IN THE MATTER OF AN ARBITRATION, PURSUANT TO THE
B.C. LABOUR RELATIONS CODE, RSBC 1996 c. 244 (the "Code")

BETWEEN:

**SCHOOL DISTRICT NO. 6 (ROCKY MOUNTAIN)**

the "Employer"

AND:

**BRITISH COLUMBIA TEACHERS' FEDERATION**
**(ROCKY MOUNTAIN TEACHERS' ASSOCIATION)**

the "Union"

RE: Maggie Calladine (Union Leave)

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# AWARD

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| Arbitrator: | Gabriel Somjen, QC |
| For the Employer: | Delayne M. Sartison, QC |
| For the Union: | Steven Rogers |
| Hearing: | April 16 & 17, 2018 in Cranbrook, BC<br>May 18, 2018 in Vancouver, BC |
| Date of Award: | May 30, 2018 |

The Grievor, Maggie Calladine, was elected as President of the Golden Teachers' Association on May 25, 2015. Pursuant to the Collective Agreement she applied for leave to take the full-time Union President position. Her leave was granted the same day.

At the time of the request for leave the Grievor was employed at two schools teaching music and drama for a total full-time equivalent ("FTE") of .8199.

The first pay the Grievor received while on leave was in September 2015. It was based on her .8199 FTE position at the time she took leave. In correspondence between the parties the Union claimed the Grievor should be paid 1.0 FTE while the Employer took the position that, while on leave, the Grievor was only entitled to be paid the FTE she was earning at the time of applying for the leave.

This grievance is about whether the Employer, in these circumstances, is obligated to pay the Grievor on the basis of 1.0 FTE [with the Union reimbursing the Employer] or whether the Employer is correct in only paying her at the rate of .8199 FTE.

**I.**

The Employer's Preliminary Objection re Timeliness

The Collective Agreement requires that a grievance must be filed within 30 working days of the alleged violation or of the party becoming reasonably aware of the alleged violation.

"Working days" in this Collective Agreement does not include the summer break. According to the Employer's calculation, if the alleged violation was on May 25, 2015 when the leave was first granted, the grievance was filed [November 25] 82 working days after.

If the alleged violation was known on September 24, 2015, when the Union and the Grievor became aware of the level of pay being paid to the Grievor, then the grievance was filed 44 working days after.

There was further correspondence between the parties on September 28 identifying the dispute and the grievance was filed 40 days after that.

I agree with the Employer's argument that the language of this Collective Agreement is strong because the word "must" is used. Because time is often of the essence in labour relations, I also agree that, if there is a reasonably long time frame such as 30 days for a grievance, then it should generally be filed within that time.

The initial correspondence between the parties shows that on May 25, 2015 the Grievor told the Employer that she had been elected President of the Golden Teachers Association. Correspondence between the Grievor and Ms. Lenardon, for the Employer, stated:

a. 3:44 PM – the Grievor emailed “That letter will state what my continuing FTE is that I will be owed when I return from leave, right?”

b. 3:49 PM – Ms. Lenardon responded “The letter will state that you are on leave from your continuing positions of .2866 FTE at NES and .5333 FTE at LGE. The CA provision for G.6 cover what that means and yes, you will continue to hold that FTE while on leave and we will follow the CA around return from leave.”

c. 3:55 PM – The Grievor responded “Thank you”

The Grievor was granted the leave requested by email on May 25, 2015:

> I am pleased to confirm that your request for a leave of absence under Article G.6 of the Collective Agreement from your .5333 FTE teaching assignment at Lady Grey Elementary and .2866 FTE teaching assignment at Nicholson Elementary School has been approved for the 2015/2016 school year. It is understood that this leave is for elected union officer release.

The Grievor first became aware that she was being paid at .8199 FTE in late September 2015.

The Employer believed that the earlier correspondence was clear that the Grievor would be paid .8199 FTE during her leave but the Grievor and the Union did not understand that to be the Employer's position until the Grievor's first pay in September. There was then correspondence

between the parties in which the Union took the position that the Grievor should be paid 1.0 FTE and the Employer held its position that she should only be paid .8199 FTE.

These exchanges were between September 24 and 28, 2015.

