GRIEVANCE & ARBITRATION UPDATE

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

2007-03 **May 1, 2007** **By E-mail: 3 Pages**

BCTF/SD No. 73 (Kamloops/Thompson): Preparation Time

Issue: Must the employer make up preparation time lost due to statutory holidays, non-instructional days and other activities such as field trips and assemblies?

The collective agreement language with respect to preparation time reads as follows:

> "Effective September 1, 1991 full-time elementary teachers assigned full-time to classroom instruction and learning assistance teachers shall be provided with a minimum of eighty (80) minutes preparation time per week."

Decision: Arbitrator John Kinzie ruled that the employer's obligation was not to "schedule" 80 minutes of preparation time per week as argued but instead to "provide" 80 minutes of preparation time per week. However, there is a direct link between the amount of preparation time and instructional time in the language of the collective agreement.

As a result of this linkage, coupled with the fact that "week" was not defined in the preparation time article as a "calendar week," the employer is not required to provide 80 minutes of preparation time in a "calendar week" but instead has the option of providing the 80 minutes of preparation time in an "instructional week"; i.e., 80 minutes over five instructional days. In order for the employer to meet its obligation to provide 80 minutes of preparation time per week, an option would be to adopt a rotating schedule for elementary schools.

With respect to preparation time lost for other activities, the union is only entitled to claim relief in respect of these events where the elementary school teacher has been compelled to attend and thereby lost her preparation time block. Where the teacher has lost her preparation time block as a result of her own decision, she would not be entitled to relief.

Please see Teacher Collective Agreement Administration Bulletin (TCAAB) No. 11 for a more in-depth analysis of this arbitration decision and two related preparation time decisions.

BCPSEA Reference No. A-12-2007

BCTF/ SD No. 36 (Surrey): Access to Information – Preliminary Award

Issue: Was the grievance one of "general application," thus allowing the union to file it at step three of the grievance procedure? Has the union improperly expanded the scope of the grievance?

The collective agreement language with respect to access to information reads as follows:

5.20 ACCESS TO INFORMATION

5.21 Within seven (7) days of issue, or within such period as may reasonably be required following a written request, the Board will furnish the Association, or its designated representatives…:

5.214 Information or documentation which could reasonably be required for the processing of a grievance.

Background: Prior to the filing of the grievance and up until the date of arbitration, the union had filed over 100 separate requests for information under Article 5.214. During the grievance procedure the union described the grievance as the employer denying requests made pursuant to Article 5.214 for "information or documentation which could reasonably be required for the processing of a grievance." The employer requested particulars of the alleged violations of Article 5.214. The union provided two instances as examples.

As the grievance progressed through the grievance procedure, the union added four more examples, bringing the total to six alleged violations. The list of alleged violations was subsequently expanded as requests for particulars were made. The day prior to the hearing, the union indicated that they were no longer going to proceed with the examples that had been provided to the employer throughout the grievance procedure and referral to arbitration process, but instead were now entitled to proceed and rely on six completely different examples of requests for information that had been denied by the employer within the last year, none of which were included as examples provided in the original grievance, nor during the grievance procedure, nor in the referral to arbitration process.

The employer raised two preliminary objections: (1) that a grievance or grievances alleging a violation of Article 5.214 must be filed individually at step one of the grievance procedure, not as grievances of general application at step three, and (2) that the union improperly expanded the scope of the grievance by adding additional alleged violations in the time leading up to the arbitration hearing.

Decision: Preliminary Objection (1): Dismissed. Article 5.214 can potentially touch and affect every grievance filed by the union either on its own behalf or on behalf of individual members; and in that sense goes to the management of the grievance procedure generally. Therefore, a grievance by the union alleging a violation of Article 5.214 is properly seen as a "grievance of general application" and may be referred directly to step three.

Preliminary Objection (2): Allowed. The employer, like the union, is entitled to the benefits of the grievance procedure as contained in the collective agreement. To allow the union to proceed as it has done, by purporting to include in the Access to Information grievance all manner of alleged violations of Article 5.214, none having had a prior referral to step three, in substitution for the alleged violations forming the basis of the grievance either as initially filed or when referred to arbitration, would deprive the employer of an important negotiated benefit.

As a result, Arbitrator Munroe ruled that he had no jurisdiction to hear this grievance as the matters the union sought to rely on and be determined were not properly within the Access to Information grievance, as they had not been raised during the grievance procedure.

He did state, however, that in the future it is open to the union to include a number of alleged violations of Article 5.214 in a single grievance, file at step three, and proceed to arbitration if necessary.

Significance: If your union files a grievance of general application, during the grievance procedure it is important for the employer to ask for clarification of the situations and particulars on which the union will

be relying. The employer is entitled to know and clarify the details of the alleged violation as well as be provided with an opportunity to resolve the grievance prior to referral to arbitration.

BCPSEA Reference No. A-16-2007

CUPE Local 703 / SD No. 42 (Maple Ridge-Pitt Meadows): Statutory Holiday Pay During Job Action

Issue: Did the employer breach the provisions of the collective agreement by declining to pay certain bargaining unit employees statutory holiday pay during a time of job action?

The relevant collective agreement language with respect to entitlement to statutory holiday pay reads as follows (Article 11.2):

> "An employee on leave of absence without pay shall not be entitled to statutory holidays which fall during the period of leave unless that employee has worked the last scheduled day before or the first scheduled day after the statutory holiday."

Background: The October 10, 2005 statutory holiday issue arose in the context of an illegal strike declared by the BCTF. The job action commenced on October 7 and ended October 24. Local 703 in School District No. 42 (Maple Ridge-Pitt Meadows) notified the employer of its intention not to cross the teachers' picket lines. The bargaining unit employees who did not cross the picket lines were not paid for the holiday.

Decision: Arbitrator Robert Diebolt determined that the issue in question is whether the employees were on unpaid leave of absence within the meaning of that term as it relates to Article 11.

The employer argued that were it not to consider these employees on leave of absence without pay, its only alternative was to treat the employees as on unauthorized leave, thus raising the issue of discipline, which it did not wish to do. The union argued that the employer was not contractually entitled to treat the employees on leave of absence without pay, and as none of the disqualifying provisions in the contract applied to them, they were entitled to the statutory holiday pay.

Arbitrator Diebolt ruled that the only viable conclusion, given the circumstances of the case, is that these employees were on unpaid leave of absence within the meaning of Article 11. Though no employee requested leave, the union informed the employer that members would not be crossing picket lines. The employer was open to treat this conduct as an implicit request for leave and to grant it.

As those employees were determined to be on leave of absence without pay, and did not work the last scheduled day before or the first scheduled day after the statutory holiday, they are not entitled to statutory holiday pay for October 10, 2005.

BCPSEA Reference No. A-13-2007

Questions

If you have any questions concerning these decisions, please contact your BCPSEA labour relations 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.