



HOSPITAL EMPLOYEES' UNION

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September 8, 2010

Service Canada
471 Queensway Avenue
Kelowna, B.C.
V1Y 6S5

Attention: Ms. Debbie Bart, Appeals Specialist

Dear Ms Bart:

**RE: NEW APPEALS
ANDREA RACHEL ET AL
CASE NUMBER 09-1363, FILE NUMBER 589-435**

Dear Ms. Bart:

We write to you with respect to a number of recent appeals to the Board of Referees which raise issues analogous to those addressed in the *Andrea Rachel et al.* matter referred to above.

As you are aware, the issue raised in the *Andrea Rachel et al* matter arises out of a 2007 Supreme Court of Canada ruling that found that legislation passed by the Government of B.C. that removed, among other things, negotiated protections for workers against contracting out was unconstitutional and a violation of employees' right to freedom of association under section 2(d) of the *Charter of Rights and Freedoms*. As these workers were directly and adversely affected by this violation of their Constitutional rights, a settlement agreement was negotiated between the Government of B.C. and the Facilities Bargaining Association (FBA) that provided for payments made in recognition of the violation of their Constitutional rights. The FBA is the association of unions certified under the B.C. *Labour Code* and *Health Authorities Act* as an exclusive bargaining agent for collective bargaining purposes and the Hospital Employees' Union is a union party to that association.

The Employment Insurance Commission found that payments made to claimants pursuant to the settlement were earnings for benefit purposes under the *Employment Insurance Act* and it issued overpayment notices. Due to the large number of notices of overpayment and related appeals, a representative appeal, *Andrea Rachel et al.*, proceeded before the Board of Referees. The HEU, and others, worked with the Commission in order to put this representative appeal process in place. Unfortunately, the majority of the Board of Referees hearing this appeal concluded that the payments were earnings for benefit purposes. A subsequent appeal was filed and is currently proceeding before an Umpire.

We understand that the Commission is refusing to recognize a number of individuals that advised of their intention to be included in the *Rachel et al* appeal.

It has come to our attention that additional HEU member claimants, who did not previously receive notices of overpayment, have now received notices from the Canada Revenue Agency of an intention to collect the overpayment amount or a decision to withhold all or part of the amount from a tax refund. Having now received notice of the overpayments issued by the Commission, these claimants are filing appeals.

We are concerned that the Commission has been directing claimants to the HEU for information and the lodging of appeals. Every claimant has the right to lodge an appeal and it is the Commission's role under the Act to provide information and guidance relating to that process. In taking this position, it is our view that claimants have been losing valuable time for the filing of their appeals and that they are being provided with inaccurate information by the Commission.

In addition, it is our understanding that the Commission has suggested to individual claimants that the HEU *should* be representing them. With respect, the voicing of this opinion has led only to confusion and consternation on the part of claimants who are simply seeking to exercise a statutory right of appeal. While the HEU provided, and continues to provide, assistance in the *Rachel et al.* matter, it is not able to provide representation on what could be between 50 and 100 individual, new appeals. Unfortunately, it is the Commission that has refused to consolidate these individual appeals into a second representative appeal.

At the end of the day, efficiency and consistency in decision-making suggest that it makes little sense to proceed with a series of appeals before the Board of Referees, or the Umpire, while the central issue is already the subject of an appeal before an Umpire in support of which comprehensive submissions are being filed.

In light of all the foregoing, please be advised that we will be advising any member filing an appeal that he/she should request that any Board of Referees or Umpire proceedings be held in abeyance pending the outcome of the Umpire appeal in the *Rachel et al* matter. We trust that the Commission will support such requests and, at the very least, not object to them.

We are also hereby respectfully requesting that claimants who contact the Commission also be advised that they can request that their appeal be held in abeyance pending the decision of the Umpire in the *Rachel et al* appeal.

We trust that this proposed course of action will assist in making the resolution of these related appeals more efficient and expeditious. Certainly, it will avoid the needless expenditure of Commission and other resources. We trust it will also lessen the stress and decrease the time that individual claimants will be required to expend on an issue for which an Umpire is already seized.

Yours truly,



Bonnie Pearson
Assistant Secretary-Business Manager

cc: C. Pinsent
J. de Aguayo
C. Sullivan