After that the Grievor corresponded with the Employer trying to arrange for the BCTF to pay the difference between 1.0 FTE and .8199 FTE and sought assistance from the employer with that calculation. In the end, the BCTF did not agree to pay the difference. The Union filed its grievance on November 25, 2015.

In normal circumstances, if the parties are in disagreement over the proper interpretation of the Collective Agreement, the Union would be expected to file its grievance within 30 days of becoming aware of the alleged violation. I understand that the Employer believed its early correspondence in May 2015 indicated to the Grievor that she would be paid .8199 FTE. However, the correspondence does not actually demonstrate that. In May the Grievor requested what she was being granted leave from and what she would be entitled to on her return. The answer from the Employer was .8199 FTE. However, neither party clearly addressed the issue before me which is on what basis she would be paid while on the leave. I agree with the Union that the Grievor did not know the answer until she received her first pay in September 2015.

The Employer says that the Union did not file its grievance until it was out of time, which is true. However, between September 28 and when the grievance was filed on November 25, the Grievor, who was then Union President, was trying to resolve the issue without the need for proceeding to a grievance or arbitration by getting the BCTF to pay the difference between 1.0 and .8199. Once she concluded that was not possible, the Union filed its grievance.

The Employer thought that the Union was conceding the Employer's interpretation of G.6 because after September 28 it was not filing a grievance but trying to find a solution to the problem. However, I conclude that the Union was making a reasonable effort to resolve the difference between the parties. While it could have filed a grievance first and then tried for a resolution with

the BCTF, it chose to first see if there could be a resolution and only when the BCTF declined did the Union file a grievance.

In the circumstances, it would be unfair to hold the Union to the 30 day time limit. The Employer was aware that the Grievor was trying to resolve the issue and the fact that the Union did not file a grievance and then seek a resolution rather than the other way around should not be held against the Union. When a party to a dispute is seeking to resolve it in a constructive manner that should be encouraged. Therefore, I conclude that, even though the Union was about 10 days beyond the 30 day time limit for filing a grievance, in the circumstances of this case, the time limit should be extended to allow the grievance to proceed. I do so pursuant to Section 89 [e] of the *Labour Relations Code*, taking into account: the particular facts in this case, the short period beyond the 30 day time limit, the fact that no significant prejudice was demonstrated by the Employer and the fact that the union was trying to resolve the issue during the period from September 28 to November 25, with the Employer's knowledge.

I also agree with the Union's argument that there has been a continuing alleged violation of the Collective Agreement each time the Employer paid less than 1.0 FTE, particularly since a second leave was granted for a second year and she has been paid at .8199 throughout the 2 years of leave.

Therefore, I dismiss the Employer's objection with respect to timeliness and proceed to deal with the merits of the grievance.

**II.**

When G.6 was negotiated the parties did not address how an employee on union leave would be paid if the position from which the employee was being released was less than 1.0 FTE. This is the first case in which there has been a dispute over the level of pay to an employee on leave to a full time union position where the employee's position prior to the leave was less than 1.0 FTE.

In many cases the teacher on leave is at 1.0 FTE, so the issue does not arise.

I also heard that sometimes the Union only provides for a part time union position (eg. .5 FTE). In those circumstances the Employer will release the teacher and pay for the union work but also provides part time work for the teacher to make up the amount worked prior to the leave.

A helpful history of the bargaining relationship and the way these parties dealt with leave for union business in the past was set out in the agreed statement of facts.

**History of Locals**

1. In BC, teachers gained full collective bargaining rights in 1987. The first full round of collective bargaining took place in 1988.
2. Until 1994, there was a local association certified as the bargaining agent in each of British Columbia's 75 school districts. In 1994, the Public Education Labour Relations Act ("PELRA") was enacted and established that the BCTF was the certified bargaining agent for all public school teachers. Subsequently, the Labour Relations Board cancelled certifications of the local associations.
3. On December 1, 1996 the provincial government amalgamated several school districts so that there were 59, instead of 75, school districts. School District No. 18 (Golden), School District No. 3 (Kimberley) and School District No. 4 (Windermere) were amalgamated to form the Rocky Mountain School District No. 6. The local unions were not amalgamated.
4. Discussions took place between the local unions and School Districts around the province and some locals amalgamated and adopted one version of local language. Others did not, and two or three versions of collective agreement language continued to operate in nine School Districts. Three collective agreements continued to operate in Rocky Mountain School District.
5. In 2002, the provincial government enacted the Education Services Collective Bargaining Act (proclaimed January 27, 2002). This legislation voided a number of local agreements so that only one local agreement applied in each School District, effective July 1, 2002. In Rocky Mountain, the Kimberley and Golden agreements were voided by the legislation and the Windermere agreement was deemed to apply to all teachers employed by the Rocky Mountain School District.
6. BCPSEA took the position that it only recognised one local in each School District. BCTF filed a grievance and an application at the Labour Relations Board. The Labour Relations Board deferred most of the issues to arbitration. The grievance proceeded before Arbitrator Kelleher. At that time, the dispute related to five School Districts including Rocky Mountain.
7. Arbitrator Kelleher determined that the union was entitled to establish its own structure, although the employer was only required to deal with one entity.

