

# Understanding your Collective Agreement

## **Introduction**

The Collective Agreement (CA) is the single most important document for a Shop Steward. This is because the CA lays out the employment conditions agreed to by both the union and the employer, and a major part of your role will be ensuring that the agreement is honoured. Understanding the language in your CA is a skill that you will be developing for at least as long as you are a Shop Steward, but some tips and principles will get you off to a strong start.

## **The Collective Agreement: what it is and where it comes from**

A CA is a legal contract binding an employer and the collective bargaining unit (as represented by the union or “Bargaining Agent”) to certain terms and conditions of employment. Since the CA is a contract between one employer and one bargaining unit, each of the Locals with YEU has their own.<sup>5</sup> The majority of the CA spells out the rights that employees are entitled to, but there is usually also a section on Management Rights, which may be more or less detailed.<sup>6</sup> From the general topics covered to the precise words that are chosen, the entire CA is negotiated between representatives of the employer and representatives of the union, with trained negotiators on each side. The contract is established for a set period of time, often 3 or 4 years but occasionally 1, 2 or 5 (the duration of the contract is an item open for negotiation). Several months prior to its expiry, notice is given by either the union or the employer to the other party to commence bargaining for a revised CA. During bargaining every item in the CA is up for re-negotiation, but issues are prioritized by bargaining teams for both sides.

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<sup>5</sup> When distinct Locals share the same employer they may be covered under the same CA.

<sup>6</sup> A minimal “management rights” clause does not mean that Managers do not have as many rights as employees. It merely means that they don’t need to be spelled out in detail in the CA. An example is clause 8.01 from PSAC’s CA with the Yukon Government: “Except to the extent provided herein, this Agreement in no way restricts the authority of those charged with managerial responsibilities in the Public Service.”

This is important to a Shop Steward for a few reasons. First, just because the wording of a particular clause is agreed to by both the union and the employer, does not always mean that they have the same thing in mind. Many grievances stem from a clause that seems to say one thing pretty clearly from your perspective as a union representative, but that is interpreted very differently by management. It is helpful in these cases to keep in mind that the disagreement might go all the way back to the original negotiation; it may be that there never was consensus on how the matter would be treated. Second, Stewards sometimes get complaints from members about treatment that seems unfair, but that is not specifically addressed in the CA. There are often still ways that the union can try to resolve the issue, but in cases like this the Steward wants to keep some notes for the next bargaining team; it may be something that can be negotiated into the next CA. Finally, it is important for Stewards to be aware that CA's are subject to change periodically. A Steward needs to pay attention to the bargaining process and to spend some time getting familiar with the changes in a new contract.

## **Navigating your Agreement**

CA's are usually very well organized, making it easy to find what you are looking for. Distinct issues are divided into numbered "Articles", and these Articles are listed at the front of your CA in an Index, or Table of Contents. Some of the headings, like "Vacation Leave", will be pretty self-explanatory but others, like "Premium Pay", might not be familiar. As a first step to understanding your CA better, read the unfamiliar sections, until you are confident that you understand all the main article headings in the Index.

Next, ensure that the numbering system is a help rather than a hindrance. Main articles get whole numbers, and sub-articles dealing with the same topic are numbered with either with a decimal point, or with an indented number or letter, or with parenthetical numbers (and sometimes with a mix of these features). If Article 6 outlines Seniority Rights, for example, then Article 6.03 (22) (b) might be one of several clarifications to a clause detailing what happens to a seasonal employee's seniority status when s/he is laid off.

Within the first few articles you will often find definitions of terms or general purpose statements that will apply to the rest of the document. It is important to read these sections carefully. A word like “allowance” is familiar enough to everyone from common usage, but it may get a special, technical definition in a CA. In common usage a “day of rest” is just any day that you rest on, but a CA might define the term as “a day other than a holiday on which an employee is not ordinarily required to perform the duties of his/her position other than by reason of his/her being on leave of absence.” Once you know *which* terms get special definition in your CA, you can always refer back to that section to remind yourself how they are being used. If you skip over this section in the first place, however, you may never realize that a clause in the CA uses a particular phrase in its technical sense rather than its common usage.

It is worth drawing attention to a few technical definitions. Some CA’s include something equivalent to the following article.<sup>7</sup>

“‘May’ shall be regarded as permissive, ‘Shall’ and ‘Will’ as imperative, and ‘Should’ as informative only.”

