

Article 19

Article 19 - Layoff and Recall

Related Articles: 2, 6.04, 13, 17.01, 18.01, 18.04, 18.05, 20, 21, 22, 23, 37.01, 55, Appendix B, Appendix C, MOA - Laid Off Employees and External Health Authority Vacancies

Know your rights:

- If there is a **significant change to the workplace**, the Employer must give notice and have discussions with the relevant unions.
- The Employer must **notify employees in writing** of a displacement (maximum notice is 60 days (See Article 19.02).
- If you are displaced, **there should be a meeting with yourself, your Steward and management** as per Article 19.01 (B).
- **Under the PCA you have access to all the vacancies** (this includes "unfilled vacancies") at your worksite, whether posted or not (See Article 19.01 (B) (1) and (2).
- **The Employer must provide you with:**
 - a list of all the vacancies (including unfilled vacancies);
 - the seniority list for your worksite;
 - the dovetailed seniority list (DSL) for your dovetailed seniority list area (DSL A) (where applicable);
 - a list of all the unfilled vacancies within the DSL A; and
 - information regarding any other options that may be available at that time
 -
- **You also have access to "unfilled vacancies" at other worksites** within your DSL A (where applicable - see interpretation guidelines that follow to determine applicability)
- **Article 19.01 (B) (3) of the PCA also sets out bumping options** within your worksite and where applicable within your DSL A (See interpretation guidelines that follow for more details)
- **If work is transferring to a different worksite or Employer**, you may have the option of transferring with the work or exercising your options at your home worksite. While some Employers are arguing that Bill 29 allows them to transfer employees without displacing them, BCNU is encouraging Employers to displace nurses so they can exercise all their options.

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- Under Bill 29 you may not be transferred to a worksite greater than 50 kilometres from the worksite where you ordinarily work, without your consent. If you do choose to transfer, you are entitled to reasonable relocation expenses. You cannot be forced to transfer outside the 50 kilometre radius, but you can voluntarily do so.

Interpretation Guidelines:

Dovetailed Seniority List Area (DSLAs)

Within the 5 Regional Health Authorities, when employees are exercising displacement or recall rights, seniority related to dovetailed seniority within the Dovetailed Seniority List Area (DSLAs) as described by LRB decision B274/2002 as listed below:

- Northern Health Authority (3 areas) - Northwest, Northeast, Northern Interior
- Interior Health Authority (4 areas) - East Kootenay, Kootenay-Boundary, Okanagan, Thompson Cariboo
- Fraser Health Authority (2 areas) - Fraser Valley, Simon Fraser/South Fraser
- Vancouver Coastal Health Authority is all one area.
- Vancouver Island Health Authority (2 areas) - South Vancouver Island, Central/North Vancouver Island

Seniority and benefits go with the member to the new worksite.

Who does have access to Dovetailed Seniority List Area Options?

Only employees in worksites that are directly owned and operated by the 5 Health Authorities as set out above. The relevant Health Authority must create a dovetailed seniority list for each of the above noted areas within their boundaries.

Who does not have access to the Dovetailed Seniority List Area Options?

Employees of Affiliates of Health Authorities and other facilities not named in the appendix to LRB decision B274/2002. These include:

- Some acute care, mostly denominational, e.g. St. Joseph's (Comox), United Church facilities such as R.W. Large, Wrinch
- Providence - however the facilities run by Providence have merged and therefore have a single seniority list.
- Some home support agencies
- Some long term care facilities
- Private for profit (former Pricare) facilities

Affiliates are covered by all the provisions of Article 19 except those that describe options under a DSLA.

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The Union is actively encouraging affiliate Employers and Health Authorities to enter into agreements to expand the options for displaced affiliate employees wherever possible. These are usually "without prejudice" agreements.

