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**ARTICLE XXIII – TECHNOLOGICAL CHANGE**

**Section 1: Advance Notification**

The Company shall notify the Shop Committee and the Union not less than six (6) months in advance of intent to institute material changes in working methods of facilities which would involve the discharge or laying off of employees.

**Section 2: Rate Adjustment**

a) An employee who is set back to a lower paid job because of mechanization, technological change or automation will receive the rate of his/her regular job at the time of the setback for a period of three (3) months and for a further period of three (3) months he/she will be paid an adjusted rate which will be midway between the rate of his/her regular job at the time of the setback and the rate of his/her new regular job. At the end of this six (6) month period the rate of his/her new job will apply. However, such employee will have the option of terminating his/her employment and accepting severance pay as outlined in Section 3 below, providing he/she exercises this option within the above referred to six (6) month period.

b) Following an application of a) above, where an employee is set back to a lower paid job because of an application of Article VIII – Seniority brought on by mechanization, technological change or automation he/she will receive the rate of his/her regular job at the time of the setback for three (3) months and for a further three (3) months he/she will be paid an adjusted rate which will be midway between the rate of his/her regular job. At the end of this six (6) month period the rate of his/her new regular job will apply.

**Section 3: Severance Pay**

Employees discharged, laid off or displaced from their regular job because of mechanization, technological change or automation shall be entitled to severance pay of seven (7) days' pay for each year of service with the Company. The amount calculated under such entitlement shall not exceed a maximum of thirty (30) weeks' pay. This Section shall not apply to employees covered by Section 2 b) above.

**Section 4: Option**

Employees laid off from their regular jobs because of mechanization, technological change or automation shall have the option to terminate their employment and accept severance pay, either

a) at the time of layoff, or

b) at the point seniority retention expires

**Guidelines**:

## ARTICLE XXIII – TECHNOLOGICAL CHANGE

**Section 1: Advance Notification**

Guidelines for this section logically call for:

(i) parameters for what constitutes technological change, and

(ii) issues associated with required notice

(i) History and jurisprudence have failed to **clearly** define what activity constitutes technological change. An arbitration case involving Fletcher Challenge Canada Limited, and IWA Local 1-118 *(See Case Reference #1)*, serves to provide some parameters. This case reinforced that the combination of duties formerly held by two positions, albeit as an indirect result of technological change elsewhere, is not in itself technological change.

To conclude that a prospective change is in fact a technological change under the meaning of this Article, a close examination of the language is helpful. Section 1, the words state, "*material changes in working methods or facilities*". Other sections repeatedly state, "*mechanization, technological change or automation*". Therefore, for a change to be considered technological change under this Article, it must be a material change in working methods or facilities involving mechanization or automation. A simple reduction of forces due to market or economic conditions is not technological change.

In November of 2007, a very thorough legal analysis was undertaken with respect to all available jurisprudence and industry practice in order to conclusively decide if a scenario in question (specifically the elimination of a chipper attendant job and camera installation and other equipment changes elsewhere) would be considered as technological change under our collective agreement. **If you encounter any scenario that gives rise to the question of the**

**applicability of the technological change article, then the legal analysis is worth reviewing**. For a copy of the legal analysis please contact CONIFER.

A November 8, 2010 decision of Arbitrator Joan Gordan (*See Case Reference #3)* also serves to provide some focal insight into the application of the technological change article in the collective agreement. In this case the Union submitted that the discontinuance of the cut-off saws and log banding station, together with the dramatic increase in the supply of CTLs (cut to length logs) to the mill after October 2009, constituted a material change in working methods or facilities attracting the relief under the Technological Change article. The arbitrator awarded in favor of the Company in this case. This case is worth reviewing if questions as to whether a change may constitute "tech change" or not, especially if the prospective change involves the simple discontinuation of certain facets of the mill operation due to a shift to CTL log supply.

