

## Article 9

### Article 9 - Grievances

Related Articles: 6.04, 6.05, 6.08, 6.09, 8.05, 10, 15.04, 16.02 (C), 32.06

#### Interpretation Guidelines:

#### Article 9.01 - Discussion of Differences

This clause sets out the "work now, grieve later" rule.

This rule can be broken in limited circumstances where an employee feels justified in disregarding direct orders because they have a reasonable expectation execution of the Employer's instructions would be unsafe or illegal or where the grievance procedure does not afford a realistic hope of compensation for an incorrect order. (*BC Telephone Co. and Federation of Telephone Workers of British Columbia (1976) 13 LAC (2nd) Arbitrator MacIntyre*)

#### Article 9.02 - Grievance Procedure

Please see additional information on the grievance procedure in the "Tools" section at the back of this manual

#### \* Step 3 (New language in 2006)

Language has been added to clarify that both the Union and the Employer are required to provide each other with full disclosure of all information and documents pertinent to the grievance by Step 3 at the latest. This new language reflects the parties' agreement to try and resolve grievances at the early stages of the grievance process and reduce the number of disputes referred to a third party.

This language has particular relevance to selection disputes. The Employer cannot refuse to provide information relevant to a selection dispute citing privacy concerns related to the application of the Freedom of Information and Protection of Privacy Act (FOIPPA). The Union's entitlement to information necessary to properly represent members in the grievance process is set out in FOIPPA and has been confirmed by arbitration and rulings of the courts (See the Interpretation Guidelines at Article 18 for further information).

#### Industry Troubleshooter

This is often referred to as **Step 4 of the Grievance procedure** and provides an ability to involve a neutral third party to come in and try to settle the issues in dispute. As Step 4 of the grievance process, Stewards are allowed time while on duty (see Article 6.04), in the same manner as for Step 3 meetings, to attend the hearing.

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Individual grievances that deal with a unique set of circumstances, disputes where a quick resolution is needed, or disputes where it is important to preserve working relationships often benefit from participation in the Troubleshooter process.

The Troubleshooter generally tries to mediate a settlement to resolve the issue. If the dispute cannot be mediated, the Troubleshooter will issue written recommendations to the parties. However these recommendations are not binding so the parties do not have to implement them unless they have previously agreed to abide by the recommendations.

Resolutions from Troubleshooter hearings are "without prejudice" to the position either party may take in future. However in some circumstances they can be used to set a precedent.

If either of the parties disagrees with the Troubleshooter's recommendations they can still refer the grievance to arbitration.

This is intended to be an informal process. Therefore lawyers are not to be used by either party in Troubleshooter hearings in their capacity as a lawyer and the use of legal jurisprudence and examination of witnesses is discouraged.

### Article 9.03 - Single Employer Policy Dispute

These grievances begin at Step 3 of the grievance procedure and as such they are filed by the LRO as the remedy sought will apply to all nurses at either a worksite or within a Health Authority.

#### New language was added to Article 9.03 in 2006

The new language confirms that when an Employer policy applies to worksites throughout the Health Authority, the Employer is required to apply the resolution or third party decision on a grievance filed at one worksite to all the worksites in the Health Authority.

In addition, the Employer is required to advise the Union at the Step 3 meeting if the policy has limited application throughout the Health Authority and is required to confirm with the Union to which worksites the policy applies.

Please note: Article 9.05 General Application Dispute was replaced in 2001 bargaining by the new Article 9.04 and Article 9.07. As a result the numbering of some of the provisions of this Article changed.

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### Article 9.04 - Application of Single Employer Arbitration Decisions (New in 2001)

Arbitration decisions in these disputes are **not binding on other Employers or Health Authorities covered by the PCA, or other Unions in the NBA** unless the parties agree.

However HEABC and the NBA can use these arbitrations to argue that they set a precedent in other arbitration hearings.

### Article 9.05 - Amending Time Limits (changed from Article 9.03 in 2001)

Arbitrators have jurisdiction under Section 89 of the Labour Relations Code to set aside violations of time limits by the Union. As a result, employers are still required to address the merits of the grievance, on a without prejudice basis, even though time limits may have been violated.

In *South Okanagan Hospital and BCNU*, February 26, 1987, Arbitrator Thompson considered the following factors in determining whether the Union's failure to adhere to the time limits were grounds to dismiss the grievance:

- (a) The language of the Collective Agreement (whether the time lines in the grievance procedure were "mandatory" or "directory");
- (b) The "gravity" of the grievance (the seriousness of the matter being grieved);
- (c) The continuing nature of the grievance;
- (d) The loss suffered by either party because of the delay;
- (e) The reasons for the delay; and
- (f) The length of the delay.

Where the analysis of these factors shows the delay is unreasonable under the circumstances or imposes undue hardship on the Employer, an arbitrator may choose to dismiss the grievance on the basis that it is "out of time".

For example: A grievance filed months after the grievor was denied payment for overtime may be considered to be out of time, whereas an arbitrator may decide to waive the time limits on a grievance filed months after a letter of discipline has been issued to a grievor.

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### Article 9.06 - Resolution of Employee Dismissal and Suspension Disputes

In recognition of the serious nature and the potential ramifications for the employee the process for resolution is shortened.

Please ensure the Employer notifies the Union office of any suspension or dismissal within 10 days of the occurrence so a grievance can be filed by the Union office as quickly as possible.

