



CENTRAL RIGHTS FUNDING PROCESS

***Provided by the Ontario Hospital Association,
Hospital Employee Relations Services***

March 2011

Central Funding of Rights Arbitrations

Introduction

The central funding process was originally put in place in 1980 and was intended to provide support when collective agreement language negotiated through central bargaining was challenged at arbitration. It was recognized that significant savings could be achieved if hospitals 'pooled' their resources into a central defense fund rather than individually defending a case at arbitration.

This collective approach, aside from providing obvious economic advantages, is critical in ensuring the consistent interpretation and application of central provisions. Considering the shifting provincial framework in which hospitals operate, the central funding process provides much needed support to hospitals in their efforts to maintain the integrity of the centrally-negotiated collective agreements.

Objective

The objective of the Central Rights process is to provide all participating hospitals with full access to the resources of the OHA in order to ensure consistent and accurate interpretation and application of all centrally-negotiated collective agreements in Ontario.

Given the overall importance of defending the integrity and consistent application of these central agreements, the Central Rights process is designed to provide experienced labour relations advice along with industry-wide provincial research and arbitral jurisprudence to qualifying grievances. Additionally, the Hospital Employee Relations Services (HERS) department provides full case management support throughout the entire process, including the communication of these grievances to other hospitals, as well as notification of any other general industry-wide concerns that may present immediate and/or future potential liability to hospitals.

The HERS team understands the growing complexity of Health Human Resources and Labour Relations needs throughout the province and is committed to providing support and quickly responding to issues facing hospitals.

Background

Throughout the 1970s, an increasing number of collective agreement provisions became common to Hospitals which participated in central bargaining. These common provisions were intended to apply in the same way in all hospitals.

In 1980, on the advice of its Employee Relations Policy Committee, the OHA Board passed two policies designed to assist hospitals in their administration of this central language.

One policy required each central Negotiating Team, working with Hospital Employee Relations Services (HERS), to prepare a Reference Manual for use by participating hospitals. Each manual explained how the central provisions were to be applied, and supplied supporting documentation and examples as necessary.

The second policy was directly related. It provided for the central funding of rights arbitrations in cases where a union was challenging the Hospitals' Negotiating Team's interpretation of centrally negotiated or arbitrated provisions. In 1989, the OHA Board approved an expansion of this policy to include matters proceeding under *The Employment Standards Act, Labour Relations Act*, or

Human Rights Code, that would have otherwise been funded had they proceeded as rights arbitrations.

Since then, hundreds of grievances have been approved for central funding. The Ontario Health Premium Tax issue is one example of a recent province wide case which impacts on all Hospitals supported by the Central Funding pool.

Ontario Health Premium - On March 4, 2005, a centrally funded arbitration hearing on the payment of the Ontario Health Premium (imposed under Bill 106) by the Participating Hospitals was heard before arbitrator Howard Brown. The arbitration represented a consolidation of more than 130 individual Union grievances. In this case, the Participating Hospitals took the position that the collective agreement requires the Hospitals to pay premium coverage of the billed premiums under the Ontario Health Insurance Plan (OHIP), not the payment of a tax, which was imposed by the Province through the amendment to the *Income Tax Act*.

In dismissing the grievance, arbitrator Brown did not accept the Unions argument as the *Income Tax Act* does not require the collection of proceeds of the tax to be applied to any specific purpose by the Province in the use of those funds and is not enacted in the form of a premium for an insurance plan, such as the OHIP as reference in Article 17.01(a). Rather, Bill 106 added an individual tax based on an employees taxable income for the year. As a result, the statutory requirement of Bill 106 was determined not to be consistent with the Hospitals' obligation under Article 17.01(a) of the collective agreement.

Grievances Eligible for Funding

The process for determining whether or not a grievance is eligible for central funding is ensuring that a given matter meets the following criteria:

1. The hospital concerned must have participated in the round of central bargaining which resulted in the current collective agreement, or must have authorized participation in the current round of central bargaining.
2. The grievance must be directly related to the interpretation of a central provision;
3. The Hospital must have administered that provision in a manner consistent with the Negotiating Team's interpretation, as set out in the Reference Manual;
4. The matter must be worth pursuing at arbitration.

In assessing a grievance's suitability for central funding, it is important to bear in mind that the grievance must not only involve central language, but must *challenge the manner in which the language is being applied*. For example, a grievance which relates to whether or not part-time employees in general have a right to bid on full-time job postings, is challenging the intention of the language, and would normally be eligible for central funding.

Grievances that challenge the hospital's judgement rather than the manner in which the language is interpreted are not appropriate for central funding. For example, if the union was challenging the hospital's *choice* of applicants because it disagreed with the hospital's assessment of qualifications, the union is then grieving a value judgement made by the hospital and not the application or interpretation of central language. Such a grievance would not be appropriate for central funding.

