

Union	Grievance Category	Issue Summary / Outcome
OPSEU	Policy / Group / ASMP	<p>The Union challenged the Employer's application of discretion in the administration of the former ASMP. Specifically, the Union believed that the Employer should determine, on a case by case basis, whether an employee progresses through the ASMP, based on the nature and circumstances of the Employee's illness. The Union cited provisions of the Ambulance Act, whereby paramedics are precluded from providing patient care when they are experiencing various illness. The Union also expressed concerns regarding the Employer's delay in scheduling and conducting ASMP meetings with Employees.</p> <p><i>Outcome: The parties negotiated a mediated settlement at arbitration with the assistance of the Arbitrator. The Employer has updated and amended the former ASMP program (now referred to as the ASP), which resolved a number of issues related to the timeliness of ASP trigger notifications and meetings. The settlement also provided clarity with respect to how the Employer may exercise discretion, subject to the Employee providing substantiating medical documentation to support their absences, with consideration given to chronic or episodic conditions, or contagious diseases (in consideration of the provisions of the Ambulance Act).</i></p>
ONA	LTD	<p>The Grievors were PHNs in receipt of LTD benefits, who in accordance with the Collective Agreement, were terminated for frustration of contract after being out of the workplace in excess of 30 months. The Grievors were paid their appropriate vacation accrual and severance. As per the Employer's benefit contract language, vacation and severance pay were "carved out" of their continued LTD benefit payments. Consistent with past practice and the application of the contract language, vacation and severance payments have always reduced continued LTD benefits, on the basis that these payments are considered income by the Employer, and accordingly, should off-set benefit payments. The Union also grieved the terminations themselves, claiming a violation of the Human Rights Code.</p> <p>Prior to arbitration, the Union withdrew the grievance related to the termination. The only matter before the Arbitrator was the clawing back of LTD benefits based on the vacation and severance payouts. The Arbitrator correctly determined that the Grievors had received all of their statutory payments (severance) and contractual payments (vacation and LTD) and the administration of the LTD plan (including the offset) was not discriminatory.</p> <p><i>Outcome: The Arbitrator found that the offset of severance and</i></p>

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		<p><i>vacation payments from LTD is not a breach of the OHRC, and the grievance was therefore denied.</i></p> <p><i>This decision clearly supports the contractual agreement between the City and ONA, with respect to the payment of LTD, and the "all source" calculation of payments. Given that the LTD plan is an ASO plan, the offset of vacation and severance is a necessary cost containment provisions within the contract. Should the Arbitrator have ruled in favour of the Grievors, the outcome would have been costly, not only for this bargaining unit, but potentially for all other bargaining units within the City, with similar contract language.</i></p>
<b>CUPE 5167</b>	<b>Termination</b>	<p>Employees terminated for time theft and neglect of duties, dishonesty and falsification of time cards.</p> <p><i>Outcome: Of the 21 terminated employees, 6 terminations upheld, 9 reinstated with no back pay (ie. 27 month unpaid suspension), 5 employees reinstated with varying unpaid suspension (ie. 1 – 15 months). All reinstatements subject to a 30 day suspension on their record. Arbitrator ruled that, although City was justified in decision to terminate employment, there exists a "culture of low expectations" which was main factor in Arbitrator's decision to give most grievors another chance.</i></p>
<b>CUPE 5167</b>	<b>Termination</b>	<p>Probationary employee terminated for attendance and performance issue. Over the course of his employment which began on November 18, 2013, the Employer received numerous concerns and complaints expressed by his supervisors and co-workers about his work habits and productivity. Both the quality and volume of the work performed by him was not been of an acceptable standard. Supervisors had discussed this with him on a number of occasions, and stressed the need for him to improve both the amount and quality of work performed.</p> <p>A necessary component of his position is the ability to work as part of a team. Supervisors received numerous reports from co-workers who expressed concern in this regard, and have asked that they not be scheduled to work with him, because they are concerned his actions place them in jeopardy of discipline. Other employees have reported that he frequently asked to extend break periods, or to take an additional break outside of the designated time. Other employees report that when they have refused such requests, he asked to be dropped off at alternate locations, and take these breaks alone. In addition to the issues identified above, he had also been late to work on more than one occasion</p>

