EDUCATIONAL PULL-OUT

Steward Notes

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UNION STEWARDS ARE THE FRONT LINE OF DEFENCE FOR UNION MEMBERS IN THE WORKPLACE. STEWARDS PLAY ONE OF THE MOST IMPORTANT ROLES IN THE LABOUR MOVEMENT.

Issue Identification: How to Spot a Relevant Fact

by Jan Goodwin
AUPE Research Officer

In the last issue of Steward Notes, we talked about the information that needs to be collected when you are working on a grievance. Aside from getting the basic information about the grievor, issue identification is the single most important thing that you need to do when handling grievances. Here are some tips on how to properly identify the issue in your next grievance.

Think of the issue as the question that needs to be answered to determine the grievance. Some simple examples would be things like: Was he fired with just cause? Was she paid overtime correctly? Was he scheduled for too many shifts in a rotation? Did the employer calculate her vacation time properly?

Some of the questions can be more complicated, like: Is there a disability involved? Did the employer fail to meet their duty to accommodate? Sometimes you need to do a big picture evaluation of what's going on.

Grievances are allegations that the employer has breached the terms of the collective agreement. So to identify the issue you need to start with one question (you know what's coming): WHAT DOES THE COLLECTIVE AGREEMENT SAY?

Consider the following example. A grievor is involved in a horrendous disagreement with the members of his philatelic club (stamp collectors can be very impassioned hobbyists). After the meeting, he puts on his blue long johns and, while drinking vodka shooters, he drives to work and hits a woman walking

Issue Identification *Continued*

four blonde Afghan hounds. The bad news is that, because of his involvement with the police following the accident, he is late for work. Two days later he is disciplined with a one-day suspension.

What is the issue?

To determine the issue, first read the letter of discipline to find out what the employer is thinking. The letter in this case says: "This is the fourth time this year you have been late for work. You were given a verbal warning earlier this year that clearly had no impact on your behaviour. Therefore, we are imposing this suspension to be served tomorrow." Now read your collective agreement. It likely says something about no discipline without just cause.

Your investigation will be to gather the facts that address the issue and answer the question: was he disciplined for just cause? Facts that help answer this question are relevant. Facts that don't help answer the question, while they may be interesting as all get out, are irrelevant.

Here is what you DO need to know: What day does the employer say he was late? What time was he supposed to start? What time did he arrive? What evidence is there that he was late? Is there a policy on lateness? Does the grievor have any recollection of the verbal warning that he was supposed to have received? When was the verbal warning given, if it was actually given, and by whom? Did the grievor know, or should he have known, about any related policy? Are other people ever late, and are they disciplined the same way? Did the grievor know he could be disciplined for being late? Does the employer always discipline for lateness?

Facts that DO NOT need to be included in your investigation: What the argument with his fellow philatelics was about; how he was dressed; what he was drinking; what logo was on the shot glass he was drinking from; why was he wearing blue long johns; and details of the unfortunate accident with the hounds. These facts are not relevant. They do not help answer the question of whether or not the employer had just cause for imposing discipline.

The tricky part is that the relevance of the facts will change in every situation. A grievor with extensive, comprehensive and irrefutable medical documentation that supports his claim that he has athlete's foot is irrelevant to a grievance about duty to accommodate. On the other hand, a grievance about overtime without reference to the overtime article, time sheets, paystubs and a calculation showing how much is owed is really missing some basic documentation.

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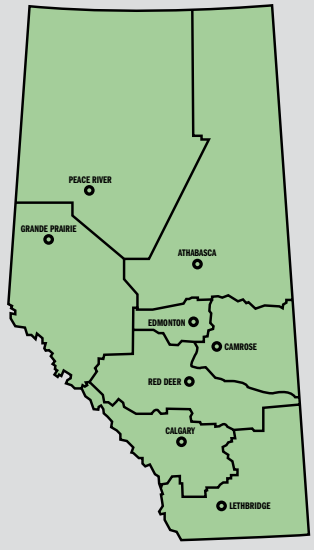
HAVE QUESTIONS?
CONTACT YOUR MEMBER SERVICES OFFICER
CALL 1-800-232-7284



Have your local/chapter number and worksite location ready so your call can be directed quickly.

Bad faith bargaining: a primer

by Michael Hughes
Disputes & Arbitration Rep

Pursuant to labour law in Alberta, a union and employer have two duties – duties that can be said to provide the foundations for the collective bargaining relationship. These are:

1] The duty to bargain in good faith; and
2] The duty to make every reasonable effort to enter into a collective agreement.

These duties can be found in Alberta's Labour Relations Code at sections 60(1)(a) and 60(1)(b), respectively, and must be carried out by the union and employer (or employer's organization) within 30 days of serving notice to bargain. The duties last through strikes or lockouts and end only when the parties have arrived at a collective agreement.

The Board has commented that the duty to bargain in good faith requires "full, honest and rational discussion of terms and conditions of employment with a view to reaching an agreement." At paragraph 46 in Southam Inc. (Re), [2000] Alta. LRBR 177 the Board fleshed this out by noting the following principles employed to assess whether the parties are engaging in bad faith bargaining:

