

BCTF/MRTA and GVTA and BCPSEA/School District No. 42 (Maple Ridge-Pitt Meadows) and School District No. 61 (Greater Victoria): Appointing Teachers as Temporary Acting Vice Principals

Issue

Can a School District grant a teacher a leave of absence to take a temporary, acting Vice Principal position and return the teacher to their former teaching position after the appointment?

Facts

The Employers appointed teachers from within the bargaining unit to temporary, acting Vice-Principal positions. The Employers placed the teachers on leaves of absence which allowed them to return to their former teaching positions after the temporary appointments ended. The teachers' vacant teaching positions were posted as temporary vacancies for the term of their temporary Vice Principal appointments in accordance with the collective agreement.

Relevant Statutory and Collective Agreement Language

Principals and vice-principals are expressly excluded from the definition "employee" under the *Labour Relations Code*. Sections 20 and 21 of the *School Act* provide that:

- 20 (1) A board may appoint a person as a principal, vice principal or director of instruction to perform the duties and have the powers set out in the regulations.
- (2) A principal, vice principal or director of instruction is not an employee within the meaning of the *Labour Relations Code*. ...
- 21 (1) When a board of a school district
- (a) does not intend to renew the contract of a principal, vice principal or director of instruction in the school district, or
 - (b) intends to dismiss a principal, vice principal or director of instructor other than for cause, the board must first offer the principal, vice principal or director of instruction a teaching position in the school district before the expiry of the contract or the effective date of the dismissal.
- (2) If a person is appointed as a principal, vice principal or director of instruction in a school district and is subsequently offered a teaching position in that school district, he or she is, for the purposes of seniority only, deemed to have been a teacher in that school district both during the period that he or she was employed as a principal, vice principal or director of instruction and during the period that he or she was employed as a teacher in that school district.

The collective agreement provisions applicable in the two districts provide for leaves of absence without pay for personal reasons. Neither district has language expressly stating that personal leave cannot be taken to accept a temporary administrator appointment and neither has language which expressly addresses the status or rights of a teaching taking a temporary administrator position.

Decision

In his decision of August 28, 2015 attached, Arbitrator Kinzie decided that the Employers were not entitled to place a teacher taking an administrative position on a personal leave of absence under the collective agreement. He found that it is not possible under the *School Act* for a teacher to be temporarily assigned to an administrative position while still retaining rights under the collective agreement — one must be either a teacher or an administrator. Once a teacher has taken an administrative position — even if it is temporary — that person is no longer a teacher, is excluded from the bargaining unit, and the collective agreement no longer applies to him/her.

For this reason, a teacher acting as a temporary administrator cannot be granted a leave of absence under the collective agreement, cannot be promised that he/she will return to his/her former teaching position at the end of the appointment, and the vacancy in his/her former teaching position cannot be posted as temporary. A temporary administrator is entitled to what is provided by section 21 of the *School Act* — “a” teaching position in the district, not “their” teaching position. Further, the district’s offer of a teaching position will be subject to post and fill requirements in the collective agreement.

Arbitrator Kinzie found that it would require “clear and express” language in the collective agreement to provide non-bargaining unit personnel, such as temporary administrators, with leaves of absence and seniority rights that give them priority over bargaining unit members. However, he left open the door to the parties to expressly provide these rights to teachers taking temporary administrator positions. Specifically, he stated (at pages 17-18):

As I have said above, the parties could confer rights on non-bargaining unit personnel such as temporary, acting administrative officers, but they would have to do so in clear and express language. For example, in this case, they could, in my view, expressly confer on a former teacher who has undertaken a temporary, acting appointment as an administrative officer, the right to return to her former teaching position following the expiry of her temporary, acting appointment. The parties clearly have jurisdiction over that teaching position and, in my view, they could expressly facilitate that right of return by expressly stating that the vacancy in that position be treated as a temporary vacancy while the incumbent is in her temporary, acting administrative officer position and that she have a right to return to that position on the expiry of her temporary, acting administrative officer position. The significant point though at this stage is that they have not expressly included such language in their collective agreement.

Arbitrator Kinzie noted the parties’ agreement that if the Employer was not successful, then a second hearing would be convened to deal with the districts’ estoppel claim.

Significance

Without the union’s express agreement, school districts are not permitted under the *School Act* to place teachers who accept temporary administrator positions on leaves of absence or promise them a right to return to their former teaching positions. Arbitrator Kinzie recognized that the decision may well have a chilling effect on teachers’ willingness to accept temporary administrator appointments if they have no guarantee of returning to their former teaching positions.

The impact of this decision will depend on each district’s leave language and past practice in relation to this issue.

BCPSEA has applied to the Labour Relations Board for a review of the decision. We will keep you updated as the appeal proceeds. If you have any questions, please contact your BCPSEA liaison.

Attachment: Arbitration Award BCPSEA Reference A-09-2015