

IRENE HOLDEN LTD.
ARBITRATION, MEDIATION AND
WORKPLACE CONFLICT RESOLUTION

File: 150

February 28, 2007

British Columbia Public School
Employers' Association
400 - 1333 West Broadway
Vancouver, British Columbia
V6H 4C1

British Columbia Teachers' Federation
100 - 550 West 6th Avenue
Vancouver, British Columbia
V5Z 4P2

Attention: Ms. Jacquie Griffiths

Attention: Ms. Jinny Sims

Dear Mesdames:

Re: My Award dated January 16, 2007 and a
Supplemental Submission Received regarding Preparation Time

Let me begin by stating the obvious that there were a number of issues between the parties related to the Framework for Settlement which was concluded on June 30, 2006 and ratified by the membership in September of 2006. I met with the parties on October 4, 2006 to discuss the issues and determine a process in which to conclude them. It was decided that the parties would make submissions to me and I would rule on the outstanding issues. I issued my award on January 16, 2007.

On January 12, 2007, four days prior to my award, I received a supplemental submission from the BCTF regarding one of the outstanding issues: preparation time. I briefly looked at the submission and my first impression was that not only was the submission out of time but, regardless, the issue would be addressed in the award which I had already drafted and was awaiting finalization. Consequently, I did not request a submission from BCPSEA, at that time, regarding the issue and/or the timeliness of the submission.

When I met with the parties on January 31, 2007, for clarification of the award, the issue was again mentioned. I requested a submission from BCPSEA who immediately forewarned that it would argue that I lacked jurisdiction to consider the issue placed before me at such a late date. Nevertheless, BCPSEA agreed to make a submission, as requested.

The Issue

The issue was posed as a question in BCTF's submission of January 12, 2007:

In order to comply with the averaging provision in the first year of the collective agreement, does preparation time have to be made up if it is lost due to a schedule disruption such as a statutory holiday?

In its January submission, BCTF argued that it had understood BCPSEA's position regarding this issue to be that the averaging provision in the first year of the collective agreement would require the make-up of lost preparation time due to statutory holidays, etc., but that either BCTF had misunderstood BCPSEA's position or that BCPSEA had changed its position.

In its most recent submission regarding this issue, BCPSEA reiterated that not only did it think that my jurisdiction to decide this matter was *functus officio*, as it had threatened to argue, but that its position had not changed. It described its position as follows:

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.

Clarification

In my view, it is not necessary to determine my jurisdiction or comment on the lateness of the submission, any further than I already have. My first impression when I read the January 12th submission remains the same: the award dated January 16, 2007 deals with this very issue. Although the question was not posed in the same manner as it was on January 12th, it was indeed answered within the body of the January 16th award.

Further, I do not think that BCPSEA has changed its position regarding this issue. At page 30 of my award, I discuss the Employer's submission as follows:

...For the purpose of transition in the first year of the Collective Agreement, BCPSEA asserts that those districts which would be faced with increased preparation time needed the ability to **average the increase** in the first year since the increase was effective at the beginning of the 2006 school year and the agreement was signed on June 30, 2006. Most districts, according to BCPSEA, had already completed their staffing process by the time the Framework for Settlement was signed.

(emphasis added)

At pages 32 and 33 of my award, when discussing year one, I stated that I accepted BCPSEA's position, having checked my bargaining notes and upon reflection of the discussions at bargaining itself:

At no time was the concept of "averaging", as found in *Mission* arbitration award, discussed. When "averaging" as found in Year 1 of the language, was referred to, it was explained that the reference was to those districts which did not currently have 90 minutes preparation time and may already have concluded its scheduling for a lesser amount of preparation time.

When I referred to "'averaging', as found in *Mission*" in my award, I was referring to the arbitrator's decision in the *Mission* award that the Employer would have to make up preparation time for time lost due to non-instructional days such as statutory holidays and others. When I declined to define "averaging" in this manner and left it to the current arbitral proceedings, I was adopting the Employer's submission as to the intent of the new collective agreement language found in Article D.8.

Answer to the Question

Perhaps part of the confusion stems from the fact that unlike the other outstanding issues addressed in my award of January 16, 2007, I answered the three questions associated with preparation time all at once in my award. By way of clarification only, I shall therefore specifically answer the question posed in BCTF's January 12th submission – in much the same way I provided clarification on issues related to the portability of sick leave and seniority. In my view, the answer has already been provided in the award, but for the sake of clarity I shall reiterate it.

Question: In order to comply with the averaging provision in the first year of the collective agreement, does preparation time have

to be made up if it is lost due to a schedule disruption such as a statutory holiday?

Answer: No. The averaging provision referred to in the first year of the collective agreement, and as found in Article D.8, related to the increased preparation time in those districts which had less than 90 minutes preparation time and had already scheduled its preparation time based on this lesser amount.

In conclusion, I hope that this clarifies the issue.

Yours truly,

IRENE HOLDEN LTD.

A handwritten signature in black ink, appearing to read 'Irene Holden', written over a light blue horizontal line.

Irene Holden, Mediator

IH/cls