Article 44 - Leave - Union

Related Articles: 2, 4.01, 6.04 (A), 37, Appendix C

Interpretation Guidelines:

See following pages:
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The Advocate

Step by Step Guide for Requesting Union Leave

1. Request union leave as far in advance as possible, up to a year, if you know that far ahead. Make your request in writing and keep a copy for your records. Make a note of the date you delivered the request to your employer, and how and who you delivered it to.

2. If the Employer does not respond within 14 days, file a grievance, under the appropriate collective agreement clause, that the employer has not granted union leave. (See Notes on Union Leave)

3. If the Employer denies the request: a) Ask what measures the Employer has taken to try to fill your position:

   1. Look at and get a copy of Casual Call-in logs
   2. Have they canvassed the part-time nurses?
   3. Check the Employer’s information regarding what measures they took to fill your position:

   4. Check the Casual Call-in Logs
   5. Talk to the part-time nurses were they asked to fill your shift?
   6. Ask your co-workers if they will do a shift exchange with you.
Article 44

Union Leave Notes

Type of leave

Employer paid

Employees who are required by the employer to attend meetings or hearings, or to sit on a Board established by the employer, receive their salary for the time periods required to attend. Overtime, call-back and all other provisions apply for the time periods required.

Employers must reimburse employees for all expenses including reasonable travel time incurred during these periods.

Meetings may include:
- disciplinary meetings
- evaluation meetings
- grievance meetings
- investigations
- compulsory staff meetings
- mandatory inservices
- and any other meetings an employee is required to attend by the Employer.

Hearings may include:
- troubleshooter hearings
- arbitrations in which both an employee taking forward a grievance as well as his or her steward may attend.

A Board established by the employer may include a Board or joint committee formed under a collective agreement or pursuant to some other authority where the Employer requires an employee to sit on the Board.

Note:
Keep in mind the right to Union Leave depends on the type of leave (see Article 6.04 and Article 44 and Notes on Union Leave).

The Union has the responsibility to be reasonable. That means that if you work in a small unit, the Employer may only be able to agree to have a certain number of members off at any one time to attend a Union event.
Article 44

Union leave

Stewards are entitled to reasonable paid time during work hours to carry out their duties including but not limited to:
- investigating complaints of an urgent matter, and investigating grievances, and
- assisting employees in preparing and presenting a grievance in accordance with the grievance procedure, and
- supervising ballot boxes and other related functions during ratification votes, and
- attending meetings called by management, and
- accompanying an employee, at her/his request, at a meeting called by the employer, where disciplinary action is anticipated, and
- meeting with new employees as a group during the orientation program, and
- acting as appointees to the Union/Management Committee.

Article 6.04 (D) states that “Stewards shall be entitled to reasonable time while on duty without loss of regular pay and benefits to perform the above duties when they:
- have received prior consent from their supervisor before leaving their work area such consent shall not be unreasonably withheld, and
- make every endeavour to complete their business in as short a time as possible, and
- advise their supervisor of their return to the work area.

Stewards shall not interrupt the normal operations of the worksite.”

The HEABC has recognized the duties of a steward involving meetings of management may be interpreted to include some employer paid preparation time while on duty.

Under the Public Service collective agreement, Article 20.03 covers employer paid leave, including the above, as well as for actual official union bargaining. However, the employer does not pay for bargaining preparation; this is union paid.

Stewards covered by other collective agreements should refer to the relevant language and contact a Labour Relations Officer if they need assistance.

Union leave as described above cannot be denied by the employer because it is not subject to operational requirements.

Union paid

Provincial Collective Agreement
Acute Care

Article 44.01 sets out the circumstances for union paid union leave, which is not subject to operational requirements, including:
- attendance at a Union Council/Board meeting
- attendance at annual or special union conventions
- participating as a member of a BCNU bargaining committee
- attendance at the Provincial Bargaining Conference
- term(s) as full-time president of the BCNU.

Article 44.01(F) states paid leave of absence without pay shall be granted for BCNU members who are “appointed or elected to special or standing committees of the union. A leave of absence granted to members to attend regular or special meetings of such committees shall be subject to the operational requirements of the worksite.”
Article 44

Union leave

Continuing Care
Article 44.02 sets out the circumstances for union paid union leave, which is not subject to operational requirements, including:
- term(s) as full-time president of the BCNU
- participating as a member of a BCNU bargaining committee.

