

STEWARD NOTES

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AUPE recognizes workplace activist for accommodating injured members

Roy Warnock of AUPE Local 071/013 received the Rolyn Sumlak Award at the union's 32nd Annual Convention for his tireless efforts overseeing work accommodations for injured and ill AUPE members at St. Joseph's High School in Edmonton.

Warnock is the Head Custodian at St. Joseph's High School, AUPE's largest secondary school worksite. The award, which recognizes union members who strive for excellence in workplace safety, is named in remembrance of Rolyn Sumlak, a Local 012 member employed by the Department of Agriculture, who was killed in a workplace accident Oct. 9, 1990, when his auger boom struck a power line.

Colleagues who nominated Warnock for the award this year praised his efforts to ensure that injured workers are able to resume work with duties they can perform safely.

“[Roy's] day is spent advocating for a safe, meaningful workday for six to eight accommodations at any one time, yet keeping his entire crew focused and at minimal risk or no risk of any further injuries,” Mark Weleschuk, Local 071/013 chair told convention-goers at the award presentation ceremony.

“He instills health and safety values in our new custodians that they will take into the various buildings of the school district and into their future lives and employment,” he added.

(continued next page)

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AUPE recognizes workplace activist *continued*

Warnock learned the value of those workplace accommodations first-hand four years ago, when he took on too much work too soon after three major surgeries. Within two months he had suffered three hernias and was off work again.

The experience left him determined to make sure no fellow AUPE member would suffer the same way he did. With the assistance of a school district nurse, he set up a program to ease workers back into full-duty work safely.

“I get people sent here, the nurse sends me the info on their [physical] restrictions, and I set them up according to their qualifications. Once we figure out the restrictions and what they can do, we start them out with work they can do according to the doctor’s recommendations,” Warnock explained.

The program is popular with fellow union members who are often intimidated by typical WCB programs and frustrated at the reduced pay while they heal.

Rolyn Sumlak Award Recipients

Dennis Mikalson 1992
Local 012

Doug Moeckl 1992
Local 011

Ann Hamilton 1993
Local 009

Stanley Tomlinson 1993
Local 003

Tony Banack 1997
Local 003

Nola Blanchard 1997
Local 001

Susan Sawchuk 1997
Local 057

Debbie Simmons 1999
Local 009

Leane Lagasse 2000
Local 001

Mike Rennich 2001
Local 003

Michael Kennedy 2002
Local 054

Wesley Rusnell 2003
Local 009

Len Pederson 2004
Local 002

Tracey Courtepatte 2005
Local 049

Marlene Belich 2006
Local 002

Shirley Doerks 2007
Local 001

Coleen Young 2007
Local 047

Roy Warnock 2008
Local 071



Roy Warnock (centre right) received the Rolyn Sumlak Award at AUPE’s 32nd Annual Convention, October 25, 2008.

“It was from me being hurt when I came back, I said, ‘we can’t have this.’ I figured out a working model at home, then approached the school board nurse who thought it was a wonderful idea. Working together, we took it to the board,” Warnock recalled.

“When we showed them the board’s WCB premiums would go down, because they pay all this extra for people on WCB they decided to try it out,” he said.

After six months, the first group of employees ‘graduated’ from the accommodation program and the board made it a permanent program. Approximately 30 members have been through the program since it was introduced three years ago.

When you’re on WCB you don’t receive your full wage. When they get sent here they get paid their full wage and they get to work with people that they know, and they’re not as scared... They’re working with union brothers and sisters, and friends, and everyone knows what their restrictions are and is working to protect them,” said Warnock.

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:

Can I grieve a human rights violation if it's not in the collective agreement?

A. Yes. Human rights violations can be grieved under your collective agreement, even if there isn't a specific provision for it in the agreement.

In fact, every employment-related statute or law, even those not explicitly mentioned in your collective agreement, forms the "floor" of your collective agreement. That includes Alberta's Human Rights, Citizenship and Multiculturalism Act, the Employment Standards Code, the Occupational Health and Safety Act, Public Service Employees Relations Act, Employment Pensions Act, privacy legislation and more.

A 2003 Supreme Court of Canada Decision (District of Parry Sound Social Services Administration Board v. Ontario Public Service Employees Union,

Local 324 and Ontario Human Rights Commission) clarified the relationship between collective agreements and legislated statutes. In that case, the employer had argued that an employee had no right to grieve her dismissal on the basis of a human rights violation, since there was no provision for it in the collective agreement.

