

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

April 17, 2007

By E-mail: 4 Pages

Irene Holden
Suite 202 - 856 Homer Street
Vancouver, BC V6B 2W5

Dear Ms. Holden:

**Re: BCTF/BCPSEA Dispute Regarding Porting of Seniority and Sick Leave by
Employees on Leave**

We are writing in response to the letter to you from the BC Teachers' Federation dated March 27, 2007. In that letter, the BCTF referred to you, for resolution, a disagreement between the provincial parties over the effect of your final award on the portability of both sick leave and seniority.

Specifically, the parties disagree about the ability of teachers on leave from one district to access the provisions of Article C.2.2 (Seniority) and/or Article G.1 (Portability of Sick Leave).

Although this disagreement is not one of the issues in dispute that the parties mutually agreed to put before you, BCPSEA will not object to your jurisdiction to decide this issue. However, the BCPSEA position is without prejudice to our right in the future to raise a jurisdictional objection on other issues that do not relate to the two issues currently in dispute referred to you by mutual agreement of the parties.

BCPSEA submits that the only two issues regarding the porting of seniority and sick leave that were in dispute and referred to you for resolution were:

1. Does a break in service cancel the right to port seniority; and
2. Can an employee who receives a continuing contract port seniority from more than one school district?

BCPSEA submits that the issue of whether teachers on leave from one district while achieving a continuing contract in another district are entitled to access the provisions of Article C.2.2. and Article G.1. was not before you and, therefore, not part of your decision. However, the BCPSEA position that the porting of seniority only occurs when a teacher has severed his/her employment with the former school district and achieved continuing contract status in the new school district is consistent with your decision and supplemental clarification ruling.

The BCPSEA position regarding the portability of seniority was clearly set out in our submission dated October 18, 2006:

C.2.2 was intended to be a prospective provision, that effective September 1, 2006, would permit a teacher to port up to 10 years of seniority when s/he terminates employment with one school district in order to accept employment with another. The parties recognized that it is not always possible to secure a continuing contract position at the point of entry, and therefore provided that the porting of seniority would be activated at such time as the teacher "achieved continuing contract status" in the new district.

In your decision, at page 25, you state that one of the issues for the provincial committee to consider would be how long an employee could take before acquiring a continuing contract "at which point s/he can port his/her seniority."

Further, in your letter dated February 20, 2007, you issued the following ruling:

2. Is differential treatment afforded to employees based on the reasons for their severance of employment from previous school districts?

No. The reason does not matter. Since portability of seniority and sick leave only occurs after hiring an employee, the reason for the previous severance of employment will be taken into account during the hiring process.

Therefore, BCPSEA submits that our position that the porting of seniority only occurs when a teacher has severed his/her employment with the former school district and achieved continuing contract status in the new school district is consistent with your decision and supplemental clarification ruling.

The purpose of porting seniority is to allow teachers to bring seniority with them to a new school district. Until C.2.2. was negotiated, the provincial parties had not established a right to port seniority between school districts and, therefore, once a teacher's employment was severed with a school district, his/her seniority rights were extinguished. Absent specific language in a previous local agreement, when the teacher started work at a new school district, s/he began to accumulate seniority credits with no recognition of his/her accumulated seniority credits with the former school district.

As stated in our submission dated October 18, 2006, the context in which C.2.2. was discussed was the "porting" of seniority when leaving one school district and moving to another. This context is clear in the bargaining history. The intent of the language was to allow an employee to bring service and increased security when moving from one school district to another. A teacher who is on leave of absence from one school district cannot be said to have "left" that school district and moved to another, nor has that teacher lost anything with respect to security. To accept the BCTF's positions would mean that an employee could maintain seniority and security with the school district from which they are on leave while, at the same time, establishing themselves in a more secure position in the new school district as a result of the porting of seniority. In essence, such an employee could choose to exercise their security in more than one district, thereby going beyond the intent of the parties to provide an ability to port seniority, to a place where the employee had actually achieved an enhanced benefit. Depending on the previous local agreement language, such an employee may even continue to accrue seniority from the school district in which the employee is on leave while also accruing seniority in the new district. The result of this could then be increased disruption in both districts

as less senior teachers are unnecessarily laid off in the face of realities such as declining enrolment. Even with the potential for recall, such unnecessarily laid off teachers may also choose to access severance provisions or leave the school district from which they have been laid off, thereby reducing the supply of teachers for students in these districts and causing further disruptions and negative consequences for the delivery of sound educational programs.

Further, in its submissions dated October 18 and 25, 2006, the BCTF does not dispute the BCPSEA position that the intention of C.2.2. was to permit a teacher to port up to 10 years of seniority when s/he terminated employment with one school district in order to accept employment with another.

In its submission dated October 18, 2006, the BCTF stated the position of BCPSEA regarding breaks in service:

...makes little sense with regard to the needs of school boards. Teachers who could, would never resign from a district, but instead would take a leave on an indefinite basis until they were able to secure a continuing appointment in another district.

This statement was made in the context of arguing against the BCPSEA position that employment between the two districts must be continuous. However, BCPSEA submits that it is a recognition that the teacher would only be on leave until s/he secured continuing contract status in a new district and it is only at that point that s/he would be entitled to port his/her seniority; i.e., the point at which s/he is no longer on leave with the former school district.

BCPSEA submits that amendments were made to the language of G.1 to specifically include "employees on exchange." The parties specifically put their minds to the issue of to whom this provision would apply. Had the parties intended this provision to apply to employees on leave, then this would have been specifically stated, just as it was for "employees on exchange." Only a teacher who has severed the employment relationship or is on an approved exchange is eligible to port sick leave.

Therefore, BCPSEA submits that our position that employees on leave of absence from another school district are not eligible to port either seniority or sick credits is consistent with the context in which the issue was discussed in bargaining and with your decisions. In addition, to accept the position of the BCTF regarding portability would lead to an absurd result. This interpretation would result in an employee maintaining sick leave and/or seniority in more than one district. In essence, such employees would not just maintain their security, they would actually enhance it as a result of moving from one district to another.


Finally, BCPSEA submits that ruling #3 in your letter dated February 20, 2007 finds that the new school district must provide the employee with the appropriate form which the employee and the previous school district can utilize in the verification process. Therefore, the new school district is required to provide the employee with the appropriate form. However, the ruling only acknowledges that the parties are in the process of developing a form which the employee and the school districts can utilize in the verification process. The ruling does not require that the parties agree on the form. The result of this would have been that BCPSEA might not have been able to send out much needed information to school districts in time for this year's transfer process. The matters outstanding with respect to the form are not process issues but, rather,

the substantive issues that have been put before you now. In anticipation of the upcoming staffing processes in districts, BCPSEA developed its form in good faith and in consultation with the BCTF. When the parties were unable to agree on some of the substantive issues, however, the employer proceeded with the development and implementation of the verification form consistent with your ruling.

BCPSEA submits that the information provided to you is sufficient to support the BCPSEA position. If this is not the case, however, BCPSEA submits that a more formal hearing will be required in order that we can provide additional relevant evidence, such as more detailed bargaining history and legal argument that will further support our position.

All of which is respectfully submitted.

Yours truly,

A handwritten signature in black ink, appearing to read 'Jacquie Griffiths', with a long horizontal line extending to the right.

Jacquie Griffiths
Associate Executive Director

c: Jinny Sims
 Irene Lanzinger
 Sharon Wood
 Lydia Picucha
 Lynne Sinclair