

**2006-08**

November 1, 2006

By E-mail: 1 Page

## **BCTF/School District No. 82 (Coast Mountains): Extended Maternity Leave/Discrimination**

The Grievor, a full-time continuing elementary teacher, requested a 0.5 FTE extended maternity leave following her one-year maternity leave. The district denied the leave, advising the teacher that she could either have a full time leave or return to work full time. The teacher returned to work but grieved that the denial was a violation of the *Human Rights Code*, in particular, discrimination based on "family status" or "sex."

The extended maternity leave provision contains the clause:

"Teachers granted short term maternity leave **who choose not to return to work** at the expiration of that leave, may apply for extended maternity leave." (emphasis added)

Arbitrator Don Munroe denied the grievance. He noted that the union is required to establish a *prima facie* case of discrimination on a prohibited ground before the burden shifts to the school board to establish the defense of *bona fide* occupational requirement (which includes the question of accommodation). He found that the union had not done so.

With regard to "family status," Arbitrator Munroe quoted a Court of Appeal decision that the determination of discrimination depends on the individual circumstance of each case. A *prima facie* case occurs when an employer imposes a change in a term or condition of employment which results in a serious interference with a substantial parental or other family duty of the employee. He concluded that there was nothing out of the ordinary about the grievor's situation.

With regard to "sex," in other cases the Supreme Court of Canada has found breast feeding to be a factor to be considered when determining discrimination based on sex, and the Union raised the matter in this grievance. Arbitrator Munroe then considered whether the union had demonstrated that the grievor experienced an adverse effect regarding her employment through the denial of the part time leave. He found that "although the organization of Ms. Sutherland's breast feeding while working full-time was not as she would have preferred it, there was no evidence that that was the only mode of organization available to her."

*BCPSEA Reference No. A-24-2006*

## **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.