

BCTF/ SD No. 49 (Central Coast): Union President's Leave

Issue: When a 0.5 FTE teacher was granted a 1.0 full time President leave and subsequently required sick leave, was the employee entitled to draw 1.0 sick leave or 0.5 sick leave during that absence?

Collective Agreement Language:

ARTICLE A.9 ASSOCIATION RIGHTS A.9.1 PRESIDENT'S RELEASE TIME

A.9.1.1 Upon the request of the CCTA prior to May 15th, stipulating the name and the amount of time to a maximum of full time, the President of the CCTA shall be granted leave of absence without pay for such time during the subsequent school year. The Board will continue to pay the President and the CCTA will reimburse the Board for the cost of salary and benefits for the period of the leave upon receipt of a monthly statement. The Board will pay the employer share of teacher pension contributions.

A.9.1.2 The President shall inform the Board of any absence due to illness, and such time shall be deducted from the teacher's accumulated sick leave credits.

A.9.1.3 In the event that the President resigns while on leave, or is replaced for any reason while leave arrangements are in effect, the Board shall grant leave to another teacher as President on the same terms and conditions, as soon as a replacement is hired.

A.9.1.4 The teacher returning to teaching duties after serving as President shall be assigned to the same position held previously or to another position suitable.

Facts: Facts: The grievor was a teacher from 1977 to 2001-2002. Since 1983 she had been in a 0.5 FTE teaching position. In spring 2002, the grievor was elected President of the Central Coast Teachers' Association (a 1.0 FTE position). The grievor was granted full time leave without pay from the school district pursuant to the collective agreement language governing President's Release Time. The grievor was paid a full time salary including benefits by the school district and the school district was then reimbursed by the union. During the presidency leave, the grievor accumulated sick leave as per Article G.2 at the rate of 15 days per school year (the rate of a full time teacher for each year as president).

In May 2007 the grievor became ill and went on sick leave. While the president was on sick leave, in accordance with Article A.9.1.3, another union representative was granted full time president's leave to replace the grievor for the remainder of the 2006-2007 and subsequent school year. In September 2007 the school district granted the original president sick leave that mirrored her teaching assignment (0.5 FTE) versus that of her original union president leave (1.0 FTE). During this period the union only reimbursed the district for the costs of the acting/replacement union president.

Decision: Grievance allowed. Arbitrator Burke noted that:

Article A.8.1.3 is intended to ensure the replacement Acting President is granted leave. It does not address the status of the President while on sick leave...Article A.8.1.4 deals with the

teacher returning to teaching duties after serving as President and being assigned to the same position or another suitable position.

Arbitrator Burke also stated:

The time of the illness and the absence related to the illness determines the entitlement to access the allowance...the grievor is on sick leave from the full-time President position; not from her .5 active employee status. She is entitled to access her sick leave credits at the full time rate during her absence from the Presidential position due to illness.

Regarding the employer's position that the release time should be cost neutral for both parties, arbitrator Burke concluded:

The employer's argument has an initial attraction, [but] the reality is that the provisions do not expressly address this issue nor can they say to have established such a definitive proposition. It is key, as the union points out, that this matter involves an earned benefit and must be regarded as such.

Significance: When an employee is requesting leave, they are requesting leave from their current teaching assignment. As a result, regardless of what the employee is doing on their leave (in this case acting as a full time president), it is important that any such leave granted not go beyond that of the employee's current teaching assignment.

BCPSEA Reference No. A-55-2008

BCTF/ SD No. 73 (Kamloops/Thompson): Freedom of Expression

Issue: Did the board's failure to put the union on the agenda of a public board meeting violate the union's constitutional right to freedom of expression?

Facts: The union had a standing slot on the public board meeting agenda. There were a series of board meetings where inappropriate conduct and misleading/inaccurate statements made by the union resulted in inaccurate articles in the press. Following warnings to the union, the local teachers' union and CUPE were taken off the board meeting agenda. The district then set up alternate avenues for the unions to provide the board with their views/concerns. At the time of the proceedings, the union had been off the board meeting agenda for the past several years.

Decision: Settlement, without prejudice to the parties' respective positions on the legal issues in dispute in the arbitration proceedings before arbitrator Dorsey.

Key aspects of the settlement include the following:

The Kamloops/Thompson Teachers' Association (KTTA) will be granted the opportunity to make presentations at public board meetings under the agenda topic, "Public Inquiries, Petitions and Written Presentations." The KTTA will comply with the rules of order adopted by the Board concerning the agenda item, "Public Inquiries, Petitions and Written Presentations." Specifically:

- the topic will be subject to approval of the Secretary Treasurer
- the presentation will be limited to five (5) minutes
- the request and supporting written documents must be provided to the office of the Secretary Treasurer by the end of the business day on the Wednesday preceding the Monday Board meeting.

Topics that will not be permitted under that agenda item are bargaining, grievances, personnel matters and topics listed in the Rules of Order for discussion at in camera Board meetings. The KTTA commits to making its presentations in a professional and accurate manner.

The arbitration proceeding will be adjourned sine die and either party may at any time request that the arbitration proceedings be rescheduled if that party considers that the terms of settlement are no longer acceptable. Any request to reschedule the arbitration proceedings will result in the KTTA no longer having the opportunity to make presentations at public Board meetings.

