

**IN THE MATTER OF A TROUBLESHOOTER ROLE**

**BETWEEN:**

**BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION**

("BCPSEA" or "the Employer")

**AND:**

**BRITISH COLUMBIA TEACHERS' FEDERATION**

("BCTF" or "the Union")

**Re: Leaves of Absence and the Porting of  
Seniority/Sick Leave**

**ARBITRATOR:**

Irene Holden

**REPRESENTATIVES:**

Jacque Griffiths,  
Associate Executive Director,  
for the Employer

Jinny Sims,  
President,  
for the Union

**DATES OF SUBMISSIONS:**

March 27 and April 17, 2007

**DATE OF AWARD:**

June 7, 2007

## **INTRODUCTION**

In April through June of 2006 I was the mediator of record assisting the parties to achieve their first bargained Collective Agreement. After the Memorandum of Settlement was ratified in the Fall of 2006, there were a number of issues which the parties placed before me as I had remained seized of the implementation of the Memorandum. I issued a decision on these issues on January 16, 2007. Two of these issues concerned the portability of both seniority and sick leave found in Articles C.2.2 and G.1 of the Collective Agreement:

### **ARTICLE C.2. SENIORITY**

...

2. Effective September 1, 2006 and despite paragraph 1 above, an employee who achieves continuing contract status in another school district shall be credited with up to ten (10) years of seniority accumulated in other school districts in BC.

### **ARTICLE G.1 PORTABILITY OF SICK LEAVE**

1. Effective September 1, 2006, the employer will accept up to sixty (60) accumulated sick leave days from other school districts in British Columbia, for employees hired to or on exchange in the district.
2. An employee hired to or on exchange in the district shall accumulate and utilize sick leave credit according to the provisions of the collective agreement as it applies in that district.

The issues were posed as the following questions:

- i. Does a break in service cancel the right to port seniority or sick leave; and
- ii. Can an employee who receives a continuing contract port seniority or sick leave from more than one school district?

In the January 16, 2007 award, I addressed the preceding questions with the following rulings:

7. Teachers, including teachers on call, are able to port up to 10 years worth of seniority from one school district to another, despite a break in service, once they have achieved a continuing contract in the receiving school district. Teachers will also be able to port seniority from multiple school districts.

Joint committees will be established, provincially and locally, to deal with the calculation of the seniority as well as the rules governing the seniority's portability. A dispute resolution mechanism will also be implemented.

8. Teachers will also be able to port sixty accumulated sick leave days when hired to a new school district or on exchange within the district. The mechanics of this portability will also be determined by a joint committee, similar to that one established for the portability of seniority, with a similar dispute resolution mechanism.

The dispute resolution mechanism referenced in the preceding rulings was a troubleshooter role I would play with the ability to bind the parties as final arbiter of the dispute. The parties decided that the joint committee structure was too onerous but there were still some outstanding issues which they needed to address via the troubleshooter role. Consequently, I met with the parties on February 10, 2007 in such a role and issued a number of rulings on the logistics of portability – more specifically on breaks in service, reasons for severance, records retention, and Teachers on Call porting from multiple school districts. I issued those rulings as a letter of clarification to my original decision.

It is not necessary to reiterate those rulings, but suffice it to say that the current issue was not part of the February 2007 discussions and rulings regarding the portability of seniority and sick leave. The current issue was referred to me by the BCTF on March 27, 2007. Although BCPSEA reserved on its right to argue against my jurisdiction on such matters in the future, it did grant me the right to deal with the current issue in a troubleshooter capacity and made its written submission on April 17, 2007.

### **CURRENT ISSUE**

The current issue regarding the portability of seniority and sick leave concerns itself with a teacher who is on leave of absence from one school district and acquires a continuing contract in another school district while on that leave.

### **PARTIES' SUBMISSIONS**

BCTF submits that the teachers on leave of absence from one school district who acquire a continuing contract in another school district should be able to port both seniority and sick leave in accordance with the porting provisions of the Collective Agreement. The Union argues that the eligibility for porting is determined not by the circumstances in which the teacher left the previous school district but rather is determined by the type of employment achieved in the new school district – ie. the achievement of continuing contract status. BCTF further contends this position was acknowledged by BCPSEA in its original submission to me regarding the outstanding issues in the Fall of 2006 and that my subsequent rulings solidify that position.

BCPSEA, however, submits that the portability of seniority and sick leave should only occur when a teacher severs his/her employment with one district and accepts a continuing contract in another school district. The Employer argues that such a position is not only consistent with my initial award and subsequent ruling, but that it is consistent with the intent of the portability language found in Articles C.2.2 and G.1 of the Collective Agreement. The intent, as discussed at the bargaining table, was to allow an employee to bring service and increased security when moving from one school district to another, according to the Employer.

BCPSEA contends that to accept BCTF's position would not only allow the employee to maintain seniority and security in the school district granting the leave, but grant the employee an enhanced benefit of a more secure position in the new school district. Such an enhanced benefit could lead to an employee being able to accrue seniority in both school districts and could ultimately lead to less senior teachers being unnecessarily laid off in the face of declining enrolments.

## **DECISION**

Since this is a troubleshooter award, the analysis portion of the decision will be brief. Suffice it to say that I have reviewed the portability language found in both Articles C.2.2 and G.1 of the Collective Agreement, considered the intent of such language during bargaining, as well as taken the parties' submissions into account. I do not believe that the parties put their minds to the situation of a teacher on a leave of absence in one school district, who acquires a continuing contract in another school district, and what effect such portability language, especially when it comes to seniority, would have on the losing and receiving school districts. Certainly I do not recall such a discussion occurring during the last round of collective bargaining. However, as with any collective bargaining, not all the

repercussions of the newly negotiated language can be understood and ultimately addressed at the bargaining table.

