

STEWARD NOTES

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Employers, disability, and accommodations

Imagine that a member on your worksite has just come out of the hospital after a major car crash. The member survived, but was paralyzed in the accident, and is now a quadriplegic.

Aside from the obvious changes in life that such a dramatic injury brings – from becoming dependent on a wheelchair to relying on others' help with every meal – it also means dramatic changes at work. The fact is the member will not be able to do a number of tasks he or she was capable of before the accident – not without retraining, modified hours and new office equipment. Employers are obligated to provide these work and workplace modifications within certain limits – this is what is referred to as their “duty to accommodate.”

Human rights legislation in Canada provides the grounds to demand that employers accommodate their employees' disabilities (remember that human rights cannot be negotiated away in the collective agreement), but a number of arbitration cases have

set precedents that limit how far an employer has to go. While human rights legislation protects disabled workers from being discriminated against in the workplace, thereby implying an obligation to accommodate workers' disabilities, in practice an employer is only required to do what could be “reasonably” expected of them, up to the point of undue hardship.

Limits on the duty to accommodate

This limitation on the duty to accommodate could for instance limit a fish canning factory's duty to accommodate an employee that develops a severe fish allergy, since there is no practical way

(continued next page)

Employers, disability, and accommodations *continued*

for the employer to eliminate fish from the workplace. Working with fish would be considered a “bona fide occupation requirement” and the burden of trying to accommodate the employee would constitute an “undue hardship” to the employer. But most cases aren’t so cut and dried and require careful step-by-step evaluations.

Past arbitration decisions have set out a number of requirements that employers are expected to meet when trying to

not expected to incur “excessive financial costs” in accommodating an employee. What constitutes an “excessive financial cost” is a matter of argument of course.

Employers are also not expected to expose the employee, other employees, or members of the public to unacceptable risks to their health and safety as a consequence of the accommodation. Accommodations can also be argued against on the grounds that they will anger or frustrate other employees, or if

proper records of the disability and the way the disability limits the member from performing certain tasks to the expected level gives a scientific, factual basis on which to negotiate with the employer for modifications to the workplace, schedule, or job duties.

Another overlooked but important thing that will help an accommodation along is a good-natured attitude. Members are often best served if their disability can be accommodated without the aid



Sam Halabi, an employee of Alberta Tourism Parks & Recreation told the story of his accommodation at AUPE's Labour School in Jasper March 1 - 4, 2009.

accommodate a disabled employee. They must assess the employee’s disability to see how it actually impacts their ability to perform in their actual work situation and consider whether the job can be modified, for instance by reducing the hours of work, modifying the duties or even changing the location or job itself, to accommodate the employee. This may include offering a trial period for the modified position, or even require the employer to relax attendance rules.

However, this same history of arbitration has also set out some protections for employers. Aside from the obvious fish-canning example, employers are generally

the accommodation requires overriding another employee’s seniority, or displacing another employee.

The process of accommodation

Accommodations can be long and drawn-out tasks with plenty of ups and downs for the member, the employer, and the Steward or MSO involved. Patience and perseverance are two key personal requirements for anyone undertaking an accommodation. But there are some things you can do to help an accommodation move forward more quickly.

Likely the most important part of any accommodation request is good medical documentation of the disability. Having

of an arbitrator’s ruling – an adversarial arbitration process could end with the member being awarded an accommodation in a workplace where they no longer feel personally comfortable or welcome. Being friendly but firm can keep an accommodation out of arbitration, where the employee’s fate ultimately rests in the hands of a third party.

Steward Notes

May 2009

FAQ >

FAQ is a regular feature that gives AUPE stewards the opportunity to get advice from their union. Something have you stumped? Send your question to stewardquestions@aupe.org.

Q:

I'm about to send a grievance to my MSO... what should I double-check before I send it in?

A: When filing grievances it is important to not only to file on time but that you fill out the grievance form correctly. If you're thinking about reviewing the grievance before you send it to your MSO, you're already on the right track. Here are three questions you should ask yourself before submitting your grievance to your MSO:

- 1) Have I filled out sections I, II, III completely and accurately? These sections are important to ensure a) the grievance gets to the right designated officer (lists are available at your local AUPE office), b) AUPE has the right contact information and c) the union knows which collective agreement applies to the grievance.

Ask yourself whether you are dealing with an individual, group or a policy grievance and what initial step or level the grievance should be submitted. In most cases, Union Stewards deal with individual grievances. If you are unsure as to what kind of grievance you may be dealing with you should seek assistance from your MSO.

