

STEWARD NOTES

Vol. 3 • Issue 1 • March 2010

Handling harassment
in the workplace

pg. 3

Your right to union
representation

pg. 4

Chemical exposure case
an OH & S lesson

pg. 6



Victory for AUPE opens door for arbitration in discrimination cases

A major AUPE victory has opened the door for members employed by the Government of Alberta to take discrimination grievances before an arbitration board.

Over the years the Government of Alberta has continuously rejected AUPE's efforts to include language in the collective agreement recognizing members' right to have grievances based on discrimination heard by an arbitration panel. Instead, the government insisted on language that limited discrimination grievances to Level 2. In a Level 2 grievance, the employer has the final say. After numerous challenges based on the Supreme Court of Canada's 2003 ruling, *Parry Sound (District) Social Services Administration vs. OPSEU*, AUPE has now secured a decision by arbitrator Allen Ponak that supports the union's position that discrimination grievances must be allowed to go to Level 3 and be heard by an arbitration panel.

The arguments

The decision followed a grievance filed by a member, employed in Corrections, who found it difficult to obtain childcare after

management changed the shift schedule and required her to work more nights. The member's grievance was taken to arbitration by AUPE on the basis that the member had suffered discrimination on the basis of family status.

The employer objected, arguing that the grievance was not subject to arbitration, as Article 29.01(c) of the collective agreement clearly states that "a complaint alleging sexual harassment, unjust treatment, discrimination, or alleging unfair working conditions, may be presented as a grievance directly to Level 2. A decision given at Level 2 shall be final and binding on the Parties and all interested persons."

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Arbitration win for AUPE *continued*

The employer argued that to allow the member's grievance to go to Level 3 (arbitration) would effectively modify the collective agreement, which the board is forbidden from doing. In the employer's view, the union and the employer, by virtue of the presence of Article 29.01(c), had agreed to specifically exclude grievances based on discrimination from the collective agreement.

The board summarized AUPE's argument into three key points:

"1) Parry Sound requires collective agreements to be read as if the agreement contained human rights laws and other employment-related statutes; 2) Parry Sound prohibits parties to a collective agreement from contracting out employee rights under human rights laws and employment-related statutes; and 3) Parry Sound expressly states that the mutual intentions of the parties [as stated in a collective agreement] can be overridden if the contract fails to protect employee statutory rights."

Finally, the board noted the union's conclusion that "Parry Sound required the board to take jurisdiction over the current grievance and disregard the contract's clear language barring the arbitration of discrimination grievances."

The decision

The board referred to numerous arguments in the Supreme Court of Canada's 2003

Parry Sound ruling. In that decision the Supreme Court wrote: "Human rights and other employment-related statutes establish a floor beneath which an employer and union cannot contract. As a result the substantive rights and obligations of the parties to a collective agreement cannot be determined solely by reference to the mutual intentions of the contracting parties as expressed in the [collective] agreement ... The statutory rights of employees constitute a bundle of rights to which the parties can add but from which they cannot derogate."

The result, the board wrote, is that the current contract must be interpreted and applied "as if it prohibited employment discrimination on any of the protected grounds in Alberta's Human Rights and Citizenship Act, one of which is family status."

The employer argued that recognizing human rights and other employment-related statutes form the floor of the collective agreements did not give the board the jurisdiction to hear the grievance, since the member had other venues available to have her human rights complaint adjudicated, namely the Alberta Human Rights Commission and the Court of Queen's Bench of Alberta.

The board rejected that argument. Returning to Parry Sound, it stated "the fact that the Employer's decision

at Level 2 of the grievance procedure is deemed 'final and binding'... turns the disposition of a discrimination complaint into a management right that cannot be contractually challenged." Quite simply, the board observed, "Article 29.01(c) does precisely what the Supreme Court says cannot do: it leaves an employee without independent contractual recourse in matters of alleged discriminations."

Citing the collective agreement, the board decided the "Article 29.01(c) restriction on arbitrating discrimination grievances must be overridden as contrary to Parry Sound."

"Parry Sound," it observed, "ruled that anti-discrimination laws are to be implied into collective agreements and that such provisions must also be subject to the arbitration process."

"It is not sufficient under the principles of Parry Sound to have a method of contractual dispute resolution on matters of human rights that constitutes an unappealable decision by management," the board concluded.

