

STEWARD NOTES

Vol. 1 • Issue 1 • July 2008

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Understanding your collective agreement

One common complaint members make about unions is that they don't represent them when they feel they need the most support – during a grievance. AUPE Union Representative Sheila Temple says this feeling is well known at the Alberta Labour Relations Board: “the biggest number of phone calls they get is complaints from members that their union isn't fairly representing them.”

As the face of the union on the worksite, it's a complaint that Stewards need to be prepared for. The volume of these complaints doesn't mean they are fair or accurate. In fact, Temple notes, almost all of them are dismissed immediately. The problem is that with their complaint dismissed, the member remains dissatisfied and the root problem is unsolved. Temple believes an improved understanding of how collective agreements work, and what kind of powers they give unions and their members could improve the situation.

When Stewards are empowered with a basic but essential understanding of what a collective agreement is and how it works, workplace solidarity can be enhanced. Stewards that are clear and up front about what is likely to be a successful grievance and how far it can be taken under the collective agreement don't

raise members' hopes to unrealistic levels and can help prevent disappointment or distrust in their union.

The building blocks

There are some basic building blocks you can expect in every agreement you work with. For instance, in Alberta every collective agreement:

- 1) is in writing
- 2) is a legally binding contract
- 3) is between the union and the employer
- 4) defines terms and conditions of employment
- 5) includes a dispute resolution process and grievance procedure
- 6) cannot be altered except with the mutual consent of the union and employer

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Understanding the collective agreement *continued*

All of these foundational 'building blocks' apply in the workplace and define members' and employers' obligations.

The fact that every collective agreement is in writing means that the terms of conditions of employment must be in writing, and that members shouldn't assume that anything that is not in writing is a binding term or condition of employment. On the flip side this also means the employer is technically entitled to make any policy or take any action that suits so long as it doesn't violate the collective agreement or any other law, for instance, human rights legislation. (This is something to keep in mind during bargaining!)

Some members may be upset that they can't expect to successfully grieve everything they perceive to be unfair – but it's your job to consult your AUPE Membership Services Officer (MSO) about the grievance and share their opinion honestly with the member throughout the process.

That doesn't mean that a perceived condition of employment that isn't in the collective agreement shouldn't be discussed. On the contrary, challenging an employer policy that isn't in the collective agreement could just

require a more informal approach with the employer. On the other hand the right issue could even turn into a court battle!

On the positive side, these basic parts of the collective agreement also give the union clear and legal grounds to challenge the employer whenever the conditions of employment spelled out in the contract are violated.

Ultimately, this all means that knowing the terms and conditions of employment in the collective agreement isn't an option for Stewards. Knowing the agreement inside and out means that you don't waste your time on dead end issues, and that you spend more time working on grievances and labour relations work that can serve the most members.

It's in the details

The rule of thumb for understanding how your particular collective agreement works is "never assume," Temple says.

"Members often think that anything can be grieved successfully. If the collective agreement doesn't cover an issue, and other provincial or federal laws don't cover it, the employer can technically do whatever they want. Never assume anything," she explains.

Stewards however must also recognize that the decision to file a grievance is always up to the member.

Just as knowing the difference between the terms of employment and employer policy can help determine the best strategy for a grievance, so too can knowing the difference between a casual and a full-time employee. In some cases, not every employee has access to the same grievance steps in a collective agreement. Stewards should know how different employees are classified, and how far they can take a specific grievance within their classification.

"If you're advising other union members about terms and conditions – don't automatically assume that the process for a full-time and part-time employee is the same. Even experienced people can make mistakes. Always read your collective agreement and make sure you're right," Temple says.

SIDEBAR Studying Pays

A strong knowledge of the collective agreement is essential to a Steward's work. Cramming for the big test doesn't work in school, and it won't work on the jobsite either. Becoming an expert on your collective agreement won't happen overnight, but the following tips can help you get an "A" in labour relations a lot sooner:

- consult your collective agreement (CA) often
- keep a copy at work
- don't assume, never speculate – look it up in the CA
- start looking in the table of contents
- try to remember where certain provisions are located (what section, what article?)
- don't substitute words – use the terminology in the CA
- read complete articles when you consult the CA
- set a schedule to read entire sections of the CA
- when your CA gets revised, review every change

FAQ >

FAQ is a new recurring 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:

What does AUPE's Disputes and Arbitrations Section do?