- 2) Have I filled out Section IV (details of the grievance) properly? Double-check whether you have properly framed the grievance by keeping the details of the grievance to the violation in the collective agreement. Use the first person (write "I") when referencing your grievor and include the date the violation occurred whenever possible. Save your argument and further details for the grievance hearing.
- 3) Have I filled out Section V correctly? This includes checking whether you have identified all the articles in the collective agreement that apply to your grievance, and any legislation that has been violated (ie. the Human Rights,

Citizenship and Multiculturalism Act). Also check to see that you have checked off all appropriate boxes in this section and indicated what redress you are seeking.

Grievances must be filed through your local AUPE office. When you have completed your grievance form send it in to your MSO for review. Your MSO will ensure all articles are listed from the collective agreement and check the details of your grievance to make sure nothing is missed. Your local office will then assign a file number to the grievance and send it to the appropriate designated officer. An MSO will take on the responsibility of tracking the timelines for your grievance.

If you feel you might miss your deadline to file the grievance contact your MSO or local AUPE office immediately to seek an extension from the employer. This will either result in the union getting permission to file the grievance after the deadline or providing you with help get your grievance filed before the deadline.

SNAPSHOTS



Stewards worked through a mock grievance hearing at AUPE offices in Calgary on March 20, 2009.

STEWARD PROFILE >



Liberty Pestano

Level 3 Steward, Local 049 Bargaining Committee Member, Provincial Executive Representative, 2009 DOVE Award winner

DOVE Award winner shares tips for mobilizing your worksite

With the provincial budget being so tight, a lot of stewards will be working extra hard to stay on top of what's going on at their workplace. What's the first step you take to get in touch with your members?

I talk to them personally, and I also have my contact person at each unit in my worksite, which is very important. I have a network with a contact person, a steward, the local executive, and the chapter executive. I'm always talking to all of them, plus we have the Employee Management Advisory Committee (EMAC) – we have a rep from every unit and every classification on that committee.

It almost sounds like you have a spy agency set up!

Well in a way it is. It's the only way to keep in touch with your workplace. I can't be everywhere all the time, so it's the only way to know what's happening.

A lot of stewards find it difficult to get their union brothers and sisters interested in participating in the union. How do you build that commitment?

I try to communicate everything I can to them – it's trust. If they have a concern and approach me, I try and help them out and find a solution before we go to management, or try to resolve it with the manager and bring the solution back to the member. A lot of their commitment comes from earned trust. When they can see that you're really working and trying to help them out, I think that's what it is that gets them committed.

EMAC is a really good place to find out what's happening, because you can deal with some things that aren't covered by the collective agreement there, and other things that managers aren't following but are in the collective agreement, and have a

discussion about it. Because I try to have a good relationship with the management that sometimes helps resolve some of the problems brought forward by the members.

You've helped organize some worksites. What lessons did you learn?

When I'm organizing I encourage those that have been interested and active to take the Introduction to Your Union course first and see how they can be involved after that. From there, I say you can take the Steward Level 1 course. I also encourage them to call the Membership Services Officer, and let them call me too.

At my site I do the orientation with the new staff, and I also encourage them to take the Introduction to Your Union course because that is the best way to get the member involved in the union. I always tell them that we need new blood in the organization because we are getting old.

I tell them to check the bulletin board to find out who is on the executive on their worksite, and who the stewards are, and let members know they are there to help them with anything they need to know about the union and the workplace.

I know it might sound crazy too, but I tell my members that they are free to call me at home at any time. I was just talking to one, actually. I just make myself visible at the workplace. I just want to help. When you make somebody happy, it's really rewarding. I don't want people to be mistreated. I just want to help them out.

Another thing that has come up was the role of food in your work...

Yeah (laughs)... whenever we have a meeting, I make sure no one is hungry. I cook and change menus for the meeting and try to be unpredictable. The still want my noodles every time though!



Liberty Pestano accepts the 2009 DOVE Award at the Women's Conference on March 21 in Edmonton.



INTERPRETATION:

reading the collective agreement as a whole

Reading your collective agreement as a whole is key to properly understanding and interpreting it on your worksite. It may seem like an obvious thing to do, but too often as Stewards we take shortcuts. We skip to the most relevant article when dealing with a grievance, and forget about

So what do we mean we say “read the collective agreement as a whole”? Simply that you have to know the full story to talk about any part of it sensibly. We understand this rule automatically when we talk about movies or stories.

movie about a washed up fighter working as a debt collector,” he tells you.

