

18-P-GNWT-02316 Policy Grievance: Temporary Transfer Assignments

Award 2020-10-29

Collective agreement expiring March 31, 2021

Refer to Articles 2 – Definition of Layoff & Article 33 – Lay off

The employer and the union agree that transfer assignments are a valuable tool for both parties, however the negotiation of the agreement and the possibility of layoff through the employer's staff retention policy at the end of the transfer assignment is at issue.

What is a transfer assignment? A transfer assignment is a temporary redeployment of an employee into another position, either within their own department or interdepartmentally. These assignments are used to meet operational requirements, contribute to an employee's career development, redeploy an affected employee, address human resource considerations such as a duty to accommodate and/or cover acting periods greater than 6 weeks.

Transfer assignments are voluntary and open to either indeterminate or term employees who have successfully completed their probationary period.

Employer's position

While an employee is on a transfer assignment, it is up to the manager of the home department whether to backfill the employee's position, as is the employer's right to manage work. At the end of the transfer assignment, it is up to either the home or receiving department to offer a position to the employee on transfer assignment. If the home position is filled and the receiving department is unable to offer a position, the employee is now in status not defined by the collective agreement and can be considered "affected"; this means that person may effectively be laid off.

The employer indicated this has been common practice for transfer assignments for years and the union has been notified of this human resource practice through updates on their manuals as well as monthly reporting through staff movement reports. Throughout the process, the employee has the option to negotiate or cancel the transfer assignment at any time, subject to approval by the manager. The number of staff that have been subject to the staff retention policy is minimal.

Union's position

The union alleged that the employer is bargaining outside of the Collective Agreement in two instances:

1. Offering transfer assignments to members without the involvement of the union
2. Reference to the staff retention policy within these agreements undermines the definition of indeterminate employee status

The union has not been invited to provide input to the employer's human resource manual nor is providing reports that are difficult for the employer to read themselves in any way considered consulting with the union. The union also questions why casual employees are listed as on transfer assignment.

The union requests the employer cease entering transfer assignments and the reference to staff retention policy be removed from all future transfer assignment documents.

Arbitrator – upheld

The arbitrator did note that while employer is free to backfill the position of an employee on transfer assignment, the lack of work (as defined by Art 33 layoff) has not been met. The work continues as evidenced by the filling of the home position.

The arbitration found the employer has violated the collective agreement by bargaining directly with employees and entering into transfer assignments. This type of individual negotiation is also prohibited by the collective agreement and undermines the union's exclusive bargaining authority.

Transfer assignments alter the terms and conditions of employment and affect the most fundamental condition of a collective agreement, that being job security. The union is to be party to all transfer assignment negotiation and the reference and application of the staff retention policy in the case of transfer assignments is outside that of the Collective Agreement and is to cease.