Disability rights in the workplace

Understanding duty to accommodate

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Sisters and brothers,

Advances in human rights have given unions new tools to fight for members. Employers, with the union playing an active role, have an obligation to adapt work and workplaces to ensure that persons with disabilities have the right to employment without discrimination. A landmark court ruling ensures accommodation of disabled employees, unless it would be impossible without imposing undue hardship.

This presents new opportunities for the union to advocate on behalf of our members with disabilities. There are also new opportunities for collective bargaining to ensure that our collective agreements integrate equality rights.

Education will be important so that members know their rights and know the importance of our duty to accommodate.

The area of human rights and discrimination on the basis of disability will be a fast growing area of arbitration. We can push for a creative expansion of rights for our members and build more inclusive workplaces.

This guide is meant to be used by union advocates working with injured workers, workers with a disability returning to work after being on long-term disability or sick leave, and workers who have a disability whether or not they have been off the job.

You will find an overview of disability and the duty to accommodate, a procedure to deal with the employer on the issues, and samples of existing collective agreement language. Resources for further reading and information are also provided.

Through our collective efforts we can make big strides in securing the full rights of all our sisters and brothers, winning respect and equality in our workplaces - and building an ever more diverse and welcoming union.

Judy Darcy
National President

Claude Généreux
National Secretary-Treasurer

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Understanding duty to accommodate

Canadian Union of Public Employees
cupe.ca

Cover illustration, "Breaking Free", by Natalie Wood.

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What is duty to accommodate?

The duty to accommodate is an obligation upon employers, with the union playing an active role, to adapt work and workplaces to allow persons with disabilities their right to employment without discrimination. It is a broad equality concept that applies to all grounds of discrimination that are covered under human rights legislation and the equality rights provisions of the Canadian Charter of Rights and Freedoms.

This guide looks at accommodation only in the context of disability. However, the principles also apply for a local union looking for ways to accommodate members based on all the other grounds of discrimination.

Persons with disabilities are one of the most excluded groups from the workforce. They are subject to long periods of unemployment and are three times more likely not to be in the labour force at all. Many have sporadic, precarious low-paying work. Their rate of full-year employment is less than half of Canadians without disabilities. One of the reasons persons with disabilities are excluded from work is that employers have not looked at ways of changing workplaces to accommodate their needs. Unions can help change this by working to ensure the employer is meeting their obligations to accommodate workers with disabilities.

What is a disability?

All human rights statutes prohibit discrimination on the grounds of disability or handicap. The Canadian Charter of Rights and Freedoms prohibits discrimination on the grounds of disability under Section 15, the equality rights provisions.

Discrimination on the grounds of disability is a concept that is expanding as legal cases frame new practices and obligations. Generally, disability includes any physical disability or infirmity regardless of its cause, any intellectual disability or impairment, or a learning disability. It also includes psychiatric and mental disabilities. Discrimination on the grounds of disability occurs when the disability impacts on the employee's duties at work or the employer perceives it will impact on their duties at work.

Over the years, human rights tribunals and labour arbitration boards have expanded the definition of disability to include, for example: HIV/AIDS, depression, heart condition, alcoholism, hypertension, and chronic diseases such as diabetes, colour blindness and dyslexia.

Disability can arise from a condition at birth, an illness, or an injury. Human rights do not distinguish the source. This means that workers with disabilities are owed the duty of accommodation whether or not they have ever been absent from work or been on sick leave, long-term disability or workers' compensation. The disability can also be temporary, permanent, or recurring. The duty to accommodate remains the same. The duty is owed all employees whether they are new employees, casual, temporary or permanent.

Duty to accommodate

In 1999, the Supreme Court of Canada made a landmark ruling that obliges an employer to justify any work requirement that appears discriminatory. Their ruling - in what is called the Meiorin case - also set out a groundbreaking test that establishes a new standard for human rights and arbitration purposes.