Examples of the type of provisions that have been included in these agreements are:

1. A commitment to retaining all nurses affected by the implementation of a new staffing model.
2. Access to refresher/retraining, vacancies existing within the health authority.
3. A canvass process to identify staff who want to remain within Residential Care and those opting for displacement.
4. A mutually agreed process for displacement and rotation line selections where appropriate.
5. Mutually agreed criteria for participation in a refresher/re-training program.

New in 2006 - MOA re Laid-Off Employees and External Health Authority Vacancies

This applies in particular to employees working for the affiliates who are not part of the DSLA. Laid off employees within the geographic region of the Health Authority who have exhausted their Article 19 options i.e. where there are no displacement or bumping options within their own worksite and as a result the employee is on lay-off will have:

- Access to placement into external vacancies within the Health Authority, or
- If required, appropriate orientation and education for the scope of practice necessary for safe practice in the acute or community setting.

Note: The provisions of Article 19, dealing with displacement and bumping changed on January 1, 2006.

The difference in the displacement and bumping process before and after January 1, 2006 is set out on the following page.

Merger agreements to consolidate seniority lists may have a further impact on the displacement process. Please consult with your LRO.

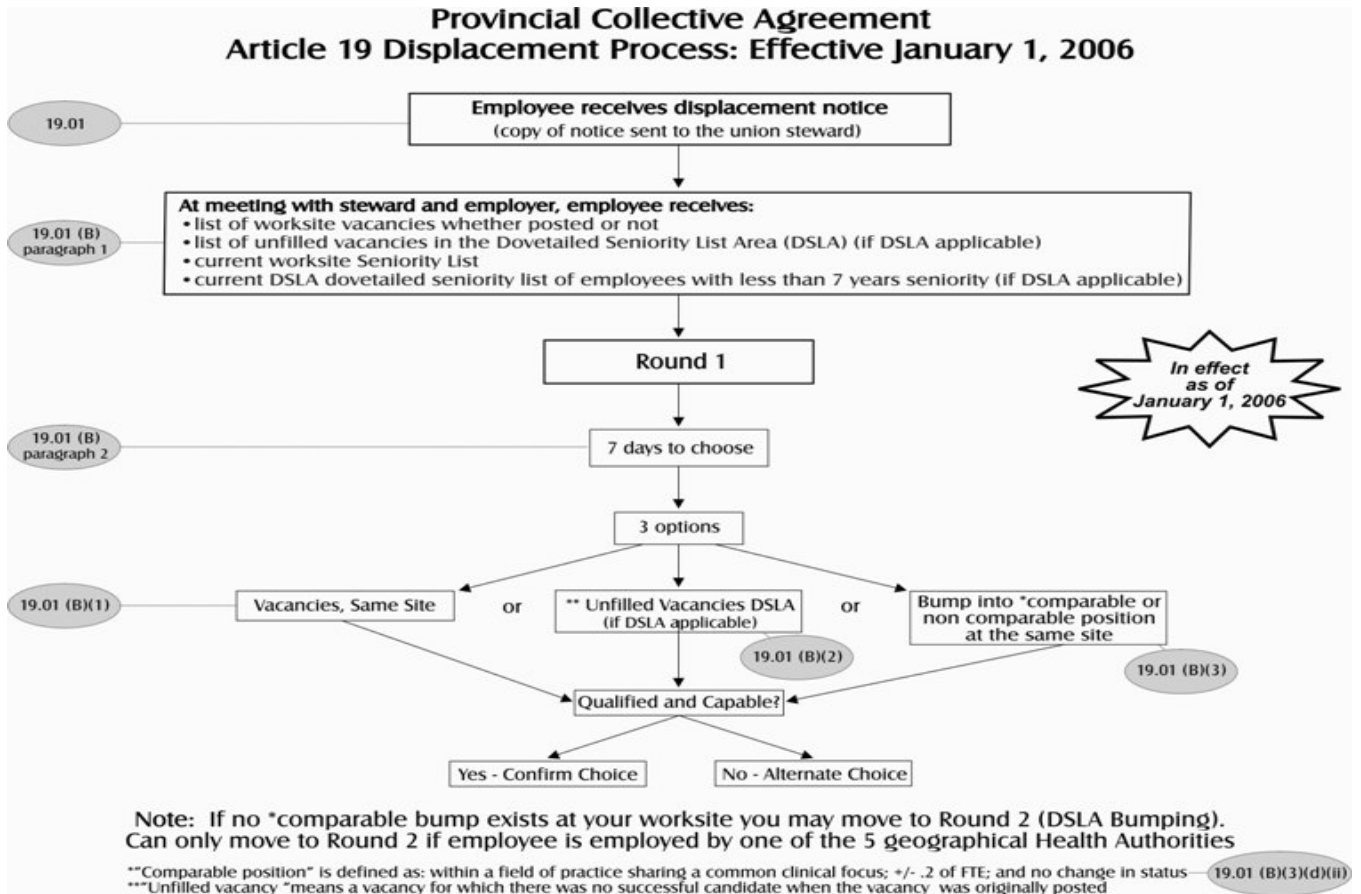
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Issue	After Bill 29 and LRB Rulings	After January 1, 2006