A: Let's start with what the Disputes and Arbitrations Section doesn't do. They don't do grievance hearings. These hearings are the realm of the Membership Services Officers and involve grievors, union stewards and employers. The various levels of hearings are set by the collective agreement and allow for candid, off-the-record discussions and settlement negotiations. Everything said at a grievance hearing remains confidential to encourage open discussion – this is not the case in arbitration.

The Union Representatives in Disputes and Arbitrations (commonly referred to as "D & A") come into the picture when grievances have gone through the grievance hearings to arbitration. Arbitration is similar to court

in that there is a judge-like figure called an arbitrator, whose powers are specifically determined by the collective agreement, and each side has legal counsel. In AUPE, counsel for the grievor or grievors consists of Union Representatives (or Union Reps) from D & A. Much as in a court setting, at an arbitration hearing evidence is produced, witnesses are questioned under oath and a binding decision is written by the arbitrator. Unlike grievance hearings, these written decisions become public documents.

But not all grievances go to arbitration. Many are settled. Some are withdrawn by the grievors. And some go to the union's Grievance Review Board ("the GRB"). The grievor and the members of the GRB, composed of three of the union's vice-presidents, each get a copy of a brief, called a GRB Summary that is written by D & A staff, that sets out the facts, the wording of the collective agreement and any relevant past decisions. The grievor may attend the GRB hearing in person, by phone or submit

a written response; this is another chance for the grievor to give their perspective on the grievance and to produce any further evidence. Based on the summary and any final input by the grievor, the Board decides to withdraw the grievance or to send it on to arbitration.

Since most grievances starts with a Steward, the quality of their work is very important to the work done by D & A. Notes from a grievance interview are essential, and should be dated – including the year, month, and date. Records can pile up during a grievance, but it's important for Stewards to keep all of them. Something that seems irrelevant today could become a key detail for D & A later on. The early stages of a grievance may be informal, but that doesn't mean your records should be incomplete.

For full details of the Grievance Review Board see AUPE Policy 1-3.1.

SNAPSHOTS



AUPE members work on exercises as part of the Introduction to Your Union course held at Edmonton Headquarters in June. The introductory course is a prerequisite for all other courses offered by AUPE.

STEWARD PROFILE



Sharon Urbina

Administrative Support Clerk and Union Steward
Local 047/018 Cross Cancer Institute

Level III Steward, Advanced Bargaining, Advanced Steward, and Union Counselor

Best advice: “Use the resources they have in their education, take courses, get involved, attend meetings and have someone as a mentor that you can shadow and learn from.”

When did you become a steward?
1992.

Why did you become a steward?

I wanted to get more involved, I wanted to know my collective agreement and I wanted to know about the people behind the cameras and how they did their work in bargaining. I started attending some union functions that got me interested, and my co-workers were saying, “you know, Sharon, you should really become a steward, you’d be really good.” So I decided, okay I’ll give it a try, and that’s how it started.

Your co-workers recommended you? You must maintain good relationships with everyone on your jobsite.

Yes I do. It’s very important that you make yourself known as a steward to your co-workers and to management. I think that’s where you build a foundation of respect and good relations with everyone.

That includes management?

Yes, it’s very important, very important. Respect goes both ways. The way I approach things and handle situations is to communicate well. I think that’s very important. You don’t want to just jump right in and file a grievance or look for problems. We have to approach management sensitively, express our concerns, and try and solve problems before they escalate. By doing that, knowing who the managers are, and speaking one on one, you can solve a lot of issues that may arise.

Can you describe a problem solved outside of the grievance procedure?

There a lot of worksite issues with regards to occupational health and safety, with regard to the Labour Code, with regard to interpretation of the collective agreement. There are a lot of issues that stem from that [informal approach]. I deal with a wide variety of issue directly with the employer as well as members.

What is the most important piece of advice you would offer a new steward?

