

BCTF/ SD No. 34 (Abbotsford): Posting Vacancies

Issue: Does the collective agreement require the employer to post the mid-year vacancy created by the retirement of a teacher "as vacated," as opposed to permitting the employer to fill the vacated position by an internal shuffle, and then post the resulting vacancy? Is the employer entitled to assign work only at the end of the school year?

Collective Agreement Language:

Article 5:9 Job Postings

5:9.2 In this article, vacancy means an existing or newly created teaching position/assignment which the School District intends to fill and to which a teacher is not assigned.

Facts: A teacher who taught ESL in an elementary school retired in December 2006. The principal assigned Learning Assistance (LA) duties to the retired teacher's position, so the position included ESL as well as LA. Another teacher in the same school as the retiring teacher was identified as qualified to teach ESL and LA, and was moved into that position from a Grade 5 position. The employer then posted the Grade 5 position.

Decision: Grievance upheld, in part. Arbitrator John Steeves reviewed a number of arbitration awards that addressed the same or similar issue, and examined the collective agreement language at issue in those awards. While he found most of the awards of limited assistance, he did contrast a SD No. 23 (Central Okanagan) case against the issue at hand here. Arbitrator Steeves noted that:

...The *Central Okanagan* award reached the same result as urged by the Union in this case but on very different language. In the *Central Okanagan* award the language was retrospective; it looked back at the event of the incumbent vacating her position. The legal significance of this, as confirmed by the result in *Central Okanagan*, is that the parties to the agreement in *Central Okanagan* intended that a vacancy related to the position that was vacated.

Arbitrator Steeves further stated:

In contrast, the language in this case (Article 5:9.2) states that a vacancy exists for a "position/assignment ... to which a teacher is not assigned." This is stated in the present tense rather than retrospectively; what is at issue is a position/assignment that does not have a teacher assigned to it. There is no reference to the content of the position and no indication that the vacancy is otherwise related to the one vacated by the incumbent (as in *Central Okanagan*).

In conclusion, the employer is not required to post a position in the form in which it was vacated. However, the employer did not have the right to assign the Grade 5 teacher to the ESL/LA position. Arbitrator Steeves concluded:

...After the teaching duties of the retired teacher's position were changed, it was a position/assignment that was existing or newly created and the Employer intended to fill it. It was a vacancy in the sense that a teacher was not assigned to it.

Therefore, I find that the ESL and Learning Assistance position was a vacancy under Article 5:9.2 and it should have been posted under Article 5:9.3.

With respect to the union's argument that the employer is only entitled to assign work at the end of the school year, Arbitrator Steeves concluded:

Article 5:2.1 is silent about when the assignment of teaching duties will take place. Therefore, there is no agreement between the Union and the Employer to restrict the right to assign teaching duties to the end of the school year.

Significance: Please note this decision only applies to mid-year vacancies and does not apply to organizational times such as the beginning of the school year or semester change or the spring posting process for the following school year.

BCPSEA Reference No. A-10-2008

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.