Understanding the difference between these terms is essential to understanding the rights and obligations imposed by the CA. When a clause specifies something that an employee (or the employer) **may** do, it means only that the relevant party has permission to do it; it does not say that it must be done. A clause stating that “Part-time Night Care Attendants may be scheduled to work weekends and statutory holidays” establishes that the employer has the right to schedule these employees on weekends or holidays, but it does not establish that the employer ever *has* to do this. ‘Shall’, and ‘Will’, on the other hand, are *imperative*, meaning that these words are used to indicate something that must be done. A clause stating that “Regular and seasonal employees **shall** be paid bi-weekly” establishes an obligation on the employer to pay these employees once every two weeks. Finally, “should” establishes neither permission nor obligation. It is informative only, meaning that it might suggest the preferred way of doing something, but cannot lead to discipline or a grievance if it isn’t followed.

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<sup>7</sup> Clause 2.01 (19) in the CA between PSAC and the Yukon Government, expiring Dec.31, 2015):

Second, conditional language (often in the form of “if... then...” ) can be notoriously difficult to interpret properly. Many of the provisions set down in your CA are conditional in nature, meaning that they only apply if the right conditions are met. For example, your CA might state that “The employer will respond to vacation requests within three weeks, but only if the request is made before the deadline.” With that wording, the clause says nothing at all about cases in which your vacation request falls after the deadline; unless there is another sub-article addressing it the union would not be able to pursue a grievance if the employer took four weeks to respond to a late vacation request. Conditional clauses are most often expressed in this familiar form: “If so-and-so occurs, then the employer must do such-and-such.” Be aware, however, that conditional clauses can also be expressed with “when” (e.g. “When a deadline falls on a weekend or holiday, the next business day shall be considered the deadline”), or with “only” (e.g. “Subject only to satisfactory conduct, the salary of a regular employee shall be increased by 4% on the employee’s anniversary date.”). When you read such clauses in your CA, pay careful attention to *what* is being allowed for or promised, and the *conditions* that have to be satisfied in order for that promise to be in effect.

## **Guidelines for Reading your CA**

You will grow more comfortable reading your CA with time and practice, but the following guidelines should provide some direction:

### ***A. Look for Rights and Obligations***

Almost all the articles in your CA establish either a *right* (something that someone is entitled to), or an *obligation* (something that someone must do). Because of this, you should ask questions like these about them:<sup>8</sup>

- What rights/obligations does the clause establish?
- Who ‘owns’ the right/obligation? To whom does it apply?

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<sup>8</sup> This list is adapted from PSAC’s ‘Getting to know your collective agreement’ (<http://psac-ncr.com/getting-know-your-collective-agreement>)

- Are there any conditions that have to be met in order for the right/obligation to be established? If so, what are they?
- When the conditions are met, what exactly must/may be done, and who must/may do it?

Here is an example of the process in practice:

“All permanent full time employees who have completed two or more years of continuous service shall be entitled to receive a Yukon Bonus travel benefit in the amount of \$2900.00 and be entitled to the Yukon Bonus each subsequent year of continuous service thereafter.”<sup>9</sup>

*What rights/obligations does the clause establish?:* It establishes the right to receive a Yukon Bonus once every year

*Who ‘owns’ the right/obligation (i.e. who does it apply to)?:* It is a right of employees (implying an obligation on the employer to pay the Bonus).

*Are there any conditions that have to be met in order for the right/obligation to be established? Yes.*

*If so, what are they?:* The employee must be full-time, and must have completed two or more years of continuous service (part-time employees get a pro-rated bonus, but that is detailed in the next clause)

*When the conditions are met, what exactly must/may be done, and who must/may do it?* The Employer must pay the employee \$2900.00 after the initial 2 year period, and then every year after that.

### ***B. Read individual clauses within the context of the Agreement as a whole***

Usually, single clauses are specific instances of a more general policy. For instance, Article 28 might explain sick leave provisions, using 37 sub-clauses clarifying specific cases or qualifying general claims in various ways. If the only thing you read is clause 28.15 (a), then you risk missing important contextual information

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<sup>9</sup> Clause 16.01 from the CA between PSAC and the City of Whitehorse, ending August 2017.

explained in related clauses. On the basis of this partial information you may be led to believe that you can win a grievance, when in fact the rest of the Article makes clear that the issue you are dealing with is permitted by the CA. Always consider the broader context.

