

Class Size Arbitration Update

BCTF/GVTA and BCPSEA/SD 61 (Greater Victoria): Teacher Attendance at Consultation Meetings

Issue: If a teacher chooses not to attend the “consult” meeting to provide their views on the class, have the “consult” requirements of s. 76.1 been satisfied?

Facts: With respect to the consultation requirements under the class size legislation, teachers in two secondary schools in Victoria were invited to attend principal–teacher consultation meetings. The applicable teachers were presented with a variety of dates and times for these meetings and were asked to sign up. Some teachers signed up for the consultation meetings while other teachers chose not to sign up and attend the consultation.

Union Argument: Consultation with the teacher is a mandatory prerequisite under s. 76.1 of the *School Act*. The teacher’s choice not to attend a consultation meeting does not relieve the principal or employer of their statutory responsibilities and obligations to consult. If there is no consultation, then the class size and composition standards cannot be exceeded. “The union submits if the teacher can choose not to be consulted or to waive the right to be consulted, it can only be done after the principal has determined whether a meeting as proposed is appropriate for the teacher, the principal has fully informed the teacher of the principal’s position, and the principal has fully informed him or herself of the teacher’s position.”

Decision: Arbitrator Dorsey dismissed the grievance. On pages 10 and 11 of the award he stated:

“There is no legal obligation on a teacher to participate in the consultation process. Teacher cooperation in the consultation process is presumed by the legislation. It is not forced. A teacher cannot be compelled to attend a consultation meeting. A teacher’s refusal to attend does not suspend or vitiate the process. A teacher can decide for professional or other reasons that he or she will forego the right to be consulted by the principal. The teacher does not have to provide the principal with an explanation for that decision.

When a teacher does forego the opportunity to be consulted, a principal can assume the teacher either has no concerns with the organization of the class or any concerns are not serious enough to pursue. The principal does not have to pursue the teacher for an explanation of the decision or be assured the teacher’s decision is either an informed or reasonably formulated decision. It is presumed the teacher made a professional decision based on the best available information. The principal is not required to probe and pursue the teacher. The principal is not required to offer paid release time or other incentive to entice the teacher to a meeting. It is expected the teacher will inquire further if he or she

believes more information is required or other options should be considered or communicated with the principal if the times offered cannot be accommodated.

The consequence is that if the organization of the class and the dual principal and superintendent opinions are subsequently challenged at arbitration, the teacher's decision to forego the opportunity to be consulted will be a factor "in assessing the reasonableness of the principal's opinion about the appropriateness of the class for student learning and whether to defer to that opinion."

Questions

Should you have questions on this matter, please contact:

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