

Issue of the day: No Harassment and No Other Forms of Discrimination in the Workplace



LOCAL 20221

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Article 9 – No Discrimination & Article 10 – Sexual Harassment

Union Proposal:

Delete current Articles 9 & 10 and replace with the following:

9. NO HARASSMENT AND NO OTHER FORMS OF DISCRIMINATION IN THE WORKPLACE

The Alliance and the Employer recognize the right of employees to work in an environment free from sexual and personal harassment and discrimination and the Employer undertakes to ensure that sexual and personal harassment and discrimination will not be tolerated in the workplace.

9.01

- (a) Harassment means any improper behavior by a person employed by the YVRAA that is directed at and is offensive to any employee of the YVRAA and which that person knew, or ought to have reasonably known, would be unwelcome. It comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles or causes personal humiliation or embarrassment to an employee. It includes harassment within the meaning of the Canadian Human Rights Act.
- (b) Sexual harassment means any conduct, comment, gesture or contact of a sexual nature whether on a one-time basis or in a continuous series of incidents:
 - (1) that might reasonably be expected to cause offence or humiliation to any employee or,
 - (2) that the employee might reasonably perceive as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

9.02

- (a) The Employer acknowledges and affirms its obligations under the Canadian Human Rights Act, which prohibits discrimination in respect of employment by reason of race, national or ethnic origin, creed, language, color, religion, age, sex, marital status, family status, mental and physical disability, criminal conviction for which a pardon has been granted, sexual orientation, political affiliation, or membership or activity in the union, in the absence of a bona fide occupational requirement as provided for by the Canadian Human Rights Act.

Accordingly, the provision of this Agreement shall be interpreted and applied in a manner consistent with applicable human rights legislation.

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- (b) In the event of a violation of this Article by the Employer, an arbitrator shall have the jurisdiction to hear the complaint and have the remedial powers set out in Section 53 of the Canadian Human Rights Act.
- (c) Where an employee makes a complaint to the Human Rights Commission, the complaint shall not be arbitrable and no grievance shall be filed by the Alliance in respect of such complaint.
- (d) There shall be no discrimination in respect of employment by reason of membership or activity in the Alliance. An allegation of such discrimination is subject to the Grievance Procedures.

9.03

Complaint Procedure

- (a) The employee who alleges sexual harassment, or a Union representative on behalf of the employee, will contact a Human Resource Representative who will:
 - (1) investigate the matter, and
 - (2) maintain a strict degree of confidentiality with the employee concerned; and
 - (3) take appropriate action to resolve the problem.
- (b) In the event the problem is not resolved under (a) above, the employee may refer the matter to Stage 2 of the Grievance Procedure and subsequently thereafter to arbitration.
- (c) Grievances under this Article will be handled with all possible confidentiality and dispatch by the Alliance and the Employer.
- (d) At any stage in this procedure an employee may seek assistance and/or involvement of a union representative.

9.04

An alleged offender whether a member of the bargaining unit or an excluded employee, shall be given notice of the substance of a complaint under this Article and shall be given notice of and be entitled to attend, participate in, and be represented at any grievance hearing or any arbitration under this Agreement.

Rationale:

Our proposal includes the issue of personal harassment and clearly defines what harassment is. The current language does not address bullying or harassment from either the Employer or co-workers.

The Employer told us during bargaining that they take measures to not have harassment in the workplace.

The Employer stated that to have a general harassment clause in the collective agreement sets up a different dynamic. Employees will use this language against management and it will infringe on the manager's right to do performance reviews. Further, that employees will view coaching as harassment and file grievances. Finally, the Employer is worried that employees would use this clause to avoid legitimate performance management issues.