You immediately protest: “What are you talking about? Rocky was an underdog hero and his actions teach us that hard work and perseverance will be rewarded!” You can’t understand your friend’s interpretation of Rocky. It seems like you’re talking about two completely different characters.

Finally, your friend confides that he walked out of the movie before the first 20 minutes were over. His impression of Rocky would have been accurate if the movie had ended when he walked out, but without seeing the whole movie, he was clearly mistaken. The same logic applies to understanding your collective agreement – if you don’t know it from beginning to end, chances are you’ll get something wrong.

The employer’s mistake in this case was to rely on the specific wording of a single article in the collective agreement.

the rest of the agreement. Such shortcuts can have serious consequences: it can cost members pay that they are entitled to or deprive them of other benefits.

Imagine sitting down with a friend and talking about the original Rocky film. Your friend is disgusted by the main character Rocky Balboa. “I can’t believe they made a

Interpretation: reading the collective agreement as a whole *continued*

An AUPE grievance against the Calgary Health Region in 2001 illustrates the point. After introducing a new scheduling system in late 2000, the health region realized that premium pay for work on named holidays wasn't being provided consistently. Some employees working shifts that covered a statutory holiday and a few hours the day before the holiday only received 1.5 times their pay for the hours worked on the actual day of the named holiday. Other employees received 1.5 times their pay for the entire shift, including the few hours worked on the day before the named holiday. When the employer discovered the discrepancy a notice was sent to the union stating that premium pay would only be paid for hours actually worked on a named holiday.

AUPE filed a grievance pointing to an article in the collective agreement that clearly stated the employer's responsibility to pay premium rates for the entire shift

when the majority of hours worked in the shift fell on the named holiday. The employer on the other hand argued that another article in the collective agreement clearly stated that premium pay is only required for hours worked on the holiday itself. An arbitration panel gave a decision in AUPE's favour by reading the collective agreement as a whole, resolving the apparent contradiction in the two articles argued by each side.

In its decision the panel wrote that the article referred to by the employer "is clear and unambiguous in that they only require payment of statutory holiday premium pay for hours worked on the statutory holiday." (Note that if you stopped reading at this finding, you might think the union had lost.) The panel expanded on that, however, to say that the article noted in the union's argument deems "certain hours as being worked on a statutory holiday if the majority of hours on the shift are actually

worked on such holiday," and ruled in the union's favour.

The employer's mistake in this case was to rely on the specific wording of a single article in the collective agreement, without considering the impact the rest of the agreement has on the interpretation of that article. To return to our analogy, the employer was talking about Rocky Balboa in the first 20 minutes of the movie and ignoring the rest of the film.

Reading the collective agreement as a whole is key to understanding each of its parts, particularly when it comes to a member's entitlement to benefits and the level of coverage they receive. Entitlement often changes depending on the employee's classification and you sometimes have to look at a number of places in your collective agreement to know with certainty. Don't take shortcuts or you'll miss the big picture.

SNAPSHOTS



AUPE members work through an exercise at a Respect in the Workplace course on March 20, 2009 at union headquarters

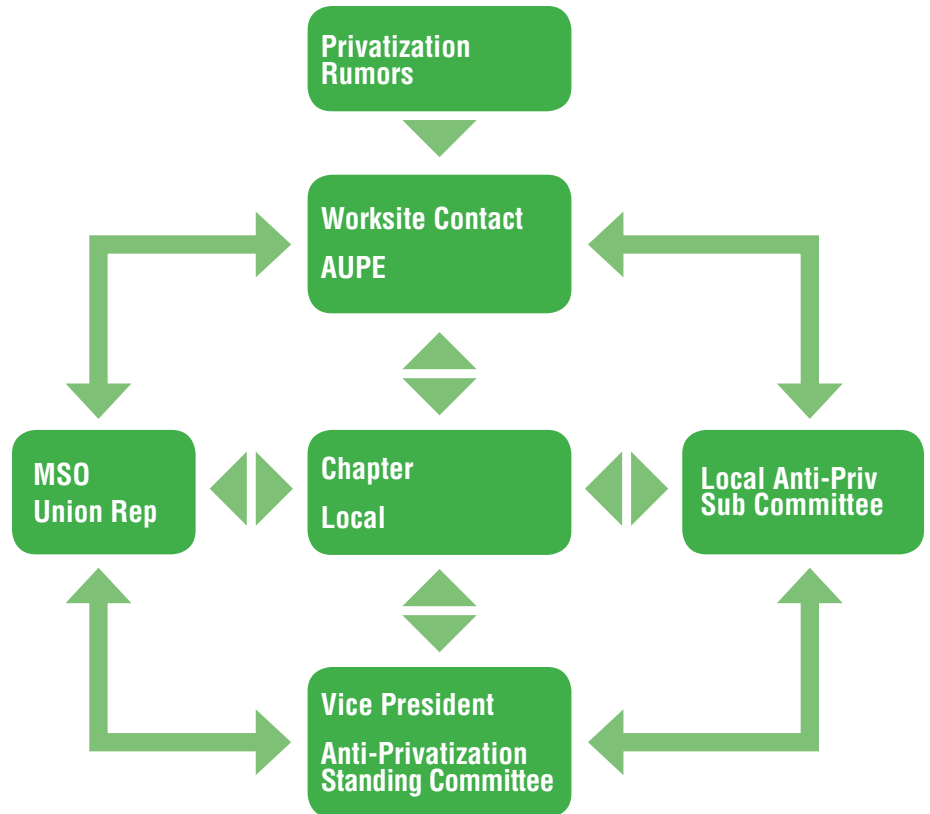
AUPE Anti-Privatization Committee sets out new communications model