Historically, a definition of technological change existed in the Labour Code. However, this is no longer the case. In the event of technological change employers also need to be cognizant of their obligations under Section 54, "Adjustment Plan" of the Labour Relations Code of British Columbia. Sub-Section 1 of Part 54 states:

"If an employer introduces or intends to introduce a measure, policy or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,

a. the employer must give to the trade union that is party to the collective agreement at least 60 days notice before the date on which the measure, policy, practice or change is to be effected, and
b. after notice has been given, the employer and the trade union must meet, in good faith, and endeavor to develop and adjustment plan, which may include provisions respecting any of the following:
    i. consideration of alternatives to the proposed measure, policy, practice or change including amendment of provisions in the collective agreement

ii. human resource planning and employee counseling and retraining;
iii. notice of termination;
iv. severance pay;
v. entitlement to pension and other benefits including early retirement benefits;
vi. a bipartite process for overseeing the implementation of the adjustment plan

2018-2020 marked a period involving substantial litigation at the BC LRB regarding the meaning of and obligations under section 54. The focal case originated in the context of the plant closure of Tolko, Quest Wood Division. This is a complicated legal issue with complexity beyond the scope of this Manual. **Companies contemplating technological change are advised to seek legal advice regarding the implications of Section 54 of the Labour Relations Code of BC.**

(ii) Once a prospective change is considered a technological change, and a corresponding discharge or layoff of employees is anticipated as a direct consequence of the change, the Company must notify the union and the shop committee six months in advance of intent to institute the change. It is advisable to maintain open lines of communication with the union in regard to possible operational changes that may result in the application of technological change.

Where advance notification is not provided a liability for wages and benefits could result. *(See Case Reference #2)*

**Case References – Article XXIII, Technological Change, Section 1:**

1. **FLETCHER CHALLENGE CANADA LIMITED AND IWA LOCAL 1-118**
   **Arbitrator: David H. Vickers, March 8, 1989**
   Click here to read this case reference

   BACKGROUND: The grievor was an Auto Trimmer Tailer/Sling Hoist Operator. The Company combined the positions of Line Bar Tailer and Auto Trimmer Tailer/Sling Hoist Operator and assigned the grievor to perform the combined jobs in the work area previously occupied by the Line Bar Tailer. The Company's decision to combine the jobs was facilitated by modifications at the mill that constituted technological change. However no technological changes were made in the reman area where the grievor worked.

2. **MACMILLAN BLOEDEL LIMITED AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 882**
   **Arbitrator: Munroe, Wok, Neale, February 10, 1983**
   Click here to read this case reference

   BACKGROUND: In this case the company implemented a major technological change, but did not consider it to apply to the powerhouse crew.

   CONCLUSION: The arbitrator ruled, *"In short the consequence of technological change on the Operating Engineer's bargaining unit, at times when the change is rendered operational, is the loss of employment for five members"*. As a result, the decision provided that affected employees *"must be made whole in the form of wages and benefits lost"*.

3. **WEST FRASER MILLS LTD. AND USW, LOCAL 1-417**
**Arbitrator: Joan M. Gordon, November 8, 2010**
Click here to read this case reference

BACKGROUND: The union filed a grievance claiming that moving to a cut to length (CTL) program in the bush constitutes technological change and resulted in a material change in working methods or facilities.

CONCLUSION: Arbitrator Gordon dismissed the union's grievance and at one point in her decision, states: "The change to 100 percent delivery and processing of CTL's meant that the banding station, in-feed decks and cut-off saws were no longer required, and those parts of the operation were discontinued. Those parts of the operation were previously involved in processing long and short logs; they were not involved in processing CTL's. And importantly, in my view, the discontinuation of the banding station, in-feed decks and cut-off saws did not have the effect of materially altering the remaining part of the mill operation where the CTL's are processed into lumber. Those parts of the operation were simply shut down, leaving the remaining lumber producing part of the mill operating as it had before."

**Section 2: Rate Adjustment**

Sub-section a) provides that an employee, **whose job disappears** because of technological change and who as a result applies his seniority (i.e.: bumps) to obtain a lower paid job, will receive rate protection. The three-month periods referred to in this section are three calendar months, as opposed to three working months. An individual **directly** impacted by technological change, **(meaning the job was there prior to the technological change and gone after technological change occurred)** and who elects to bump and be subject to rate adjustment, also maintains the right to accept severance pay, based on Section 3, over the course of the six (6) month rate adjustment time period.