I would say use the resources the union has in their education department, take courses,

get involved, attend meetings, and have someone as a mentor that you can shadow and learn from. I have had some great mentors, and don’t think I would be as far as I am if it wasn’t for some individuals like Susan Maruca and Kathie Milne. I respect them immensely and have learned so much.

As a steward if you set a good example, and are sincere, and have the compassion to help people, then that’s what will get more stewards involved.

When I meet with someone who has an issue, I listen really well to their side, then I approach management and I speak with them about it and try and resolve the issue. Just about 100 per cent of the time both parties are happy with the resolution.

Is that a lot of your work, acting in a support role and helping those who otherwise might not be comfortable making their issue known to management?

Absolutely. Sometimes people just don’t know their rights and need a friendly hand to guide them and say “you know what, yes you made a mistake and this is how we can fix it” or “this is what you need to know.” And vice-versa. Sometimes I approach management and let them know when things aren’t right and we try to come to a compromise before it comes to the next step in the grievance.

I feel I have very good relationship with management, so maybe I approach things differently. But I’m very successful and that makes everyone happy.

Stewards profiled in each issue of Steward Notes are nominated to the editors by their peers. If you know a Steward that deserves recognition for their work, please e-mail m.wells@aupe.org with the name, contact information, and a brief description of your nominee’s accomplishments.

SNAPSHOTS



New AUPE Stewards brainstorm during a Union Steward Level 1 course held at Edmonton headquarters in March.

The KVP case:

How one mechanic's grievance clarified Management Rights



When you're caught up in the details of your last two contracts and sorting through the latest arbitration rulings it's easy to take for granted the historical cases that laid the foundation for contemporary labour relations. One such case is *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co., Ltd. (1965)*, better known simply as "KVP", which for 40 years has been one of the most referenced cases setting out the limits of Management Rights in Canada.

The background

Raoul Veronneau arrived at his camp job 104 miles west of Sudbury ready for work as always. It was June 24, 1964 and the mechanical supervisor for his employer, KVP Co. Ltd. was happy with his work. Veronneau was recognized as an experienced mechanic and a reliable employee – and both were in short supply.

Veronneau's only worries were financial. His wages had already been garnisheed twice for medical bills since December, and in October the company posted a bulletin saying anyone who was garnisheed more than once would be fired. Veronneau couldn't read, but his co-workers had told him about the policy, and he had even been called to see the camp superintendent, who warned him another garnishee would result in dismissal. He had been lucky so far – his supervisor had valued his work so highly that his second pay garnishee was hidden from senior management.

June 24 turned out to be a bad day for Veronneau. Upon arriving at the camp, he was called to see his mechanical supervisor, who informed him he was being fired for a third garnishee that had come to the attention of higher management.

A silver lining in the grey clouds only appeared for Veronneau when his union – Lumber and Sawmill Workers' Local 2537 – took up his cause. The union quickly launched a grievance against the

dismissal, which was soon brought before an arbitration panel. Two years after the dismissal, the panel rendered a decision on May 30, 1965, which not only reinstated Veronneau's job, delivered him back pay, and restored his seniority – it also made Canadian labour history.

The grievance

At the heart of the grievance was the extent of the employer's right to make rules outside of the collective agreement, in this case, a rule about garnishees of wages, and then

KVP is one of the most referenced cases on Management Rights in Canada.

harshly discipline a long-standing employee for contravening the rule. Taken at face value, the union's case looked weak. As the arbitration panel noted in the decision:

"...the rule we are concerned with is clear and not in any sense ambiguous, and was brought to the attention of the grievor and all employees and the union itself almost six weeks before the rule became effective.

Also the rule itself was a specific notification to all employees that any employee who breached the rule would be discharged.

There is no suggestion by the union that the company has discriminated against

the grievor in that it failed to apply the rule consistently since it was introduced...

The only grounds for attack upon the rule open to the union would appear to be its allegation that the rule is unreasonable, is not consistent with the collective agreement, and is invalid."

The case was made more difficult because the collective agreement lacked a Management Rights Clause. Common to almost every collective agreement, the Management Rights Clauses specifically reserve the employer's right to promote, transfer, demote and lay-off employees, and to discipline or discharge employees for cause, subject to all the other terms of the collective agreement.