* * *

8. A supplemental award by Arbitrator Kelleher addressed the final language to be included in a settlement document between the parties. He awarded that one local union would be recognised in each School District for collective agreement purposes, but the organisation of a local union and matters of how its authority/responsibilities are framed or delegated are matters within the exclusive authority of the union.

9. In 2002, the teachers employed by the Rocky Mountain School District formed the Rocky Mountain Teachers' Association. Its constitution was adopted on May 28, 2002.

10. The association has three locals: Golden Teachers' Association, Kimberley Teachers' Association and Windermere District Teachers' Association. Each local has its own constitution. The union continues to structure their own affairs so that one local president represents members from Golden, a different local president represents members from Windermere, and a different local president represents members from Kimberley.

**Collective Agreement Provisions**

11. The Windermere 1988-1990 collective agreement included a provision on president's release. In the 1990-1992 collective agreement, a clause was added that states, "The District will pay fifty percent (50%) of the Association's share of the President's pension". Other than that addition, the language remained the same up until the locals adopted G.6 for the 2013-2019 agreement.

12. The 2006-2011 collective agreement between the parties contained the following language on local president's leave:

    ARTICLE G. 28 PRESIDENT'S RELEASE LEAVE

    1. The District agrees to release the President of the Association from teaching duties as required by the Association. The schedule for such release time will be agreed upon by the President and his/her supervising Administrative Officer. Three (3) month's notice prior to the beginning of the school year shall be given for such absence.

        a. The District will continue to pay the President his/her salary and to provide benefits as specified in the agreement. The Association shall reimburse the District for such salary and benefits costs within thirty (30) days of the receipt of a monthly statement.

        b. The District will pay fifty percent (50%) of the Association's share of the President's pension.

    2. For the purposes of pension, experience, sick leave and seniority, the President shall be deemed to be in the full employ of the District.

3. The Teacher returning to full teaching duties from a term or terms as President shall be assigned to the position held prior to the release or to another position which is acceptable to the Teacher.

4. In the event the President is unable to fulfill the presidential duties, the Association will make arrangements with the Superintendent for the release of a replacement President. Release will be on the following basis:

   a. The provisions of Clauses 1, 2, and 3 of this Article will apply to the replacement. Reasonable notice will replace the requirement for notice specified in Clause 1 of this Article.

   b. Any costs to the District directly caused by the change in President shall be the responsibility of the Association.

13. The collective agreement president's leave language applied to the RMTA president, not the other two local presidents.

14. The 1988-1990 Windermere collective agreement contained language related to additional union leaves. The language remained the same (other than incidental changes such as acronyms) up until the locals adopted Article G.6 for the 2013-2019 agreement. In the 2006-2011 collective agreement Article G. 29 provided:

    ARTICLE G.29 LEAVE FOR LOCAL, BCTF, CTF AND TEACHER COLLEGE BUSINESS

    1. Subject to operational requirements as determined by the Superintendent and provided that adequate notice is given, leave of absence with pay and without loss of seniority shall be granted:

       a. to a Teacher who is a member of the Executive Committee, Representative Assembly, a committee or task force of either the British Columbia Teachers' Federation, the Canadian Teachers' Federation, or the Teacher College Council or appointed an official representative or delegate of the Association or the British Columbia Teachers' Federation;

       b. to Teachers called by the Association to appear as witnesses before an arbitration board or the Industrial Relations Council;

       c. to the Association bargaining team to prepare for negotiations; and

       d. to Staff Representatives to attend Staff Representative training.

       e. The Association will reimburse substitute cost of leaves for Association, Canadian Teachers' Federation, and British Columbia Teachers' Federation business.