Sub-section b) applies to an employee **who is bumped** by an individual in the course of seniority application triggered by the technological change. This individual(s) affected by the change is eligible for the same rate protection process as in Section 2 a), **except that the option for termination with severance pay is not available.**

Example:

A's job is eliminated by technological change
A applies his seniority to bump B
B applies his seniority to bump C
C applies his seniority to bump D
D is displaced and does not have seniority to bump anyone else

A is entitled to rate adjustment plus right to elect severance pay (Section 2 a), Section 3) [assuming he is set back to a lower paid job].

B is entitled to rate adjustment (Section 2 b)) [assuming he is set back to a lower paid job].

C is entitled to rate adjustment (Section 2 b)) [assuming he is set back to a lower paid job].

D is entitled to seniority retention (recall).

**Section 3: Severance Pay**

This section applies to individuals directly affected by the implementation of a technological change **(meaning the job was there prior to the technological change and gone after technological change occurred).** (Individual A under Section 2 example). Technological change circumstance can be inherently complex, including the determination of whether a given employee is entitled to severance pay. For an employee to be entitled to severance pay under this section, the jurisprudence has established a "dual criteria requirement" where the employee must be removed from his/her position as a result of its elimination due to technological change as well as being subject to a loss of job or a job reduction (i.e. being forced to take a lower paying job). If the employee is reassigned to a new role at the same rate of pay and similar responsibilities as his/her previous role they are not entitled to severance under this section. (*See Case Reference #1)*

Eligible employees that elect severance pay shall receive seven days' pay for each year of service with the Company up to a maximum of 30 years (i.e. 30 weeks' pay, or 210 days). A day is defined as eight (8) hours straight time pay, exclusive of any ticket premiums, overtime, or shift differential. There is **no** pro-rating of months, as is the case under severance calculation due to permanent plant closure. Employees with less than one year of service are not entitled to severance pay.

Employees who elect severance pay are terminated and are not also entitled to seniority retention and recall. There is clear arbitral and interpretive jurisprudence in the province which has established the principle that when an employee is not set back to a lower paid job, he/she is not entitled to severance.

This language was established long prior to the current prevalence of alternate shift schedules. Where technological change severance entitlement may be applicable to employees on an alternate shift schedule, companies are encouraged to contact CONIFER for guidance. In these circumstances it is the position of

CONIFER that seven days pay would be based on eight hours per day regardless of the particulars of the alternate shift.

In circumstances where employees that would otherwise be affected by the implementation of technological change (and may be entitled to severance pay) are on a LOA for medical reasons, a WI claim or an LTD claim, the arbitral history is complex. Companies are encouraged to contact CONIFER for guidance.

**Section 4: Option**

Employees laid off **(meaning the job was there prior to the technological change and gone after technological change occurred)** have the option of accepting severance pay at the time of layoff (and sever their employment) or wait until their seniority retention expires. If at that point they have not been able to apply their seniority to obtain another job, they are then eligible for severance pay.

**Case References – Article XXIII, Technological Change, Section 3:**

**1. WEST FRASER MILLS AND USW LOCAL 1-2017**
**Arbitrator: Jessica Gregory, November 28, 2018**
Click here to read this case reference

BACKGROUND: The employer implemented a new Inline Cut N' Two system, which utilized smart bins for stacking and sorting. The grievor held the position of Planer Grader/PET Product Line and bumped into the position of Planer Grader/LHG Check Grader when the change was made to the Cut N' Two system. This new role had the same rate of pay and similar responsibilities as his previous role. The issue for the arbitrator to determine was whether the grievor should have been provided severance pursuant to the technological change provisions in the collective agreement.

CONCLUSION: The arbitrator denied the grievance and ruled that "an employee must be discharged, laid off or displaced from the employee's regular job because of mechanization, technological change or automation" and furthermore, he reinforced the MacKoff Interpretation which "established a dual-criteria requirement: elimination from the existing position as a result of technological change as well as either a loss of job or a job reduction (i.e. Being forced to take a lower paying job)." The grievor was not directly affected by the technological change and it did not alter the fundamental nature of the grievor's primary responsibilities.