The Supreme Court disagreed. In their decision the justices said "human rights and other employment-related statutes establish a floor beneath which an employer and union cannot contract" and that grievance arbitrators have "the responsibility to implement and enforce the substantive rights and obligations of human rights and other employment-related statutes as if they were part of the collective agreement."

The rights and restrictions of employment-related statutes are the foundation for every collective agreement and cannot be negotiated away. This fact is important for all stewards to know. Even if you do, for instance, have human rights language

in your agreement, the Supreme Court decision means that human rights language of the agreement cannot reduce the protections provided by employment-related statutes.

No matter how exhaustively your collective agreement covers a legislated area like human rights – whether it's occupational health and safety standards, human rights, or some other area – you don't truly know all of your members' rights under the collective agreement unless you also know these statutes.

How a grievance gets resolved in a case involving an employment-related statute depends on the statute and the collective agreement; it may also depend on the language of the "Labour Code" that applies. Keep in touch with your Membership Services Officer in such cases and don't be afraid to rely on the collective knowledge provided by your union.

SNAPSHOTS



MSO Dewey Funk (standing) getting his point across at a Level 2 Steward course at Headquarters, November 13, 2008.

STEWARD PROFILE >



Phillipia Bates Renouf

Judicial Clerk, Alberta Justice
Chair, Local 001

8 years Steward experience

Broadly, what's your biggest concern on the worksite right now?

Keeping my bulletin boards fresh and letting new members know who they can contact, and keeping track of which membership services officer is assigned to what worksite. All of that is information that I work to keep fresh in members' minds.

You like your members to be more cognizant of the union and what they've done for them. You read about PSAC settling for 6.8 per cent over four years and you think "thank you very much AUPE" for the last agreement because we got 4.9, 4.8, and 4.3 per cent plus the signing bonus and pay grade adjustments for the judicial clerks. We can get complacent and take things for granted, and then you get that attitude of "what has my union done for me lately?"

What many members don't realize is the union has to fight continuously for the rights that are already in the collective agreement. The employer will always seek to take something away from you.

What is the biggest challenge working with your employer?

The employer is not recognizing that the member always have the right to have a union steward present when there's any disciplinary action whatsoever. That's not good employee-employer relations. If you want to have a good relationship in the workplace, at least let an employee have a union steward or some representation like a MSO there to give them some guidance or direction.

So it's two things: if the employer isn't giving the members their collective agreement, they're not introducing them to their union steward and there's a disciplinary action, it's frustrating. You try and get to the member, but if there's not a relationship between the union and the employer, it's always a battle.

What is the biggest challenge working with your union brothers and sisters?

You have employees that have been there 10 or 20 years, then all of a sudden things start to shift, and you get this huge influx of new employees...You hear that and you realize "I've got some work to do on this site because there's all these new employees." You have to get the collective agreements to them, plus let them know that there are union stewards on the worksite and that they have rights. That's one of my goals right now.

How do you do that – identify the new employees in your bargaining unit?

The biggest and most perfect solution would be to have worksite contacts and stewards on every worksite. When you get someone who has taken the initiative to inform people of the union, that's gold. You need a member who is not intimidated or afraid to say you have to have union recognition on the site. The orientations on your worksite are key to identify those people. The other big thing we need to work on is being positive. You can't intimidate people into coming to a meeting.

How do you build relations with your members after that?

Keeping it positive [also means] you say "this is your collective agreement and if you ever need to talk to me about anything, give me a call."

Employee-employer relations is not necessarily about going to the employer and having a big fight with them but letting the employee know what their rights are and how they can handle it. They can just send an e-mail to the employer and say "my understanding of the collective agreement is this" when the employer has denied them something – a big one is acting pay.

Part of it is also educating the employer, because in my experience not all managers have a background when it comes to unions. No disrespect to them but they're not always as educated as an MSO or an active steward. It's not their mandate. Their mandate is to operate a worksite and get things done.

What's your approach to handling grievances?

When I meet with the employer and the member the biggest thing is understanding what the issue is from the member and then letting them know they need to stick with that issue, and be positive when you go in there [to meet the employer]. You can't get into attacking or taking things personally. You have to give the member the ability to feel comfortable that they can speak to the employer, and the employer needs to know that intimidation is unacceptable.

I start out saying "we're just going to go in there, talk about the issues and see where the employer stands. I'll write everything down, and that's it." We'll discuss it again and then let the employer know that we're filing a grievance, and then make sure we meet the deadlines for filing it. Of course, you're constantly communicating with your MSO. That's your link to the union, your educator, your backbone. Your MSO will help you with the strategy and let you know what can be done.



