

CUPE/School District No. 36 (Surrey): District Medical Certificates

The Employer required every employee requesting medical leave for a period greater than 20 days to have their physician complete a medical certificate consistent with the certificates considered in three recent BCTF arbitrations. The Union claimed this requirement was inconsistent with the collective agreement and/or an unreasonable exercise of management rights.

Arbitrator Stan Lanyon dismissed the grievance and re-affirmed the three earlier decisions (Arbitrators Munroe, Korbin and Taylor) regarding the reasonableness of the medical forms. He also reaffirmed that, absent collective agreement provisions to the contrary, the cost associated with the provision of the certificate falls to the employee.

With respect to the Union's claims that the Employer's practice in accepting prescription pad notes was a sufficient basis for an employee establishing entitlement to sick leave, Arbitrator Lanyon said, "this past practice was not a bar to the Employer's new policy. ... an employer has the right to implement new policies related to attendance management ... the consent of the union was not required in the implementation of these programs."

With regard to the Union's argument that it was inappropriate for the Employer to forward copies of completed medical forms to external medical consultants, Arbitrator Lanyon concluded that this was permissible; however, he ruled that the employee should be made aware of this possibility.

This is the fourth arbitration award in the K-12 sector that has sanctioned the use and contents of this medical form.

BCPSEA Reference No. A-06-2006.

BCTF/School District No. 70 (Alberni): Posting or Transfer

The Alberni agreement provides for posting of vacancies after teacher-initiated and board-initiated transfer and assignment is complete. In March 2004, the Employer used new CommunityLINKS funding to create a District Resource Teacher – Preschool and Early Primary Intervention ("the position"). A teacher was transferred into the position without posting. The Union grieved that the transfer into a position was created without consultation with the Union and no other teacher had an opportunity to apply.

Arbitrator James Dorsey, QC, dismissed the grievance. He determined that the position was not a position of special responsibility. Arbitrator Dorsey also awarded that the Curriculum Implementation article in the agreement had no relevance or application to the transfer of the teacher into the position.

BCPSEA Reference No. A-07-2006

**BCTF/School District No. 79 (Cowichan Valley):
Interest Arbitration – Inclusion of an Occupational Therapist**

An Occupational Therapist (“OT”) was included in the bargaining unit. Although the parties were able to reach agreement on many issues regarding application of the collective agreement, the unresolved matters were referred to arbitration.

Arbitrator John Kinzie agreed with the Employer that, “The parties do not start from the premise that the provisions in the existing collective agreement apply.” Rather, “The generally accepted task of an interest arbitrator is to replicate what the parties would have negotiated had the collective bargaining process been carried to conclusion.” He provided the following decisions regarding the outstanding issues:

- Salary grid: OT’s paid on the teacher salary grid.
- Work year: Provision for the Employer to require OT’s to work some time during summer with an equivalent period of vacation time to be taken between September and June of that year.
- Max. instr. time: Does not apply to OT’s because they are not responsible for instructing students.
- Duration of day: Must be amended to clarify that OT’s can be required to perform duties outside of regular school hours.
- Contracting out: Prohibition should apply but with the provision that the agreement to contracting out by the Unions “shall not be unreasonably denied.”
- Definition of Teacher: Amended to include OT’s but the agreement to contain a clause expressly delineating those clauses that do not apply to OT’s.

BCPSEA Reference No. A-23-2005

Questions

If you have any questions concerning these decisions, please contact your BCPSEA liaison. If you want a copy of the complete award, please contact **Nancy Hill at nancyhi@bcpsea.bc.ca** and identify the reference number found at the end of the summary.