the parties' positions, the evidence and the arbitrator's decision.

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Additional References:

Legislation:

Labour Relations Code - Sections 81 to 105.

Key provisions that apply to the arbitration process are:

Section 84 of the Labour Relations Code requires the inclusion of an arbitration procedure in all collective agreements.

Section 86 of the Labour Relations Code provides a mechanism for parties to ask the Minister of Labour to make an appointment of an arbitrator if either party fails to choose an arbitrator within the time limits.

Section 89 - sets out the authority of an arbitrator that includes the ability to relieve against violations of the time limits in the grievance procedure.

Section 90 - states that the fees and expenses of the arbitrator shall be shared equally between the parties.

Section 92 - sets out the powers of an arbitrator that include the ability to compel witnesses to appear.

Section 99 – sets out the appeal process to be followed by either party who wishes to appeal the decision of an arbitrator.

However, **the grounds for appeal under Section 99 are fairly narrow**:

(a) A party to the arbitration has been or is likely to be denied a fair hearing; or
(b) The decision or award of the Arbitration Board is inconsistent with the principles expressed or implied in the Labour Relations Code or any other Act dealing with labour relations.

The LRB has the power to set aside the award, remit the matters referred to it back to the original Arbitration Board, stay the proceedings before the Arbitration Board, or substitute a decision or award for the one rendered by the original Arbitration Board.

Note: Summaries of all BCNU arbitration decisions can be accessed through the BCNU website at **www.bcnu.org under "Resources".**