

Summer School Teachers — Decision on Inclusion in Bargaining Unit

On January 21 and March 19, 2010, BCPSEA published *@issue* bulletins reporting on the process in place to resolve issues in dispute regarding the BC Teachers' Federation (BCTF) request to include summer school teachers in the bargaining unit. An arbitration hearing on the matter was held on April 6 and 7. Arbitrator Mark Brown issued his decision today.

The arbitrator was tasked with answering two questions:

- iii) ... Arbitrator Brown will:
 - (a) determine whether summer school teachers teaching educational programs should be included in the BCTF bargaining unit; and
 - (b) if he finds that summer school teachers teaching educational programs should be included in the BCTF bargaining unit in whole or in part, Arbitrator Brown will determine which terms and conditions of the collective agreement will apply to newly included summer school teachers. Arbitrator Brown will also have the authority to determine rates of pay for the newly included summer school teachers in affected school districts.

BCPSEA argued that summer school teachers teaching educational programs should not be included in the bargaining unit. On the second question, BCPSEA took the position that if these summer school teachers were to be included in the bargaining unit, they should not be covered by all of the provisions of the collective agreement. The collective agreement was constructed for the traditional school year (September to June), and the unique nature of summer school programs did not allow for a seamless application of the traditional provisions. In addition, there would be additional cost and administrative pressures if the whole of the collective agreement was applied. BCPSEA further argued that the applicable provisions should be those that the parties would have likely negotiated through the collective bargaining process.

The BCTF argued that because of the *Public Education Labour Relations Act* (PELRA), affected teachers are automatically included in the unit. As for the applicability of the collective agreement, the BCTF argued that all provisions of the collective agreement could and should apply to the affected teachers.

Decision

With respect to the first question regarding the inclusion, the arbitrator found that summer school teachers teaching educational programs should be included in the BCTF bargaining unit. He stated in part:

“However, given that *PELRA* and the *School Act* state that the bargaining unit consists of all teachers as defined under the *School Act*, I conclude that the summer school teachers are included in the bargaining unit. The legislation is clear and unequivocal. I conclude that I have no jurisdiction to exclude the summer school teachers from the bargaining unit, regardless of the parties’ conduct to this point.”

Turning to the second question, Arbitrator Brown did not accept the BCTF argument that the whole collective agreement applies to the newly included teachers. He instead looked at the collective agreement provisions that were freely negotiated by School District No. 36 (Surrey) and School District No. 39 (Vancouver) and used those as a reference point. Specifically, he found that the following provisions would apply:

- A.1 Term, Continuation and Renegotiation
- A.2 Recognition of the Union
- A.3 Membership Requirement
- A.4 Local and BCTF Dues Deduction
- A.6 Grievance Procedure
- A.20 No Contracting Out
- A.21 Teachers’ Assistants
- A.23 Exclusions From the Bargaining Unit
- A.28 Bulletin Boards
- A.29 Access To Facilities
- A.32 Picket Lines
- B.7 Reimbursement For Personal Property Loss
- B.10 Reimbursement For Mileage and Insurance
- B.21.2 Placement on Schedule – Experience
- C.2 Seniority
- C.21 Discipline & Dismissal for Misconduct
- D.20 Mainstreaming/Integration
- D.23 Supervision
- D.29 Health and Safety
- E.2 Harassment/Sexual Harassment
- E.20 No Discrimination
- E.26 Personnel Files
- E.30 Falsely Accused Employee Assistance
- F.20 Professional Autonomy

If the Districts affected by this Award already provide coverage under other provisions of the Collective Agreement, that coverage shall be maintained.”

(The article numbers referenced in the award refer to the Collective Agreement in place in School District No. 22 (Vernon).)

The list of provisions includes two subject areas that are not applicable in the Surrey and Vancouver school districts. With respect to the two additional provisions, the arbitrator stated:

“I have included B.21.2 Placement on Schedule – Experience as I conclude that the teacher’s work during the summer program should be taken into consideration in movement within the salary grid. It is teaching experience related to the same programs that are offered during the regular school year.

I have also included C.2 Seniority as I conclude that the teacher’s service during the summer should be counted toward seniority, recognizing that there is a cap to seniority in the Collective Agreement so a regular fulltime teacher teaching during the regular school year and summer, will not surpass a regular fulltime teacher teaching only in the regular school year.”

With respect to wages, Arbitrator Brown awarded the following:

“Accordingly I conclude that the summer school teachers shall be paid at the rate of 1/1000 of Category 5/PB Step 0 per hour of instruction. The instructional time shall include a minimum of five percent (5%) of non-instructional time which shall include one (1) teaching day prior to the first day of student attendance. Convenors shall be paid an allowance of \$1173.00.

If any of the Districts affected by this Award are currently paying a higher wage rate, that wage rate shall be maintained.”

Please note that this award does not affect any districts that currently offer summer school programs and whose collective agreements contain provisions covering summer school teachers. Full text of the award can be found on the BCPSEA website at <http://www.bcpsea.bc.ca/access/publications/aissue/aissue.html>.

Next Steps

BCPSEA will be scheduling a conference call for affected districts for April 23. Time and call-in information will be emailed April 22. In addition, BCPSEA will review the award for potential implementation issues. It is likely that further meetings with the BCTF will be required in order to implement the award.

Questions

If you have any questions or would like more information, please contact your BCPSEA labour relations liaison.