GRIEVANCE & ARBITRATION UPDATE

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

2008-01 **January 7, 2008** **By E-mail: 2 Pages**

Happy New Year! This is a friendly reminder to all school districts to please forward arbitration decisions to your BCPSEA labour relations liaison for inclusion in the monthly Grievance & Arbitration Update. This information sharing also allows BCPSEA to track arbitration trends and outcomes that may impact other school districts. Thank you!

BCTF/ SD No. 73 (Kamloops/Thompson): Implementation of Preparation Time Arbitration Decision

Issue: On April 2, 2007, Arbitrator John Kinzie ruled that in School District No. 73 (Kamloops/ Thompson), 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. The remedial issue of compensation for lost preparation time was referred back to the employer and the union for resolution. The April 2, 2007 decision was reported in *Grievance & Arbitration Update* No. 2007-03 and *Teacher Collective Agreement Administration Bulletin* No. 11.

Decision: The employer and the union agreed that teachers should be compensated for lost preparation time from September 1, 2006 onward. The union argued that teachers should have been so compensated from September 1, 2005 onward. Arbitrator John Kinzie dismissed the union's claim.

Arbitrator Kinzie ruled that the union served estoppel notice on the employer on August 30, 2005, not June 6, 2005 as argued. The June 6 notice was given to BCPSEA. It was ambiguous on its face regarding to which school districts it would apply. It did not expressly identify School District No. 73 or any other school district. It was not until August 30, 2005, when the Local President e-mailed the employer to inform of the union's intentions, that the employer was put on notice.

With respect to the amount of estoppel notice required, the general rule is that an estoppel will last to the commencement date of the next collective agreement. This gives the party benefitting from the estoppel the opportunity to negotiate its position on the disputed clause. The union argued the general rule should not apply in this case because the employer had no intention of attempting to bargain alternative language. Instead, its position was that the Mission award was wrongly decided, and would argue in front of other arbitrators that it should not be applied in other school districts. In these circumstances, the employer never suffered any lost bargaining opportunity because the employer never intended to pursue the issue at bargaining.

Arbitrator Kinzie disagreed with this submission. What is critical is that the opportunity to negotiate alternate provisions exists. The affected party is not obliged to exercise that opportunity.

In conclusion, Arbitrator Kinzie decided that, in light of all of the circumstances of the case, including the date the estoppel notice was served and the timelines of the bargaining in the spring and fall of 2005, the first meaningful opportunity for the employer to bargain alternate provisions occurred during the spring of 2006 for renewal of the June 30, 2006 collective agreement. Accordingly, the estoppel would end effective that date.

BCPSEA Reference No. A-12-2007

BCTF/ SD No. 75 (Mission): Supplementary Employment Benefit Plan ("SEB Plan") — Calculation of Weekly Salary

Issue: When calculating a teacher's weekly salary for SEB Plan benefits, should the teacher's annual salary be divided by 40 weeks or 52 weeks?

Facts: The employer has used the 52 week calculation since the inception of the SEB Plan in 1989. Consistent with that practice, SEB Plan benefits are paid to teachers over the summer months as well as Christmas and spring breaks. The union claims it was not aware of the employer's use of the 52 week method of calculation until the events giving rise to this grievance.

Decision: Grievance dismissed. Arbitrator John Kinzie determined that upon analysis of the collective agreement as a whole, both the union and the employer's interpretations are linguistically permissible. In this circumstance, arbitral jurisprudence suggests an analysis of the purpose of the disputed provision to assist in determining what the parties intended.

The specific purpose of the SEB plan is to supplement the maternity leave provisions payable under the *Employment Insurance Act* (EI Act) and Regulations. They should therefore be paid on a basis that is consistent with the basis on which the employment insurance benefits are calculated and paid.

The EI Act and Regulations provide teachers with maternity benefits throughout the year. A teacher's weekly salary for the purposes of the SEB Plan benefits should thus be calculated by dividing the teacher's annual salary by 52. This interpretation is the most reasonable one and harmonizes the provisions of the parties' collective agreement with the provisions of the EI Act and Regulations.

As an additional analysis, Arbitrator Kinzie noted that under the union's interpretation of a 40 week calculation, benefits under the SEB Plan would not be payable over the summer. Teachers whose maternity leaves occurred over the summer months would then lose eight to nine weeks of benefits, as maternity leave under the *Employment Standards Act* must be one consecutive period; i.e., a teacher could not stop her SEB benefits on June 30 and restart those benefits for September 1. The result would be treating teachers differently depending on when their maternity leaves occurred. The employer's interpretation does not result in that distinction.

BCPSEA Reference No. A-35-2007

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.