

BULLETIN

## Insubordination

June 1, 2005

### The Report: June / July 2005 vol.26 num.3

by BRUCE WILKINS



I work in a position covered by the Paramedical Professional Bargaining Association collective agreement. Our employer has recently reorganized our workplace as a costcutting measure. My colleagues and I are concerned that our patients are no longer getting the level of care they need. We have brought our concerns to our department head, our union steward, as well as to our professional association. In the meantime: when is it permissible to refuse the employers instructions at work?



Insubordination is commonly defined as the act of refusing to follow instructions or show respect to your employer. The rules governing when an employee can or cannot refuse to follow instructions from the employer is one of the more commonly occurring disputes in labour law and has generated thousands of cases from labour arbitrators. The key elements of insubordination are as follows: there must be an instruction given by the employer; the instruction must have been clearly communicated by an appropriate authority; and there must be a clear refusal to follow the instruction.

While exceptions do exist, a clear line of arbitral authority has arisen, embodied in the saying: -obey now, grieve later."

This means that if an employee disagrees with an instruction given by their employer they must follow the instruction and then grieve the matter later if they feel the instruction has violated the collective agreement. Even if the instruction does violate the collective agreement, insubordination may well attract discipline on its own.

When one asks why arbitrators have gone in this direction, one arbitrator has famously said, -an industrial plant is not a debating society." The reasoning is that if production or work stopped until the grievance process had gone through its course, the very work that the operation does will not get done.

Many HSA members belong to professional organizations that have guidelines and principles of their own which members must follow, subject to penalties from their professional organizations. This may in some situations lead a member into a perceived conflict between employer instructions and professional obligations.

In cases where there was a perceived clash between professional obligations and employer instructions, arbitrators have tended to side with employers right to instruct their staff. In an Alberta arbitration, the United Nurses of Alberta sought the right to refuse work where high workload put their professional obligation of quality care at risk. The arbitrator found that the -work now grieve later" maxim applied because the employer was under a statutory obligation to provide care, and that the employer is liable for whatever happens to patients who are in attendance at the hospital. Because of this, the employer needed to be able to insist on instructions being carried out.

The lesson in this is that relying on professional obligations in refusing work will not necessarily save an employee from discipline. In dealing with perceived conflicts between employer instructions and professional obligations, consult your union and your professional organization on the manner in which the problem can be resolved.

Once crucial exception to the -obey now, grieve later" rule is that of unsafe work. The Occupational Health and Safety Regulation section 3.12 provides a procedure by which employees can refuse to do work which would be unsafe to any person. 

*Bruce Wilkins is legal counsel for HSA.*

Type:

## [The Report](#)

- [Print](#)
- [PDF](#)

180 East Columbia  
New Westminster, BC V3L 0G7

Website  
[www.hsabc.org](http://www.hsabc.org)

Telephone 604-517-0994  
1-800-663-2017