The outcome for Stewards

AUPE has always stressed that members should file grievances when they believe that they have been subjected to discrimination at the workplace. Now that the union has secured a precedent decision recognizing members' right to take discrimination grievances to arbitration, it hopes that more members will do so.

SNAPSHOTS



Occupational Health & Safety Advocate Level 1 course in Calgary, March 10 – 11, 2010.

Dealing with workplace harassment and bullying

At some point in their career many members will be unfairly singled out by a manager or coworker with unreasonable workloads, inconsistent application of rules, verbal insults, yelling, or being pressured not to exercise rights in their collective agreement like sick time. In the past, that kind of treatment of workers might have been ignored, but a growing awareness of the consequences of such behaviour is slowly changing workplace attitudes among employees and employers alike.

The issue has also gained the attention of politicians. A private member's bill, "An Act to prevent psychological harassment in the workplace and to amend the Canada Labour Codes" was tabled in the House of Commons in March by NDP MP Brian Masse. While such labour-friendly bills rarely become law, it at least shows that the issue is on politicians' radar.

Workplace bullying isn't a new phenomenon – it was first identified comprehensively in 1976, by psychiatry professor Carroll M. Brodsky in her book *The Harrassed Worker*. While everyone is protected against harassment and discrimination in areas defined by Alberta's Human Rights Citizenship and Multiculturalism Act, the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act, more general types of bullying or harassment are not prohibited in Alberta. Nonetheless, a good steward can help union members work through harassment issues.

The healthy workplace

To help understand harassment, it helps to first consider what a 'healthy' workplace is. A key trait of a healthy workplace is the respectful exchange of ideas and opinions between employees, and between employees and managers. When people communicate in a respectful manner, whether it is verbally or by acting in an inclusive and open manner, many harassment issues can be avoided.

On the flip side is the poisoned workplace. In a poisoned workplace you may see rampant gossip and rumors, individuals being unnecessarily excluded from shared workplace activities, demeaning language, raised voices, direct put-downs or intimidation. All of these actions can be considered to be forms of harassment.

When such poisonous activities become discrimination, as defined by the prohibited grounds under Alberta human rights legislation, stewards should help members file a grievance with their employer.

Human Rights

The Alberta Human Rights Act prohibits discrimination based on the protected grounds of race, colour, ancestry, place of origin, religious beliefs, gender, age, physical disability, mental disability, marital status, family status, source of income and sexual orientation.

Dealing with harassment and bullying

Stewards' first goal in the workplace should be to prevent harassment by setting an example for their fellow members. That means speaking out against behaviour that demeans others or makes them uncomfortable. People making jokes and slurs based on racial, sexual, physical traits or other differences should be interrupted and told that their language is inappropriate. Leading by example will make others in your workplace more comfortable with doing the same.

When you encounter a member that is experiencing harassment, you should initiate a grievance with the employer

immediately. Take all complaints seriously, as it often takes a great deal of courage for members to come forward in the first place. Don't cross-examine the member, but do make sure you have good notes outlining when and where the incident took place, and who was involved. Write everything down: the more detail, the better. Remind the member that when they make a complaint made in good faith, they are protected from any form of retaliation by co-workers or superiors (i.e. dismissal, demotion, unwanted transfer, etc.). Take the grievance to management and follow up later with the member to see if there has been any further abuse.

Stewards must always take extreme caution with harassment grievances. A member who wishes to file a sexual harassment grievance against his or her manager may understandably feel too intimidated or ashamed to meet with the person she or he has accused to discuss the grievance. In other cases, one member may file a grievance because another member has subjected them to harassment. In such situations stewards need to recognize that each member – the accuser and the accused – is entitled to individual union representation.

As always, stewards should seek the assistance of their Membership Services Officer in complicated cases. Stewards should also strive to better equip themselves to handle such cases through further union education courses, such as the Respect in the Workplace course. More information on these courses is available through your regional office.

The right to union representation

Even though unions have existed in Canada for a century, that hasn't stopped employers from challenging unionized employees' right to union representation. In 1992 the issue came up in *Calco Club v. Calgary Co-operative Association Ltd.*, a case that resulted in a Labour Relations Board decision that helped solidify workers' right to union representation and provided a valuable lesson for all union stewards in the province about the important role the union plays in the workplace.