To meet that test, an employer must justify any practise or work requirement that appears discriminatory by demonstrating on balance:

1. *That the employer adopted the standard for a purpose rationally connected to the performance of the job;*

2. *That the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; and*

3. *That the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to*

accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U. [1999] 3 S.C.R. 3 (Meiorin)

This means that if the employer has a work requirement that is discriminatory they must show that the requirement is related to doing the job and that it was established in good faith to accomplish the work of the employer, and finally, that the requirement is necessary to the job. Part of the proving 'necessary to the job' is to show that it would be impossible to accommodate the worker without undue hardship to the employer.

Most discriminatory work practices pass the first two parts of the test. It is the third part of the test dealing with undue hardship where the test is most challenging and difficult to pass.

Undue hardship

The employer must prove undue hardship. It is a difficult standard to meet. Undue hardship for the employer means primarily hardship due to impossibility, serious risk or excessive cost. Aside from impossibility, two major issues have been identified as key to the analysis of what is undue hardship:

- If the financial costs associated with the accommodation would be prohibitive to the point that it would alter the essential nature or substantially affect the viability of the enterprise. However the employer's ability to raise funds from outside sources will be considered including applying for grants to obtain devices to assist a worker to accomplish the tasks of the job.

- If health and safety considerations are not met; in particular where the degree of risk, which remains after accommodation has been made, is so significant that it outweighs the benefits of the accommodation. Public safety and the health and safety of co-workers are considerations in this regard. However, if the only risk is to the person to be accommodated then the standard is higher.

Persons with disabilities often find that standards meant to protect the general workforce are barriers to them ever participating in the labour force. They are willing to assume a higher level of risk to themselves so they can have the opportunity of working. The worker with a disability is allowed the dignity of assuming risk so long as it is completely voluntary and it is not excessive.

The threshold of undue hardship will vary depending on the size of the employer's operation, but the burden must be considered substantial to meet the above test.

Supreme Court provides guidelines

The Supreme Court of Canada ruling in the 1999 Meiorin case sets out questions to ask when reviewing a workplace practice to see if it was reasonably necessary:

a. *has the employer investigated alternative approaches that do not have a discriminatory effect, such as individuals testing against a more individually sensitive standard?*

b. *if alternative standards were investigated and found to be capable of fulfilling the employers' purpose, why were they not implemented?*

c. *is it necessary to have all employees meet the single standard for the employer to accomplish its legitimate purpose or could standards reflective of group or individual differences and capabilities be established?*

d. *is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?*

e. *is the standard properly designed to ensure that the desired qualifications are met without placing an undue burden on those to whom the standard applies?*

f. *have other parties who are obliged to assist the search for possible accommodation fulfilled their roles?"*

British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U. [1999] 3. S.C.R. 3 (Meiorin)

What it means for employers

Since the ruling, the employer has an obligation to develop workplace practices and standards that accommodate all employees and build equality in their workplace. This means that the employer must also make sure that discriminatory rules and practices are eliminated. This is a forward-looking requirement. Now the employer must think about equality even if there isn't a specific request before them.

The new test means that employers have a greater obligation to accommodate individual employee requests for accommodation. They must be more creative about how an individual with a disability can be accommodated.

The employer must work with the employee and the union to seek accommodation and respect the collective agreement.

The employer must maintain confidentiality and request only information that is required to make the accommodation.

The employer should make sure education on disability and the duty to accommodate is provided to all employees.

What it means for union members seeking accommodation

The union member should inform their employer of their need for accommodation and cooperate in providing the necessary information. Sometimes the member is unable to inform the employer because of the nature of the disability. For example, workers with psychiatric or intellectual disabilities may be unable to identify or express their needs for accommodation.

The employee must provide sufficient information to the employer concerning restrictions or limitations including necessary information from health professionals. The employee doesn't have to reveal the actual diagnosis so long as sufficient information about restrictions and accommodation needs is provided. Prejudices can be triggered about the extent of work limitations based on differing understandings of the implications of a diagnosis. Sometimes though the diagnosis is known by virtue of the accommodation needs.

The member has a responsibility to work with the union and the employer to discuss reasonable solutions and participate in the accommodation process.