Without having such a clause to rely on the panel surveyed a number of cases to find a common set of principles that could be used to set out the criteria for a unilaterally imposed rule to withstand a union challenge.

The panel wrote that, for a unilaterally imposed company rule that has not been subsequently agreed upon by the union to stand:

1. It must not be inconsistent with the collective agreement.
2. It must not be unreasonable if it leads to discipline.
3. It must be clear and unequivocal.
4. It must be brought to the attention of the employee affected before the company could act on it.
5. The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge.
6. Such rule should have been consistently enforced by the company from the time it was introduced.

These six points live on and continue to be widely referenced in labour arbitration today.

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A lesson in Management Rights

Each of the six points in the KVP decision can provide the Union Steward with some guidelines concerning managements right to impose rules leading to discipline that the union hasn't agreed to. However that doesn't mean they should be considered "trump cards" in a grievance meeting with the employer, or that every point can or should be argued every time.

In the case of our mechanic Veronneau, he had been lucky that he had worked for the company for eight years and was valued as an employee. Because of his "unblemished record" and experience, his supervisor bent the rules and ignored the second garnishee in order to keep him on the job. This led the arbitration to observe the company's rule, which required not only dismissal, but also the total loss of all seniority, "was too severe and that company supervisors were conscious of this fact." Furthermore, the loss of seniority required by the rule was in direct conflict with the collective agreement.

Even the simplest point in the KVP decision, that a unilateral employer's rule must not be inconsistent with the collective agreement, might not have helped Veronneau if the union hadn't immediately challenged his dismissal. As the arbitration board put it: rules applied consistently over a period of time without being challenged by the union gain a sort of "de facto recognition" by the union. All these points and more factored into the unions' arbitration win.

Stewards have to keep in mind that for every point outlined in KVP, employers have developed numerous counterpoints over time, and every point has to be argued in the context of worksite realities and the best strategy for resolving the grievance.

Also, Stewards need to be aware of the limited scope of KVP. While the decision says employer rules that aren't agreed to by the union cannot be "unreasonable" if they lead to discipline, this doesn't mean that every company rule can be challenged on the basis of KVP. Similarly, this limited scope doesn't mean that there isn't good reason to challenge or object to employer rules where KVP doesn't apply.

Labour relations is a balancing act where the goal is to achieve the best outcome for the member and the union. KVP provides Stewards with handy tools to use in a grievance but as with any tools, using them properly requires experience, and using them improperly can cause more harm than good. There are always extenuating circumstances to consider – when in doubt seek the guidance of more experienced peers in your union.

SIDEBAR

Management's discretion and "reasonableness" in Alberta

In Alberta a general requirement of "reasonableness" only exists in collective agreements that explicitly state that the employer's action is governed by "reasonableness." Otherwise, when it comes to the exercise of discretion, the test is whether a managerial decision conflicts with the collective agreement.

Take a simple example where the collective agreement requires a certain number of weeks of holiday based on years of service. In this case the employer has discretion to create whatever holiday schedule they like, so long as the number of weeks assigned to the employee doesn't go below the number of weeks set out in the collective agreement.

People often mistakenly assume that the well-known KVP decision prohibits the employer from ever making an unreasonable rule. This is not true.

In the case of Edmonton Ambulance Authority and Edmonton Ambulance Authority Employees Association [1987], the arbitration board made a distinction between a unilaterally imposed rule that lead to discipline and a decision made by management regarding the operation of the business.

The arbitrator wrote, "the test to which we are entitled to subject the... [employer] policy is whether it conflicts with the collective agreement."

Because there was no explicit requirement for reasonableness in the collective agreement, the arbitrator decided: "We have no jurisdiction to subject the policy to a 'reasonableness test.' To do so would amend or alter the collective agreement we are prohibited from so doing."

The problem with the union challenge was that it asked the arbitrator to subject the employer's policy to a test of reasonableness. As the decision went on to explain, the rules about reasonableness established by KVP only apply when the employer's unilateral rule actually results in discipline.

As explained in the decision, "the policy will become subject to a test of reasonableness if and when disciplinary action is taken against an employee. It is then that the employer must establish 'just cause' and it is then that the 'reasonableness' of the policy in the context of disciplinary action will be considered."

