

GRIEVANCE HANDLING - JURISPRUDENCE (ARBITRATIONS & CASE LAW)

VANCOUVER GENERAL HOSPITAL (6 STEPS OF MUTUALITY) - LEGAL TEST

VANCOUVER GENERAL HOSPITAL AND
BRITISH COLUMBIA NURSES' UNION,
NOVEMBER 3, 1986 (MUNROE)

An employer must satisfy the following legal test to fulfill their responsibility to achieve mutual agreement “whenever possible” during a rotation change:

1. The Employer must give the nurses a clear and detailed outline of what it wishes to do.
2. The Employer must have a good reason(s) for making the proposal in the first place, and it must express the reason(s) to the nurses and be prepared to engage in dialogue with respect thereto.
3. The Employer must invite a reply from the nurses, and it must give the nurses a reasonable opportunity to formulate a reply and to make their own proposal(s).
4. The Employer must give bona fide consideration to any proposals which the nurses might put forward and be prepared to show that its rejection thereof was reasonable in light of its proper objectives.
5. Within this frame, the Employer must make every reasonable effort to secure mutuality.
6. The Employer's actions and its proposed schedule of shifts must not be in breach of any other provision of the collective agreement.

The words “whenever possible” are clarified by Munroe in his subsequent arbitration decision *Bastion Place and BCNU*, September 20, 2004 (Munroe) which further defines the obligations of the employer with regard to mutuality as follows:

“Adherence to each of the steps must be clearly discernable and must demonstrably be seen as meaningful as distinct from just symbolic. The objective of the steps is “mutual agreement”. It is only after genuine or good-faith effort to reach mutual agreement that unilateral employer action is allowed. That as I have said, is the collective agreement obligation arising from Article 25.02 as interpreted in Vancouver General Hospital”.