On occasion, hospitals may be advised to settle a grievance on a "without prejudice" basis because the cost of proceeding to arbitration outweighs the value of the issue at hand, or because of some other particular circumstances (such as the Hospital's past practice, or the availability of evidence or testimony).

It is also possible that, from time to time, changing trends in arbitral jurisprudence or the applicability of legislative provisions, particularly the *Employment Standards Act*, may require a change in the interpretation of a particular provision from that set out in the applicable Reference Manual(s).

Naturally, grievances challenging discipline or discharge, as well as those founded on any superior condition or local provision of the collective agreement are not eligible for central funding.

How to Obtain Central Funding

Once a grievance challenging the interpretation of a central provision is filed, the hospital should ensure that it has been administering that provision in accordance with the Reference Manual. It should then determine whether the grievance was filed on time, at the proper grievance step, and whether it specifies the nature of the grievance, the article number allegedly violated, and the remedy sought.

Any potential centrally funded grievance should be reviewed with HERS staff as soon as possible after it is filed in order to determine if it qualifies for Central Rights Funding. Accordingly, Hospitals are asked to contact HERS when any centrally funded grievance is referred, or likely to be referred, to arbitration, and to promptly forward a copy of the grievance and any attachments, a full statement of the factual background, and any relevant past practice or commitment by the hospital. To assist the hospitals in collecting this information, the OHA asks that you please complete the Central Rights Funding Request Form - CRFRF (a downloadable Funding Request Form is available at the end of this document) and forward it to HERS with the other documentation, as soon as possible.

Although it is critical that HERS staff are alerted to the development of central rights cases as soon as possible, we realize that this may not always be possible. For example, a hospital may find that as a grievance evolves, facts come to light that discredit previous information or reveal that the issues at hand do in fact challenge the interpretation of central language. It is vital in cases like these, that the hospital contact the HERS staff as soon as possible in order to ensure that the hospital's actions do not prejudice their position.

HERS staff will, in normal circumstances, confirm the Central Funding decision in writing to the hospital within 5 *working* days of receipt of the CRFRF. In order to facilitate the expedited arbitration process (Section 49 cases), response time will be reduced to within 3 *working* days of receipt of the request form. In the event that a hospital does not agree with a decision, it may request a review of the decision by the Appeals Committee (see *Appeals Committee in following section*). In Section 49 Cases (Expedited Arbitration Cases), considering the short timelines involved, HERS representatives will assist the Hospital in efforts to negotiate extensions of the timeline with the Union. The appeal process in no way suspends the hospital's obligation to carry the grievance forward.

Even if it is determined that the grievance is not to be centrally funded, HERS staff may be able to provide assistance, advice, or consulting services to help hospitals resolve the grievance.

Where a matter is determined to be appropriate for central funding, HERS will discuss the appointment of nominee, chair and counsel with the hospital. The nominee to a central rights

arbitration board will be appointed on a case by case basis depending on the issue and bargaining history. The selection of counsel, nominee and the chair shall be through consultation between the Hospital and the HERS department recognizing that final determination shall be made by the HERS department.

Once Central Funding has been approved, the carriage of the grievance, including authority for any settlement or resolution shall be vested with HERS. It is understood that before a final resolution is determined, HERS staff will consult with the lead hospital and review available options with the hospital.

Considering that the OHA is not ultimately accountable for payment of the fiscal outcome, there exists an obligation to reconcile the interests of the hospital, fiscal and otherwise, with the interests of the hospital sector. In the event that a hospital disagrees with the proposed settlement or resolution that the HERS staff decide upon, the hospital may request a review of the decision by the Appeals Committee. On occasion there may not be sufficient time available to confer with the Appeals Committee in advance of finalization of the settlement or resolution (e.g. at Arbitration hearing, 11th hour settlements, etc.). In such situations, recognizing that the settlement decision can not be changed, the Appeal shall take the form of a review and the Committee may make recommendations for addressing similar situations which may arise in the future. Similar to the Central Funding Decision appeals process, the hospital must set out its reasons for appealing or requesting a review in an Appeal Form addressed directly to the Chair of the Appeals Committee.

Appeals Committee

In the event that HERS staff do not consider that the matter at issue meets the criteria for Central Funding, a hospital may request that the decision be reviewed by a separate sub-committee of the Expert Employee Group Advisory Panel comprised of the Chair and two participating members. An alternate committee member may be selected in the event a conflict of interest exists or one of the participating members are unavailable.

