

Distribution of this Bulletin

Please ensure that this bulletin is circulated to all administrative staff in both the district office and schools who must rely on the collective agreement in the performance of their duties.

BC Court of Appeal Rules on Increment Increases During Maternity Leave

In a decision released April 19, the British Columbia Court of Appeal (BCCA) allowed the appeal of the BC Teachers' Federation (BCTF) with respect to a decision of Arbitrator John Orr. In that arbitral decision, Arbitrator Orr denied the union's grievance, which claimed that the employer was required to credit teachers with experience for increment purposes while on pregnancy and parental leaves under Part 6 of the *Employment Standards Act*, RSBC 1996, c. 113. Arbitrator Orr held that while section 56(3) of the *Employment Standards Act* (ESA) requires an employer to pay all increases in wages attached to an employee's position while the employee is on leave under Part 6 of the ESA, this did not include increments earned through actual teaching experience.

In its decision, the BCCA determined that this case involved the interpretation of section 56(3) of the ESA, which it held was a matter of general law because it applies to non-unionized employees as well as unionized employees. Accordingly, the appeal of the arbitrator's decision lay with the BC Court of Appeal and further, the standard of review was correctness.

The BCCA further determined that the arbitrator erred by allowing the agreement of the parties contained in the collective agreement (which granted increment increases based on time worked as opposed to employee service) to override the statutory minimum requirement set out in section 56(3) of the ESA. The Court ruled:

"The wording of s. 56(3) is that the employee is entitled to **all increases in wages** he or she would have received had the [maternity] leave not been taken. The interpretation given to the section by the arbitrator resulted in a "reading down" of the wording to have the meaning that the employee is entitled to **some of the increases in wages** he or she would have received had the leave not been taken. There is no principled basis for giving the section this narrow interpretation.

The Employer submits the arbitrator was correct in making a distinction between wages that are "earned" through hours of work and those to which an employee is entitled simply by being employed. That distinction does exist under the Collective Agreement, but the wording of the legislation does not permit the distinction to be imported into the interpretation of s. 56(3)."

All districts need to comply with the decision, which means that those on Part 6 leaves should receive wage increment increases as if working. The following are leaves under Part 6 of the Act:

- pregnancy leave
- family responsibility leave
- compassionate care leave
- reservists' leave
- bereavement leave
- jury leave.

The BCCA remitted the matter back to Arbitrator Orr because he has not yet dealt with the remedy issue. With respect to retroactivity for districts with existing grievances on this issue, we will provide further information once Arbitrator Orr makes his determination regarding remedy.

Questions

Should you require assistance or wish to discuss this issue further, please contact your BCPSEA district liaison.