AUPE's Anti-Privatization Committee has set up a new communications model to ensure that any rumors or information about the privatization of public services reaches the committee more quickly.

"One of the things we wanted to do was ensure that any piece of information about a pending privatization would reach the committee early enough that we could counter it in coordination with members on the worksite and the Local and Chapter," said committee chair, AUPE Vice President Erez Raz.

The new model creates a web of worksite contacts, MSOs, Union Representatives, Local/Chapter executive members, Local anti-privatization sub-committee members, and members of the AUPE Anti-Privatization Standing Committee.

When any one individual in the web hears a rumor or morsel of information about the privatization of a public service, the information is quickly circulated to everyone else in the web. The system also sets out a responsibility for each person in the web to double check that others in the web have received the information too.



Statistics Canada: 34 per cent of nurses physically assaulted by patients

A Statistics Canada report released April 15 revealed that 34 per cent of nurses providing direct care in hospitals or long-term care facilities had been assaulted in the year before the 2005 study.

The findings were based on 12,200 responses to the 2005 National Survey of the Work and Health of Nurses. The study found that Licensed Practical Nurses were more likely than Registered Nurses to report abuse, and that nurses working evening or night shifts,

or more than 12-hour shifts were more likely to report being abused by patients.

The study also found that reports of abuse varied according to the clinical setting, noting that the percentages reporting physical assault were especially high among nurses working in geriatrics/long-term care (50 per cent), palliative care (47 per cent), psychiatry/mental health (44 per cent), critical care (44 per cent), or the emergency room (42 per cent).

The report said "some of the workplace climate problems that were associated with abuse from patients were relatively common... For example, more than half of nurses perceived that there were not enough nurses on staff to provide quality patient care (56 per cent), or enough to get the work done (52 per cent)."

Steward Notes

May 2009

STEWARDS TRAINING

Upcoming
courses and
training

AUPE is offering the following courses and training seminars being offered from May to the end of the year. Contact your regional office to register or get more information.

Lethbridge - 1-800-232-7284, press 8

Union Steward Level 2	May 26-27, 2009
Convention Procedure	June 5, 2009
Union Officer Training	June 3-4, 2009

Calgary - 1-800-232-7284, press 7

Introduction to Your Union	May 29, 2009
Convention Procedures	June 4, 2009
Union Officer Training	June 18-19, 2009

Red Deer - 1-800-232-7284, press 6

Convention Procedures	June 3, 2009
Union Officer Training	June 16-17, 2009

Camrose - 1-800-232-7284, press 4

No courses scheduled

Edmonton - 1-800-232-7284, press 1

Union Steward Level 1	May 21-22, 2009
Union Officer Training	May 28-29, 2009
Convention Procedures	June 1, 2009
Union Steward Level 1	June 16-17, 2009
Convention Procedures	June 18, 2009
Union Steward Level 2	June 23-24, 2009
Union Officer Training	June 24-25, 2009

Athabasca - 1-800-232-7284, press 5

No courses scheduled

Peace River - 1-800-232-7284, press 2

Union Officer Training	June 3-14, 2009
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Grande Prairie - 1-800-232-7284, press 9

No courses scheduled

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.

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The role of the Union Steward is among the most important in the labour movement. Stewards are the front line of defence for union members in the workplace.

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 Mark Wells by e-mail at m.wells@aupe.org or by mail. Please include names and contact information for yourself and potential story sources.

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