

Article 18

Article 18 - Promotions, Transfers & Demotions in the Filling of Vacancies or New Positions

Related Articles: 3, 6.04 (C) (7), 6.07, 11.04 (H), 12, 13, 14, 16, 17, 19, 20, 23, 53, 61, 62, Appendix C

Interpretation Guidelines:

Article 18.01 - First Consideration

1. Applicants already working for the Employer must be considered before external applicants. For example: a facility-based nurse would generally be considered an external applicant on a vacancy in a community based setting.
2. Regular employees who are displaced or on layoff have to be considered ahead of the internal applicants (See Article 19.01 (B) (1)).
3. All internal applicants have to be given an equal opportunity to show they are capable of doing the position either by formal interview or assessment.
4. Each employee who applies is entitled to a formal interview or assessment.

Article 18.02 - Filling of Vacancies

New in 2006: Article 18.02 applies to the filling of vacancies at all worksites covered by the PCA. Article 18.03 - Filling of Vacancies (Applicable to Worksites Listed Under the Continuing Care Component) was deleted from the PCA.

1. The Employer is required to award the vacancy to the senior applicant who meets the required qualifications, level of competency and efficiency as required by the position specifications (i.e. job description/job posting).
2. All internal applicants must be assessed and found not qualified prior to considering outside candidates. [See Arbitration Awards: *HLRA and BCNU*, June 1, 1982 (Getz)] and *Royal Inland Hospital and HSA*, December 7, 1984 (Nathanson)
3. Arbitrators have consistently described this provision as a "competitive clause", meaning applicants "compete" against other applicants for the position.
4. However, it could also be described as a "sufficient ability" clause in that it instructs the Employer that "*appointments shall be made to the employee with the required qualifications, level of competency and efficiency as required by the position specifications*" and goes on to state "*where such requirements are equal, seniority shall be the determining factor*".

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.

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The following two arbitration awards each contain a comprehensive review of the application of "competitive clauses" and "relative equality" along with all the relevant jurisprudence:

West Coast General and BCNU, February 21, 2003 (Gordon).

Eagle Ridge Hospital and BCNU, September 24, 2003 (Hope, QC).

The principles to be applied in selection of applicants are:

The Employer is required to base their selection decisions on three factors:

1. Required qualifications;
2. Level of competency; and
3. Level of efficiency.

- A. No one factor is more important than the others.
- B. Management's decision must not be arbitrary, discriminatory, and/or unreasonable or be made in bad faith.
- C. Management must also demonstrate it has complied with the collective agreement.

The test of whether the Employer has complied with the collective agreement is set out in the Arbitration Award: *HLRA (Princeton General Hospital and BCNU)* (Hope), 1987, 32 LAC (3d) 35:

"The arbitration panel's task is to determine whether or not management applied the criteria set out in the agreement in making its decision and not some other criteria thereby violating the terms of the collective agreement".

Additional References:

Arbitration Awards:

West Coast General and BCNU, February 21, 2003 (Gordon) - this award contains a comprehensive review of the application of "competitive clauses" and the meaning of the term "relative ability" along with all the relevant jurisprudence.

Eagle Ridge Hospital and BCNU, September 24, 2003 (Hope, QC) - this is another useful award in that it also contains a comprehensive review of the application of "competitive clauses" and the meaning of the term "relative ability" along with all the relevant jurisprudence.

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HLRA and BCNU, June 1, 1982 (Getz) - an early award that set the foundation for the subsequent arbitral interpretations on these selection provisions.

Lillooet District Hospital and BCNU, July 26, 1985 (Greyall) - an early award, describing the criteria to determine "relative equality" and the application of seniority in selections.

Princeton Hospital and BCNU, December 22, 1987, (Hope) - built on the Greyall award in the determination of "relative equality" and the application of seniority in selections.

HEABC [Simon Fraser Health Board (Royal Columbian Hospital) and BCNU, January 5, 1998, (Kinzie)] - The scoring of the candidates must be related to the objective answers given to those questions and not to how they presented themselves in the interview.

Vancouver Hospital and Health Sciences Centre and BCNU, March 4, 1999 (McPhillips) - sets out criteria to ensure the selection process "is fair and seen to be fair".

Northwood Pulp & Timber Ltd. and Canadian Paperworkers Union, July 15, 1976 (Hope) - this award sets out the criteria used by arbitrators to define "competency" as it's applied in selection issues.

Tidewater Oil Co. Canada Ltd. (1963) 14 LAC 233 (Reville) - deals with management rights in determining whether vacancies are filled.

Royal Inland Hospital and HSA, December 7, 1984 (Nathanson) - first consideration. All internal candidates have to be assessed before an external candidate can be considered.

Information available on the BCNU website: www.bcnu.org

Advocate Articles: Volume 5, Number 3 August 1997 - on selection.

Council Policy Manual - re: participation in selection interviews.

