

## **BCTF/School District No. 36 (Surrey): Partial Medical Leave — Additional Information**

The Grievor applied for a partial medical leave and submitted the standard medical certificate. The Employer requested further information based on advice from its Medical Consultant. The Union grieved, stating provision of the standard certificate met the requirements of the collective agreement and the only exception that would arise is if the Employer was able to establish that the illness was not a bona fide sickness or disability.

Arbitrator Colin Taylor upheld the grievance, saying that in this particular case the request for additional information was unreasonable. However, Arbitrator Taylor did review and agree with a number of arbitral authorities which establish that:

- employers have a continuing right to inquire into any absence from work. Employees have a continuing obligation to account for any absence, including absences alleged to be due to sickness.
- the Employer has a right to refuse to pay sick benefits to Employees unless they are able to establish their entitlement to the benefits. "The key is that the benefit is paid only for absences that properly qualify."
- submission of the standard medical certificate is a threshold requirement and does not preclude the Employer from further investigation on a case by case basis where circumstances warrant. Such further investigation is not limited, as suggested by the Union, to the "*bona fides* of individually-suspicious cases... The fact that the Employer does not impugn the *bona fides* of the illnesses described in the Certificate does not of itself preclude the Employer from making further inquiries."
- sources of advice will depend on the circumstances of each case. "If, for example, advice is sought from a non-medical consultant with respect to medical diagnosis and treatment, the advice provided is likely to be open to challenge. If, on the other hand, advice is sought as to the sufficiency of information to establish entitlement to a benefit, then a medically trained person might not be the most appropriate person to provide that advice."

*BCEA Reference No. A-18-2006.*

## **CUPE/School District No. 68 (Nanaimo-Ladysmith): Job Competition — Courier**

The Grievor, a 20 year employee, was denied the position of Courier because he did not meet the required qualification of a minimum of two years' related experience. The collective agreement contains a threshold selection clause.

Arbitrator Joan McEwen dismissed the grievance, saying that given the fact the joint job evaluation committee had rated the Courier position based on a minimum of two years' experience, the Union had not met the onus of demonstrating that the Grievor possessed all of the required qualifications. She found that while the Grievor had made occasional deliveries and drop-offs in the past, these activities

were incidental to his core duties as a caretaker and groundskeeper. Arbitrator McEwen said, “the incidental delivery of goods and materials to job sites is qualitatively different from making the kind of scheduled deliveries requested of a courier two days of every week.”

*BCPSEA Reference No. A-21-2006.*

### **BCTF/School District No. 79 (Cowichan Valley): Contracting Out — Malaspina Construction Course**

Malaspina University-College (Malaspina), with the support of the School District, applied to the Ministry of Education to participate in an industry training pilot project. The project was to provide a program to support student transition into an apprenticeship and to grant dual credit for students. Students who successfully completed the program would receive credits toward career preparation/work experience and high school graduation, plus a college certificate in Basic Construction and six months toward first year apprenticeship. The Ministry of Advanced Education provided \$75,000 to Malaspina. The School District contributed \$10,000 in kind (classroom/shop space, career planning and advising, etc.) An instructor from Malaspina was hired to instruct the Carpentry — Basic Construction Skills Certificate Program at Lake Cowichan Secondary School. The Union grieved that instruction should be provided by a member of the Union.

Arbitrator Colin Taylor denied the grievance. To be successful, the Union would have had to establish that the:

- work was of the kind regularly performed by a teacher. The Basic Construction course is not a high school graduation course. It is a post-secondary course which had been offered by Malaspina prior to the pilot project. Teachers do not teach and have not taught post-secondary courses in the past. “It is not sufficient to show that certain aspects of that work have been taught by teachers in the past since that is not the disputed work...The fact that teachers teach carpentry does not mean that all carpentry programs such as apprenticeship programs are “work of the kind” contemplated by Article 202.”
- work was part of a teacher’s regular duties and responsibilities. To fall within Article 202, not only must be “work of the kind” but it must be regularly performed and this was not established by the Union.
- work was contracted out.

Taylor stated, “The important point is this: The School District is not contracting with Malaspina to have Malaspina offer one of the School District’s graduation program courses. There is no agreement by the School District wherein it contracts with Malaspina to perform work regularly performed by members of the bargaining unit. It is and always has been Malaspina’s program over which the School District has no control as that term is generally used in matters of this kind.” The School District “cooperated with Malaspina in the delivery of the Program in order to benefit students of the School District. ... The enrolment of high school students in the course and the granting of high school credits to the students does not convert the course into a high school graduation course.”

*BCPSEA Reference No. A-13-2006.*

**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](mailto:nancyhi@bcpsea.bc.ca)** and identify the reference number found at the end of the summary.