HEALTH SCIENCES ASSOCIATION
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HSA

BULLETIN

Arbitrators rule implementation of 37.5 hour work week inconsistent

April 11, 2014

Work needed to complete files to include in expedited hearing process

Employers who failed to follow a fair and negotiated process for a transition to the 37.5 hour work week will have to start over, thanks to a decision by arbitrators Vince Ready and Corinn Bell.

A feature of the 2012 – 2014 negotiated collective agreements covering health care workers, including health science professionals, was the extension of the work week to 37.5 hours from 36. Under a memorandum of understanding negotiated to guide implementation of the changes, employers were supposed to consult with staff and take into consideration local work site factors when changing schedules.

In many cases, employers ignored the process, and in the Health Science Professionals Bargaining Association (HSPBA), 1600 grievances were filed against employers who took arbitrary steps to change work schedules. In many of those cases, part time employees were targeted, and some suffered a loss in regular hours. In some cases, employers also failed to apply the principles of seniority.

Arbitrators Ready and Bell found the failure to consult employees constituted a violation of the process.

"…in any reduction of hours for part-time employees, it would have been incumbent on the Employer to implement such changes in a manner that minimizes the impact, and was done in accordance with all process requirements, including the requirement that the Employer consider and respond to proposals which part-time employees put forward once service delivery options were outlined by the Employer."

The HSPBA had argued that any reduction in hours to part time employees constituted a lay off, and as such the process violated the collective agreement. The arbitrators disagreed.

In a separate ruling, the arbitrators set out the process to be used to resolve the grievances about the implementation of the 37.5 hour work week, which they found was intended to be done in a way that minimized the impact on individual employees, and which took into consideration proposals from employees.

"For practical purposes, we would have expected department/unit managers to have looked at their existing schedules to see who was in the department or work unit at the time that the 37.5 hour work week was being considered (as well as employees who would be in the department or work unit to cover situations such as vacation scheduling or covering for employee illness)."

"… a provision which asks the Employer to consider, with an open mind, the ideas of its employees and then, if the ideas are not workable, to provide reasons why the employee proposal was not accepted…

"This provision provides the Employer with the opportunity to demonstrate to its employees not only that their ideas were heard, but with the opportunity to also explain why such ideas would not be implemented, or

whether the ideas could possibly be amended with some modifications."

The process set out to address the grievances is as follows.

The unions and employers have 45 days (ending May 22, 2014) to review all the outstanding grievances.

Employers must review their files, identify where they went wrong, and contact the union to discuss remedies for individual situations.

Unions that find they don't have the evidence to proceed on a particular grievance should withdraw those grievances.

After the May 22 deadline, the unresolved deadlines will be dealt as follows:

- The parties jointly compile the outstanding grievances in categories
- The parties participate in binding expedited mediation/arbitration as follows:
  - Agree on expedited hearing dates at locations throughout the province
  - Agree to exchange written submission on the facts of each grievance in groups of grievances that are not more than 5 pages double-spaced at least five business days prior to the expedited hearing date
  - Parties present the facts with a maximum 30-minutes each for presentation, with total hearing time no more than one hour
  - Specific facts of the case must be laid out in advance, and the decision of the arbitrator may be based on those facts only
  - Decisions no longer than one page long will be issued within 20 days
  - The arbitrator may award a variety of remedies to respond to nay grievances, including, but not limited to dismissing the grievance, requiring the employer re-do the implementation of the MOU or awarding individual or group compensation
  - The decisions will be binding

HSA labour relations officers will contact stewards by April 25, 2014 seeking information to complete files to be able to put grievances forward. Stewards, LROs, and members must work together to complete and return the information in order to prepare for the grievance process moving forward.

The union bargaining association is already working to schedule dates in June to present the grievances in the expedited process to arrive at conclusions to grievances.

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