Subject to operational requirements:
- one employee who is elected or appointed by the union for the purpose of conducting official union business
- time spent as members of Council/Board or as members of Council/Board to the committees.

Union leave
General principles
To union a grievance on union leave we have to show the employer did not have a valid reason to deny the leave.

Arbitrators will accept employers denying union leave (other than the mandatory leave in Article 44.01 and 44.02) if the Employer has been given no advance notice, or if there is no available relief, or if there are specific operational reasons.

The employer can make reasonable requests for information to ensure that the union leave fits within the parameters of the collective agreement. They can ask for the nature of the leave, the date and the location of the event.

However, the employer cannot choose to grant or not grant leave based on the merits of the particular union event in question. The employer has no right to determine which meetings of the union have more value than others.

Union Leave for Casuals
Some employers may suggest that casuals are not eligible for union leave but this is not the case. When a casual requests union leave, she becomes unavailable for the shifts she would otherwise be available for in accordance with her placement on the seniority list. (Article 11.04)

Therefore, a casual nurse who has requested paid union leave would be eligible for the wages, benefits and seniority for a shift or set of shifts for which she was available according to her seniority and the casual call-in language.

Casuals experiencing difficulties with union leave should contact a steward or LRO for assistance.

Stewards covered by other collective agreements please consult your collective agreement and speak to a Labour Relations Officer if you need assistance.

We are the union
Article 44

Union leave

Scenarios and Remedies

Q: I'm a casual employee and the employer states that they will not grant my request for Union leave because I don't have a regular position. What do I do?

A: Casuals have access to shifts or blocks of shifts through casual call-in by seniority. Determine if you are the most senior nurse available for the shift(s) on the days when you are going on Union leave. If you would have been asked to work for the particular shift on which your Union Leave Day falls, you are entitled to claim for Union leave and to be reimbursed for wages and benefits. If necessary, file a grievance.

Q: I applied for Union leave and the employer denied it without giving any reasons. What do I do?

A: Demand their reasons in writing. Determine if there are any other nurses on any kind of leave on the day you wish to be on union leave. If possible, see if there are any other staff (casuals or part-timers) who can fill the shift for you, or if there are any staff who would swap shifts with you. Take this information to the employer in an attempt to have the Union leave granted. If that does not result in approval of your leave, file a grievance.

Q: I submitted my request for Union leave to attend the basic steward course three months in advance and the employer denied my request, saying that they don't know what their operational requirements will be that far in advance. What can I do?

A: The employer cannot have it both ways! Casuals and part-time employees like to know their schedules as far in advance as possible and are usually happy to pre-book. The employer should book employees in order to cover the shift that you are scheduled to work. If the employer does not grant your leave, file a grievance.
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Union leave

Remedies:
Overall objectives should be kept in mind when formulating your remedy:
1. that BCNU members shall be released for Union business
2. that the employer responds to requests for Union leave in a timely manner
3. that the employer provides reasons for any denial of Union leave
4. that the employer treats Union leaves the same as any other type of leave.

When a member is denied Union Leave the following remedies may be sought:
1. that the original leave will be granted (based on strategies discussed in the Step by Step Guide)
2. that the next Union leave requested will be approved (i.e. guaranteed) - get this in writing from the employer
3. that the employer, not the Union, will pay for the next Union leave. That the employer pay $5000 to the BCNU education fund
4. that management sets out reasons with enough advance notice in order to prove operational requirements cannot be met. If the employer does not demonstrate operational requirements, demand higher penalty (more cash, greater number of Union leaves guaranteed, etc.)
5. in the case of denying leave based on overtime, the Union should press to have the shift paid at overtime if the employer consistently pays overtime to cover other kinds of leaves
6. if the employer cancels Union leave which has been granted, claim for overtime (for grievance example see the attached Marchioro case the Union won at Mount St. Joseph)

In cases of leave to conduct employer business (i.e. steward duties):
The Union has been successful in ensuring that certain meetings at which the union representative is required will be paid at overtime rates where applicable (OH&S meetings, termination meetings, in some cases, displacements, etc.)