Bumping outside of worksite	Limited access to DSLA (in worksites directly owned and operated by the Health Authorities, except for the Provincial Health Services Authority.	Limited access to DSLA (in worksites directly owned and operated by the Health Authorities, except for the Provincial Health Services Authority. Can only access DSLA for bumping if no comparable position at worksite.
Restrictions on who can be bumped	Seniority ceiling - only someone with less than 5 years seniority at the worksite or DSLA If displaced person has less than 5 years seniority, they can only displace the most junior comparable person.	At worksite - no seniority ceiling - the most junior person with the identified Full-Time equivalent (FTE), unit/ward/program and shift pattern. In DSLA - somebody with less than 7 years seniority . But if no comparable job, they can bump the most junior person with more than 7 years seniority in a worksite of the displaced employee's choosing.
Definition of Comparable	If a displaced person has less than 5 years seniority, a comparable job to bump into would be within 20% of FTE and 5% of wages.	- No change in status - Plus or minus 0.2 FTE - Same field of practice as before displacement
Access to Vacancies	- Vacancies at worksite - Unfilled vacancies in DSLA	- Vacancies at worksite - Unfilled vacancies in DSLA
Time limits to choose options	At worksite - 48 hours to bump or choose unfilled vacancies - 14 days for worksite vacancies In DSLA - 7 days to bump or choose unfilled vacancies	At worksite - 7 days to choose vacancies, unfilled vacancies or bump In DSLA - If no comparable bump at the worksite, a further 7 days to bump or choose an unfilled vacancy in the DSLA