The case

The case began with the dismissal of three employees by the employer, the Calgary Co-operative Association Ltd., following allegations of theft. The union (Calco Club) challenged the dismissal on the grounds that the employees were denied union representation during an interview conducted by the employer's security personnel.

The union argued that the workers had been dismissed contrary to an article in the collective agreement which stated that "an Employee who is a bargaining unit member shall have the right to have the assistance of a union representative for reasons of discipline or dismissal."

In a letter to the union the employer expressed the reasons for denying union representation, stating "it is management's prerogative to interview employees appropriately and in accordance with the Charter of Rights."

In a subsequent letter the employer gave a more technical explanation of its position, stating "there is no contractual right for Calco representation during security investigations. Security acts as a gatherer of information. This information is presented to management. Management may, or may not, proceed with action in these matters. If it does, any meeting with employees, who may be disciplined or discharged because of this information, will be conducted with Calco present... I repeat, security is not involved in matters of discipline or discharge.... When management analyzes the facts, decides to interview the appropriate employee, and if the possible

result could be discipline or discharge, then management will observe Article IX.1 and allow Calco representation."

From the employer's perspective, the collective agreement contained no union right to provide employees representation until the time that management deemed the discipline process had begun. Investigations conducted by security employees, in the employer's opinion, were completely separate from the discipline process. Discipline, the employer argued, did not begin until management decided to proceed with discipline, based on the evidence presented by security.

The union argued that denial of union representation at the investigation meetings conducted by the employer's security

in investigatory interviews of this nature where the employees request representation."

The lesson

In its ruling the board said it "cannot accept the employer's position that these investigatory interviews do not affect the rights of employees. The stated purpose of the interviews is to confront employees with alleged wrongdoing involving store security and to gather information from the employee. Discipline, likely dismissal, is a reasonable anticipated consequence of the interview."

The board explained that "to restrict representation to the meeting imposing formal discipline is to prejudice the rights of the employee to fair process. It may also prejudice the opportunity of fair settlement

Stewards should always ask the employer if a meeting with a member could lead to discipline, and if so, ensure that member has a union representative at the meeting.

personnel interfered with the employee's right to union representation, which is spelled out in Alberta's Labour Relations Code. Section 146(1) of the Code reads:

"No employer or employer's organization and no person acting on behalf of an employer or employer's organization shall: participate or interfere with the representation of employees by a trade union."

Because investigations conducted by security personnel were conducted on behalf of the employer, and because any admissions or statements made by employees in those meetings could lead to discipline or even dismissal, the union argued that the employees had the right to union representation at those meetings.

The board agreed with the union, and ordered the Calgary Co-operative Association Ltd. to "cease and desist in refusing union representation to employees

of the matter in the grievance process."

However, the board cautioned that it was not suggesting "that an employee can request union representation for every meeting or discussion with the employer... The issue must affect many employees or the employee must reasonably believe discipline will follow."

On the worksite, the board's decision means that stewards should always ask the employer if a meeting with a member could lead to discipline, and if so, ensure that member has a union representative at the meeting, whether it is a steward or AUPE Membership Services Officer. Alternatively, if the member reasonably believes a meeting could lead to discipline, he or she should ask that a steward or MSO be present during the meeting.



AUPE's Union Rep for WCB issues Randy Corbett (left) helped member Anna Arendt (right) in her fight for compensation.

Anna's story: a clear lesson in workplace health and safety

by Randy Corbett,
Union Representative

Alberta's occupational health and safety legislation provides employees with a right to know about hazards on their worksite that could lead to an injury. Unfortunately, that right is only as strong as any employee's knowledge of the right, and his or her willingness to assert the right, as the case of Anna Arendt demonstrates.

Anna was a new immigrant to Canada employed as a laboratory technician in a major hospital setting. It was her responsibility to distil Phenol in the lab for sale to a third party, or for use in the lab for research purposes.

A decision was made by the employer to order Phenol crystals in 50 kg drums. Anna was assigned the task of chipping these crystals from the drum into a two-litre beaker, which she did on a regular basis for 10 to 12 years. No proper protective gear was provided to Anna during this time, which left her exposed to levels of Phenol far above the five parts per million maximum established by the Government of Alberta OH&S guidelines. All Anna was provided with was gloves and a cloth lab coat. At no time did

the employer provide her with the proper protective equipment identified on the Material Safety Data Sheet for Phenol.