Where a hospital wishes to have a decision reviewed, it shall submit a Central Rights Funding Appeal Form to the OHA addressed directly to the Chairperson of the Appeals Committee within 10 working days of receipt of the HERS Central Funding Decision letter. The Appeal Form provides the hospital with an opportunity to set out reasons for the appeal and explain why they wish to have the decision reviewed (a downloadable Appeal Form is available at the end of this document). The hospital will be consulted via teleconference where the Appeals Committee finds it necessary to clarify details of the circumstances related to the appeal. The Appeals Committee will endeavour to respond to the hospital within 5 working days of receipt of the form requesting the decision review. In the case of Section 49 grievances, the Appeals Committee will attempt to expedite its review, preferably within one day. Again, it is important to note that the appeal process in no way suspends the hospital's obligation to carry the grievance forward.

Additional Considerations

At times, participating hospitals may originally proceed without central funding at the outset of a case, and later, as the case progresses, the hospital may reconsider and decide to make a request for Central Funding. In these cases, upon receipt of the request along with the appropriate documentation forwarded to HERS, the request will be reviewed by HERS in accordance with the central funding guidelines. The HERS will determine the appropriateness and level of funding, if any, taking into consideration the hospital's management of the case to date and the potential impact on central provisions. In the event of any dispute, HERS will then forward its recommendation along with the request for funding to the Appeals Committee for

consideration. The funding made available to support these cases will be at the discretion of the Appeals Committee and in keeping with the principles and guidelines of Central Funding practice.

A non-participating Hospital may submit a request for central funding on the grounds that the dispute has significant impact upon central agreement provisions. In these cases, the request for funding will be forwarded directly to HERS along with the appropriate documentation for review. HERS will forward the request along with its recommendation to the Appeals Committee who will determine the appropriateness and level of funding, if any. Should the request be granted, the hospital will be required to pay the annual central fund levy.

On occasion, on behalf of a non-hospital employer, HERS may request support for the funding of rights cases if the case involves the challenge of a key issue whose outcome will significantly impact the application and interpretation of central provisions. In these cases, HERS will submit its recommendation and the request for funding directly to the Appeals Committee who will determine the appropriateness and level of funding, if any.

Central Rights Funding Request Form

HOSPITAL: _____ **UNION:** _____
(Including Local #)

CONTACT NAME: _____ **SIGNATURE:** _____

ADDRESS: _____ **PHONE:** _____

CITY: _____ **POSTAL CODE:** _____ **FAX:** _____

SUMMARY OF GRIEVANCE:

(Provide as much detail as possible. Use additional pages if necessary.)

UNION

POSITION:

(Provide as much detail as possible. Use additional pages if necessary. Please include remedy sought.)

Has this grievance been filed under Section 49 of the Labour Relations Act Yes No (If YES, please attach)

What articles and/or legislation are being grieved? _____

Does this grievance involve any local provisions? Yes No If YES, please list: _____

Has this grievance been referred to arbitration? Yes No (If YES, please attach)

Has there been any procedural irregularities associated with this grievance? Yes No (If YES, please attach)
(e.g. failure to comply with time limits or follow proper steps in the grievance/complaint process or a lack of information provided regarding grievance.)

Has the union submitted their suggested arbitrators? Yes No (If YES, please attach documentation)

Please submit the following additional information along with this form:

- 1) Copy of the grievance(s);
 - 2) The letter referring this matter to arbitration;
 - 3) Factual background information (e.g. the manner in which the hospital has applied the collective agreement; specific actions taken by hospital; past practice, statements made by the grievor, union representative, or hospital that bear on this issue);
 - 4) Notes from the grievance meetings, and investigation meeting notes;
 - 5) Any other materials or information that is pertinent to this grievance(s), including those noted above.
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Please fax completed form along with additional information to:

**HOSPITAL EMPLOYEE RELATIONS SERVICES
ONTARIO HOSPITAL ASSOCIATION
(416) 205-1390**

CENTRAL RIGHTS APPEAL FORM

HOSPITAL: _____ **UNION:** _____
(Including Local #)

CONTACT NAME: _____ **SIGNATURE:** _____

ADDRESS: _____ **PHONE:** _____

CITY: _____ **POSTAL CODE:** _____ **FAX:** _____

CENTRAL RIGHTS REQUEST # _____

THE GRIEVANCE MEETS THE FOLLOWING CRITERIA:

- The grievance is directly related to the interpretation of a central provision and the Hospital has administered that provision in a manner consistent with the Negotiating Team's interpretation, as set out in the Reference Manual.

Hospitals Position:

- The matter is worth pursuing at arbitration (or where hospital disagrees with the proposed settlement or resolution).

Hospitals Position:

Other Comments:
