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By E-mail: 2 Pages

School districts received two important arbitration awards recently that may have an effect on your district. A copy of each of these awards has been posted on our teacher issues and support staff issues members only websites, on the Administration side of the sites, under Publications, *Grievance & Arbitration Update*.

BCTF/ SD No. 68 (Nanaimo-Ladysmith): Preparation Time
Arbitrator: Stan Lanyon, QC

Issue: When preparation time is missed for reasons beyond the control of a teacher (i.e., statutory holidays, non-instructional days, parent/teacher interviews, sports days, concerts, field trips, etc.), does this "missed preparation time" have to be made up?

Arguments: The union argued that the amount of preparation time listed in the collective agreement is an absolute contractual right. Any preparation time missed that was not in the control of the teacher, irrespective of the reason, must be made up. The union did concede, however, that preparation time missed that was in the control of a teacher; i.e., sick leave, was not at issue. The union relied heavily on two previous arbitration awards from SD No. 75 (Mission).

The employer argued that it has met its collective agreement obligation to an employee's preparation time when it schedules preparation time on the normal calendar week of Monday to Friday. Some of the preparation time will consequently fall on statutory holidays or non instructional days; however, the district is not obliged to change the school calendar or school schedule to make up for this time. This position is consistent with the wording of the preparation time Article ("scheduled"), bargaining history, the past practice of the parties, and the definition of regular work year/weekly instructional assignment, which includes in its definition "preparation time."

Decision: Arbitrator Lanyon dismissed the union's grievance. He confirmed that there is no need to make up preparation time that is lost during the week due to statutory holidays, non-instructional days or other lost time due to school events in the control and direction of the district. Mr. Lanyon agreed that the language of the collective agreement as well as the past practice established by the employer supported this conclusion. With respect to the previous Mission award, Arbitrator Lanyon wrote, "After reviewing these two awards I have concluded that they do not address the issue before me. First the language in this collective agreement differs from that in the Mission School District. Second, the issue of preparation time was bargained at the local level. Therefore, the extrinsic evidence of past negotiations and past practice are distinct to the Nanaimo School District."

We now have two awards that have come to opposite conclusions on the issue of preparation time. We are presently in the midst of a third case on this same issue in SD No. 73 (Kamloops/Thompson). Three days of hearings have been heard thus far with a further two days scheduled in mid-February. If this subject has been or becomes an issue in your district, please contact your BCPSEA liaison.

BCPSEA Reference No. A-03-2007

**BCTF/ SD No. 73 (Kamloops/Thompson): Control of Professional Development
Arbitrator: Donald Munroe, QC**

Issue: Do teachers apply to the school Professional Development Committee for permission not to attend the school-based professional development activities, and to engage instead in their own individually chosen activity, or must that permission be sought and obtained from the school principal; i.e., from management? Is it the school professional development committee (union position) or the Principal of the school (employer position) that accepts and approves such a request?

Language: "School Professional Development Committees – Each school shall operate a Professional Development Committee, consisting of the Principal and other teachers on the staff. Professional Development activities at the school level shall be determined by this committee."

Decision: Arbitrator Munroe dismissed the grievance and ruled that such permission must be sought from the employer:

"The words "at the school level" in Article IX.14.2 are equally as important as the phrase "professional development activities." Once again, a fairly natural reading of the second sentence of Article IX.14.2 is that the school Professional Development Committee decides the school-level professional development activities that will occur on school-based professional development days; not also any individualized professional development activities that do not occur at the school level."

Arbitrator Munroe also commented on the employer's Management Rights:

"Dr. Sullivan said that good professional development is not a "top down process," that "it has to occur at the school level" and that he fully supports the present structure by which the organization and planning of school-based professional development activities "is dominated by teachers." But Dr. Sullivan also said that the question of exempting individual teachers from school-based professional development activities so that the teacher can pursue his or her own self-directed professional development "is a critical issue to the District that strikes at the heart of issues concerning child learning and student improvements." Given the significance of professional development of the school district's core mission, it is reasonable to think that were management to agree to turn over to the teacher-dominated school Professional Development Committees the full range of responsibilities suggested by the Association, some greater clarity of expression would have been used to record that agreement."

Also of significant note is the fact that Arbitrator Munroe did not rely on past practice evidence to come to this conclusion and instead based his decision solely on management rights and the wording of the collective agreement. As an aside, the parties recently completed arbitration on the same issue in SD No. 70 (Alberni) and are awaiting the decision of Arbitrator John Hall.

BCPSEA Reference No. A-02-2007

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.