As a consequence of these high levels of exposure Anna began to experience symptoms from the toxic effects of this chemical, including chronic fatigue, headaches, burns, photosensitivity, respiratory symptoms, permanent facial rash, mouth ulcers and host of other problems.

Anna is now unable to tolerate any exposure to Phenol and must avoid similar chemicals as they also cause adverse reactions. It is unlikely that Anna will be able to return to employment in a lab or other health care setting due to these permanent restrictions. Her daily activities remain significantly restricted from chronic fatigue arising from the exposure.

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What is Phenol?

Phenol is a chemical substance used in a wide range for industrial processes. In the health care sector it has been used to sterilize instruments and in the laboratory to alter DNA. We regularly encounter Phenol-containing compounds in our daily lives as it is found in cosmetics, cleaning solvents, paint, exhaust fumes, furniture and many other common consumer items. It is a toxic chemical that can be absorbed through the skin, ingested, or inhaled. It is also highly corrosive and has an anesthetic property that destroys the sensation of pain. Phenol will cause severe burns and attacks the central nervous system, as well as the liver and kidneys. Acute exposure often leads to death.

Anna's story *continued*

How this serious injury could have been avoided - what stewards should know

Under Alberta OH&S legislation, employees have the right to know about hazardous substances or situations that may put them at risk of injury. It is an employer's responsibility to conduct a hazard assessment of each work site and to involve workers in the development of the hazard assessment document (see OH&S Code Part 2).

It is also the employer's responsibility to provide adequate training to employees in order to allow them to perform their duties safely – this includes the provision of proper personal protective gear.

According to the OH&S Code Part 4, it is also the employer's responsibility to limit exposure to harmful substances to the lowest levels possible and, when a controlled product is used at the worksite, the employer is required to follow the requirements listed in the OH&S Code Part 29, dealing with the Workplace Hazardous Materials Information System. This part of the Code requires employers to have a Materials Safety Data Sheet (MSDS) from the supplier for each controlled product. The MSDS will list the hazards of the product as well as first aid measures and proper handling procedures.

If Anna had been provided the information she was entitled to and that the employer

was obligated to provide, her injury would likely have never occurred. Every employee has these rights under the law and should make use of them to protect themselves and others. Stewards can help by reminding employers of their obligations, and educating their fellow members on the work site of their rights.

The ultimate right under the OH&S Act Section 35(1) is the right to refuse work that will place yourself or others in imminent danger of being killed or injured. The procedures to be followed when making this allegation must be followed carefully and according to the legislation, but Stewards and members should know that they cannot be disciplined for raising a valid concern.

Labour School 2010 brings fresh faces, inspires action



Nearly half of the 240 union activists at AUPE's 2010 Labour School, held from Feb. 28 to Mar. 4 in Jasper, were first-time participants. That's good news for the union.

"All these new faces mean that AUPE is getting stronger and that we're reaching more and more people all the time," said Union Rep Greg Maruca, who was the lead organizer for the 2010 school.

The intensive week of education is already paying dividends as members from the Organizing course have helped certify a health care worksite in Mannville, while graduates of the Direct Action course have pitched in on information pickets around the province.

AUPE President Guy Smith praised all the members who took part at this year's Labour School: "Committed and well-trained members are vital to the strength of AUPE in its efforts to mobilize the membership. They help all members of the union feel confident and proud of the work they do providing services to the people of Alberta."

Visit <http://aupephoto.smugmug.com> to see more Labour School photos.



Take Action! AUPE shows solidarity on Blue Thursdays

AUPE's Provincial Executive is asking all members of our union to wear something blue to work every Thursday to show their employers and the government that they're sick and tired of cutbacks.

"The cuts from the 90s still haven't healed," said AUPE President Guy Smith. "Blue Thursdays will let employers know that we're united in our view the new round of cuts has already gone too far and too deep."

Smith said that wearing blue on Thursdays is a way for AUPE members to show solidarity in their opposition to the government's unhealthy focus on balancing the budget by cutting programs and services.

"We're asking members to wear blue to work on Thursdays until their employers and the government gets the message that we can't bear any more cuts."



