

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

Reply to BCTF Supplementary Submission: Preparation Time

This submission is in response to the BCTF supplementary submission regarding preparation time dated January 12, 2007 and is further to the meeting between the BC Teachers' Federation (BCTF), BC Public School Employers' Association (BCPSEA) and Irene Holden on January 31, 2007. At this meeting, BCPSEA clearly stated its view that Ms. Holden no longer has jurisdiction to consider the issues placed before her by the BCTF on January 12, 2007. Nonetheless, Ms. Holden directed BCPSEA to submit a reply to the supplementary submission, including jurisdictional arguments, and indicated that all matters would be considered.

1. Background

In the fall of 2006, BCPSEA and BCTF consented to grant Ms. Holden jurisdiction to determine a number of issues arising out of the Framework for Settlement. One of the issues was preparation time. Specifically, three issues on preparation time were placed before Ms. Holden by the parties:

1. Does the language in Article D.8 mean that preparation time is weekly and there is an obligation to make up preparation time lost due to statutory holidays and non-instructional days, for example;
2. Does the language mean that all elementary teachers' preparation time in Year 2 must be weekly;
3. As an alternative to question #2, does the language mean that at least the first 90 minutes of preparation time for all elementary teachers is weekly?

The issue in the supplementary decision of the BCTF dated January 12, 2007 is the same as the first issue that was put to Ms. Holden in the initial process. Submissions on all issues were made by the BCTF and BCPSEA on October 18, 2006.

The October 18, 2006 BCPSEA submission regarding preparation time stated that the purpose of "averaging" for the first year was for "transition" for employers required to increase preparation time with such short notice. This averaging was "established solely for the transition period to give the employer relief in scheduling increased preparation time given the short time between reaching the agreement on June 30, 2006 and implementation at September 1, 2006."

Our October 18 submission also specifically addressed the ongoing issue of preparation time "lost" due to statutory holidays and non-instructional days. BCPSEA stated in our submission that that issue was not part of the "averaging" concept proposed by the employer and that the parties at the bargaining table agreed to "live to fight another day" on that issue knowing that the issue was currently a matter for a number of arbitrations.

The October 25 BCTF reply submission addressed the BCPSEA position on make up of lost preparation time in the 2006-2007 school year. The January 12, 2007 BCTF supplemental submission again addressed the first issue on preparation time that was already the subject matter of submissions and replies by both parties in October and the subject matter of Ms. Holden's award dated January 16, 2007.

2. The BCTF is out of time for its January 12, 2007 supplementary submission

As described in the background, the parties agreed to submit specific issues to Ms. Holden for determination. October 18, 2006 and October 25, 2006 were set as the dates for submissions by the parties. BCPSEA articulated its position on the first issue regarding preparation time in its October 18, 2006 submission. The BCTF then replied to the BCPSEA submission on October 25, 2006. Ms. Holden ruled on the issue on January 16, 2007. It is now too late for the BCTF to reactivate the issue and to either add to or reiterate previous submissions on the issue for consideration by Ms. Holden.

3. Ms. Holden is *functus officio*

The parties consented to the jurisdiction of Ms. Holden to make certain specified determinations on preparation time. Ms. Holden has now made those determinations pursuant to the authority given to her by the parties. The result of this is that Ms. Holden is *functus officio* and she no longer has jurisdiction to make further determinations on this issue. In addition, Ms. Holden has no jurisdiction to make a second award altering the nature of her first award which is final and conclusive.

4. The BCTF submission is without merit on the issue

In the event Ms. Holden determines that a decision on the merits of the issue put before her in the supplementary submission of the BCTF on January 12, 2007 is appropriate, then the BCPSEA position remains as it has been stated previously. BCPSEA does not agree with the BCTF characterization of the BCPSEA position regarding preparation time as described in their January 12, 2007 supplemental submission. The 2006-2007 school year is a transition year for those districts that, prior to June 30, 2006, provided less than 90 minutes of preparation time for elementary teachers. For those districts affected by the increase to 90 minutes in the 2006-2007 school year, the concept of averaging applies for the 2006-2007 school year only. Any one of those districts that was not able to schedule the 90 minutes commencing in September 2006 will make up any loss that results from the lack of scheduling for the period during which the increased time is not scheduled. For example, if a district increased from 80 minutes to 90 minutes of preparation time and this change was not implemented until five weeks after the school year began, such a district will make up 50 minutes of lost preparation time due to failure to schedule the 10 extra minutes during the five weeks of the school year (10 min. x 5 weeks). The make up of such lost preparation time has no connection to, nor relevance, to statutory holidays and non-instructional days. It relates strictly to the failure to schedule or give those extra 10 minutes to the teachers for those five weeks.

For the purpose of the make up of the preparation time as a result of the framework agreement, it can be implied that districts assumed the increased preparation time would not have been scheduled on statutory holidays or non-instructional days.

It is important to keep in mind that the intent of "averaging" is to provide flexibility for districts in the timing of when preparation time is given. It is not a concept that addresses how much preparation time is to be given. Simply stated, averaging addresses "when" as opposed to "how much." The recent School District No. 68 (Nanaimo-Ladysmith) decision (*School District No. 68 (Nanaimo-Ladysmith) and the BC Teachers' Federation* [2007], unreported, January 29, 2007, (Lanyon)) adds further support to the BCPSEA position on the issue of averaging (attached). Districts with the averaging concept for preparation time in their previous local agreements have the same "make up" issue as districts without the averaging concept. In secondary schools, teachers in most districts receive one block out of eight for preparation time during the school year. Where there is a linear timetable (i.e., September to June), teachers receive one block in every eight blocks. For the semester system teachers receive one block out of four blocks offered for one-half of the school year. Those teachers do not have any

time made up for statutory holidays or for non-instructional days. Those teachers receive their full allotment of preparation time (*School District 75 (Mission) and MTU (Dalton Larson)*), attached, at p.4).

The entitlement to make up time for lost preparation time on statutory holidays and non-instructional days depends on:

- other provisions in the local agreement
- past practice in the district
- negotiating history in the district

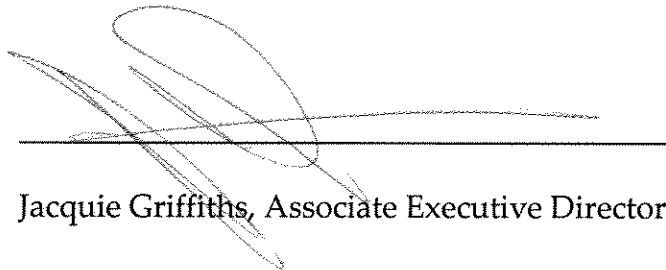
(Lanyon, *School District No. 68 (Nanaimo-Ladysmith)*)

The issue is dealt with in current ongoing arbitration hearings and should be permitted to be determined in that forum and not through this process.

Conclusion

For all the reasons outlined above, the supplementary submission of the BCTF dated January 12, 2007 should be dismissed. The issue has already been decided by Ms. Holden, the BCTF is out of time, and their position is without merit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of February, 2007.



Jacquie Griffiths, Associate Executive Director