GRIEVANCE & ARBITRATION UPDATE

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

2006-06 **September 1, 2006** **By E-mail: 2 Pages**

CUPE/School District No. 40 (New Westminster): Accumulation of Sick Leave

The Employer changed its longstanding practice of calculating, crediting and deducting sick leave in days to determining sick leave based on hours worked. The change in method (from days to hours) corrected the anomaly that arises when a 4 hour per day employee with ten sick days (40 hours) moves into an 8 hour per day position (40 hours becomes 80 hours if recorded as ten days).The Union argued that the Employer could not make a unilateral change and also raised an estoppel issue.

Arbitrator Vince Ready dismissed the grievance. He noted that the language "in proportion to their hours worked" is clear and unambiguous. "The Union's interpretation could serve to vary the Collective Agreement to confer a superior unearned benefit on some employees that would be inconsistent with the plain meaning of the language and the intention of the parties."

With regard to the estoppel claim, Arbitrator Ready said that a past practice alone cannot create rights. "In order to support an estoppel in this situation the Union would have required an express commitment from the Employer to continue the practice of calculating, crediting and deducting Article 3.09(b)(i) sick leave in days. The Employer did not make any such commitment."

BCPSEA Reference No. A-16-2006.

BCTF/School District No. 68 (Nanaimo-Ladysmith): Entitlement of Parties of Like Interest to Examine Witnesses

This is an Interim Award regarding process in an arbitration following an investigation in which the Employer determined that the harassment alleged by a teacher did not occur. The teacher's complaint involved allegations about an educational assistant and CUPE had obtained intervenor status in the proceedings. At the commencement of the arbitration, the three parties had agreed that the hearing was to be confined to the issue of whether or not harassment occurred. Any remedy for the grievor flowing the finding would be sought from the Employer only, not the Intervenor's member. The BCTF objected when CUPE sought to cross-examine the Employer's witness.

Given the particular circumstances of this case, Arbitrator John Orr determined that the interests of the Employer and Intervenor were fully synonymous. Both were united in interest in having the grievance dismissed. Thus the Employer and Intervenor would have their ability to cross-examine each other's witnesses only where it could be "shown that there is a point of demonstrated adversity in interest or where a witness has by his or her evidence adversely affected the particular party's position in the case." This decision should expedite arbitrations involving intervenors.

BCPSEA Reference No. A-17-2006.

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.