

BCPSEA & BCTF: Melding/Interfacing Issues

Issue: In melding/interfacing the provisions of the 2006-2011 Provincial Collective Agreement (PCA) with existing local provisions, BCPSEA and the BCTF identified a number of areas of dispute between the parties.

BCPSEA and the BCTF referred the outstanding melding/interfacing issues to Mark Brown to mediate and, if necessary, arbitrate a resolution to the outstanding issues.

The 2006-2011 PCA articles at issue are:

Article B.7 Reimbursement for Personal Property Loss
Article B.10 Reimbursement for Mileage and Insurance
Article G.1 Portability of Sick Leave

There also remained two outstanding issues of dispute with respect to Article B.2 Teacher on Call Pay and Benefits in School District No. 41 (Burnaby) and School District No. 44 (North Vancouver).

Decision: On May 19, 2009, Mark Brown issued an arbitration decision resolving each of the outstanding melding/interfacing issues.

Article B.7 Reimbursement for Personal Property Loss

BCPSEA and the BCTF had differing views of the interpretation and application of Article B.7.1 Private Vehicle Damage, which reads as follows:

"Where an employee's vehicle is damaged by a student at a worksite or an approved school function, or as a direct result of the employee being employed by the employer, the employer shall reimburse the employee the lesser of actual vehicle damage repair costs, or the cost of any deductible portion of insurance coverage on that vehicle up to a maximum of \$600."

Arbitrator Brown ruled as follows:

First, I conclude that theft of a vehicle is captured within the term "damage." To do otherwise is unreasonable. It is unreasonable, for example, to cover a possible dent in the body of a car, but not cover the situation where the vehicle is stolen. I agree with BCTF that theft is the ultimate form of damage.

Second, I conclude that the criteria for coverage is (*sic*) broken into two components. The first component is damage caused "by a student at a worksite or an approved school function." The language is constructed in such a way that the damage must be caused by a student, not by the general public. Also the requirement that it be caused by a student is for both "work site or an approved school function."

The second component is damage caused “as a direct result of the employee being employed by the employer.” I do not agree with BCTF that this is broad enough to capture all teachers who drive a vehicle to work by choice. I acknowledge that many teachers do not live and teach in the same community. The same can be said for many employees in all walks of life and careers. However, where one lives, where one works and how one gets to work is a personal choice. I conclude that the second component covers all situations where the teacher is required by the School District to use their own vehicle; be it to transport students or equipment. It also includes any damage, and is not limited to damage caused by students.

Arbitrator Brown also ruled on the specific melding/interfaces of Articles B.7.1 and B.7.2 in the following school districts, as follows:

School District No. 79 (Cowichan Valley)

Article B.7.1 applies without any interface with the local provision. The Local Provision B.14.1 no longer applies.

School District No. 39 (Vancouver)

Article B.7.2 applies. Previous Local Provision re Vandalism, Loss of Damage Compensation continues to apply as a “Local Provision.”

School District No. 41 (Burnaby)

Article B.7.2 does not apply. Previous Local Provision B.26.1 Teachers’ Property – Loss or Damage is superior to B.7.2 with respect to personally owned professional material, and continues to apply as a “Local Provision.”

School District No. 44 (North Vancouver)

Article B.7.2 applies as it relates to personal professional material. The Local Provision B.26.6. applies as a superior provision relating to personal property, and continues to apply as a “Local Provision.” The teachers cannot apply both provisions, but must apply the one that is appropriate in the circumstances.

Article B.10 Reimbursement for Mileage and Insurance

During the mediation phase, BCPSEA and the BCTF reached agreement on many of the outstanding melding/interfaces issues regarding Article B.10. Those agreements, and the rulings made by Arbitrator Mark Brown, are as follows:

School District No. 19 (Revelstoke)

School District No. 22 (Vernon)

School District No. 23 (Central Okanagan)

School District No. 36 (Surrey)

School District No. 52 (Prince Rupert)

School District No. 53 (Okanagan Similkameen)

School District No. 54 (Bulkley Valley)

School District No. 60 (Peace River North)

School District No. 67 (Okanagan Skaha)

School District No. 68 (Nanaimo-Ladysmith)

School District No. 69 (Qualicum)

School District No. 79 (Cowichan Valley)

School District No. 82 (Coast Mountains)

School District No. 83 (North Okanagan-Shuswap)

School District No. 92 (Nisga’a)

Previous Local Provision regarding mileage continues to apply. Article B.10.1 does not apply. Article B.10.2 does apply. Article B.10.3 does apply.