I agree with the Employer that the intent of the portability language, in the main, was to address a teacher who was severing his or her employment with one school district to accept a continuing contract with another school district. However, the clear language in Articles C.2.2 and G.1 makes no reference to those teachers on leave. In fact the references to employees in both Articles are fairly generic. In Article C.2.2 the right to port seniority is determined by the achievement of the continuing contract and in Article G.1 the right is triggered by being hired, or on exchange, to a school district. No other circumstances are referred to. If the parties had wanted to address teachers on leave in the language, they should have done so at the bargaining table. They did not.

I further agree with the Employer that the intent of the portability language was not to provide enhanced benefits for certain employees. However, nor was the intent to erode benefits which were already enjoyed by certain teachers. The enhanced benefit had already existed for teachers on leave prior to the current Collective Agreement. The only thing that has changed for these employees is the size or quantum of the enhanced benefit. To be more specific, prior to the portability language being bargained, the employee on leave would maintain his/her seniority and sick leave in the previous school district and begin to accrue sick leave and seniority in the new school district. The major difference now is with the ability to port up to 10 years of seniority and up to 60 days of sick leave, others' rights, especially regarding seniority, are potentially being more seriously affected than they were when the amounts of seniority accrued in the new school district were relatively small. As a result, the severity of the consequences of the enhanced benefit may have increased. Nevertheless, the severity does

not negate the fact that the enhanced benefit existed prior to portability and portability has merely increased the size of the benefit.

The control for such a benefit, as it always did, rests with the school districts in the type of contract being offered and the type of leave being granted, subject of course to the language of a particular collective agreement. Having said that, I recognize that the issue is not as simple as it sounds. For example, what happens to the seniority and the sick leave while the employee is on leave and there is a lay off in the previous school district or if the employee returns to the school district granting the leave; or what if the employee moves to a couple of school districts on a continuing contract basis throughout the course of the leave of absence, depending on the length of the leave. There is of course no way of determining all the circumstances which can arise. In my view, these issues have to be balanced with the ability for the teacher to exercise rights he or she already had and those rights, such as portability, newly acquired in the 2006 collective bargaining process.

Consequently, I have concluded that teachers on leave should have the ability to port seniority and sick leave for all purposes in the new school district, and maintain his/her seniority in the previous school district for purposes of lay off. For example, a teacher with 12 years seniority takes leave from District A and achieves continuing status in District B. For all purposes, except lay off, the teacher's seniority in District A is 2 years; for lay off it is 12 years. In District B the teacher's seniority is 10 years for all purposes.

The issues surrounding the portability of sick leave are less complex in my view since a teacher should not be able to access sick leave from one district to another. So, for example, a teacher with 200 sick leave credits takes leave from District A. He or she is hired or on exchange to District B

and ports 60 days of sick leave. Sixty days of sick leave is then transferred to District B and the employee has 140 days of sick leave in District A, remaining static. The employee should have no ability to access sick leave from District A when on a different kind of leave of absence from that same district. To provide otherwise would compound leaves upon leaves which makes no sound labour relations sense, unless unusual circumstances warrant such a compounding or past practice and/or specific collective agreement language dictate the compounding.

Further, should the employee return to the school district which granted him or her the leave, then the employee's initially ported seniority and unused ported sick leave would be returned to the initial school district which granted the leave.

Although I am not convinced that this would often occur, for the record, the porting of sick leave and seniority is not intended to apply to subsequent leave requests from subsequent school districts. For example, unless the teacher severs his/her employment in District A, the school district initially granting the leave, the teacher could not port seniority or sick leave by securing a subsequent leave from District B, the new school district, to accept a continuing contract in District C. This kind of portability undermines its original intent, in my view.

I am also cognizant of the fact that staffing decisions have been made in many of the school districts and the implementation of this award may therefore become an issue which needs to be addressed at this juncture of the award. First of all, those teachers who are on leave and eligible to port his/her seniority and sick leave to a new school district as a result of acquiring a continuing contract in a new school district must immediately declare his or her intent to port the seniority and/or sick leave. If such teacher has already incorrectly received lay off notice, then such notice must



be rescinded. If the post and fill provisions of a particular school district and its local collective agreement have been concluded, then they should remain concluded. The intent is to protect and restore the rights of the teachers on leave, not to create wholesale disruption and destroy processes which have been concluded throughout the various school districts. Each case will have to be dealt with on a case by case basis and a resolution found based on the specific circumstances. If the parties cannot resolve such cases, I remain seized to assist them in finding a solution and ultimately deciding the result for them.

### **CONCLUSION**

Teachers on leave who achieve a continuing contract in another school district are entitled to port seniority and sick leave to the new school district in accordance with Articles C.2.2 and G.1 of the parties' Collective Agreement and subject to the provisions of this award. For purposes of lay off, the teachers' seniority will not only be transferred to the new school district but will remain in the district granting the leave. For all other purposes, the teachers' seniority will be reduced in the school district granting the leave by the amount of seniority being ported. For sick leave purposes, up to 60 days of sick leave may be transferred to the new school district. The balance of sick leave will remain in the school district granting the leave. I remain seized of any implementation issues associated with this award.

Dated at the City of Vancouver in the Province of British Columbia this 7<sup>th</sup> day of June, 2007.



**IRENE HOLDEN, Arbitrator**