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		<p>since November 18, 2013.</p> <p><i>Outcome: Grievor remained terminated</i></p>
<p><b>CUPE 5167</b></p>	<p><b>Termination</b></p>	<p>Employee one of the distributors in the infamous “brownies” case. Grievor brought brownies to the workplace that he knew, or ought reasonably to have known, contained cannabis. He provided the two brownies to an individual that he knew to be a marijuana smoker.</p> <p>Employee received the brownies from Grievor, and knew, or ought reasonably to have known that they contained cannabis. Despite this knowledge, he provided a co-worker a brownie without disclosing the fact that they contained cannabis. When faced with his co-workers adverse reaction and increasingly severe symptoms, the Grievor and Employee sought to conspire together to devise an alternate story in an effort to minimize their role in the event and avoid responsibility. They did this at the expense of the truth, and at the expense of the health, safety and well-being of their colleague and co-worker.</p> <p>By their own admission Grievor and Employee provided deliberately false, misleading and incomplete information to the Police and the Employer initially, and it is the opinion of this report that they continue to do so. But for the threat of potential criminal sanction, it is unlikely that they would have disclosed any of the information provided.</p> <p><i>Outcome: Grievor remained terminated. Letter of employment provided.</i></p>
<p><b>CUPE 5167</b></p>	<p><b>Termination</b></p>	<p>Employee terminated for frustration of contract due to LTD. The Grievor had been absent from work since April 11, 2011, and despite the repeated efforts of the Employer to return her to work in any capacity, the Grievor has been unsuccessful in returning to work, and it was apparent that she was unable to return to work in any capacity in the foreseeable future. The Grievor and Union contend that the Employer had failed to attempt to accommodate her restrictions to the extent required by law.</p> <p><i>Outcome: Employee paid ESA entitlement + nominal damages for full and final resolution. Grievance settlement also resolved OHRT complaint.</i></p>
<p><b>CUPE 5167</b></p>	<p><b>Suspension</b></p>	<p>Employee suspended for AWOL. Grievor believes he was unjustly disciplined (one day suspension) by the Employer for his absence from work on September 19, 2014. The Grievor also alleges the</p>

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		<p>discipline was issued outside the timelines required by the collective agreement.</p> <p><i>Outcome: Discipline remains on file, reimbursed partial payment for suspension.</i></p>
<p><b>CUPE 5167</b></p>	<p><b>Benefits</b></p>	<p>PT employees seeking “grandfathered” EH benefits. Union and employee’s believe this is a “legacy” entitlement from casuals’ grievance settlement. Union contends the employees listed below were paid the incorrect amounts for vacation pay and pay in lieu of benefits when they returned to Winter Operations as a temporary term and task employee.</p> <p>Given the settlement of “casual” employees grievance reached by the parties, and as set out by Arbitrator MacDowell, it is the opinion of the Employer that this grievance was resolved further to the terms of that settlement.</p> <p><i>Outcome: One employee paid a nominal sum for full and final resolution of all matters.</i></p>
<p><b>CUPE 5167</b></p>	<p><b>Termination</b></p>	<p>The grievor requested benefits while off due to an occupational injury.</p> <p>Collective agreement does not provide benefits to those off on WSIB. Union argued that it doesn’t make sense that we give benefits to age 65 if injured permanently while on LTD. However, the language does not provide the same benefit to those unable to work due to an occupational injury and while on WSIB.</p> <p><i>Outcome: Arbitrator issued an award that confirmed the Employer’s interpretation of the language.</i></p>
<p><b>OPSEU</b></p>	<p><b>Termination</b></p>	<p>The Grievor was a paramedic, who was terminated for failure to provide patient care in accordance with the BLS Standards, resulting in the death of a patient. The events that gave rise to his termination were also the subject of a Coroner’s investigation, resulting in charges being laid by Ministry of Health and Long Term Care.</p> <p><i>Outcome: The parties agreed to hold the grievance in abeyance pending the outcome of the criminal proceedings initiated by MOHLTC. The outcome of which resulted in the Grievor negotiating a plea agreement with the Crown in relation to the charges. The Employer and Union were then able to negotiate a settlement prior to arbitration, whereby the termination would be maintained, the Grievor would receive a monetary settlement and the parties could avoid a lengthy, costly and complicated</i></p>