    2. Teachers and/or Staff Representatives of the Association shall arrange, where possible, to conduct grievance investigations and other Association business in such a manner as not to disrupt classroom or other instruction.

3. Where a Teacher and/or Staff Representative is requested by the District to meet on Association-District matters, they shall suffer no loss of pay for time so spent.

4. Staff Representatives shall be relieved of instructional duties with no loss of pay to be present at any meeting between an Administrative Officer and a Teacher when such presence has been requested by either party under the terms of this agreement.

5. In the event that a Teacher covered by this agreement is elected to a full-time position as an officer of the Federation, or is appointed on a term contract of employment to the administrative staff of the Federation, or seconded to the Federation, leave of absence without pay shall be granted for the duration of the first term of such appointment. The Teacher shall be entitled, on written notice at least three (3) months prior to the commencement of a school term, to return to employment with the District effective the commencement of that term, and shall be entitled to an assignment comparable to that previously held.

15. In the 2011-2013 round of bargaining, BCTF and BCPSEA bargained provincial language with regard to leave for union business. Article G.6 was adopted in the 2011-2013 provincial collective agreement. During the discussions that led to Article G.6, BCTF and BCPSEA did not have any discussion about whether Article G.6 required the continued pay and benefits of teachers on union leave to be at their level of pay and benefits prior to leave or a different level of pay and benefits as directed by the Union. The language of Article G.6 remained the same in the 2013-2019 provincial collective agreement.

Article G.6 provides:

ARTICLE G.6 LEAVE FOR UNION BUSINESS

1. a. Any union member shall be entitled to a leave of absence with pay as authorized by the local union or BCTF and shall be deemed to be in the full employ of the board.

   b. 'Full employ' means the employer will continue to pay the full salary, benefits, pensions contributions and all other contributions they would receive as if they were not on leave. In addition, the member shall continue to be entitled to all benefits and rights under the Collective Agreement, at the cost of the employer where such costs are identified by the Collective Agreement.

2. The local or BCTF shall reimburse the board for 100 per cent of such salary, benefits, pension contributions and all other contribution costs upon receipt of a monthly statement.

3. Where a TTOC replaces the member on union leave, the reimbursement costs paid by the local or the BCTF shall be the salary amount paid to the TTOC.

4. Where a non-certified replacement is used, the reimbursement costs paid by the local or the BCTF shall be the salary amount paid to the replacement.

5. Where teacher representatives are requested by the board to meet on union-management matters during instructional time, representative(s) shall be released from all duties with no loss of pay.

Short-term leave (leave of 10 consecutive school days or less)

6. Such leave will be granted subject to the availability of a qualified replacement. The request shall not be unreasonably denied.

Long-term leave (leave of more than 10 consecutive school days)

7. Such leave will be granted subject to the availability of a qualified replacement and educational needs of the school district. The request shall not be unreasonably denied.

8. Upon return from leave, the employee shall be assigned to the same position or, when the position is no longer available, a similar position.

Elected union officer release

9. Such leaves will be granted upon request.

10. Upon return from leave, the employee shall be assigned to the same position or, when the position is no longer available, a similar position.

*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.*

16. The above-quoted "implementation" language of Article G. 6 permitted locals to decide whether to retain superior union leave provisions in their previous agreement in which case the corresponding provision of Article G.6 would not apply. Rocky Mountain Teachers' Association retained local language and did not adopt Article G.6 during the 2011-2013 collective agreement. However, the Rocky Mountain Teachers' Association did not retain local language and instead adopted Article G. 6 in its entirety for the 2013-2019 collective agreement.

17. Prior to the adoption of Article G.6, the School District paid 50% of the union's share for the pension contribution for the released president of the RMTA. Under G.6, the union pays the entirety of the Union's share for the pension contribution.

The Employer argued that in leave cases arbitrators have often held that the employee is only entitled to pay by the employer to indemnify for pay lost due to the leave. Union work outside

normal working hours has therefore been denied in some of these cases. I accept those general principles as set out, for example, in *HEABC and Community Bargaining Assn (Union Leave Grievance),* [2016] B.C.C.A.A.A. No. 85.

