

IN THE MATTER OF A MEDIATION / ARBITRATION

BETWEEN

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

("BCPSEA")

AND

BRITISH COLUMBIA TEACHERS' FEDERATION

("BCTF")

RE: 2011 – 2013 MELDING / INTERFACE ISSUES

APPEARANCES: Renzo Del Negro, for BCPSEA

John Wadge, for BCTF

MEDIATOR/ARBITRATOR: Mark J. Brown

DATE OF HEARING: January 28, 2014

DATE OF AWARD: February 24, 2014

## I. ISSUE

In a letter dated December 13, 2013 from BCTF, I was appointed as Mediator/Arbitrator to resolve some melding / interface issues with respect to the 2011 – 2013 Collective Agreement. The Collective Agreement included new leave Articles – Compassionate Care, Family Responsibility, Unpaid Discretionary, Bereavement and Union Business. In some cases the Articles included a superior benefits provision.

The parties put three questions to me in relation to Article G.6. Leave for Union Business:

1. Does Article G.6. apply to leave for local presidents?  
BCTF argues that G.6.9. provides for release for elected officers upon request, which includes local presidents. BCPSEA argues that G.6. was intended to apply where leaves were not currently available. As every local agreement includes a presidents leave provision, G.6. does not apply.
2. Does Article G.6. apply to staff representatives?  
BCTF argues that G.6. applies to staff representatives. Furthermore, BCTF argues that where a local elects to preserve superior local leave provisions, and where those provisions place limits on the number of days of leave which will be granted, the employee can access additional leave under G.6. when the local leave limits have been reached. BCPSEA argues that G.6. does not apply to staff representatives for the same reason as in #1. above.
3. Can locals retain portions of local union leave articles and portions of Article G.6.?  
BCTF argues that locals can retain elements of their local union leave articles that they deem to be superior and at the same time adopt a portion of G.6. BCPSEA argues that the implementation provision of G.6. precludes creating such a hybrid article.

The parties were unable to resolve the issues in mediation. Therefore, I issue an Award as set out below.

## II. AWARD

In 2009, I was involved in a similar process for the 2006 – 2011 Collective Agreement. The Articles in question at that point included a Note that stated:

Any and all superior or additional provisions in the Previous Collective Agreement shall remain part of the Collective Agreement

The parties' arguments were very similar to the case at hand. At page 3 of the Award, dated May 19, 2009, I stated:

I do not have the benefit of negotiating history evidence with respect to this issue. Based on the parties' presentations I conclude that the pyramiding of benefits should not occur. Furthermore, while it may not be necessary to select an entire article over another, "provision" should not be read so narrow as to result in "cherry picking" a narrow benefit to insert into another provision.

In the cast at hand, G.6. contains the following:

#### Implementation

The parties will develop a schedule of articles that are replaced by this article. Where a superior provision is identified in the previous collective agreement, this provision will not apply and the superior provision will continue to apply.

As in the 2009 case, the implementation note differentiates between “article” and “provision”. By using the two different words, there must be a different meaning; otherwise, the parties would have used “article” throughout the implementation note.

I conclude that the G.6. Article contains four provisions: short term leave (#6), long term leave (#7 and #8), elected union officer release (#9 and #10), and payment/reimbursement clauses (#1 to #5).

If the parties agree that a local agreement contains a superior provision in comparison to the four provisions noted above, the provision in G.6. will not apply and the superior provision will continue to apply.

In answering the specific questions put to me, I conclude that leave for a local president is included in G.6. in the elected union officer release provision. Either the G.6. provision will apply in its entirety or the current provision in the collective agreement will apply if it is deemed to be superior.

I conclude further that staff representative leave is included in the elected union officer release provision. Either the G.6. provision will apply in its entirety or the current provision in the collective agreement will apply if it is deemed to be superior. A local cannot access a number of days under the current collective agreement and then access additional leave under the G.6. provision as that would be pyramiding benefits. The local must elect either the current provision or the G.6. provision.

I conclude further that locals cannot cherry pick portions from current leave provisions and adopt portions of the short term leave and/or long term leave provisions in G.6. The local must adopt either the entire short term leave and/or long term leave provision from G.6. or the entire corresponding provision from the current collective agreement.

I conclude further that the same approach must be taken for the payment/reimbursement clauses (#1 to #5) in G.6. The local must adopt all of #1 to #5 in G.6. or all of the corresponding provision in the local collective agreement and not portions from each.

I remain seized of any matter arising out of the implementation of this Award.

*“Mark J. Brown”*

Dated this 24<sup>th</sup> day of February, 2014.