Article 20

Article 20 - Technological Change

Note: This article is impacted by Bill 29 – the Health and Social Services Delivery Improvement Act.

Related Articles: 10, 19

Interpretation Guidelines:

Bill 29 removed the ESLA which meant that **Section 54** of the **Labour Relations Code (Adjustment Plan)** applies.

Section 54 (1) (b) requires the Employer and Union to meet and to develop an adjustment plan to include provisions on any of the following issues:

- **Consideration of alternatives** to the proposed measure, policy, practice or change, including amendment to the collective agreement;
- **Human resource planning** and employee counselling and retraining;
- **Notice of termination;**
- **Severance pay**;
- **Entitlement to pension and other benefits** including early retirement benefits;
- **A bipartite process for overseeing the implementation** of the adjustment plan.

If after meeting in accordance with subsection (1), the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union. (In other words: failure to implement provisions in the plan would be grievable).

Section 54 Adjustment Plan requires the Employer to give **at least 60 days notice** to the Union before the measure, policy, practice or change is to be implemented, where it is expected to affect the terms, conditions, or security of employment of a significant number of employees.

The **definition of a significant number** of employees really depends on the size of the workforce at a particular worksite. For example: at a small worksite with only 6 regular nursing positions, a layoff of 4 nurses could be considered significant.

The LRB decision *B182/2002* **issued on May 24, 2002** addresses questions associated with the application of Section 54 as follows:

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1. When must Section 54 notice be given?

"The reference point for calculating the notice period is the date on which the terms, conditions or security of employment of employees will be affected". (i.e. notice should be given 60 days prior to the date when it is expected that employees will be laid off.)

The ruling adds "providing information at an earlier stage (i.e. before 60 days) may promote co-operative participation and settlement …. but is not mandatory given the language of Section 54".

2. **Who should give the notice: HEABC, the Health Authority or the faci**lity?

Section 54 notice is required to be served by the Health Authority on behalf of the facility or facilities where the affected employees work.

3. **To whom should notice be given: the Association, the individual Union or local representatives of the Unio**n?

Notice should be given to the appropriate bargaining association representing the employee who will be affected.

In our case, this is the Nurses' Bargaining Association and notices ought to be addressed to the attention of the Coordinator with responsibility for essential services and LRB matters and copied to the appropriate LRO and BCNU Steward Coordinator(s) at the affected worksite(s).

4. In general terms, what should be contained in the notice?

Citing a previous case (*BCLRB No. B371/94* **– UBC**), the LRB defined the elements of sufficient notice as:

- Should **be communicated directly to the Union**;
- Should **contain a detailed description of the change** for which notice is being given;
- Should **include a reference to Section 54** of the Code or at the very least a description of the subjects to be discussed; and
- Should **detail the time frame** within which the discussion (required by Section 54 between the trade union and employer to develop an adjustment plan) should take place.

Examples of technological change are:

- Replacement of nursing positions with other health care workers (e.g. LPN, Social Workers, Care Aides etc); and

- Changes to health care delivery (e.g. contracting out, deletion of bargaining unit positions, exclusions, centralization of services at one worksite)

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Check with the Union office if you need clarification whether the changes proposed by the Employer constitute technological change and require Section 54 notice be served.

Additional References:

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.

Labour Relations Code – Section 54 Adjustment Plan, Section 54 must be read in light of the heightened requirement imposed by the amended Section 2 of code – see (HEABC Children and Women's Health Centre and HEU) - B45/2003 and B34/2004 (reconsider)

Employment Standards Act – Section 64 Group Termination

LRB Decisions:

May 24, 2002 - *BCLRB No. B182/2002* – Section 54 Decision – decided four issues related to Section 54 notice – details above.

BCLRB No. B371/94 **(UBC)** – ruled on the elements to be contained in a Section 54 notice.

Arbitration Decisions:

Windermere Retirement Lodge Ltd (BC Pricare) and BCNU, **June 12, 1992** (Kelleher) – the change from long term care facility to private pay was considered a technological change within the meaning of the Labour Relations Code. The term technological change includes changes which have no relationship to technology.