Those cases must be seen in light of the collective agreement language, are fact-dependent but serve as a useful starting point.

In our case I consider important the particular language and context of the Collective Agreement, the past history of these parties and other school districts, the extensive agreed facts before me and the arguments of counsel.

**III.**

**Past Pactise Under Previous Language**

I was provided with an agreed statement of facts regarding industry evidence relating to how these issues have been dealt with in the past. Under different language than Article G.6, this evidence shows that there were several times in the past when particular school districts, including SD 6, paid teachers on union leave at 1.0 FTE even though the teacher held a position of less than 1.0 FTE before the leave. In some cases this was accomplished by changing the employee's assignment before the leave to make up the difference to 1.0 FTE; in other cases different arrangements were made. The School Districts did not deny pay at 1.0 FTE in those cases. However, it is important to note that the Collective Agreement language in those cases was different.

**Practice under Clause G.6**

Under the present language of G.6, the Employer rejected the Union's interpretation. In Princeton [SD 58] a similar situation arose and the employer declined a request for payment of the union president at 1.0 FTE although the teacher was a .5 FTE at that time. The issue was never resolved because the previous president decided not to retire. SD 79 granted a leave with pay at 1.0 FTE to a teacher who was part time, although there were some factual differences from our case.

This history shows a mixed practice under G.6 and a practice supportive of the Union's position prior to the advent of G.6, but under different collective agreement language.

Based on this evidence of past practice I cannot reach a definitive conclusion, although it is clear that before G.6 under different language, there were arrangements in which teachers with less than 1.0 FTE positions were paid-1.0 FTE while on union leave. This is not determinative because of the different language; however, when the parties negotiated G.6, I assume they were aware of thethese previous collective agreement clauses and practices.

With some assistance from past practice, but no evidence of the parties addressing this issue in collective bargaining, I must reach conclusions as to the proper interpretation of Article G.6 based on the circumstances of this case as well as the wording and apparent purpose of G.6.

I accept the guiding principles that should be considered as set out in *Imperial Oil Strathcona Refinery,* 130 L.A.C. (94th) 239 (Elliott):

> ... In the interpretation of collective agreements, their words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object, and the intention of the parties.
>
> 41 Using this principle, interpreters look not only to the intention of the parties, when intention is fathomable, but also to the entire context of the collective agreement. This avoids creating a fictional intention of the parties where none existed, but recognizes their intention if any intention can be shown. The principle also looks into the entire context of the agreement to determine the meaning to be given to words in dispute.
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> 42 Before applying the modern principle of interpretation to this grievance I will identify the components of the modern principle and what they encompass. The modern principle of interpretation is a method of interpretation rather than a rule, but still encompasses the many well-recognized interpretation conventions. The modern principle directs interpreters:
>
> 1 to consider the entire context of the collective agreement
>
> 2 to read the words of the collective agreement
>
> - in their entire context
> - in their grammatical and ordinary meaning
>
> 3 to read the words of a collective agreement harmoniously

- with the scheme of the agreement
- with the object of the agreement, and
- with the intention of the parties

1 What is the "entire context of the collective agreement"

43 The "entire context" includes

* the collective agreement as a whole document. One provision of a collective agreement cannot be understood before the whole document has been read because what is said in one place will often be qualified, modified or excepted in some fashion, directly or indirectly, in another

* reading one provision of the collective agreement keeping in mind what is contained in other provisions. In the first instance it must be assumed negotiators knew not only the provisions specifically bargained but all the others contained in the collective agreement. An example is the use of words that have defined meanings. Those meanings must be applied whenever the defined word is used in the collective agreement

* keeping in mind the legislative framework within which collective agreements exist and keeping that framework in mind as part of the entire context.

2 Reading the words

44 Words in a collective agreement are to be read

a) within their entire context in order to figure out the scheme and purpose of the agreement and the words in a particular article must be considered within that framework,

b) in their grammatical and ordinary meaning. Typically this involves taking the appropriate dictionary definition of a word and using it, unless the dictionary meaning is modified by a definition, by common usage of the parties or by the context in which the word is used, and

c) harmoniously with

* the scheme of the agreement (which could include the arrangement of provisions and the purpose of the agreement or a particular part of the agreement)

*its object

* the intention of the parties, assuming an intention can be discerned. The intention is to be found in the words used, but evidence of intention from other sources may be appropriate in order to decide on what the words used by the parties actually mean.

