



HOSPITAL EMPLOYEES' UNION

NEWSLETTER

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Arbitrator rules that employees working with children must pay \$20 criminal records check fee

An arbitrator has ruled that health employers are not required to pay the cost of a criminal records check for employees who require them because they work with children or have unsupervised access to children.

The checks impact the majority of HEU members and have been required since 1996 under the *Criminal Records Review Act*. Health authorities had covered the cost of the checks after a fee was imposed for the service in 2002. But starting this past spring, employers began charging workers the \$20 fee.

As a result, HEU and its union partners in the Facilities Bargaining Association (FBA) filed a policy grievance on the matter.

The FBA argued that the cost of the criminal records checks was a business cost and as such, employers could not collect the fee from employees because of provisions in the *Employment Standards Act*. The FBA took the position that since employers have paid this cost previously, the change in practice needed to be subject to negotiations.

Health employers said that changes to the *Criminal Records Review Act*, which come into force later this month, have expanded the list of offences that must be checked as well as requiring a new records check every five years.

Because of these significant changes, employers argued, they should not be bound by past practice. They also argued that the fee was not a business cost.

In a December 9 decision, the arbitrator ruled that health authorities were not required to pay the fee under the provisions of the facilities collective agreement, and that it was not a business cost. He further ruled that the changes to the *Criminal Records Review Act* were substantial enough to warrant a departure from past practice.

He also ruled that since employees were responsible for granting authorization for the criminal records checks under the *Criminal Records Review Act*, they were also responsible for paying the fee.

There remains an outstanding issue which is the way employees pay the fee. The FBA has taken issue with the employers' threat of discipline against employees who refuse to authorize a payroll deduction to cover the cost of the records check.

The FBA maintains that employees should be able to refuse such authorization if they wish to pay by credit card or cheque or some other means. This question will be heard and decided by the arbitrator on an expedited basis.

December 14, 2010