What it means for CUPE local unions

Advocacy

The local union has a key role to play in ending workplace discrimination and assuming responsibility in achieving accommodation. Past court decisions have put responsibility on the union to participate with the employer in accommodating the worker protected under human rights legislation. The union can't negotiate out of its obligations under human rights legislation. The union can be liable if it stands in the way of an accommodation proposal. *(Central Okanagan School District No. 23 v. Renaud [1992] 2 S.C.R. 970)*

A 2002 Ontario Human Rights Board of Inquiry held a union responsible for not participating in an accommodation for a member by refusing to transfer seniority from one bargaining unit to another. The union was fined $22,000.

While the union has a role to play in accommodation, it is still the employer that has the information and power to find the solutions. With the developments in

equality rights, there are new tools to challenge employers to find solutions. Unions have a greater role in the workplace on equality issues.

We can use developments in equality law to push employers to review and design workplaces that are barrier free and accessible for all.

The local union must advocate for the individual member seeking accommodation and follow-up to make sure the solution is really working. Often accommodations must be continually reviewed to make sure all the necessary adjustments are made. All members have the right to accommodation whether they are new workers, temporary or permanent, part-time or full-time.

Once an accommodation is made, the member has the same right as everyone else to apply for new positions. If they qualify and have the seniority, then there is an obligation to investigate whether the new position can be accommodated.

Education

The local union can make sure that all union members participate in education on equality issues and the

duty to accommodate. Members need to know their rights so they can come forward when they have accommodation issues. Members working with other members that are being accommodated need to understand that accommodation is a right so the worker receiving accommodation feels welcome in the workplace.

Accommodation is a union issue and every member can play a positive role to make sure we are making our workplaces inclusive.

Procedure

We can be creative in seeking accommodation. There are opportunities to seek new bundling of tasks and creating new jobs as part of the accommodation toolbox.

Bundling tasks means looking at a number of jobs and the tasks involved to rearrange the tasks in order to create a job that can accommodate a worker with a disability. For example, a clerical worker has a disability that prevents bending over and filing. It may be possible to review all clerical jobs in order to provide accommodation. If there are a number of clerical jobs that require filing as one part of the job, it may be possible to rearrange the tasks so that one of the jobs doesn't require filing.

Many unions are advocating creative solutions for accommodation. Accommodation is employer-wide. It is not restricted to the member's worksite.

Employers with larger workplaces will have more resources and opportunities to accommodate without undue hardship. However there are solutions to be found even in a small workplace.

Accommodation must not become 'managed care' where the focus is on changing and 'curing' the worker within pre-established timeframes to get them 'fit' to return to work. True accommodation focuses on changing the workplace for the worker based on their needs. Activists can use the duty to accommodate to press for ergonomic changes to the workplace.

Accommodation legal cases have examined as the first step the ability to accommodate the worker in their existing job. The very last step would be to see whether disturbing some of the rights contained in the collective agreement could accommodate the worker.

The following procedure is based upon the approach arbitrators have taken to accommodation that has been adopted by many unions:

1. Accommodate the existing job through work reorganization and methods, providing assistive devices, changing the work equipment or work area, and/or providing additional assistance and/or training.

2. Locate an alternate job within the member's classification that can be accommodated or requires no accommodation or bundle tasks within the existing classification.

3. Locate a job within the bargaining unit that can be accommodated or bundle tasks. Some local unions have also bargained new jobs as part of an accommodation program. It is important that these jobs be meaningful and not token jobs.

4. Seek positions with the employer outside the bargaining unit.

5. Alterations to rights set out in the collective agreement including seniority are considered only after all other options have been exhausted. The duty to accommodate does not mean displacing an existing employee to accommodate another. The union and the employer must agree to any changes that would affect seniority.

Grievances and human rights complaints

New equality law provides the opportunity to review policies and standards with a view to improving them. The local union must consider all options when making the decision whether to submit a grievance, a human rights complaint, or both. It depends on the collective agreement language as well as the public policy implications of the case. Arbitration can often be a speedier road to a resolution than a human rights tribunal. However, sometimes when there is a case that could break new ground, a human rights case may be advised. Check with CUPE staff for advice.

