

## **BCTF/BCPSEA/SD No.59 (Peace River South): Department Head Allowance**

**Issue:** Has the employer failed to comply with the collective agreement by not paying the grievor a 1.0 allowance for his 0.5 position as Department Head of the Science Department? Should the grievance be dismissed on the basis of timeliness?

**Facts:** In September 2005, the grievor was given a Department Head position at South Peace Secondary School. The principal of the Secondary School indicated in an email that the appointment was a 0.5 Department Head assignment, with an allowance of \$1,500. When the grievor received his pay in November 2005, it was half of what he expected. The principal explained that the Math and Science Department Head positions were split, and thus each department received 50% of the allowance. Knowing this, the grievor advised he wished to continue with the Department Head position. The matter lay in abeyance for two years before a grievance was filed.

The collective agreement provides as follows:

### **ARTICLE A.6 GRIEVANCE PROCEDURE**

#### **Steps in Grievance Procedure**

#### **2. Step One**

- a. The local or an employee alleging a grievance ("the grievor") shall request a meeting with the employer official directly responsible, and at such meeting they shall attempt to resolve the grievance summarily. Where the grievor is not the local, the grievor shall be accompanied at this meeting by a representative appointed by the local.
- b. The grievance must be raised within thirty (30) working days of the alleged violation, or within thirty (30) working days of the party becoming reasonably aware of the alleged violation.**

**Employer Argument:** The employer reserved a right to reduce such positions and allowances for budgetary reasons and further, the grievor had agreed to the change.

The grievance should be dismissed on the basis of timeliness. Article A.6.2 B. required the grievance to be raised within 30 working days of the party becoming reasonably aware of the alleged violation. The matter lay in abeyance for two years before a grievance was filed.

**Union Argument:** The breaches of the collective agreement (failure to pay full-time Department Head allowance, failure to advertise the position and failure to provide a job description in consultation with the incumbent) were breaches that continued passed the filing of the grievance in October 2007. As a result of the continuing breaches, there was no issue of timeliness. Alternatively, the parties have not

required strict compliance with time limit provisions in the past and no issue of timeliness was raised by the employer throughout the grievance process. Further, the employer had no evidence it suffered any prejudice because of any alleged delay in filing the grievance.

**Decision:** The timeliness argument was most applicable to the alleged violations. Arbitrator Emily M. Burke explained:

“There is no explanation for the delay with respect to raising these matters. If relief was allowed, and the Union to succeed, an inappropriate retroactive financial liability could result for a lengthy period preceding the grievance when the Grievor explicitly agreed to the appointment for which he was paid. Further, the Employer cannot be expected to tolerate the uncertainty that would result if grievances outside the time limits can be resurrected at the Union’s convenience.”

Arbitrator Burke further noted:

“The Union has argued the incorrect explanation concerning Department Heads led to the delay with respect to the Grievor’s assertion of not being paid the appropriate allowance to the Department Head position. That however is not applicable to the alleged violations concerning advertising the Department Head position and developing a job description. Furthermore, these were not raised in the original grievance as filed; nor are they live issues today. Accordingly, the arbitrator is not inclined to deal with these in the circumstances set out above.”

The grievance was therefore dismissed on timeliness.

**Significance:** Although arbitrators are permitted under the *Labour Relations Code* to relieve on time limits, this arbitration is an example of a grievance being dismissed on the basis of timeliness.

*BCPSEA Reference No: A-33-2010*

## **BCTF/WCAT/SD No.5 (Southeast Kooteney): Health and Safety**

The Workers’ Compensation Appeal Tribunal (WCAT) released a decision on August 18, 2010 related to alleged mercury poisoning as a result of exposure to mercury as part of the worker’s employment. WCAT is the final level of appeal in the workers’ compensation system of British Columbia and is independent of WorkSafeBC.

There were two mercury spills at Mt. Baker Secondary School (2001 and 2004) that resulted from broken barometers in a science classroom. As a result, in excess of 60 current and former employees of Mt. Baker Secondary submitted claims to the WorkSafeBC related to the mercury spills. Three claims for the individuals that had the most direct exposure to the two documented mercury spills were processed by WorkSafeBC and were denied. WorkSafeBC and the report by an occupational medical specialist recommended by the BC Teachers’ Federation (BCTF) found no link between the mercury spills and the symptoms the employees claimed to be suffering from. WorkSafeBC found no mercury exposure health risk at Mount Baker. This decision was appealed to the WCAT.

The WCAT panel found that the evidence was insufficient to establish that the workers suffered from mercury poisoning. As a result, the terms of subsection 6(3) and Schedule B of the *Workers Compensation Act* were not met and subsection 6(3) of the Act was inapplicable. The panel’s finding that the workers did not have mercury poisoning meant it did not need to consider subsection 6(1) of

the Act. It found that the workers did not have an occupational disease due to the nature of their employment.

Full text of the decision can be read at: <http://www.wcat.bc.ca/research/decisions/pdf/2010/08/2010-02235.pdf>

*BCPSEA Reference No: A-36-2010*

## **Questions**

If you have any questions concerning this decision, 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](mailto:nancyhi@bcpsea.bc.ca)**