LABOUR RELATIONS BRIEFS

Court of Appeal rules Arbitration Board overstepped authority

Alberta v. Alberta Union of Provincial Employees, 2008

A loss for AUPE at the Alberta Court of Appeal July 7 provided a valuable lesson about the limits of arbitration boards' powers and underscored the power of the Collective Agreement.

AUPE originally won a decision from an Arbitration Board, which said that because the Employer had dismissed a probationary employee in "bad faith" the Board was allowed to take jurisdiction and rule on a grievance that they otherwise would not be permitted to hear.

The Board's decision relied largely on Ontario cases that established the power of arbitration Boards in that province to take "limited jurisdiction" in reviewing an Employer's decision to dismiss a probationary Employee – even if the Collective Agreement forbids them from doing so – if the decision is "made in bad faith."

A judicial review however, found that the Board had incorrectly implied a provision into the Collective Agreement requiring the Employer not to act in bad faith, and quashed the Board's remedy.

The Court of Appeal decision disagreed further with the Board, stating the arbitrators had "altered, modified or amended the Collective Agreement by substituting arbitration for the dispute resolution method specifically provided in the agreement" and that this action violated Sub-Clause 29.05(b) of the Agreement, which prohibits Arbitration Boards from amending the Agreement, and Sub-Clause 29.01(d), which states that the dismissal of a probationary Employee "shall not be a subject of arbitration at Level 3."

The Board had reasoned that the preamble of the Collective Agreement, which states "a harmonious relationship between the Employees and Employer" as its goal, allowed the Board to override specific clauses in the Collective Agreement. The Appeal Court ruling chastised the Board for this interpretation, noting that such an interpretation would "create great uncertainty about the meaning of the agreement" and potentially be "used to override virtually every clause the agreement contains."

The case speaks to how the powers of arbitration boards in Alberta are limited

by the terms of collective agreement. Stewards should also take note of the judges' statement that "there is nothing inherently unfair or unreasonable" about the Employer having the discretion to fire probationary employees without cause.

This opinion is supported by the language of the Collective Agreement discussed above, but other collective agreements give probationary employees more rights than that. When faced with the dismissal of a probationary employee, Stewards should refer to the collective agreement to be sure about the avenues available to them.

And there are other avenues for Stewards to help probationary employees challenge a dismissal. If the employer has broken a law or committed a human rights violation in dismissing an employee (ie. firing them because of race or gender), the collective agreement does not give away the employees' right to challenge the dismissal.

SNAPSHOTS



Membership Services Officer Judy Mayer (top right) leads AUPE stewards in role playing a grievance hearing with the employer during a Union Steward Level 2 course held at Edmonton Headquarters, May 6, 2008.

Steward Notes

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STEWARDS TRAINING Upcoming courses and training

AUPE is offering the following courses and training seminars throughout 2008. Contact your regional office to register or get more information.

Lethbridge

October 7, 2008	Introduction to your Union
October 28-29, 2008	Union Steward Course Level 1
November 25-26, 2008	Union Steward Course Level 2

Calgary

September 25, 2008	Introduction to your Union
November 6-7, 2008	Union Steward Course Level 1
November 20-21, 2008	Union Steward Course Level 2

Red Deer

September 26, 2008	Introduction to your Union
September 30-October 1, 2008	Union Steward Course Level 1
October 10, 2008	Mobilizing
November 6-7, 2008	Union Steward Course Level 2
December 5, 2008	Contract Interpretation

Camrose

September 26, 2008	Introduction to your Union
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Edmonton

September 25, 2008	Introduction to your Union
October 2-3, 2008	Union Steward Course Level 1
November 13, 2008	Introduction to your Union
November 13-14, 2008	Union Steward Course Level 2
November 17-18, 2008	Union Steward Course Level 1
November 27-28, 2008	Union Officer training

Athabasca

September 24, 2008 (Elk Point)	Introduction to your Union
November 19, 2008 (Cold Lake)	Introduction to your Union

Peace River/Grande Prairie

October 2, 2008	Introduction to your Union
November 5, 2008	Contract Interpretation
November 14, 2008	Mobilizing

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.

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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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