According to the Meiorin decision the duty to accommodate is forward looking and doesn't depend on an actual request from an individual. This means union locals can also make policy grievances to challenge workplace practices that have a discriminatory effect on workers with disabilities.

We can seek a wider range of remedies such as striking down workplace rules, standards or policies or seeking damages. Arbitrators are becoming more creative with remedies. Arbitration awards have had resolutions such as:

- Eliminating a particular work shift that was found to be discriminatory because it required constant heavy lifting with no opportunity for a rotation of duties and discriminated on the basis of physical disability.

- Requiring the employer to search for duties to accommodate a casual worker on a call-in list who was injured off the job and indicated he was available for light duties.

- Requiring the employer to redesign some jobs through re-bundling tasks and providing tools to ease the heavy lifting demands for workers with physical disabilities.

We must make sure that we provide enough evidence at arbitration to make the claim for discrimination to counter the employer's defence as well as establishing the employer's failure to accommodate.

Collective bargaining

Using the opportunity and the tools provided by the advances in equality rights law, we can review our collective agreements with a view to proposing contract language that ensures equality for members with disabilities:

- comprehensive anti-discrimination clauses;
- joint processes, committees, and procedure to accommodate all members' requests for accommodation based on disability regardless of source;
- training opportunities;
- education on human rights issues in the workplace;
- seniority accumulation protection for members off on sick leave and long-term disability;

- provisions for extended health benefits (drugs, medical aids, vision-care, dental care, hospital coverage, other health services such as massage, and nursing home care), leave provisions, and other provisions that help members with disabilities stay at the workplace;

- good sick leave and long-term disability provisions;

- right to participate in a review of workplace to audit practices that impact members with disabilities.

No discrimination

The obligation under the collective agreement for the employer's duty to accommodate is contained in the 'no discrimination' clauses. Including no discrimination provisions will give the local union the right to seek remedies for discrimination through arbitration.

CUPE locals have negotiated no discrimination clauses that incorporate the listed grounds in human rights legislation. Other CUPE agreements list the grounds specifically without reference to human rights legislation. This can provide for the expansion of grounds of discrimination to those not yet protected under every province's human rights legislation such as criminal record unrelated to the job (or for which a pardon has been granted) and discrimination on the grounds of transsexual transition or gender identity status.

Because developments in human rights legislation and interpretation are rapidly changing, contract language could become out-of-date if compliance with human rights legislation is not specifically required. For that reason, contract language should be checked regularly with the legislation. Including

both not-yet-listed protections and requiring compliance with human rights legislation provides the maximum coverage.

See the Appendix for examples of no discrimination clauses.

Accommodation procedures

Some CUPE collective agreements provide for joint accommodation committees and processes for employees who have been in receipt of workers' compensation benefits. Some agreements provide for workers returning from long-term disability. These provisions can be changed to provide a joint procedure for all employees who may require accommodation for a disability whether or not they have ever been off work or on sick leave, long-term disability or in receipt of workers' compensation benefits.

We must try to negotiate provisions to ensure members with disabilities get the accommodation they need whether the disability is permanent or temporary and without regard to the source of the disability.

The procedure should be incorporated into the collective agreement so that the employer's obligation to modify the workplace, adapt equipment, obtain equipment, and restructure jobs is established clearly. The obligation to consult with and work with the union must also be established in the collective agreement.

There should be a dispute resolution mechanism in the collective agreement that is tailored to accommodation for members with a disability. An expedited arbitration or decision-making process with someone who is knowledgeable in the area of accommodation can help pave a smooth path for a member seeking accommodation.

A joint process to accommodate members with disabilities is important because the union also has responsibilities for the accommodation. The union is best placed to advocate for the member if it is engaged from the beginning in a joint process with the employer. It is more difficult to advocate when the union is trying to correct or amend an inadequate plan to accommodate a member. If the local has the resources, a joint committee can be helpful as this helps build expertise inside the local. If a formal

committee isn't possible it is still important to establish a joint process through the collective agreement.

The Appendix contains some samples of existing collective agreement provisions in CUPE agreements.