Weasel words and sucker clauses

Trapping them early will strengthen your workplace rights

Sometimes the words in your collective agreement won't mean quite what they seem to mean at first glance. It's not your fault. Those words are commonly referred to as "weasel words" – words that

A few common weasel words:

"Wherever practical"

Taken at face value this looks like a good phrase that would imply a union right. But let's look at how the use of that term could

term in the collective agreement – something that arbitrators are forbidden from doing.

"Meaningful consultation with the union"

Sounds pretty good! But again, there's too much wiggle room. In practice, an article in a collective agreement that includes a "meaningful consultation" clause requires the employer to have more than a brief discussion with the union, and provide some detailed information to the union. But meaningful consultation does not override management rights and doesn't imply any specific power for the union in the collective agreement.

"Every reasonable effort"

Ultimately, what constitutes "reasonable" is up to an arbitrator to decide. Alberta's Labour Code, for instance, says employers and unions must make "every reasonable effort to enter into a collective agreement." But, depending on what decision you read, "every reasonable effort" could mean attending meetings, actively participating, following procedure, not blocking

Weasel words - words that are intentionally ambiguous or misleading

-Oxford Dictionary

are chosen specifically to mislead. Even though they look like they carry meaning or imply an obligation, in reality they are often unenforceable terms and have no real meaning in your collective agreement.

Unfortunately "weasel words" are not a conspiracy theory, but are part of a strategy to reduce a union's rights and benefits under the collective agreement without appearing to do so.

play out in the workplace. Imagine the collective agreement says the employer is required to allow a leave of absence "wherever practical." Sounds good, but it isn't. In fact, all that means is that the employer gets to decide when an employee gets to take a leave of absence. It doesn't guarantee consultation with the union, and it doesn't define what is "practical" for the employer. In fact, arguing that the words "wherever practical" imply a union right would, in effect, imply a new

Weasel words and sucker clauses *continued*

progress, or sharing information freely and in a timely fashion.

“Should” and “may”

The word “should” simply indicates a preferable option – but it contains no obligation for the employer to choose that option. So the statement “employees should be given a full day off on Christmas Eve” is nothing more than a motherhood statement. The word “may” simply indicates that whatever follows is an option. “The employer may provide employees with free parking at the worksite” is the same as saying “the employer may give employees free parking, or charge them \$5.00 a day and make them hike a mile uphill to the worksite.”

When you see these words, watch out – you may be getting sold a bill of goods. Always try to replace “may” and “should” with the words “must” or “shall” or “will.” The strongest of these three words is “must,” because it almost always imposes a legal duty. “Shall” and “will” are strong, but they can be weakened by the context they are used in.

Identifying weasel words

Unfortunately, there isn’t a dictionary of weasel words to consult, and even if there

was, cross-referencing every word in your agreement against such a list would be an exercise in futility. The best approach to identifying the weasel word is to figure out what the article or clause you’re reading really means.

For example, “No change in job classification shall be instituted until there has been consultation, discussion, and negotiation with the Union.”

Once you’ve carefully read the above clause, ask yourself the following questions:

1. Could we tell if the article was breached?
2. Can the article be enforced?
3. What penalty could an arbitrator impose?

If you answered yes to either of the first two questions, or found there was no penalty that an arbitrator could impose, there’s a good chance there are weasel words in the article, and you don’t have a right you thought you had.

In the provided example the words “discussion, consultation, and negotiation” have no real force. There is no explicit power for the union to veto an employer decision. As the clause reads, the employer

could simply notify the union that it was going to change job classifications, and then unilaterally do so. What the clause really outlines is a management right to change job classifications.

Catching weasel words requires close and careful reading of your collective agreement. If you think an article is too soft, flag it, and read it again later. If you’re not sure whether you’ve caught a weasel word, double-check with your MSO. Be a skeptic when you’re reading your agreement – it will make for a lot less disappointment down the road.

AUPE suggests that union activists make a list of their issues and concerns to be forwarded to their Bargaining Committee for their next round of negotiations.

SNAPSHOTS



Local 054 members took part in a major in-service training at Headquarters December 8, 2008.

Non-culpable “discipline”

What happens when a member isn’t at fault

Discipline is never a straightforward process: mitigating factors can reduce a member’s level of discipline, a clause in the collective agreement can limit the degree to which some employees can grieve discipline, and on the other hand, some cases will eventually end up in the courts.