See Article 6.04 in the PCA and in this manual for more information about the employee's right to representation in discipline matters.

**Note:** Stewards should ensure that BCNU members who are reported to the College of Registered Nurses of BC are provided with information to contact LEAP through the BCNU office. Further information about LEAP can be found under Article 5.02 in this manual.

### Article 9.07 - Industry Wide Application Dispute (new in 2001)

This was previously the General Application Dispute and following the creation of the Nurses' Bargaining Association and the Health Authorities, industry wide disputes were referred to as Section 84/3 disputes.

**Industry Wide Application Disputes (IWAD)** are only filed by the NBA through the BCNU office as the resolution of these disputes will apply to all HEABC members covered by the PCA and the members of all the Unions in the NBA.

See table "Types of Grievances" in the Tools Section at the back of this manual for further information.

### Article 9.09 - Deviation from the Grievance Procedure

Once the grievance has been committed to writing at Step 2, the Employer cannot attempt to settle it without the consent of the Union. If the Employer does attempt to settle the grievance with the grievor(s), especially through coercion or intimidation, the Steward needs to call their LRO who can file a grievance if necessary.

**Advice for members who receive a monetary settlement as part of the resolution to their grievance**

1. **Monetary settlements that are taxable are:**
  - For breaches of the monetary collective agreement provisions (including wages, overtime, shift premiums, qualification differentials, stat pay etc)
  - Retroactive pay as a result of the negotiation of a new collective agreement.

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2. Monetary settlements that are considered non-taxable are:
  - Damages for human rights violations, personal or psychological injury
  - Breaches of non-monetary provisions
3. If the settlement amount is taxable and for a period longer than 1 year, the member should be advised that they can allocate the amount to different tax years.
4. In order to spread it over different tax years the member will need to complete a Form T-1198 Statement of Qualifying Retroactive Lump Sum Payment and submit it to Canada Customs and Revenue Agency.

### Impact of the Freedom of Information Protection of Privacy Act (FOIPPA) on the Grievance Process

Does FOIPPA prevent the Employer from disclosing information to the Union during the grievance procedure that would otherwise be required by the Collective Agreement?

Employers have been taking the position that in the absence of permission from the individuals concerned, FOIPPA prevents them from releasing personal information such as the interview and other notes that are part of a selection process.

This was the subject of an arbitration and the Union's entitlement to this information was upheld. [See *Arbitration Award: Board of School Trustees of School District No. 33 (Chilliwack) and Chilliwack Teacher's Association*, March 12, 2004 (Korbin)].

The Arbitrator ruled as follows:

*"Disclosure of information sought in this case under the collective agreement is permitted particularly by the exceptions identified in ss22(4)(c) and 33(c) and (d) of the FOIPPA.*

*This conclusion is in keeping with the interpretive principle that statutes be construed harmoniously.*

*It does not undermine or detract from the policy objectives of the Code and is consistent with the jurisprudence that recognizes the public interest in expeditious, cost effective methods for resolving labour disputes.*

*It is also consistent with the public interest rationale for the exceptions in the Act. It permits the parties to comply with their Collective Agreement obligations as well as enabling them to fulfill their statutory obligations under the Code and the FOIPPA.*

*It is in accord with the reasonable expectations of the parties in a selection grievance.*

*As well, s.3(2)conceptually operates to confirm the information requested is available to the Union.*

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*Finally, on submissions of the Union, I am satisfied the grievance procedure affords a reasonable level of protection of privacy for the individuals directly affected."*

**Note:** While this arbitration case specifically addressed access to information in a selection dispute, it could have **application to other disputes** being addressed by the grievance procedure where, in order to properly represent members, the Union requires information in the Employer's possession.

The Employer's application for appeal was dismissed. See *Board of School Trustees of School District No. 33 (Chilliwack) v Chilliwack Teacher's Association*, The Court Of Appeal of British Columbia, August 11, 2005 (The Honourable Mr. Justice Esson, The Honourable Mr. Justice Thackray, The Honourable Madame Justice Newbury), 2005 BCCA 411

### Additional References:

### Legislation:

Labour Relations Code, Section 89.

### Arbitration Awards:

*(BC Telephone Co. and Federation of Telephone Workers of British Columbia (1976) 13 LAC (2nd) Arbitrator MacIntyre)* - The "work now, grieve later" rule can be broken in limited circumstances e.g. where obeying the Employer's instructions would be unsafe or illegal or where the grievance procedure does not afford a realistic hope of compensation for an incorrect order.

*South Okanagan Hospital and BCNU, February 26, 1987, (Thompson)* - Sets out the criteria considered by arbitrators in determining whether to waive the violation of grievance time limits.

*Board of School Trustees of School District No. 33 (Chilliwack) and Chilliwack Teacher's Association, March 12, 2004 (Korbin)* - confirmed the right of the Union to be provided with information such as interview and other notes in the possession of the Employer concerning the filling of a posted vacancy.

### Court of Appeal of British Columbia

*Board of School Trustees of School District No. 33 (Chilliwack) v Chilliwack Teacher's Association*, The Court Of Appeal of British Columbia, August 11, 2005 (The Honourable Mr. Justice Esson, The Honourable Mr. Justice Thackray, The Honourable Madame Justice Newbury), 2005 BCCA 411 - Employer's application for appeal of the Korbin decision was dismissed.