***C. Rely on common sense, past practice, and industry standards to interpret vague or ambiguous language***

No CA is able to cover every eventuality, or say something about every possible situation that might arise (and if one attempted to, the resulting contract would fill a bookcase rather than just a small drawer). Instead, many things are left *vague* in the CA. For example, some CA's include an exact timeframe in which the employer must respond to annual vacation requests. In other CA's this requirement is left open: "The employer will respond to such application for annual leave in a timely manner."<sup>10</sup> What counts as a "timely manner"? How many days have to go by with no response to a leave request before the employer has violated its obligation? You can look in as many dictionaries as you like, but you will not find a precise number of days counting as "timely manner" in this case. Vague language like this can be frustrating, but it also gives everyone involved some flexibility. Three things to consider in cases like this are:

- Is there an established past practice? Has the employer always aimed to respond within two weeks before, but has now taken over four weeks?
- Do other CA's establish a common standard? Just because something is left vague in your CA does not mean that it is left vague for everybody. A review of other CA's might reveal that employers are generally required to respond to leave requests within 2-4 weeks, for example. Your employer is not obligated to follow anything in a different CA, of course, but doing this can give you support for claiming that 6 weeks is outside the bounds of "timely".
- The word "reasonable" is used often in CA's and it is always at least somewhat vague. When a Shop Steward requests leave to represent a

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<sup>10</sup> Clause 11.05 (c) from the Agreement between the City of Whitehorse and PSAC Local Y023, ending August 2017.

member, for example, this request cannot be “unreasonably denied”. What counts as ‘reasonable’ from the union’s perspective may not match up with what counts as ‘reasonable’ from management’s perspective, but common sense is often a good guide. When such leave is denied, ask for the reasons for the decision and consider what a neutral third party might think of those reasons.

#### ***D. Consider management’s perspective***

There would be far fewer grievances if management and the union always looked at every provision in the CA in the same way. Grievances occur, and escalate to higher levels, because there is room for interpretation in many matters. When reading your CA with an eye to understanding all the rights and obligations it establishes, be careful to consider how your understanding might be different if you were an employer’s agent instead of an agent for the union. This does not mean you need to agree with management’s perspective, but reading the CA in this way will help you to understand where potential disagreements might lie.

#### ***E. Get input from your team***

Shop Stewards are always one member of a bigger team. As you work through your CA, highlight parts you are not sure about or keep notes to record questions that occur to you. Your Chief Shop Steward or Local President may have experience with some of the same issues that you find unclear, and might be able to clarify some things. Your Union Advisor has special training and access to a host of past cases that will shed light on how your CA has been understood in the past. You may even be able to talk to members of the bargaining team who negotiated your CA, to ask what the intentions were behind the way something is worded. Involving your teammates clarifies issues for us all.

### **Beyond the CA**

The CA regulates most of your employment conditions, but it is not the only relevant document. Your employer may have policy statements or administrative directives

on matters that are not included in the CA, for example rules about the use and care of Personal Protective Equipment. Legislation such as the Yukon Employment Standards Act and the Yukon Human Rights Act provide baseline conditions that all employers must follow, regardless of whether they are included in the CA.<sup>11</sup> The Yukon Government has a Respectful Workplace Office with policies on fair and non-discriminatory workplace practices. There are also Occupational Health and Safety (OH&S) policies that must be followed. While you don't need to be an expert on all these matters, it is important to keep in mind that the CA doesn't cover everything; an employer practice might not violate any articles of the CA, but still run contrary to the applicable legislation. Also keep in mind the order of authority. A CA cannot legitimately establish standards below what the employment standards legislation allows for, nor can a union and an employer agree to establish practices that discriminate against protected minorities (for example). Legislation comes before your CA. Similarly, employer policies cannot legitimately violate terms in the CA; an employer cannot issue a directive forbidding employees from using their Special Leave, for example, when the CA grants them this right. The CA comes before employer policies (and questionable policies can be challenged by the union).

## **Conclusion**

The better you understand your CA, the more effective you will be as a Steward. Not only will you be able to appeal to the appropriate sections when processing a grievance or attending a meeting, you will also be better equipped to evaluate the daily working conditions in your workplace. You may find yourself noticing unfair employer practices that otherwise would have flown under your radar. As you get more and more familiar with your CA, make a point of sharing what you know with your co-workers and asking for assistance with items you aren't sure about.

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<sup>11</sup> In fact, an important Supreme Court of Canada case in 2003 found that arbitrators have the right (and obligation) to apply Human Rights and Employment Standards legislation in interpreting a CA. This means, in effect, that these pieces of legislation are implicitly included in every employment agreement even if they aren't explicitly mentioned. Reference: *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157, 2003 SCC 42