BCPSEA Reference No. A-56-2008

BCTF/ SD No. 39 (Vancouver): Distribution of Union Material

Issue: Are teachers permitted to send union Foundation Skills Assessment (FSA) information home to parents via students?

Facts: Teachers sent, or sought to send, union information home to parents through students regarding FSA. The district instructed teachers that students were not to be used as couriers to deliver such information home to parents. The union alleged that they had a constitutional right to use students to distribute FSA information to parents and a denial of such a right was a violation of the teachers' right to freedom of expression.

This was the same pamphlet and issue that was arbitrated in SD No. 5 (Southeast Kootenay) by arbitrator Kinzie and reported in his award of May 2, 2008.

In that award, arbitrator Kinzie concluded that schools have the right to control what information is sent home to parents from the school. He agreed that the BCTF pamphlet, titled "FSA testing can be harmful to students!" was "confusing and does not provide parents the whole story."

However, the arbitrator determined that rather than instituting "an absolute ban" on teachers from sending home information with students, the Board of Education should have instead addressed concerns with the union about the accuracy and confusing nature of the pamphlet. If the union refused to correct the inaccuracies, then the Board would have been justified in restricting its teachers from sending the pamphlet home with students. As this process did not occur, the arbitrator ruled that the absolute ban on sending this pamphlet out to parents through students was a violation of the *Charter of Rights and Freedoms* (the Charter) and was not a reasonable limit demonstrably justified in a free and democratic society under section 1 of the Charter.

Decision: Consent Award.

The terms of the Consent Award are:

The union accepts the concession by the Employer that the April 19, 2007 directive prohibiting teachers from sending material opposing the FSA test home to parents through students was contrary to Section 2 (b) of the Charter and was not saved in this case by Section 1;

The school district will withdraw the letter of expectation given to the teacher. The school district will withdraw its April 19, 2007 directive to principals

If there is any issue arising in the future over the distribution of FSA material by teachers in the Vancouver School District to parents through students, this issue will be referred to arbitrator Hall on an expedited basis. The expedited basis will consist of a hearing which will not exceed two hours in length and will be heard within one week of the referral. Any disputed material will not be sent home prior to the ruling of arbitrator Hall.

This Consent Award grants and resolves the grievance filed by the Union on April 20, 2007. It is not intended to restrict any right that the parties otherwise have regarding the distribution of other material in the Vancouver School District.

Significance: This Consent Award is consistent with the Kinzie award in SD No. 5 (Southeast Kootenay). Please refer to BCPSEA @issue No. 2008-13 dated, September 30, 2008, for a description of the constitutional limits under Section 1 of the Charter that may be placed on a teacher's freedom of expression rights.

BCPSEA Reference No. A-43-2008

BCTF/ SD No. 61 (Greater Victoria): Denial of Leave

Issue: Was the decision of the district leave committee to deny an unpaid leave at the end of the school year "unreasonable"?

Facts: In February 2007, the grievor applied for an unpaid personal leave in the last week of school to go on a bicycle tour through China and Mongolia. Prior to 2000, individual school principals were permitted to exercise discretion over the granting of unpaid leaves. The absence of central control led to ambiguity, inconsistency, parental complaints, and audit issues. An investigation of stakeholders including the GVTA was undertaken and a report was written with recommendations.

The District Leave Committee (DLC) was created in 2000 and a memo went to all teachers advising that the DLC—and not the school principals—would be deciding applications for unpaid leave. The guidelines the DLC operates under are that personal unpaid leave will be denied unless there are unique or exceptional circumstances.

A memorandum was agreed to which stated, "each application...will be considered on an individual basis in accordance with its own merits...if leave is denied under clause G.3.4 (c) the teacher will be provided with reasonable grounds for the denial."

The DLC reviewed the application by the grievor and the information sought from the school Principal. The DLC determined that the trip amounted to a cycling vacation. The DLC notified the grievor of their decision and advised him that should he require further information, he could contact human resources. The grievor cancelled the trip and stated that he accepted the decision although he was disappointed. The union grieved that the DLC did not exercise its discretion under [the collective agreement] in a reasonable manner.

Decision: Grievance dismissed.

Arbitrator Blasina noted:

To overturn an exercise of discretionary authority, an arbitrator must have concluded that the decision is outside the boundary of reasonableness. It is the decision which is the focal point of the dispute. It is the decision itself which must be reasonable; and, in this type of case, a

decision is not necessarily unreasonable just because there was some error or deficiency in the decision making process. ...

There is a required number of instructional days...and there are "book ends" to when schools are in session. The School District is entitled to demand of its teachers regular attendance for all of that time. This is a paramount consideration.

Speaking in reference to a previous leave grievance, arbitrator Blasina went on to say:

Recreation was given precedence over duty. That is not a message which a school district should give its student or their parents.

The arbitrator concluded:

The guidelines by which the DLC is to exercise its discretion are themselves reasonable...[and] the grievor added no information of substance which would bolster his [letter of application]...It was clear from the evidence...that the DLC gave serious, critical, and individual consideration to...the application...the evidence did not establish that the DLC's decision was arbitrary, inconsistent, or discriminatory...The DLC made a reasonable decision in February 2007.

Significance: Under the provisions of this collective agreement, the employer has the management right to deny unpaid personal leave during the term of the school year as long as the decision is reasonable and is not done in an arbitrary, inconsistent, or discriminatory manner.

BCPSEA Reference No. A-57-2008

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.