School District No. 33 (Chilliwack)

Previous Local Provision regarding mileage and insurance no longer applies. Article B.10.1, Article B.10.2 and Article B.10.3 apply.

School District No. 35 (Langley)

Article B.10.1 replaces first paragraph of Article 68, as such, Article B.10.1 applies. Article B.10.2 applies. Article B.10.3 does not apply. Second paragraph of Article 68 is retained as a superior provision to Article B.10.3.

School District No. 37 (Delta)

Although the parties agree that the Local Provision G.9.1. should apply, the BCAA does not publish rates any longer. Accordingly, the reimbursement rate will be \$0.50 per kilometre for the term of the collective agreement. Article B.10.2 and B.10.3 apply.

School District No. 38 (Richmond)

Article B.10.1 is superior overall and applies. Article B.10.2 does apply. Article B.10.3 does apply. Previous Local Provisions no longer apply.

School District No. 43 (Coquitlam)

Articles B.10.1 and B.10.2 apply, Article B.10.3 does not apply. Local Provision B.1.8.a is retained as it is superior to B.10.3. Local Provisions B.1.8.b and B.1.8.c are replaced by B.10.1. Local Provisions B.1.8.d and B.1.8.e continue to apply.

School District No. 44 (North Vancouver)

Article B.10.1 and B.10.2 apply. B.10.3 does not apply. Local Provision B.15.1 is replaced by B.10.1. Local Provision B.15.2 continues to apply.

School District No. 61 (Greater Victoria)

Articles B.10.1 and B.10.3 do not apply. Article B.10.2 applies. Local Provision B.3.5 continues to apply.

School District No. 78 (Fraser Cascade)

Article B.10.1 does not apply. Article B.10.2 applies. Article B.10.3 applies. Local Provision B.8.5.a and B.8.5.b continue to apply. Local Provision B.8.5.c is replaced by Article B.10.3.

Article G.1 Portability of Sick Leave

School District No. 41 (Burnaby)

Article G.1 allows a teacher to port 60 days of sick leave. The local provision at Article F.2.2 sets out an additional porting provision, of up to 200 days, that applies when sick leave credits are exhausted (i.e., the 60 days ported upfront plus any sick days earned). Once sick leave credits are exhausted, the teacher can port additional days if needed up to 200 days, not 260 days.

Article B.2 Teacher on Call Pay and Benefits

School District No. 41 (Burnaby)

Local Provision F.2.3.d. states that a TOC “while being paid on scale on any teacher-on-call assignment, will be eligible to utilize his/her teacher-on-call sick leave credits.”

The BCTF argued that the local provision should be maintained and the TOC has access to sick leave when they go on scale, which is now the fourth day.

The position of the BCTF was upheld.

School District No. 44 (North Vancouver)

Local Provision B.3.2 provided for 8% payment for vacation pay and pay in lieu of benefits. BCPSEA argued that the 1/189 on scale rate of Teachers on Call, pursuant to Article B.2.6, is inclusive of vacation pay and as such Teachers on Call in School District No. 44 (North Vancouver) should no longer receive 4% of the 8% attributable to vacation pay while being paid on scale.

Both BCPSEA and the BCTF made lengthy submissions to Arbitrator Brown, who ruled that the provision in question is clearly a superior benefit and should be melded into the collective agreement. However, this ruling was made on a prospective basis, effective the date of the Award. No retroactivity was awarded, given the BCTF's untimely pursuit of this issue.

BCPSEA Reference No. M-01-2009.

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.