The meaning of "context"

45 The word "context" itself means The circumstances that form the setting ... for [a] statement ..., and in terms of which it can be fully understood. Concise Oxford

> Dictionary (10th) and the Merriam-Webster Dictionary includes in its definition of "context": the weaving together of words; the parts of a discourse that surround a word or passage and can throw light on its meaning; the interrelated conditions in which something exists or occurs.
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> 46 And so, entire context in terms of a collective agreement and the interpretation of words used in it includes considering
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> *how words have been weaved together
>
> *how those words connect with other words
>
> * the discourse (other information) that can throw light on the text to uncover the meaning
>
> * any conditions that exist or may occur that might affect the meaning to be given to the text.
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> 39 These parties have also raised two other general principles to which no serious exception is taken. The first is that specific collective bargaining arrangements occur in the context of labour relations principles generally and that a "presumptive framework" can exist of which the parties are deemed to be aware: Andres Wines (B.C.) Ltd., supra; Nanaimo Regional General Hospital, [1978] B.C.L.R.B.D. No. 67 (BCLRB).
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> 40 A second is that an interpretation of the provisions in an agreement should not lead to an "absurd", "unreasonable" or "anomalous" result. MTM Enterprises, supra; Complex Services Inc., [2011] O.L.A.A. No. 321 (Davie); City of Edmonton, 1 L.A.C. (2d) 369 (Lefsrud), Southern Railway Company, supra.

The Employer argued that because of the specific wording of G.6 1. a. and b., the Employer's obligation is only to pay the employee on leave the same amount as she would have been entitled to in the position held prior to the leave. The Employer argues that this is because the definition of "full employ" refers to continuing salary, benefits, etc.... “as if they were not on leave...".

The term "full employ" might mean full time employment but neither the Union nor the Employer argued that was the appropriate interpretation, especially since not all union leaves are for full time work.

To reach the proper interpretation of Article G.6 it is helpful to analyze what each party was obtaining when they negotiated this clause.

One benefit is any Union member has a right to this type of leave as authorized by the local union or the BCTF. This is an important concession to the Union because the Employer cannot deny the leave if the Union authorizes it.
It would be possible for the parties to agree that during such leave the Union would become the employer with all the obligations and implications of that. However, instead of that arrangement the parties have agreed that the member on leave "shall be deemed to be in the full employ of the Board". This is helpful both for the Union and the employee.

The Union does not have to become the employer of the member with all the implications of tax deductions, employment insurance, Worksafe, etc. that are associated with being an employer. For the employee the benefit of this deeming provision is not only will salary and benefits continue but other benefits of continuing as an employee such as accruing seniority, experience credits and sick leave credits will continue. The employee comes back after the leave as if they had continued to work for the School District.

The Employer also benefits from the arrangement in that the Union has agreed to reimburse the Board for 100% of salary, benefits, etc. I note that in some previous local language the Union did not reimburse 100%… . For example, pension contributions under G.6 are now fully reimbursed, whereas in some prior agreements the Union only reimbursed 50% for pension contributions.

The purpose and best interpretation of the arrangement in G.6 becomes clearer having analyzed the benefits to the Union, the Employer and the employee.

A key to determining this matter is the proper interpretation of the words in G.6 1. a. "shall be entitled to a leave of absence with pay as authorized by the local union…"

The Employer argues that “as authorized by the local union” is only a failsafe to ensure that the Union has authorized the leave and an employee is not seeking the leave on their own. The Union argues that the proper meaning of that phrase is that the Union determines the level of employment and pay for the employee on leave and that is what is referred to as “ with pay as authorized by the local union….”.

In this case the Union President position was 1.0 FTE but there are occasions in which the Union is not able or willing to pay a full salary and may only be prepared to pay, for example, .5 FTE to the member on leave. Because the level of work is not always 1.0 FTE for the Union position a more likely interpretation of "Leave of absence with pay as authorized by the local union…" is that the Union authorizes the level of pay for the Union position.

That is consistent with the Employer's explanation that where the Union position is less than the employee's prior position the Employer pays the employee on leave the amount suggested by the Union for the leave and the Employer also provides teaching work for the employee to make up the difference.