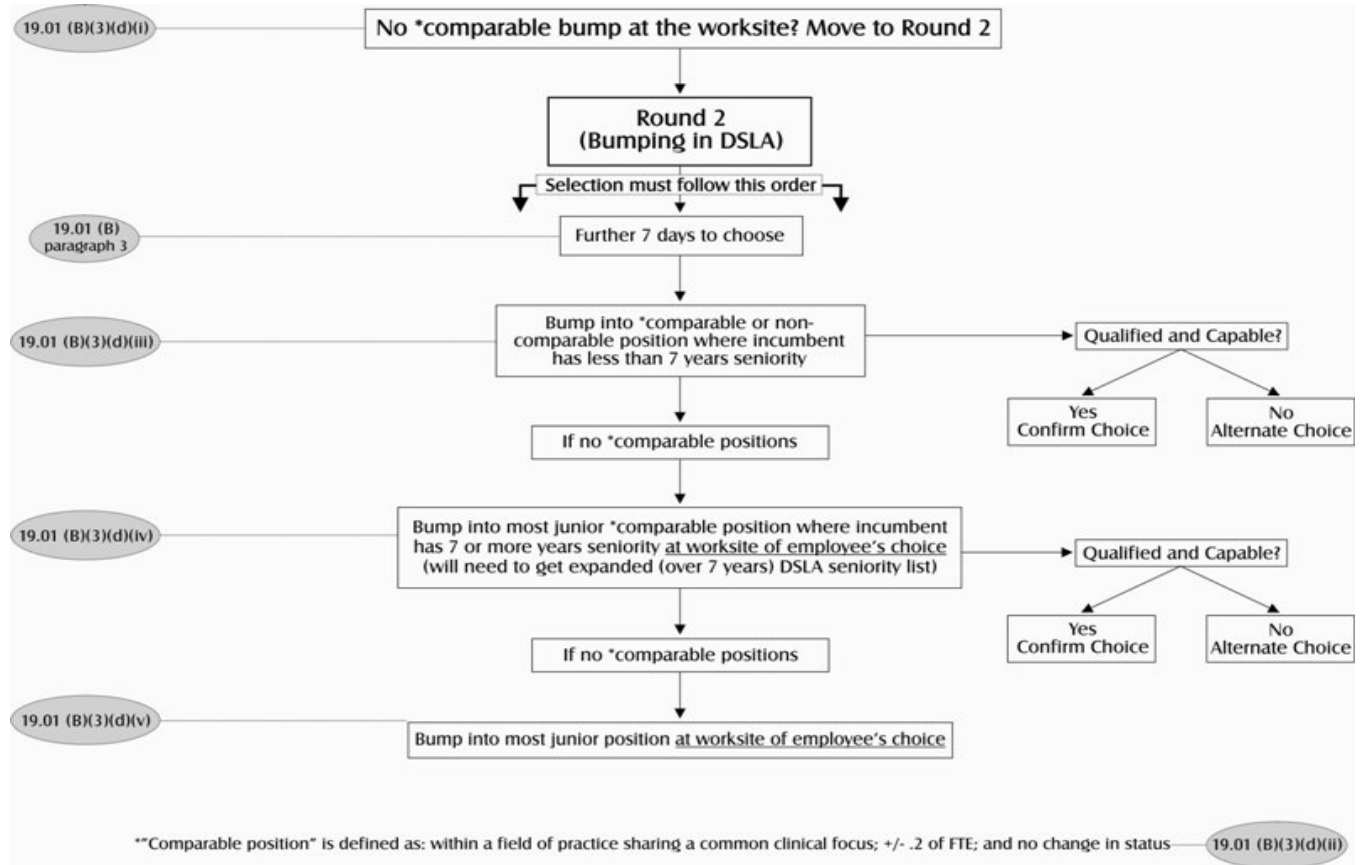
The interpretations in this manual are provided on a *without prejudice, errors and omissions* basis to any position Unions in the Nurses' Association of Bargaining Agents may take in any arbitral proceeding or any other forum.