References and Resources

A Place For All: A Guide To Creating an Inclusive Workplace, Canadian Human Rights Commission, 2001

Canadian Council on Rehabilitation and Work, www.ccrw.ca

Canadian Working Group on HIV Rehabilitation (CWGHR), www.hivandrehab.ca

Contract Clauses, 3rd edition, Sack and Poskanzer

CUPE kit on workload, Balancing work and family life, 2001

CUPE kits and materials on bargaining

Duty To Accommodate: A PSAC Guide for Local Representatives, 2000

Force For Change: Labour Force Participation for People Living with HIV/AIDS, Canadian AIDS Society, 1998

Overview of the Meiorin Supreme Court Decision and Its Impact on Disability Rights, CLC, prepared by Kate A. Hughes, Cavalluzo Hayes Shilton McIntyre & Cornish, 2000

Policy and Guidelines on Disability and the Duty to Accommodate, Ontario Human Rights Commission, 2000

The Duty to Accommodate in the Canadian Workplace, Michael Lynk, 2001, www.workink.com/workink/national/Lynk/lynk.htm

Appendix

NO DISCRIMINATION

York University and CUPE 3903

ARTICLE 4 - DISCRIMINATION AND HARASSMENT

4.01 The Employer and the Union agree that there shall be no discrimination, interference, restriction, harassment or coercion, including no mandatory blood or urine tests, including but not limited to as these relate to Acquired Immune Deficiency Syndrome (AIDS), AIDS-related illness, AIDS-Related-Complex, or positive immune deficiency test, and including no genetic screening for specific medical disabilities or pregnancy, exercised or practised with respect to any member of the bargaining unit in any matter concerning the application of the provisions of this Agreement by reason of race, creed, colour, age, sex, marital status, parental status, number of dependents, nationality, ancestry, place of origin, native language (subject to Article 12.02.1), disability or disabilities (subject to Article 12.02.1), Acquired Immune Deficiency

Syndrome (AIDS), or AIDS-related illness, or AIDS-Related-Complex, or positive immune deficiency test (virus HIV) (subject to Article 12.02.1), political or religious affiliations or orientations, academic affiliations or orientations (subject to the exercise of academic freedom as set out in Article 14.01), record of offences (except where such a record is a reasonable and bona fide ground for discrimination because of the nature of the employment), sexual orientation, transsexual transition status, gender expression, and gender identity, nor by reason of her membership or non-membership or lawful activity or lack of activity in the Union, or the exercise of any of the rights under this Agreement. The Employer undertakes that no York University student who is or has been employed in Unit 2 shall be penalized in her student status for the exercise of any of her rights under this Collective Agreement or by reason of her membership or non-membership or lawful activity or lack of activity in the Union.

Compensation Employees' Union and BC Workers' Compensation Board

The Parties hereto subscribe to the principles of the Human Rights Act, SBC 1984, c.22. As stipulated in the Act, the Parties will not discriminate against a person with respect to employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offense that is unrelated to the employment or to the intended employment of that person.

CUPE 4150 and the Nova Scotia Health Organizations

4.01 The Employer and the Union agree that all Employees will be protected against discrimination respecting their human rights and employment in all matters including age, race, colour, religion, creed, sex, sexual orientation, pregnancy, physical disability, mental disability, illness or disease, ethnic,

national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity, membership in a professional association, business or trade association, employers' organization or Employees' organization, physical appearance, residence, or the association with others similarly protected, or any other prohibition of the *Human Rights Act of Nova Scotia.*

ACCOMMODATION

CUPE 1975 and the University of Regina and the University of Saskatchewan

19.15 Joint Union-Management Rehabilitation Committee

There shall be a Joint Union-Management Committee consisting of two management representatives, two Union representatives and a Chair to be appointed by mutual agreement between the University and the Union.

19.15.1 Committee Mandate

The parties endorse the principles and importance of early intervention and early return to work. The Committee will work in a consultative manner towards processes and procedures, which support these principles.

All actions of the Committee shall be within the terms of the Collective Agreement and current University policy. Changes or revisions to any policy related to the jurisdiction of this Committee shall be a matter of mutual agreement between the University and the Union.