Article 18.03 - Qualifying Period (renumbered in 2006 from 18.04)

1. Allows regular employees a 90 day qualifying period in a new position.
2. The employee can be returned to his/her previous position if found "unsatisfactory" by the Employer during the 90 days.
3. Where the Employer determines the employee to be "unsatisfactory" it must relate to job performance. This decision is grievable. The Employer needs to meet a higher standard of proof than the standard applied during a probationary period.
4. Only a promoted employee has the right to choose to return to their previous position if the employee finds the position unsatisfactory.

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5. The employee has no right to choose to return to their previous position if the transfer was within their existing classification (e.g. DC1 position to a DC1 position).

Also see Article 19.01 (C) (iii).

Article 18.04 - Orientation and Training (renumbered in 2006 from 18.05)

1. The Employer is required to provide a proper orientation to all new, transferred and promoted employees as set out in the collective agreement.
2. Employers are required to pay employees at the applicable rate of pay, which means they receive any premiums including: shift differential, stat pay, overtime rates, etc that may be applicable for the time spent at orientation.
3. Employers are also required to pay for travel time and other related expenses such as parking, where the orientation session is held at a location other than the employee's home worksite [See **Arbitration Award: *Simon Fraser Health Region and BCNU (GAD)*, November 3, 2000 (McPhillips)** where the Employer was required to pay differential travel time and any additional expenses incurred by employees to attend orientation other than at their regular worksite].

Article 18.05 - Returning to a Formerly Held Position (renumbered in 2006 from 18.06)

1. Employees returning to a formerly held position do not lose seniority or benefits.
2. A returning employee, who was promoted outside the union certification and returns to the bargaining unit, retains seniority and accrued benefits and is slotted at the same increment step as though the promotion never occurred. **This applies for 90 calendar days from the start date in the new position.**

Article 18.06 - Salary on Promotion (renumbered in 2006 from 18.07)

1. The promoted employee is placed the lowest step of the increment structure in the new level that gives her/him a minimum **monthly** increase of \$50.00.
2. This means that **it is important for the employee to consider the potential impact of the timing of their anniversary date on their placement at the new classification level.**

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The importance of this was confirmed by the following **Arbitration Award: HEABC and NBA (IWAD), February 23, 2004 (Kinzie)**. The situation was:

Three more increment steps were added as a result of the legislated agreement in 2001. The 7th and 8th steps were added October 1, 2001 and the 9th step was added April 1, 2002.

Before October 2001, nurses with 10 years were at the top of the increment scale at Step 6.

The grievors were nurses who went into promoted positions before either October 1, 2001 or April 1, 2002. As a result, their placement on the increment scale was based on the 6th increment step rather than the 7th, 8th or 9th step.

The Arbitration Board dismissed the grievance, ruling:

- The promotions which occurred before October 1, 2001 are completed transactions and there is nothing in the collective agreement requiring the employer to re-open those transactions.
- The effective dates for the additional steps are October 1, 2001 and April 1, 2002 and if they acceded to the Union's request, this would remove the effective dates and make them retroactive to a date further back.

Article 18.07 - Increment Anniversary Date (renumbered in 2006 from 18.08)

The employee's anniversary date does not change on promotion. For example: an employee with an October 3rd anniversary date who starts in a promoted position on September 5th, will receive his/her next increment increase on October 3rd as usual.

Article 18.08 - Temporary Assignment to a Lower Rated Position (renumbered in 2006 from 18.09)

The employee's wage level and benefits do not change as this is Employer initiated.

Article 18.09 Voluntary Demotion (renumbered in 2006 from 18.10)

This is a demotion initiated by the employee and as a result they will be paid at the lower classification level.

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The employee will be placed at the appropriate increment step based on their continuous service with the Employer. This seems to mean that an employee who has worked only a few years for the Employer may not be able to use previous experience from other Employers.

The voluntary demotion will not change the employee's anniversary date.

This article does not apply to:

- **Employees who are promoted** and subsequently decide to return to their previous position within the 90 day qualification period. In this situation, employees resume their previous position and wage rate.
- **Employees who are displaced and either choose a vacancy or choose to bump into a lower-rated position** pursuant to Article 19. The displacement process is caused by Employer actions, therefore it is considered to be an involuntary demotion. In this situation, the employee's current wage rate is protected by a process called "red-circling". BCNU filed an IWAD on June 7, 2002 that was resolved prior to the arbitration hearing based on arbitration awards on the same issue in favour of the BCGEU and HSA.

See interpretation guidelines under Article 19 for more information.

Additional References:

Arbitration Awards:

Simon Fraser Health Region and BCNU (GAD), November 3, 2000 (McPhillips) - the Employer was required to pay differential travel time and any additional expenses incurred by employees to attend orientation other than at their regular worksite.

HEABC and NBA (IWAD), February 23, 2004 (Kinzie) - the grievance seeking re-calculation of increment steps in promoted positions that preceded the addition of the 7th, 8th, and 9th increment steps was dismissed. The arbitrator ruled:

- The promotions which occurred before October 1, 2001 are completed transactions and there is nothing in the collective agreement requiring the employer to re-open those transactions.
- The effective dates for the additional steps are October 1, 2001 and April 1, 2002 and if they acceded to the Union's request, this would remove the effective dates and make them retroactive to a date further back.