

Settlement Agreement

Between

Facilities Bargaining Association (FBA)

And

Health Employers Association of BC (HEABC)

On behalf of:

Fraser Health Authority

Interior Health Authority

Northern Health Authority

Providence Health Care

Provincial Health Services Authority

Vancouver Coastal Health Authority

Vancouver Island Health Authority

Re: Transfer of Services - Outstanding Disputes

On June 10, 2011, the FBA referred a number of differences related to transfer of services to an Industry Troubleshooter Hearing. The hearing was held on July 7, 2011. The parties continued to meet from July 7, 2011 to August 3, 2011 to resolve these differences.

The parties have reached an agreement to resolve the differences before the Industry Troubleshooter and therefore, do not require recommendations with respect to any of the differences.

The agreement reached is reflected in this document and the parties have either agreed to amend/add language (*in italics*) to the Standard Template Transfer Agreement (STTA) or have reached an understanding on the interpretation and application of the STTA and Part V – Transfers, of the Addendum – Job Security and Expanded Opportunities (JSEO) in the Facilities Subsector Collective Agreement.

The following reflects the agreement to resolve outstanding differences:

I. Effective Date of this Agreement

The STTA and Supplemental Transfer Agreements (also known as Labour Adjustment Plans (LAPs)) reached since June 2010, are standardized to incorporate the agreements set out below. The parties also agree that all changes to these Supplemental Transfer Agreements/LAPs are prospective. The FBA has asked employers to address specific grievances filed in a manner consistent with the agreements below. As these grievances number less than 10, the FBA will provide the list of grievances and their particulars prior to signing this Agreement, with sufficient information to allow the parties to work toward resolving them consistent with the agreements set out below.

II. Disclosure of Information required under the Standard Template Transfer Agreement (STTA)

1. Duty to Accommodate Agreements

The parties will amend the STTA, Part IX, point #4 on page 7 to read as follows:

The Sending Employer(s) will identify, in writing, all existing agreements that arise out of the Duty to Accommodate and confirm that they believe the list is complete. The Receiving Employer, the Sending Employer(s), the Union and the employee will work together to ensure the specific accommodation is addressed through the transfer process. The parties will meet their legal obligations pursuant to Human Rights Law.

For each of the transfers which have occurred since June 2010, the Sending Employer(s) will confirm in writing they believe the list of employees who have been identified to the Union with DTA agreements is a complete list.

2. Local MOA's and Superior Benefits

The parties will amend the STTA, Part IX, point #6 on page 7 to read as follows:

Existing MOA's and Superior Benefits applicable to the Sending Employer will be reviewed. The Sending Employer(s) and Unions will both identify and produce employer specific MOA's to enable a review. Where the parties mutually agree an MOA is applicable, the MOA shall transfer with employees to the Receiving Employer(s).

3. Divided Positions

The parties agree to amend the last sentence of the STTA, Part IV – Worksites and Employees, to read as follows:

The list will also identify those employees who are in relief postings within and outside the service transferring, and those employees who are transferring in positions that also contain work responsibilities originating from a service that is not transferring ("divided" positions).

In the case of Medical Imaging and Health Information Management, VCHA and PHC will produce a list of employees working in divided positions who are transferring.

4. List of Employees Transferring

The parties discussed this issue further and have reached an understanding on the interpretation and application of the STTA and the JSEO in this area as follows:

The FBA was primarily concerned with employers defining the scope of the services being transferred and not expanding the scope of services being transferred following the 30 day notice period. By that time, the full scope of services being transferred and impacted positions should be well understood. While the list of positions and employees should be known and communicated under the STTA, V.I. 30 days prior to transfer, it is acknowledged that the list of employees may change due to employee mobility, list updates, etc.

III. Interpretative Issues on the language of the STTA

I. Employees Returning from Long Term Disability

a. LTD – “Own Occupation Period”

The parties agree to add the following language at the end of Part V. I. Of the STTA:

Employees returning to work from LTD during their “own occupation” period will be transferred and fill the position they temporarily vacated for this leave period, in accordance with Section I of the LTD Plan Addendum. Accordingly, the employee will have full access to employment rights that exist at the Receiving Employer.

b. LTD – “Any Occupation Period”

The parties agree to add to the above paragraph the following further paragraphs:

Employees returning to work from LTD during their “any occupation” period will also exercise their rights under Section I of the LTD Plan Addendum with the sending employer retaining responsibility for all placement options. Placement options will be implemented as follows:

The transfer of the employee will be the first priority of the sending employer to help the employee return to the same job or service that was transferred to the Receiving Employer.

Upon receipt of medical information supporting the ability of the employee to return to work in her pre-disability job or an alternate job within service transferred, the sending employer will request the receiving employer to provide a vacancy list and seniority list for that service area. The parties will explore options within the service at the receiving employer for a vacancy, bump or accommodation arrangement (although it is understood that the test of “undue hardship” remains the responsibility of the sending employer), and if such options are available, the employee will be transferred.