If the employer is refusing to grant leave to do steward duties due to having to pay overtime to cover the shift, utilize article 6.03 which provides for the payment of overtime for "employer business".

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Thanks to the hard work of stewards at Cowichan District Hospital and their Labour Relations Officer, six grievances relating to denial of Vacation and Union Leave were settled prior to arbitration when a consent award was negotiated.

Although much of the settlement agreement related to vacation leaves and their scheduling, a priority list for leave requests was developed that includes Union leave. In compiling the list, the Employer has acknowledged the non-discretionary nature of Union leaves under Article 44 (excluding F) of the Provincial Collective Agreement.

In the list, first priority was given on an equal basis to:

- Compassionate leave (Article 33)
- Court appearance (Article 34)
- Election (Article 36)
- Maternity/parental leave (Article 38)
- Public office (Article 41)
- Special leaves:
  - Marriage Leave (5 days)
  - Paternity Leave (1 day)
  - Serious illness of spouse or child (up to 2 days)
  - 1 day may be added to compassionate leave
  - 1 day may be added for travel associated with compassionate leave
- Union leaves (Article 44 A - H excluding F)
- Vacation (Article 45)

The resolution to these grievances was without prejudice and precedent, and was negotiated by the stewards and the LRO to meet the needs of the nurses at Cowichan District Hospital.

<table>
<thead>
<tr>
<th>Type of leave requested</th>
<th>Union paid</th>
<th>Employer paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leave under PCA Article 6</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Leave under PCA Article 44</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Leave under PCA Article 44(F)</td>
<td>✓</td>
<td></td>
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</tbody>
</table>

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Article 44

Union Leave

Grievance won pre-arbitration

A grievance arising out of cancellation of union leave with short notice and no compensation was successfully argued before the need for costly arbitration at Mount St. Joseph's Hospital in Vancouver.

Steward Eva-Marie Marchioro was granted union leave, then a few days before the leave she was informed that it was cancelled. When she was denied overtime for the shifts she worked, she decided to file a grievance under articles 44(1) and 25.07 of the Hospital Master.

“IT was important because it recognized union leave as equivalent to any other time away from work, like vacation or days off. And it clarified that union leave should be cancelled only as a last resort.”

The employer also agreed to grant union leave unconditionally. In the past they agreed subject to staffing requirements. Since the grievance, union leave is either granted or denied with no conditions attached. If emergency staffing requirements arise, a nurse scheduled for union leave can be asked to work but she or he will then be compensated according to the collective agreement.

Eva-Marie has already seen the positive effects of her effort. “It was precedent setting and now at our facility there have been several people granted union leave then asked to work and they’ve been paid the appropriate overtime.”

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Article 44.02 (E) - President of the Union

1. Under the **Acute Care Component** the Employer continues to pay (and be reimbursed by the Union) the premiums for all the health and welfare plans for the duration of the President’s leave.

2. Under the **Continuing Care Component**, the Employer is only required to pay the premiums for the health and welfare plans for the first 3 months of the President’s leave.

   ➢ If the employee becomes disabled within the 3 month period and is not covered by sick leave, the employee will remain covered by the Employer’s LTD plan provided the Employer is reimbursed by the Union.

3. All other provisions have the same application in both the Acute and Continuing Care Components.

**Arbitration Awards:**

**Fernie District Hospital Society and BCNU, July 5, 1990 (Bird)** - the Employer had been prevented (estopped) from changing the method used by the Union in calculating the amount for reimbursement of benefits while BCNU members were on Union leave.

**Fernie District Hospital Society and BCNU, December 24, 1990 (Bird)** - However the barrier to changing the method of calculating the amount of reimbursement for benefits was lifted because the Employer had served estoppel notice to stop the practice before the next round of bargaining.

**HEABC (Simon Fraser Health Unit) and BCNU, May 22, 1997 (McPhillips)** - ruled that Employers must be reasonable and cannot be arbitrary and discriminatory in the denial of Union leave. Employees should give the Employer as much advance notice as possible of the need for Union leave to ensure approval.