That is more consistent with the Union's argument that the Union authorizes the level of work for the leave and the Employer pays the corresponding amount. If the Employer's position as argued in this case were correct then, in the case of a .82 FTE teacher taking a leave to a .5 FTE Union position, the Employer would pay .82 FTE while the teacher is on leave.

However, the Employer stated that in that circumstance it would pay the teacher .5 FTE for the leave and continue employment of the teacher for .32 FTE. That seems to be an implicit recognition that the Union determines the level of work while the teacher is on leave.

The other term in G.6 which must inform my decision is the meaning of "full employ." It is defined in 1.b. but begs the question of what salary benefits, etc. the employee would receive …"as if they were not on leave…" in circumstances where the Union has authorized a 1.0 FTE position. The Employer's interpretation of 1.b. is "full employ" means at the level that the employee was just prior to seeking the leave. This is a plausible interpretation but, taking into account the various benefits to the Union, Employer and employee discussed above, I believe that a more reasonable contextual interpretation of "full employ" is that the employee on leave is still treated as fully employed by the Board and not partly employed by the Board and partly employed by the Union, which would be the result if the Employer's interpretation is accepted.

If the Union position is 1.0 FTE and the Employer's interpretation is correct Ms. Calladine would be employed .8199 FTE by the Board and the Union would have to make up the difference as an employer up to the 1.0 FTE. This seems inconsistent with the concept of "full employ" and would detract from one of the advantages of this arrangement for the Union which is that it does not have to become the employer, with all the incidents of being an employer.

The Employer argued that although G.6 2. provides for 100% reimbursement by the Union of salary, benefits, pension contributions and all other contribution costs, the Union's interpretation would still require the Employer to incur some costs that are not reimbursed. For example, in the case of the Grievor, if the Union's interpretation is correct she would earn sick leave credits and experience credits at the rate of 1.0 FTE rather than .8199 FTE and upon her return from leave her accrual of the sick leave credits and experience credits would be higher than if she had continued at .8199 FTE during the time of the leave.

In addition, the Employer argues that under G.6 3., if the Employer replaces the Union member on leave with a TTOC, the reimbursement costs are not 100% but limited to the amount of salary paid to the TTOC which may be considerably less than 100% of the 1.0 FTE cost to the Employer.

Under this Collective Agreement a TTOC can only be used for 20 days. Therefore, in the circumstances posited by the Employer there would be a time limit on this extra cost and the Employer could avoid it by not using a TTOC.

I accept the Employer's argument that there may be some "hidden costs" to the Employer in some cases where these circumstances arise but it also appears that the majority of costs, if not all, will be covered by G.6 2. which provides for 100% reimbursement.

Apart from this, the evidence I heard was that paying a person on leave 1.0 FTE only requires a data entry into the payroll system [SMS] which then generates all the benefits, accruals and contributions required for that level of pay, so the administrative inconvenience to the Employer is minimal.

Taking all this into account, I conclude that Article G.6 gives a union member the right to leave for union business with pay as authorized by the local union or the BCTF, meaning at the level of pay authorized by the Union or BCTF. If the union position is authorized at 1.0 FTE the Employer must pay the employee during the leave of absence at that level with the Union fully reimbursing under G.6 2. This interpretation is more consistent with the apparent purpose of G.6 and is more consistent with the practice prior to G.6, albeit under different language. The Union asked that I make a declaration to that effect and I do so here.

It flows from this conclusion that the Employer breached the Collective Agreement in the circumstances of this case by not paying the Grievor 1.0 FTE for the period of her Union leaves. Therefore, I order that the Employer make the Grievor whole for all salary and benefits while on Union officer leave for the 2015-2016 and 2016-2017 school years. I leave it to the parties to determine what amount should be paid to the Grievor for those periods and remain seized should there be any difficulties with that calculation. These amounts will be reimbursed by the Union once paid by the Employer.

I commend the parties for presenting this case very efficiently with liberal use of agreed statements of facts. This expedited the hearing, saving resources and time and assisted me in coming to my conclusions.

Dated at Vancouver, BC, this 30th day of May 2018.

*" Gabriel Somjen, QC "*

Gabriel Somjen, QC, Arbitrator