



**UNITED STEELWORKERS
SALARIED LOCAL 2724
ALGOMA STEEL INC.
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January 7, 2022

LETTER TO MEMEBERS

We acknowledge receipt of the letter sent to Local 2724 on December 20, 2021. Please consider this Local 2724's (the "Union") reply to that letter.

In the letter you state, among other things, that you oppose Algoma Steel Inc.'s (the "Employer") policy titled "Eligibility Requirement to Attend on Site in Response to the Covid-19 Pandemic" (the "Policy"). In particular, you question the safety of the vaccine, the efficacy of PCR tests, and state that the Policy is a breach of the collective agreement and various other statutes. You also request a list of names and emails of Employer representatives.

Let me first deal with the request for contact information. The Union will not be distributing any third-party contact information without those individual's express consent. Any further request for that information should be directed to your supervisor or manager directly.

The Union is currently in the process of considering the merits and scope of a grievance challenging the Policy, in consultation with legal counsel. The Union relies on the information provided by the Public Health Authorities and the developing case law on this subject matter in balancing and assessing the competing interests of our members.

The Union recognizes that you are perfectly entitled to your personal opinions about any rules that your Employer may impose about vaccinations, testing, and disclosure of medical information. However, you should be aware of possible consequences that may flow from refusal to follow such rules. Here are some details.

As you know, it is the Employer that sets workplace rules, not the Union.

Employer rules must be reasonable and must comply with laws, including the Ontario Human Rights Code (the "Code"). Among other things, the Code prohibits discrimination in employment on the basis of disability and requires the reasonable accommodation of restrictions caused by disability. If the employer sets a rule requiring vaccination or medical testing, an employee with a medical condition that prohibits vaccination or testing is entitled to accommodation. This accommodation will depend on all of the circumstances, including the nature of the medical restriction and the availability of altered duties. Generally, a request for accommodation requires a medical note or report that describes the nature of the restrictions caused by the disability.

If you have a medical note or report that states that you have a disability that prevents you from undergoing either vaccination or a test, then the Union will assist you by advocating for reasonable accommodation that will allow you to continue to work.

Similarly, the Code prohibits discrimination on the basis of creed. If you oppose vaccination or medical testing on the basis of a religious belief, you may be entitled to reasonable accommodation.

However, the Ontario Human Rights Commission has issued a statement that a “singular belief” that vaccination is unnecessary or unsafe does not fall within the definition of “creed” in the Code. In other words, a sincere belief regarding vaccination in itself does not constitute a “creed” and therefore is not a prohibited ground of discrimination.

If the Employer holds a member out of service and/or imposes a disciplinary penalty for breaking a workplace rule, the member may be entitled to file a grievance under the collective agreement. Under the collective agreement, grievances may be referred to arbitration for hearing and decision by a grievance arbitrator.

When a grievance is filed, the Union gathers all of the relevant facts and considers arbitration decisions in similar cases in order to assess whether a grievance is likely to succeed at arbitration. If the Union decides to refer the grievance to arbitration, a representative of the Union prepares and presents the necessary evidence and arguments.

As well, the Union may file a policy grievance and take the position that a workplace rule is unreasonable and should be struck down by a grievance arbitrator.

All of this general information applies to a workplace rule that requires members to be vaccinated or medically tested in order to work.

In the event that a member is disciplined for not complying with this rule, the member may file a grievance. The Union will assist the grievor by gathering the relevant facts and moving the grievance through the procedure set out in the collective agreement.

Not every grievance succeeds at arbitration. It may be that, depending all of the facts pertaining to the particular decision to impose discipline, an arbitrator would find that the discipline was imposed with just cause and dismiss the grievance. Similarly, a grievance arbitrator may dismiss a policy grievance and find that a workplace rule is reasonable.

Members should be aware of the possible consequences if you refuse to comply with a workplace rule and that refusal is made along with others. In those circumstances, an employer may take the position that the group refusal is an illegal strike and file a complaint with the Ontario Labour Relations Board.

The Ontario Labour Relations Act, 1995 defines “strike” very broadly. A strike can be any work stoppage, work refusal, work slowdown or other action done along with others or with a common understanding with others. Where that kind of action disrupts production in the

workplace, the Ontario Labour Relations Board can find that there was a strike. If the strike happens while a collective agreement is in effect, the strike is illegal.

Where an employer can show that an illegal strike caused the employer to suffer financial or other harm, the employer can seek damages payable by the union and/or individual workers who participated in the illegal strike, especially if those individuals are union officers.

Obviously, damages for lost production caused by an illegal strike can be very high. The Union does not condone illegal strikes because, among other things, of the potential harmful consequences for the Union and members. Instead, the Union encourages members to file grievances as necessary.

In summary, members cannot be compelled to accept vaccination and/or to provide proof of vaccination. However, employers can make reasonable rules requiring both as a condition to work. Those rules are subject to a duty to accommodate members who can prove that their refusal to be vaccinated is based on medical grounds or on a belief system that is more than a belief that vaccinations are improper or unnecessary. As well, those rules are subject to challenges under the grievance procedure that the rules, or the applications of the rules, are somehow unreasonable. However, a member who refuses to follow a rule requiring vaccination or proof of vaccination may be held out of service or terminated and the Employer's decision to do so may be upheld by a grievance arbitrator.

I hope that this information is helpful. We will keep members updated regarding any challenge to the Policy as that information becomes available.

If you have any questions, please do not hesitate to contact us.

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