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After January 1, 2006:



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Article 19.01 (B) - Displaced Employee's Options

1. Vacancies:

Employees who are displaced have first consideration on all vacant new positions at the same worksite whether posted or not (subject to being qualified and capable of doing the job).

Order of Priority in filling vacancies:

First: Laid off employees and displaced employees at the worksite are considered first.

Second: Vacancies are posted for all employees at the worksite to apply.

Third: If the vacancy is not filled by Steps 1 and 2 above, then the "unfilled vacancy" is available to displaced employees throughout the DSLA.

Fourth: If the position is still not filled, laid off employees throughout the DSLA are recalled.

Employees have **7 days** to choose a vacancy whether posted or not at their own worksite.

2. Unfilled Vacancies:

Means a vacancy for which there was no successful candidate when the vacancy was originally posted.

Employees have **7 days** to choose an "unfilled vacancy" either at their own worksite or at another worksite within the DSLA (where applicable). Employees bump at either their worksite or a worksite within the DSLA.

3. Bumping:

Employees bump at either their worksite or a worksite within the DSLA.

If you are employed at more than one worksite within the DSLA you should appear on the dovetailed seniority list (DSL) only once.

For an employee who holds a regular position at one worksite and also has casual status at another worksite within the DSLA, the casual hours at the 2nd worksite need to be converted to a seniority date. This is done by dividing the casual hours attained by 1879.2 (full-time equivalent hours per year of service) to determine your years of seniority. Those years of seniority are then backdated from the date the DSL was issued to determine a seniority date. **The dovetailed seniority would be the earliest of either the regular position seniority or the converted casual date.**

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See interpretation guidelines under Article 13 for an example of the calculations.

4. Layoff:

If there are no satisfactory jobs available, employee may choose layoff with recall (see Article 19.04). However, **employees on layoff may only turn down one recall to a comparable regular position within their DSLA (where applicable) without affecting their layoff status.**

5. Access to Casual Work:

Employees on layoff can access casual work at their own worksite or at any other worksite within the DSLA (where applicable) without affecting their seniority status.

6. Severance Allowance:

Employees on layoff with more than 10 years of service (as defined by Article 55) are entitled to severance if they are not recalled within one year.

Article 19.03 - Benefits Continued (after layoff)

1. Employees with more than one year of service:

- accrue benefits (e.g. sick leave, vacation, pension etc) for first 20 days (see Article 37 Leave - General)
- have their benefits maintained for the remainder of the year
 - after 20 days the employee will need to make arrangements to maintain her/his health and welfare plans and make contributions to the pension plan

2. Post-probationary employees with less than one year of service:

- Do not accrue benefits for the first 20 days
- Do have their benefits maintained for one year after layoff
 - after 20 days the employee will need to make arrangements to maintain her/his health and welfare plans and make contributions to the pension plan

3. Probationary employees:

- Do not accrue benefits for the first 20 days
- Do have their benefits maintained for 3 months
 - after 20 days the employee will need to make arrangements to maintain her/his health and welfare plans and make contributions to the pension plan

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Article 19.04 - Recall

1. Employees on layoff may only turn down one recall to a comparable regular position within their DSLA (where applicable) without affecting their layoff status.
2. The Employer is required to give 7 days notice by registered mail to the employee of recall to work.
3. The employee is required to report to work within 7 days of receiving the registered letter or the Employer will consider the employee to have abandoned their right to re-employment.
4. The requirement to report within 7 days is waived if the employee has to give notice to another Employer.
5. No recall can result in a promotion.
6. The recalled employee has to serve a qualifying period (See Article 18.04) and is entitled to orientation (See Article 18.05).
7. If the employee is found to be unsatisfactory during the qualifying period as per Article 18.04, she/he will be returned to the recall list. However, total time on the recall list cannot exceed one year. So, for example, if the employee is recalled after 11 months on recall and after a month she/he is determined to be unsatisfactory in the recalled position, she/he may end up terminated from employment.

Given the potential for what in effect is a termination of employment, Stewards need to be advised by the Employer of any employee that is in danger of failing their qualifying period after recall.

Article 19.05 - Recall Period

Employees who are **post-probationary** have one year to be recalled to a regular position and then they are considered to have terminated employment.

Probationary employees only have three months to be recalled before they are considered terminated.

Employees terminated as a result of layoff and expiration of recall rights are entitled to severance pay as outlined in Article 55. Also, if the employee is 55 years or older, they are entitled to cash-in of sick leave credits in accordance with Article 42.11

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Article 19.06 Leaves of Absence

While employees on leaves of absence (e.g. an employee on parental leave) cannot be laid off until the conclusion of their leave, in most cases it is recommended that employees make their selection at the time displacement notice is served.

Additional References:

LRB Decisions:

May 24, 2002 - *BCLRB No. B182/2002* - Section 54 Decision - decided four issues -

- When must Section 54 notice be given?
- Who should give the notice: HEABC, the Health Authority or the facility?
- To whom should notice be given: The Association, the individual Union or local representatives of the Union?
- In general terms, what should be contained in the notice?
(See article 20 for more information)

June 28, 2002 - *BCLRB No. 232/2002* - Sections 35 and 142 Decision - Successorship and Seniority

August 20, 2002 - *BCLRB No. 274/2002* - Section 35 Decision - Dovetailing Seniority Lists

January 9, 2003 - *BCLRB No. B8/2003* - Section 35 Decision - Dovetailing Seniority and Application of BCLRB No.274/2002 decision.

