

IN THE MATTER OF AN ARBITRATION

BETWEEN

SCHOOL DISTRICT #42 MAPLE RIDGE/PITT MEADOWS

(the "Employer")

AND

CUPE LOCAL 703

(the "Union")

RE: CHRIS FRASER GRIEVANCE

PRELIMINARY ISSUE

APPEARANCES: Gregory J. Heywood, for the Employer

Rob Jandric, for the Union

ARBITRATOR: Mark J. Brown

DATE OF HEARING: March 31, 2016

DATE OF AWARD: March 31, 2016

I. ISSUE

I was appointed to this termination grievance on April 20, 2015. The hearing is set for April 18 to 21 and 25, 2016.

As I understand the matter, the Grievor was terminated based on a Report compiled by a lawyer retained by the Employer to conduct an investigation into a harassment complaint filed by another employee.

In preparation for the arbitration hearing, Employer Counsel has scheduled interviews with potential witnesses who are members of the bargaining unit. Some of the members contacted Union Counsel stating that they did not want to meet with Employer Counsel.

The Union requested a conference call in order to seek direction from me.

The Union argues that the employees should not be required to meet with Employer Counsel; or in the alternative, I should set conditions for the interviews similar to those awarded in the case cited by the Employer to support its argument.

The Employer argues that the employees scheduled for interviews are not subject to discipline, must attend the meetings scheduled on paid time and are not entitled to representation. The Employer cites *City of Vancouver and Vancouver Firefighters' Union, Local 18*, February 3, 2004 (Larson) to support its argument.

II. AWARD

The hearing dates are close at hand; and Employer Counsel has scheduled interviews commencing April 1st. Accordingly, this Award is being issued expeditiously due to very tight time frames.

The case at hand is on all fours with the *City of Vancouver* case.

Employer Counsel is preparing its witnesses, or potential witnesses, for the hearing. The Employer bears the onus in this case as it is a termination case. The witnesses are not subject to discipline.

The employees are required to attend the interviews as scheduled by the Employer on Employer paid time. They should answer questions put to them as best they can. I have no reason to believe that Employer Counsel will not conduct the interviews in a professional and respectful manner. Because the employees are not subject to discipline they are not entitled to Union representation.

On the issue of other conditions suggested by the Union, similar to those ordered in the *City of Vancouver* case, I note that the conditions were set due to the circumstances of the case. In that case the original investigator allegedly conducted the interviews in a "rude, condescending and abusive manner".

In the case at hand I have no such assertion.

In addition, while it may be helpful for the employees to be provided with notes etc. from the original interviews in order to refresh their memories as the interviews were conducted over a year ago, I am not persuaded to do so as the Report is subject to solicitor client privilege according to Employer Counsel. Furthermore, Employer Counsel is preparing Employer witnesses. I am not going to direct Counsel on how to prepare his case. If he is not going to provide employees with previous material, then he will have to assess their recollection of what happened given the passage of time.

I am also not setting as a condition, as I believe it goes without saying, that employees cannot be disciplined for comments made in the interviews.

Union Counsel may interview employees in preparation for its case either before or after Employer Counsel. As I do not intend to interfere with the Employer Counsel's preparation, the same goes for Union Counsel.

I note that at this point the Union had intended to call some of the employees who are being interviewed by Employer Counsel. If Employer Counsel ends up calling those employees, Union Counsel will have the opportunity to cross examine them and will not need to call them as part of his case.

"Mark J. Brown"

Dated this 31st day of March, 2016.