Sometimes an employer may “discipline” or discharge an employee for an infraction that wasn’t the employees’ fault – such as being chronically absent from work due to illness or not having the ability to fulfill duties they are expected to fulfill. Depending on the circumstances, any of these actions could be considered a non-culpable infraction.

Aside from cases of disease and disability, employees can be discharged for non-culpable incompetence when they don’t

was asked to submit a resignation. Having failed to do so, she was terminated.

The employee grieved the termination and was reinstated by an arbitration panel.

Key to the panel’s decision was the fact there were no assertions by the employer “that the deficiencies in job performance alleged by the employer arise from any deliberate conduct” on the employee’s part. In other words, the employee did not have the ability to perform according to the employer’s expectations, but did not intentionally under-perform.

Observing those circumstances, the panel concluded “that the assertions with respect to poor job performance are non-culpable” and the panel then set out the following criteria that must be met for an employer who seeks to dismiss an

reasonable efforts were made to find alternate employment within the competence of the employee.

- (e) **The employer must disclose that reasonable warnings were given to the employee that a failure to meet the standard could result in dismissal.**

The reinstatement of the employee was decided not on the grounds of her being found non-culpable for poor job performance, but because the employer failed to satisfy the criteria listed above before firing her.

In fact, the panel admitted the employer’s dissatisfaction with the employee’s job performance could be valid. The panel noted “that the obligation of the employer... is to identify that dissatisfaction to the employee in the form of written warnings, with or without the threat of discipline, thus affording to the employee an opportunity to respond to the allegations.” Because the employer failed to live up to this obligation, the employee was reinstated.

The employer argued that if the grievor was reinstated “the appropriate discipline to impose upon the grievor would be a demotion.” The panel rejected this proposition, noting that disciplinary demotion for poor performance cannot be imposed unless “the failure to perform arises from deliberate acts on the part of the employee.” Since the employee had already been found non-culpable, her poor performance could not be seen as a “deliberate act.”

The lesson stewards should take from this case is that a member can be terminated for non-culpable poor job performance, so long as the employer follows the criteria set out by the Edith Cavell arbitration panel. If you run into grievance involving a non-culpable member, be sure to carefully note whether the employer has fulfilled each of the requirements set out in Edith Cavell.

“The obligation of the employer... is to identify that dissatisfaction to the employee in the form of written warnings.”

have the ability to perform their duties as expected by the employer. However, in this case there are well-defined criteria an employer is required to meet before terminating employment.

The criteria was originally set out in a 1982 B.C. arbitration involving the Edith Cavell Private Hospital and Hospital Employee’s Union, Local 180. The arbitration involved an employee who was promoted from a dietary aide position, to assistant cook and later became chief cook. Management charged the employee with failing to order supplies as required, misdirecting food supplies intended for patients to staff, failing to monitor the inventory of dishes and cutlery, and misusing work time to socialize with other staff. Subsequently the employee

employee for a non-culpable deficiency in job performance:

- (a) **The employer must define the level of job performance required.**
- (b) **The employer must establish that the standard expected was communicated to the employee.**
- (c) **The employer must show it gave reasonable supervision and instruction to the employee and afforded the employee a reasonable opportunity to meet the standard.**
- (d) **The employer must establish an inability on the part of the employee to meet the requisite standard to an extent that renders her incapable of performing the job and that**

Steward Notes

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STEWARDS TRAINING



Upcoming courses and training

AUPE is offering the following courses and training seminars being offered from January to March 2009 (excluding Labour School). Contact your regional office to register or get more information.

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

March 27, 2009 Mobilizing

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

January 22, 2009 Mobilizing
January 29, 2009 Introduction to Your Union
February 12-13, 2009 Union Steward Level 1
March 19-20, 2009 Union Steward Level 2

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

February 11, 2009 Introduction to Your Union

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

February 13, 2009 Introduction to Your Union

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

January 20-21, 2009 Union Steward Level 2
January 23, 2009 Introduction to Your Union
January 27, 2009 Mobilizing
February 10, 2008 Contract Interpretation
February 17-18, 2009 Union Steward Level 1
March 11-12, 2009 Union Steward Level 2
March 25-26, 2009 Union Officer Training
March 30, 2009 Respect in the Workplace

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

No courses scheduled

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

March 18-19, 2009 Union Steward Level 2

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

February 4-5, 2009 Union Steward Level 1

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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