Having stopped the government's plan to shut down Alberta Hospital Edmonton, AUPE has now launched a new campaign to lobby for the redevelopment of the world-class psychiatric facility, and push the government to keep approximately 100 geriatric treatment beds on site.

"By raising their voices and speaking out AUPE members made a difference and saved badly needed psychiatric hospital beds at Alberta Hospital Edmonton," said AUPE President Guy Smith. "Unfortunately, without the redevelopment of AHE, we will inevitably have to fight to save these beds again."

Smith is also supporting members in an effort to halt the movement of geriatric psychiatry beds from AHE to Villa Caritas in West Edmonton.

"The government plans to move more

than 100 geriatric psychiatry patients into beds that were built to serve long-term care patients. That plan would reduce the availability of general long-term care beds for seniors and fragment the core of mental health professionals at Alberta Hospital Edmonton," Smith said.

Members are encouraged to visit www.savealbertahospital.com and use the updated online letter tool to send a new message of protest to their MLAs. A new research report on AHE is also available for download at the Website.



AUPE continues to support members' effort to stop the privatization and contracting out of security at Alberta Health Services facilities in Central and Southern Alberta.

The union has developed an online letter tool to help members and other concerned Albertans contact their MLA about the issue, which can be accessed via the Save Our Services icon on the right-hand side of the AUPE home page, and is providing ongoing support for meetings and pickets on the issue around the province.

AUPE President Guy Smith attended an information picket to protest the cuts

outside the Foothills Medical Centre in Calgary on Feb. 18, while Vice President Jason Heistad held a meeting on the issue in Ponoka on Feb. 24. The union has also run newspaper advertisements warning the communities affected and asking Albertans to contact their MLA.

As many as 100 security positions at health facilities in Calgary and small communities across the province are at risk due to the cutbacks.

Local 003 members oppose dangerous cuts in Corrections
AUPE Local 003 members from across the Edmonton region held an information picket on Mar. 16 to protest cuts at the Edmonton Remand Centre and other provincial corrections centres.
The Local 003 members, who are employed by the Solicitor General and

Public Security department, warn that the abolishment of a number of key positions following the hiring freeze in 2009 will endanger the safety of members, the public and the inmate population.

"We are over capacity and under-staffed at the Edmonton Remand Centre. Every day safety at the ERC, Edmonton Young Offenders Centre and other provincial

institutions is decreasing as our members try their best to cover off positions that have been eliminated because of budget concerns," said AUPE Local 003 Chair Cec Cardinal.

Cardinal also expressed concerns about cutbacks affecting the Sheriffs providing security services at Provincial Courts.

Steward Notes

March 2010

STEWARD TRAINING



Upcoming courses and training

For more information or to register in a course, please contact your regional office.

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

Introduction to Your Union

May 26

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

Union Steward Level 1

April 19 – 20

OH&S Advocate Level 2

April 29 – 30

Introduction to Your Union

May 13

Union Officer Training

May 31 – June 1

Union Steward Level 1

June 3 – 4

Convention Procedures

June 9

Union Steward Level 2

June 23 – 24

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

Introduction to Your Union

April 27

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

Introduction to Your Union

April 7

OH&S Level 2

April 13 – 14

Union Steward Level 1

April 21 – 22

Union Steward Level 2

April 29 – 30

Introduction to Your Union

May 4

Contract Interpretation

May 5

Mobilizing

May 12

Union Steward Level 1

May 18 – 19

OH&S Advocate Level 1

May 27 – 28

Convention Procedures

June 4

Introduction to Your Union

June 8

Convention Procedures

June 9

Union Officer Training

June 15 – 16

Respect in the Workplace

June 18

Union Steward Level 2

June 22 – 23

OH&S Advocate Level 2

June 24 – 25

Grande Prairie - 1-800-232-7284, press 9

Union Steward Level 2

April 8 – 9

OH&S Advocate Level 2

May 4 – 5

Union Officer Training

May 27 – 28

Mobilizing

June 16

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

OH&S Advocate Level 2

April 20 – 21

Union Steward Level 1

May 18 – 19

Mobilizing

June 9

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

Introduction to Your Union

June 2

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

Contract Interpretation

May 6

OH&S Advocate Level 2

May 19 – 20

Mobilizing

May 26

Convention Procedures

June 7

Union Officer Training

June 9 – 10

Union Steward Level 2

June 16 – 17

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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