

Employer Policy Grievance: Article G.6

BCTF/BCPSEA

Issue: As school districts will recall, BCPSEA filed an employer policy grievance with respect to Article G.6. An initial arbitration was held in respect to the question of what costs the Union was responsible for reimbursing when a teacher teaching on call (TTOC) replaces a Union member on Union leave. The BC Teachers' Federation (BCTF) was of the view that only salary is covered; the BCPSEA view was that salary-related costs such as CPP, TPP, EI and the \$3 in lieu of benefits should also be included. In her decision, Arbitrator Irene Holden accepted the BCTF interpretation of the language and found that the Union's obligation is to reimburse only salary costs. She remained seized of any issues arising from the award.

BCPSEA and BCTF returned to Arbitrator Holden to settle two remaining issues:

1. Is the application of G.6 retroactive to the date of ratification of the Collective Agreement or the beginning of the term of the 2011-2013 Collective Agreement?
2. Does Article G.6 require the Union to pay salary, benefits and pension costs of a teacher on Union leave when there is no TTOC or non-certified replacement hired to replace the teacher on leave?

Decision: With respect to the first question, the BCTF took the position that the application of Article G.6 should be retroactive to the commencement of the 2011-2013 Collective Agreement (i.e., July 1, 2011), whereas the BCPSEA position was that Article G.6 should be applied effective the date of ratification of the Collective Agreement (i.e., July 4, 2012) as it would be impractical, absurd, unintended and unfair to apply G.6 retroactively to the beginning of the term since the leaves were granted and taken based on the local language then in place (including reimbursement obligations).

Arbitrator Holden accepted the BCPSEA position and, in her decision released December 15, 2014, found that to apply Article G.6 back to the beginning of the Collective Agreement (July 1, 2011) would create an impractical and unintended effect and that a "common sense application dictates that it should have become effective the date of ratification —July 4, 2012."

The second question before Arbitrator Holden was whether or not the reimbursement clauses of Article G.6 allow for school districts to be reimbursed for the costs of the leave, such as salary, benefits and pension costs, if a TTOC or non-certified replacement is not utilized to replace the teacher on leave. The BCTF position was that reimbursement for Union leave is not paid when the school district in question does not incur replacement costs and that reimbursement when no replacement is provided would be a "windfall" to the Employer by providing compensation under the new Collective Agreement where none has been payable in the past. The BCPSEA position was that the BCTF was seeking a

substantial benefit — specifically, that where a TTOC or non-certified replacement is not hired to replace the teacher on leave, the school district continue to pay the costs of the teacher on leave with no reimbursement for any of that cost, to which the Employer would not have agreed. The BCPSEA position was that what the BCTF was seeking was a significant monetary benefit and that, accordingly, the onus was on the BCTF to establish that the momentary benefit was mutually intended by both parties; that Article G.6 clearly contemplates reimbursement in all cases of Union leave with reimbursement linked to the full cost of the teacher on leave except where the teacher is replaced by a TTOC or non-certified replacement.

Arbitrator Holden agreed with the BCPSEA position and confirmed that Article G.6 requires the Union to reimburse the Employer and pay the salary and benefits outlined in clauses 1 and 2 of Article G.6 when no TTOC and/or non-certified replacement is employed to replace the teacher on leave. Such benefits include the salary, benefits and pension costs of the teacher on Union leave.

Arbitrator Holden has remained seized of any issues which may arise regarding the implementation of this award including the calculation of monetary obligations.

Districts are advised to assess the status of any payments or outstanding invoices made pursuant to Article G.6 and adjust the payment or invoices to be in compliance with this decision.

BCPSEA Reference A-105-2014

Questions

If you have any questions, please contact your BCPSEA liaison.