19.15.2 Referral to Committee

Cases may be referred to the Committee where an employee has not experienced significant time loss from work but where the Committee deems the probability of time loss from work in the near future, for medical reasons supported by medical documentation, to be so significant as to warrant the Committee's involvement.

An employee who has been absent is medically able to return to work after being on sick leave, the short term or long term disability plan, or from having been injured, and who is unable to satisfactorily carry out the requirements of the employee's last regular position, shall have the case referred to the Joint Union Management Rehabilitation Committee.

19.15.3 Placement

The Committee shall be responsible for assessing each case referred to in Article 19.15.2 including consideration of accommodation with respect to job placement in accordance with the requirements of the *Labour Standards Act* and the *Human Rights Code*. The Committee may recommend the placement of the employee in another job which can be satisfactorily carried out within the University, if such a position is available. Job bidding procedures may be waived as individual circumstances warrant on recommendation of the Committee to the University and the Union.

19.15.4

Where no position can be found within the University, all reasonable efforts will be made to assist the employee to find employment in some other institution or business.

CUPE 728 and the Board of School Trustees of School District No. 36 (Surrey)

Letter of Understanding Protocol - Duty to Accommodate

1. In circumstances where a member of the CUPE bargaining unit may be unable to perform the regular duties of her position due to a mental or physical disability, the Employer and the Union, together with the affected employee, shall meet to discuss and to consider the available evidence regarding the existence and nature of the disability and, if necessary, options with respect to the accommodation of the employee. The parties agree to work together to consider how the employee's disability can best be accommodated without causing undue hardship to the Employer, the employee, or the Union. The affected employee shall participate and cooperate fully in this process.

2. The parties to this protocol, and the affected employee, shall share with each other all information relevant to the accommodation of the affected employee, including medical information pertaining to the employee's disability, and information regarding the requirements / duties of the employee's position.

3. The parties agree that they will attempt to accommodate employees as follows, in order of preference:

    - in her current position;
    - in her current classification;
    - in another classification with equivalent hours/rate of pay, but for which the employee possesses the requisite knowledge, skills, and abilities;
    - in another classification which does not have equivalent hours/rate of pay, but for which the employee possesses the requisite knowledge, skills, and abilities.

4. In considering the feasibility of the options set out in (3) above, the parties shall consider, without limitation, such options as the modification of duties, shifts, equipment, and/or the retraining of the employee.

5. It is understood and agreed that nothing in this protocol will require the Employer, the Union or the affected employee to agree to an accommodation which would impose undue hardship on the Employer, Union or affected employee. The Employer agrees that it will not impose an accommodation which has the effect of abridging or infringing collective agreement rights of other bargaining unit members unless there is no other reasonable alternative.

6. Agreements between the parties regarding the accommodation of employees shall be reduced to writing. These agreements shall contain provisions regarding the process which will be followed by the parties in the event that there is a change in the accommodated employee's circumstances, including a lessening or worsening of the employee's disability.

CUPE 500 and the City of Winnipeg

This provision is very detailed. It sets out the following:

- the responsibility for both the union and employer to accommodate workers for a disabilities regardless of source;
- establishing permanent and temporary positions for workers with disabilities;
- providing a right to employees determined to be permanently partially disabled to be eligible for the rehabilitative employment program;
- determination of pay rates through the collective agreement;
- setting out a procedure to place employees;
- setting out a dispute mechanism regarding suitability of the placement;
- maintaining seniority.

Article 37 - Rehabilitative Employment Program

37-1 The City and the Union jointly affirm that the rehabilitative employment process is the mutual responsibility of not only the employer and employee but of Management and Union as well. To achieve optimum reintegration of employees back into the workplace, all components of an effective Rehabilitative Employment Program must work in a cooperative and complementary manner to foster an atmosphere conducive to rehabilitation.

37-2 The City will identify and designate a diverse range and level of positions, either currently occupied or vacant, consisting of either permanent positions within the establishment, determined by Council, or those positions categorized as temporary, 64 which, subject to consultation with and approval by the Union, shall be dedicated to the Rehabilitative Employment Program as rehabilitative positions. Placement of eligible employees into these positions shall be in accordance with the provisions of Clause 5. Deletions may be made at the discretion of the City, following discussions with the Union.

