

TO: General Release

FROM: Marne Jensen, Manager, Labour Relations

DATE: November 17, 2016

RE: **GVTA - Professional Development**

Background

The purpose of this memo is to provide information on the legal status of professional development in the Greater Victoria School District.

Professional Development - Collective Agreement and General Principles

The organization of professional development is addressed in our collective agreement as follows:

F.21 Professional Development Days

1. Two of the five professional development days shall be set aside for common District-wide professional development for all teachers during each school year. These days shall be chosen by the Association in consultation with the Superintendent of School prior to April 30 in the previous year.
2. These two (2) professional development days shall be jointly organized and funded by the Board and the Association. Any activities jointly planned and funded shall be funded separate from and in addition to the Joint Professional Development Fund.
3. The remaining professional development days will be used for school-based professional development.

and

A.23.3 Staff Committee states in part as follows:

The committee shall have the right to provide advice and/or recommendations to the administrative officers and to consider aspects of school operation, including the following:

- h. Professional development activities of teachers

It is clear from the language that two of the five days are intended to be jointly funded and organized, 3 days are intended to be organized at the school level and the Ministry day (the 6th day) is not specifically addressed in the agreement.

Further, the collective agreement envisions staff committees being consulted on “the professional development activities of teachers”.

The language in the two articles read together set out the process for teacher input on professional development. The language does not provide for autonomy unencumbered by accountability of professional development activities. Fundamentally, teachers as with principals, and all staff are employees of a District and members of a school or department staff.

Even if the language of A.23 is not intended to address the organization of school based professional development, which it appears to do, legal principles can assist in the interpretation of collective agreement language.

Generally, in labour law, where a collective agreement or statute is silent on a matter the principle of management rights will prevail. That is, subject to acting reasonably, management can set processes addressing its operations. For instance, the staff committee language provides the right of the committee to consult on the professional development activities of teachers in order “to provide advice and/or recommendations to the administrative officers”. The lack of a specific bargained language setting out the process by which teachers access self-directed professional development means that the organization of professional development would fall within management rights subject to collective agreement limits (e.g. F.21 (jointly funded and organized) and A.23.3 (Staff Committee input)).

The case law on professional development also supports the District’s inherent role in professional development. The District takes guidance from the following principles as addressed in a case from Burnaby as follows:

“Given the significance of professional development to the school district's core mission, it is reasonable to think that were management to agree to turn over to the teacher-dominated school Professional Development Committees the full range of responsibilities suggested by the Association, some greater clarity of expression would have been used to record that agreement.”

“It does seem to me that absent such clarity of expression, where a teacher wishes to be away from school on either an instructional or non-instructional working day, including a school-based professional development day, in order to pursue his or her own self-directed professional development activity, it is for the employer to grant or withhold permission.” (Arbitrator Munroe 2007)

Again, in the absence of specific provisions or limits in the collective agreement, the principle of management rights prevail.

We would be prudent to also look to the practice prior to the 2007 agreement to see how the article was interpreted. It is very clear that at that time teachers seeking self-directed professional development activities required approval from their principals.

Professional Development - BCPSEA and the Letter of Agreement

By virtue of the *Public Education Labour Relations Act*, the British Columbia Public Schools Employers Association (BCPSEA) is the legal bargaining agent for the District.

This Act sets out the responsibilities of the provincial bargaining agent and also sets out of the structure by which matters can be addressed locally and provincially. Ultimately, the collective agreement between the parties reflects this split in what is called “Appendix 1 (provincial items)” and Appendix “2 (local items)”.

Professional development days are in Appendix 1. This means that only BCPSEA can bargain those items. Alternatively, if the local parties want to address the matter they must sign an agreement involving the local District, Teacher Association, the BCTF and BCPSEA. Without four signatures, such an agreement is invalid. We do not believe that this issue is in dispute.

The agreement signed by the District and the GVTA in 2007 also recognized this requirement. The agreement stated as follows:

The Greater Victoria Teachers’ Association and the Greater Victoria School District (#61) will make a joint effort to ensure that this becomes part of a mid-contract modification. In the event that the mid-contract modification is not accepted by the BC Public School Employers’ Association or the British Columbia Teachers’ Federation, the agreement shall remain in effect and will only be reviewed upon agreement of the Board and the Greater Victoria Teachers’ Association.

This article is clear that BCPSEA’s agreement is required as the language and that both parties understood that the agreement was intended to modify the contract rather than interpret it. It should be highlighted that BCSPSEA became aware of the agreement after the District attempted to meld the language into the agreement, exactly as it was required to do.

Given this clear language there is little doubt that BCPSEA has the authority to make the decision that it did.

Impact of BCPSEA’s Notice

Given the agreement required BCPSEA’s signature, the agreement was never fully ratified. This means that the agreement is void from the date of its signature. The impact is that the District would go back to the language of the collective agreement and would rely on the practice prior to the agreement.

Conclusion

1. The 2007 Professional Development Agreement is null and void and the District will administer professional development under the relevant articles in the collective agreement.
2. In the absence of specific collective agreement provisions or limitations, the principle of management rights prevail.
3. The District is well within its rights to create a reasonable approval process for self-directed professional development activities.