If no employment options are available, the sending employer will then review vacancy, bump or DTA options as per usual processes within its own organization.

2. Re-employment with the Sending Employer

The parties will amend the STTA, Part VI, point #6 on page 5 and 6 to read as follows:

If a transferred employee is re-employed in a regular position with the Sending Employer subsequent to the employee’s date of transfer and the employee resigns from the Receiving Employer, the employee will port his/her service and service related banks, effective the day following written resignation or the date of re-employment in a regular position, whichever is later. Specifically, the employee will port all related benefit entitlements including, but not limited to, vacations, special leave, sick leave, banked overtime, and service for severance and vacation entitlement, and will be entitled to health and welfare benefit coverage without having to serve a new waiting period. The employee will also port seniority hours accrued at the Receiving Employer since the date of transfer back to the Sending Employer limited to the maximum yearly hours of a regular full-time employee. The seamless porting of benefits as described above is available to employees once and is provided on a without prejudice basis to the portability provisions of the Collective Agreement.

Employees may apply for a leave of absence from the Receiving Employer to work at the Sending Employer in these circumstances. Such leave requests will be considered in accordance with Article 34 of the Collective Agreement. If the Receiving Employer grants an LOA, the employee will not be entitled to port anything in the preceding paragraph until such time as he/she resigns employment with the Receiving Employer.

Upon re-employment in a regular position with the Sending Employer, the employee will serve a qualifying period in accordance with Article 14.02 of the Collective Agreement. In the event that the qualifying period is not completed and the employee has already resigned from the Receiving Employer, the employee will be entitled to register on a casual list with the Sending Employer, since the employee will be unable to return to their previous position with the Receiving Employer.

The parties have reached an understanding on the interpretation and application of the STTA and the JSEO in this area as follows:

It was discussed and understood that an employee who chooses to pursue an unpaid LOA may experience gaps in health and welfare benefit coverage (or any other benefits associated with regular employment status) after the 20 day grace period unless the employee takes active steps to secure coverage.

Related to the above amendment, the parties agree to remove provisions from all Supplementary Transfer Agreements (LAPs) negotiated since June 2010 that address qualifying periods. For example, the HSSBC LAP provision at point #7 reads as follows:

Qualifying Periods - after transfer, HSSBC will grant for the period of the qualifying period a leave of absence to employees who are successful in applying for a regular position at their sending Health Authority within the five (5) year seniority carry over period. At the end of the qualifying period the employee may return to their position at HSSBC or remain in their new position at the sending Health Authority.

3. Obligation to Reach Agreement

The parties agree to add the following language as a new point #5 in Part III of the STTA:

The Receiving and Sending Employers and the Union will work in good faith to develop a supplementary transfer agreement/labour adjustment plan to address any matters that may not be included in this agreement or that may be unique to a specific transfer. These matters may include discussion on employees remaining in or leaving temporary postings in the transferring service or in other services retained by the sending employer.

The parties also agree to make a consequential amendment to STTA, Section V. I to read as follows:

... The notice shall include a copy of this agreement and any supplemental transfer agreement/labour adjustment plan if reached...

4. Authority to Negotiate

The parties agree to add the following language at the end of the previous new point #5 in Part III:

Any supplementary transfer agreement/labour adjustment plan reached between the Union and the Receiving Employer is binding on all parties.

5. Failure to pay Resolved Outstanding Disputes

The parties have reached an understanding to the interpretation and application of the STTA and the JSEO in this area as follows:

Receiving Employers should be providing payment in relation to resolved disputes that arose at the Sending Employers, and seek reimbursement from the Sending Employers under their own arrangements.

IV. Gaps in the STTA for which issues are arising

Relief Postings

This matter has been resolved and is addressed above in **Section 3 – Obligation to Reach Agreement**.

V. Matters on which there may be parallel processes already in place

Multi-employer single worksite steward representation – a committee was struck under the FCA. The parties agree to the following principles to guide the committee's discussions:

1. The goal is to have stewards from the same employer represent employees at those work sites to the best extent possible.
2. Where this is impracticable, look at options short of stewards from other employers providing representation, including:
 - a. Stewards being available from geographical clusters of the employer's worksites.
 - b. Greater use of technology such as videoconferencing.
 - c. Other reasonable options.
3. If other options as referenced in 2 above are not practicable, it may be necessary to utilize stewards from other employers for representation.

VI. FCA interpretation matters that have an impact on transfers

The parties agree to meet and try and resolve the issue of the overtime waiver as it relates to the Consolidation of Seniority Lists MOA, specifically for VCH, or if principles are involved, convene separate discussions with the broader group.

Signatures:


Facilities Bargaining Association

August 5, 2011
Date


Health Employers Association of BC

August 5, 2011
Date