37-3 Employees who have been accepted by the City as permanently partially disabled (i.e., they will probably never be able to perform the duties and responsibilities of their former occupation), as determined by either the Workers' Compensation Board, the Employee Benefits Board or by mutual agreement between the City and the Union, shall be eligible for placement through the Rehabilitative Employment Program. Included within this group are employees permanently partially disabled and: a) utilizing sick leave credits or sick leave of absence for medical reasons without pay; or b) receiving disability benefits; or c) receiving Workers' Compensation benefits.

37-4 The rate of pay assigned to positions designated in the Rehabilitative Employment Program shall be those provided for in the Collective Agreement.

37-5 To facilitate the placement of eligible employees into designated positions, a list of eligible employees will be developed and maintained by Corporate Services by bargaining unit seniority, with said employees listed in order of their civic seniority date. The

City shall provide to the Union, in accordance with the provisions of Article 21, a listing of all employees participating in the Rehabilitative Employment Program. Vacancies within designated positions will be posted in all departments on a Rehabilitative Employment Program bulletin which will clearly signify that first consideration will be given to permanently partially disabled employees. Applications from employees designated as permanently partially disabled will be dealt with by a Placement Committee consisting of representatives from Corporate Services and the Department where the vacancy originated. A Union Representative may participate on the Placement Committee as an observer. In addition to the criteria for promotion that a candidate must satisfy, as set out in Article 12-1(a)(i) and (ii), the Placement Committee may take into consideration performance ratings and appraisals as well as attendance records of the applicant from other positions the employee has occupied, including placements established as part of Employee Benefits Rehabilitative or Workers' Compensation Rehabilitative Programs. If no suitable candidate is identified, from eligible permanently partially disabled applicants who fall within the scope of the bargaining unit,

the City may, subject to receiving approval in writing, from the Union, staff the vacancy with a permanently partially disabled employee from another bargaining group. Should the Union not concur with the filling of the vacancy with a candidate from outside Local 500, said vacancy will be filled in accordance with the provisions of Article 12.

37-6 In the event of a dispute amongst members of the Placement Committee, regarding the suitability of a candidate for placement into a designated position, on the basis of medical grounds, the matter will be referred to an independent physician agreed to between the City and the Union for determination. The independent physician will determine whether the candidate is capable of performing substantially all the duties and responsibilities of the vacancy and this determination will be final and binding on all 65 parties.

The provision of required training of employees identified as permanently partially disabled, and the reimbursement of costs associated with said training where City funds are being expended to provide upgrading in skills and qualifications, shall be provided in a manner consistent with the terms of the City of

Winnipeg policies relating to staff education and development.

37-7 Upon being accepted as permanently partially disabled by the City, employees will concurrently maintain seniority within their previous classification/department and on the list of permanent partially disabled employees maintained under Clause 3 above. An employee placed into a rehabilitative employment position in accordance with Clause 5 above shall, upon the successful completion of their probationary period, as set out in Article 12, be afforded seniority in accordance with the provisions of Article 20-6. If Management, during the six month period referred to in Article 12 of the Collective Agreement, determines that the employee does not meet the requirements of the position, they must provide two weeks of notice to the Placement Committee of their findings, outlining reasons and steps taken to alleviate their concerns. The Department may, in accordance with Article 20-1(c), extend the probationary period of the employee for a period of up to 63 days. If during the initial six-month probationary period, the employee finds the position unsuitable, they must

provide two weeks of written notice to the Placement Committee and Management, outlining their concerns. Once an employee has established seniority in a rehabilitative employment position they shall continue to maintain their seniority within their previous classification/ department and on the list of permanently partially disabled employees until such time as: a) the employee is found fit to return to their previous classification/ Department or; b) the employee is promoted into, and establishes seniority in, a regular position where the salary provided is no less than that paid in their previous classification. The City agrees to add 25 permanent positions to the current list of permanent rehabilitative positions. These positions are to be mutually agreed upon between the City and the Union.


CUPE
On the front line