GRIEVANCE & ARBITRATION UPDATE

British Columbia Public School Employers' Association

01 December 1, 2004 By E-mail: 2 Pages

CUPE/School District No. 69 (Qualicum): Reduction of Hours (Local School Calendar)

Changes introduced by the district to balance its budget included implementation of a local school calendar with five fewer days in session and no longer assigning work to some CUPE employees on non-instructional days. These changes were implemented without serving layoff notice. An arbitration panel chaired by Robert Diebolt, QC, determined that implementation of a local calendar did not require layoff notice to be served but not assigning some CUPE employees to work on non-instructional days did constitute a layoff. It was also determined that neither the presence of a conditions and benefits clause nor the doctrine of estopped prevented either of the changes.

BCPSEA Reference No. A-60-2004

CUPE/School District No. 47 (Powell River): Layoff (Local School Calendar)

For 2003-2004, the district issued one layoff notice to every CUPE employee for the six non-instructional days and, in the same letter, recalled them the following shift to their same positions. CUPE alleged that the employer had violated the spirit of the collective agreement by laying off outside of the normal layoff period and by not allowing employees the right to bump. CUPE withdrew the grievance before the arbitration commenced.

BCTF/School District No. 69 (Qualicum): Removal from the Teacher on Call (ToC) List

The Grievor was removed from the ToC list as a result of his continued unavailability for work. While the ToC Handbook imposed a responsibility to be available, neither it nor the collective agreement specified that ToCs would be removed from the list for a lack of availability or defined the level of availability that would result in termination. Further, the Grievor was not warned that he was facing termination as a result of unavailability. Therefore, while the employer had just and reasonable cause to impose discipline, Arbitrator John Kinzie determined that removal from the list was excessive and substituted a suspension from the list for the balance of the school year. The Grievor was reinstated effective the next school year and compensated for all lost wages and benefits from that point onward. The arbitrator noted that a specification in the Handbook that a ToC requiring a personal leave of absence in excess of 10 days would have his name removed from the ToC list seemed to meet the requirements of arbitral jurisprudence.

BCPSEA Reference No. A-59-2004

CUPE/School District No. 42 (Maple Ridge-Pitt Meadows): 12 to 10 Month Custodian Positions

The board, facing budgetary constraints, implemented a reduction in the work year for the custodial workforce from 12-month positions to 10-month positions. Arbitrator Marguerite Jackson determined that there was nothing in the collective agreement that fettered the board's right to implement this change. By seeking input into the budget process, repeatedly inviting the union to meet, suggesting alternate cost-saving measures and applying to the Job Security Fund, the board met its obligation under the collective agreement to consult the union and the grievance was dismissed.

BCPSEA Reference No. A-62-2004

BCTF/School District No. 75 (Mission): Vehicle Vandalism Reimbursement

The board had a long-standing policy of reimbursing victims of vehicle vandalism to a maximum of the minimum ICBC deductible — $250. However, the collective agreement did not specify a maximum reimbursement obligation nor did it reference a board policy outlining this maximum. Arbitrator Stan Lanyon determined that both parties understood the plain meaning of the word "deductible" in the collective agreement — the amount of money a teacher would have to pay before their insurance coverage is triggered to pay for the remaining amount of repairs. However, given that the union was aware of the board policy, an estoppel was established. As the parties had agreed that an estoppel would not operate past the expiry of the collective agreement, the employer was put on notice that effective June 30, 2004, the union's interpretation of this provision would be in effect.

BCPSEA Reference No. A-61-2004

CUPE/School District No. 36 (Surrey): No Evidence Motion

After the union had concluded presenting its case in a selection grievance, the employer brought a no-evidence motion and the grievance was dismissed. The union appealed the award and ultimately a Labour Relations Board Reconsideration Panel set the award aside on the basis that the union was denied a fair hearing as it was not provided an opportunity to properly argue that its case should not be dismissed on the basis that there was "some evidence." The matter was remitted back to the arbitrator.

In the course of its reasons, the Panel clarified the approach to no evidence and insufficient evidence motions in the labour context. It confirmed that an arbitrator has a broad jurisdiction to deal with motions to dismiss a grievance at the close of one party's case and clarified that an arbitrator has the discretion whether or not to apply an election requirement.

The decision also confirmed that unless there has been a guarantee to call certain witnesses, a party is not guaranteed an opportunity to bolster its case through cross examination and is not denied a fair hearing when a successful application to dismiss a case after the close of its evidence is granted.

BCPSEA Reference No. A-07-2002

Questions

If you have any questions concerning these decisions please contact your BCPSEA liaison. If you wish a copy of the complete award please contact Lynda Kuit at lyndak@bcpsea.bc.ca and identify the reference number found at the end of each summary.