- Parties have a duty to make solicited disclosure to each other of information that is necessary to understand a position or formulate an intelligent response: e.g., UNA v. Alberta Healthcare Assn. [1994] Alta. L.R.B.R. 250. Most often this duty falls on employers, who must, for example, disclose current wage information for employees in a bargaining unit affected by bargaining for a first collective agreement: DeVilbiss, supra; Forintek Canada Corp. [1996] O.L.R.B. Rep. Apr. 453.
- An employer has a duty to make unsolicited disclosure of management decisions that may have a significant impact on terms and conditions of employment or on the bargaining unit itself. Classic examples are decisions to close the plant affected by the bargaining: Westinghouse Canada Ltd. (1980) 80 C.L.L.C. 16,053 (O.L.R.B.); to contract out the work of employees in the bargaining unit: CUPE, Loc. 2801 v. Alberta (Labour Relations Board) (1985) 42 Alta. L.R. (2d) 198 (Q.B.); or to conduct a significant reorganization of the department: CUPE, Loc. 30 v. City of Edmonton [1995] Alta. L.R.B.R. 102.
- Parties must not deliberately misrepresent material facts. Misrepresentation is the "antithesis of good faith": Inglis Ltd. [1977] 1 Can. L.R.B.R. 408 (O.L.R.B.).
- Parties may not refuse to meet before positions have been thoroughly explored, and they must meet through representatives who are equipped to engage in the full and rational discussion that the duty demands.
- One party may not attempt to dictate the bargaining representatives of the other. An employer must deal with the union through its designated representatives and may not try to bypass its committee by bargaining directly with employees.
- An employer may not engage in "surface bargaining," in which an outward willingness to observe the form of collective bargaining masks an intention to avoid entering a collective agreement at all. Tactics that may be indicative of surface bargaining include: reneging on positions already agreed to without compelling reason; and "receding horizon" bargaining, in which new issues or proposals are unjustifiably introduced late in the bargaining: e.g., IMAW, Loc. 371 v. Barber Industries Ltd. [1989] Alta. L.R.B.R. 20.
- Parties may not press to the point of an impasse a demand that the other party has a conclusive right to resist. This is often characterized as the rule against "illegal or improper demands." We discuss this aspect of the duty to bargain in good faith later in these reasons.
- The duty to engage in rational discussion means that parties must be willing to explore the issues brought to the table. They have a duty to explain the rationale for their positions, particularly on issues that are central to the negotiations or where significant changes to existing terms and conditions are sought: Canadian Industries Ltd. (1976) 76 C.L.L.C. 16,014; CALEA v. Austin Airways Ltd. (1983) 4 C.L.R.B.R. (NS) 343 (C.L.R.B.).

The Board went on to emphasize that one must assess the "totality of the parties' bargaining conduct," which might include previous unfair labour practices, tabling of demands lacking business justifications and refusal to grant "industry standard provisions."

It is important to keep in mind that unions and employers are within their rights to engage in "hard bargaining" so long as this is not found to reach the threshold of bad faith, or failure to make every reasonable effort to enter into a collective agreement. The LRB will not judge the reasonableness of the parties' bargaining positions absent some indication of illegal positions pushed to impasse, public policy breaches or clear indications of bad faith, as noted in International Association of Heat and Frost Insulators and Asbestos Workers, Local Union 150, and Construction Labour Relations - An Alberta Association, Insulators Trade Divisions (1986) Alta. L.R.B.R. 508. An impasse between the parties is not evidence of bad faith bargaining by either of them.

Labour Education

Upcoming courses and training

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Respect in the Workplace
Feb. 11
Mar. 11
May 13

Introduction to Your Union
Jan. 14
Feb. 4
Mar. 18
May 1
June 18

Union Steward Level 1
Jan. 15 & 16
Mar. 12 & 13
May 6 & 7

Union Steward Level 2
Jan. 28 & 29
Apr. 23 & 24
May 21 & 22

Union Officer Training
Feb. 12 & 13
Apr. 9 & 10
May 27 & 28

OH&S Advocate Level 1
Mar. 19 & 20
May 14 & 15

OH&S Advocate Level 2
Feb. 5 & 6
Apr. 15 & 16
June 10 & 11

Contract Interpretation
Apr. 8
June 3

Calgary

Respect in the Workplace
Feb. 7
June 3

Introduction to Your Union
Jan. 28
Apr. 9
May 13

Union Steward Level 1
Jan. 30 & 31
Apr. 23 & 24
June 17 & 18

Union Steward Level 2
Mar. 25 & 26

Union Officer Training
Apr. 30 & May 1

OH&S Advocate Level 1
Feb. 11 & 12
May 7 & 8

OH&S Advocate Level 2
Mar. 12 & 13
May 21 & 22

Contract Interpretation
Feb. 6
Apr. 15

Red Deer

Introduction to Your Union
Jan. 28
May 6
June 17

Respect in the Workplace
Mar. 20
Apr. 29

Union Steward Level 1
Feb. 4 & 5
May 21 & 22

Union Steward Level 2
Mar. 11 & 12
June 3 & 4

OH&S Advocate Level 1
Apr. 8 & 9

OH&S Advocate Level 2
Apr. 23 & 24

Union Officer Training
May 14 & 15

Contract Interpretation
June 2

Steward Notes is published by the Alberta Union of Provincial Employees to provide information of technical interest to AUPE Union Stewards, worksite contacts and other members. Topics deal with training for union activists, worksite issues, disputes and arbitrations, health and safety, trends in labour law, bargaining and related material. For more information, contact the editor.

Editor
Mark Wells
m.wells@aupe.org

Writers
Tyler Bedford
t.bedford@aupe.org

Jan Goodwin
j.goodwin@aupe.org

Michael Hughes
m.hughes@aupe.org

Design
Jon Olsen

The goal of Steward Notes is to help today's AUPE union stewards do their jobs effectively. To help us, we encourage readers to submit story ideas that deserve exposure among all AUPE stewards.

Story suggestions for Steward Notes may be submitted for consideration to Communications Staff Writer Tyler Bedford by e-mail at t.bedford@aupe.org or by mail. Please include names and contact information for yourself and potential story sources.

Alberta Union of Provincial Employees
10451 - 170 Street NW
Edmonton, AB T5P 4S7
T: 1-800-232-7284
F: (780) 930-3392
info@aupe.org
www.aupe.org