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<p><b>CUPE 1041</b></p>	<p><b>Policy / ASMP</b></p>	<p><i>arbitration hearing.</i></p> <p>The Union believed that the former ASMP program did not sufficiently recognize absenteeism related to chronic conditions. Specifically, when multiple absences related to the same condition are not “linked” for the purposes of slowing down the progression through the ASMP, the Program was considered punitive and in violation of the Ontario Human Rights Code. Additionally, the Union believed the Employer was not sufficiently utilizing its right to demonstrate “discretion” in how the ASMP is administered, and as a result, the ASMP was not fairly and equitably applied to all employees.</p> <p><i>Outcome: The parties successfully negotiated a settlement to this matter prior to arbitration with the assistance of a mediator. This was due in part to the Employer’s revision of the ASMP (now referred to as the ASP), which satisfied the Union’s concerns regarding the handling of employees with chronic or episodic conditions, resulting in absenteeism.</i></p>
<p><b>OPSEU</b></p>	<p><b>Overtime</b></p>	<p>Union grieved the Employer’s use of the term “return to active employment” as it relates to the payment of sick leave for a new illness or injury following a return to active employment for one month. The Employer had interpreted “return to active employment to mean the performance of full duties and does not include any time on modified duties.</p> <p><i>Outcome: The Arbitrator ruled that any time at work, including work hardening, graduated hours, etc is considered a “return to active employment” and therefore included in the one month period used to determine eligibility for sick leave benefits.</i></p>
<p><b>ATU</b></p>	<p><b>Policy / IPP</b></p>	<p>The issue in regards to this grievance is that the position of Ticket Agent was posted and filled temporarily as a result of an illness. The employee filling the temporary position has been in there for over three (3) years. The Union argued that, based on the definition of total disability, that the employee cannot return to the position and the temporary position should be made permanent. When the position is made permanent, the more senior employee who has been doing the position on a temporary basis will get confirmed.</p> <p>The Employer sought and obtained agreement with ATU 107 that if an employee meets the twenty-four (24) month change of definition that they will lose all rights to their incumbent position at which time that position will be posted permanently. If and when the employee is able to return to work, they will proceed through</p>

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		<p>the Return to Work process.</p> <p><i>Outcome: There has been a long standing issue with employees who have been on Short Term Disability/Long Term Disability and their incumbent position and has been posted and filled on a temporary basis. Timelines on the posting have been exhausted and there have been extensions requested and granted. However, with this case, the incumbent employee has been off for over 5 years. The Union grieved that the position should be posted and filled permanently. The settlement reached gives the Employer the ability to post and fill a vacancy on permanent basis. The incumbent, should they be able to return to work, will have to go through the Return to Work Process.</i></p>
HOWEA	Contracting Out	<p>The issue surrounding this grievance was with respect to a contracting out notice posted and that this work could have been performed by bargaining unit members. More, specifically, the Union argued that the reason for the posting was time sensitive. The Union further made note that the calibrations that are done quarterly was not given to members in the past because of manpower availability. Now, there are enough employees for the bargaining unit to do this work. The Union is seeking to have this work returned to the bargaining unit.</p> <p>In the past these calibrations of equipment were done by an external third party. Further, the notice to contract out work was put up in error by the Supervisor and should not have gone up.</p> <p><i>Outcome: The Union withdrew the grievance prior to the arbitration. The Union dropped no longer pursued the argument that calibrations that are done to the water pumps which were once done by bargaining unit members and should be returned to the bargaining unit. By withdrawing the grievance, the Employer is now free to continue to contract out the work of quarterly calibrations.</i></p>
CUPE 5167 LODGES	Policy / Scheduling Hours of Work/Seniority	<p>This matter respected the Union's argument that the collective agreement language lacked clarity on which order extra shifts were to be offered to staff seniority or equally distributed. This language was changed during bargaining in 2013 however it was not yet in the collective agreement due to the interest arbitration process. A number of staff grieved missed shifts in 2013. The grievance went to mediation in August 2013. The Employer made an offer to settle of payment the equivalent of one shift per grievor (N=5 Grievors). The Union did not accept this offer and forwarded the grievances to arbitration but took no action to secure an</p>

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		<p>arbitrator. The Union subsequently advised the Employer in 2015 expressing their willingness to accept previous offer.</p> <p><i>Outcome: The Employer's offer to settle at mediation did not change, no costs were incurred to prepare for an arbitration and the settlement included a statement that indicated this is a one-time settlement only, the normal remedy for proven missed shifts is an offer of an extra shift to the employee, not payment. Further, there has been no more grievances related to this since 2013</i></p>
<b>CUPE 5167</b>	<b>Termination</b>	<p>Employee reported to be clearing private business parking lots with City equipment on paid time. Terminated.</p> <p><i>Outcome: Given certain vulnerabilities with citizen testimony, GPS data and other relevant evidence, employee remained terminated however paid severance reflective of employment obligations.</i></p>