

BCTF Return to Work Agreement — Grievance Dismissed

In a decision issued October 18, 2016, Arbitrator Chris Sullivan has dismissed the BCTF's provincial policy grievance regarding September 2014 pay pursuant to the Return to Work (RTW) Agreement negotiated between the parties at the conclusion of the last collective bargaining round.

The issue before Arbitrator Sullivan was the proper interpretation of the RTW Agreement, specifically the meaning of the phrase, "Friday will be a paid day." Arbitrator Sullivan was asked to determine how teachers should be paid for their work on Friday, September 19, 2014.

The grievance was lodged on April 23, 2015, and applied to 15 school districts that paid teachers for seven days in September 2014 (rather than the eight days claimed) based on local collective agreement language regarding pay for partial months worked.

Background

The BCTF commenced job action in March 2013, with subsequent rotating strikes implemented starting at the end of May 2014. On June 17, 2014, teachers began a full strike. This strike continued past the scheduled first day of school. To end the strike, an agreement in principle was reached by the parties on September 16, 2014.

A RTW Agreement was then signed in the early morning on Thursday, September 18. That day, teachers voted to ratify the new collective agreement; however, picket lines remained in place pending the vote outcome. Teachers returned to work on Friday, September 19 but students did not attend school until Monday, September 22.

Argument

In short, the BCTF claimed that teachers were entitled to pay for Friday, September 19 on two separate bases: the RTW Agreement, as well as local collective agreement language.

BCPSEA's position was that the only correct interpretation of the disputed language is that, "Friday is a day in respect of which all teachers in the province should receive pay," and neither the RTW Agreement nor extrinsic evidence could support the Union's interpretation, which would have resulted in a signing bonus of approximately \$2 million.

Decision

Siding with BCPSEA, Arbitrator Sullivan found that the RTW Agreement did **not** establish a separate and independent basis upon which teachers would be paid for Friday, September 19, 2014. On a review of the evidence regarding the RTW Agreement and the language itself, he agreed with BCPSEA that the words meant simply, "Friday is a day in respect of which all teachers in the Province shall receive pay."

He held there was no bargaining evidence to justify departure from this straightforward interpretation of the plain and ordinary meaning of the provision. In fact, at the bargaining table on September 17, 2014, BCTF had sought to obtain additional pay for its members. In response, BCPSEA was adamant that a signing bonus would not be considered as one had been previously offered and rejected by the BCTF in June.

Further, at the bargaining table, BCPSEA had clearly articulated it was not prepared to pay for any time that the pickets were up. BCPSEA had even offered to pay for the Thursday and Friday of the week in question if the pickets were down for both of those days (September 18 and 19, 2014), notwithstanding the outcome of the ratification vote. This had been rejected by the BCTF. On that topic, Arbitrator Sullivan stated:

“Viewed in context, the **BCTF now seeks to effectively achieve in pay what BCPSEA had previously offered in exchange for pickets being taken down on the Thursday and Friday of the week in question.** To now find the parties mutually intended the same result without those pickets down would be wholly inconsistent with what was expressed between the parties at the bargaining table.” (pps 15-16) [emphasis ours]

The BCTF focused its grievance on school districts whose local language called for teachers to be paid for seven days in September 2014 (rather than the eight days claimed). Arbitrator Sullivan noted that, “[I]f the RTW Agreement constitutes a separate and independent basis for the payment for the Friday in question, then teachers in Districts that use the aggregation method or best of both worlds approach should have received nine days pay for September 2014, and this did not occur, and was not grieved.”

This aspect of the decision underscores BCPSEA’s long held position, which is that if the BCTF is not willing to agree to a master agreement, the Union is left with local language which may not be advantageous to all teachers in some situations.

BCPSEA Reference No. A-34-2016

September 2014 Allowances Grievance Dismissed

On July 25, 2016, Arbitrator David McPhillips dismissed the BCTF’s grievance regarding various allowances claimed during the September 2014 teachers’ strike. The arbitrator held that, in general, employees forfeit their right to wages and benefits when on strike.

Background

The BCTF had asserted that School District Nos. 52 (Prince Rupert), 82 (Coast Mountains), and 87 (Stikine) had improperly refused to pay, or had improperly pro-rated employees, the following allowances:

- Remote Recruitment and Retention
- Isolation
- Travel.

Arguments

The Union argued that the disputed payments are types of "annual" allowances, to be paid regardless of service. Therefore, the only criterion for eligibility is that a person has full time employee status.

In response, BCPSEA’s position was two-fold: First, while on strike employees had freely chosen to withhold teaching services from their employers. Employees are not owed the allowances when on strike unless clear collective agreement language requires such payments.

Second, in contrast to the Union's position, BCPSEA argued that the allowances are properly characterized as "service-based" benefits. They are not annual entitlements based on employee status, and therefore must be earned through employee attendance at work (i.e., "service"). Employees are not at work when on strike, and are therefore not owed the allowances during that time.

Decision

In denying the BCTF grievance, Arbitrator McPhillips took an interpretive approach. In order to determine whether to characterize the allowances as service or status-based, he first examined the parties' past practice. Finding that no clear practice existed, the arbitrator then looked to the applicable local agreement language in an effort to determine whether the mutual intention of the parties was to pay these allowances during a strike. He found no clear language to that effect.

Arbitrator McPhillips then reviewed related jurisprudence to attempt a proper characterization of the allowances. He found that previous awards were based on the particular agreements and intentions of the parties involved, so were not determinative in the case at hand.

Taking a broader, contextual approach, the arbitrator then reviewed the way in which similar matters are generally treated under a collective bargaining regime in the context of the *Labour Relations Code*. He stated that, "The basic premise that appears to be widely accepted is that, in the absence of clear intention to the contrary, **'common sense' dictates that employers will not subsidize the employees who are in the process of preventing them from operating and compensate the employees for services which they are not providing ...**". (pp 24) [emphasis ours]

He further stated:

"[I]t is my view that, in line with these authorities, if these parties had intended that certain benefits and allowances were to continue during the course of a strike/lockout, that intention should have been clearly expressed so that there would be no doubt that it was their intention to deviate from this **"common sense" approach that such benefits would not be provided during a labour dispute.**" (pp 27) [emphasis ours]

Caution should be used in applying this decision to all districts, as collective agreement language and practice may vary. In Arbitrator McPhillips' words, "...whether these [are] "status" or "work related" benefits [is] based on the language of the particular agreement and the imputed intention of the particular parties." (pp 19)

However, BCPSEA considers this a helpful decision going into the next round of bargaining, as it clarifies that pay reduction during a strike may not be limited to wages, and serves as a reminder of the "common sense" labour relations premise that wages and benefits are forfeited when employees strike.

BCPSEA Reference No. A-13-2016

Questions

If you have any questions, please contact your BCPSEA liaison or Jennifer Duprey, BCPSEA General Counsel (jenniferd@bcpsea.bc.ca).