



CAAT Employment Stability Team

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Severance and Layoff Grievances

What impact can electing severance have on my grievance(s)?

The Union's position is that members should not have to choose between one entitlement (the right to elect severance or recall) and another one (the right to pursue a grievance) and that members should be able to grieve that they were not properly selected for layoff even if they do take severance after the layoff becomes effective.

However, we have anticipated that the Colleges would take a different position. Various Colleges are arguing that accepting severance prevents a layoff grievance from being heard. Some Colleges have gone as far as to say accepting severance resolves *any* outstanding grievances a member may have, even those unrelated to the layoff.

The Union has done exhaustive research and there is some arbitration history in CAAT-A where arbitrators have agreed with the College's position that accepting severance does prevent a layoff grievance from going forward. There are decisions in other sectors where arbitrators have adopted our position and allowed layoff grievances to go forward when severance has been elected. On that basis, the Union is prepared to challenge the Colleges' argument as the first round of layoff grievances reach arbitration.

However, given the litigation risks involved in this kind of decision, it is important to recognize there is a real possibility that accepting severance will mean a member's layoff grievance does not proceed to be argued in full at arbitration. Members need to be aware of these risks when deciding whether and when to elect severance.

Severance under the Collective Agreement and the *Employment Standards Act, 2000*

Under Article 27.06 A, members are entitled to a minimum of 90 days from the date they receive their layoff notice to the date their layoff takes effect (the date they are no longer employed). Once this notice period has ended, members are placed on recall by default. Members then have a 120-day period to elect severance under the Collective Agreement (the "CA"). To be eligible for CA severance members must have two or more years of continuous service. Members who meet those criteria can waive their recall rights under the CA in exchange for severance. If members do not elect to receive their CA severance during the 120 period, they remain on recall for two years.

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Further, where members have not taken CA severance within 120 days, the Union takes the position that members can still access severance under the *Employment Standards Act, 2000* (“*ESA*”) up to the expiry of the two-year recall period. *ESA* severance is substantially less than CA severance. However, to be eligible for *ESA* severance a member must have five years of service or more (in contrast to the CA’s provision of severance to members with at least two years of continuous service). The Union is confident in this position as a minimum standard guaranteed by the *ESA* and various Colleges have outlined the availability of both CA severance and *ESA* severance to members issued notice of layoff. However, without arbitration history on this point we cannot predict whether any particular College will contest the entitlement to *ESA* severance.

Any follow-up questions?

This is a difficult decision for anyone. The information outlined here is intended to inform members’ decisions around electing between severance and recall. If you have further questions, please contact OPSEU/SEFPO’s CAAT Employment Stability Team:

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