Legislation:

Bill 29/2002 - [Health and Social Services Delivery Improvement Act](#) - among other things this legislation removed the Employment Security and Labour Adjustment (ESLA) provisions (Appendix A), voided the contracting out language (Article 6.02) and replaced the bumping language in Article 19 and prohibited the Unions from negotiating any changes to the bumping language until January 1, 2006.

Note: Bill 29 is currently the subject of a court challenge under the [Canadian Charter of Rights and Freedoms](#) that was heard by the Supreme Court of Canada, February 2006. Decision pending.

Job sharing is still an option for nurses

In 1994 a Memorandum of Understanding spelled out rules for job sharing for BCNU members, which is still in effect. It allows two regular employees to voluntarily job share a single full-time position, or if agreed to by the employer and BCNU, a part-time position. Emphasized in the agreement is the voluntary nature of job sharing, both on the part of the job-sharers and the employer.

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In order for a job share to be established, a specific written agreement between the Union and the Employer must be signed. So once the nurse and the employer agree to a job share the union must be contracted to write up the job sharing arrangement. The union will then ensure that all the requirements of the memorandum of understanding are followed and that the nurses involved are aware of their rights and benefits.

What you should know about job shares:

(Note: for the full and complete language and information, contact your LRO)

- once a job share is approved, a notice will be posted within the department to determine interest in the position; if more than one qualified nurse is interested, selection will be on the basis of seniority
- for the first three months of the job sharing arrangement, the nurses will be in a qualifying period (that is, the arrangement may be cancelled by either employee or employer if it is not working out)
- job sharing arrangements can be cancelled by the employer with 60 days' notice
- if one partner decides to leave the job-share she/he must give 30 days' notice; the remaining partner shall be given first opportunity to assume the position on a full-time basis. If full-time is not wanted, every effort will be made, over a 30 day period, to find a job sharing partner satisfactory to all parties
- each nurse will be treated as a part-time employee for all benefit and pension purposes
- seniority for each job share partner is accrued on a year for year basis
- if both job share partners have less than 5 years' seniority, a displaced employee can bump into the job share, and either assume the position full-time or bump one partner and assume the job sharing arrangement
- if one job share partner has less than 5 years' seniority, a displaced employee can bump that partner and assume the job sharing arrangement

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BCNU Council Policy on Job Shares

PREAMBLE

Full time positions within BCNU are to be maintained.

POLICY

Job sharing arrangements will meet the following conditions.

1. The position to be shared is a full time position with the BCNU membership.
2. Participation is voluntary, employee initiated and based on seniority.
3. The rotation shall continue as if it were not shared. The schedule shall clearly indicate on it the proportion of the full time position each nurse holds. Scheduled days of work for each member shall be proportionate to the share of the full time position held. Scheduled days off shall be on the posted rotation.
4. The minimum portion of the job kept or shared must be a .4 FTE.
5. Each member is entitled to group benefits (Health and Welfare) equivalent to a full time employee. All other benefits and language are as per a regular part time employee.
6. The portion of the position to be shared will be posted/filled according to the language of the appropriate collective agreement.
7. The members sharing a position will not be expected to cover each other's leaves.
8. The portion of the hours shared shall no be altered.
9. When the full time position is no longer shared, it reverts back to a full time position.
10. If one of the members in the shared position resigns, the remaining member may choose to become a full time employee.
11. A BCNU steward and the Union office must be notified of all job sharing arrangements.
12. A letter of understanding must be signed before each job sharing arrangement can be started, when a member terminates her employment or, when the job sharing arrangements end.