

Issue # 11

April 2007

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FOCUS is published as an information newsletter and is intended for guidance; however, before acting on any information contained in **Focus**, teachers should contact a member of the Federation Administrative Staff.

Contributors to this issue:

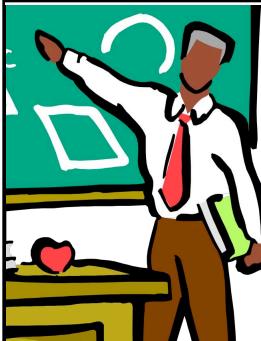
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FOCUS



The Replacement of Absent Teachers... again!

The NBTF, through its legal counsel, has filed notice with the Labour and Employment Board under Section 20(1) of the Public Service Labour Relations Act. The complaint alleges the Employer is no longer in compliance with the Order of the Board dated May 2, 2006, in which districts were

advised to replace all absent teachers, irrespective of their duties and the circumstances surrounding their absence.

A hearing into this matter will be scheduled later this month. If the matter cannot be resolved, a copy of the Order and all relevant documents shall be laid by the Minister of Education before the Legislative Assembly. The Federation maintains that the interpretation of a teacher absence as communicated by the Deputy Ministers in their memo of February 5, 2007, is contrary to both the Labour and Employment Board's Order and the Court decision at judicial review. The Federation will keep members advised of any developments in this matter.

Kevin Sheehan NBTF Official Spokesperson

The composition of the bargaining team is governed by NBTF By-Law No. 21. It is comprised of a chief spokesperson, named by the Board of Directors, the two Co-Presidents of the NBTF and two other teachers named by the Federation Executive Committee who, traditionally, have named the vice-presidents of each Association.



Larocque, elected Federation Co-Presidents. The names of the two other members of the bargaining team will be decided by the Federation Executive Committee at a later date.

At its regular meeting of February 9, 2007, the Federation Board of Directors named Mr. Kevin Sheehan, Federation Deputy Executive Director, as official spokesperson for the next round of bargaining. He will have on his new team, Brent Shaw and Marcel

A communiqué will be sent out to all teachers in April inviting members to attend branch meetings and to submit language for the asking package. Branch Presidents and Directors will be available to provide information and guidance.

ARTICLE 20- CLASS SIZE FOR THE 2007-2008 SCHOOL YEAR



ARTICLE 20 – CLASS SIZE

September 2007

- 20.01 Whenever reasonably practicable the normal class size shall be twenty-eight (28) pupils. No class size shall exceed thirty-one (31) pupils.
- 20.02 Notwithstanding Clause 20.01, the maximum class size for grades 4 - 6 inclusive shall be thirty (30) pupils; however, if unforeseen circumstances arise, the maximum class size may be increased to thirty-one (31) pupils.
- 20.03 Notwithstanding Clause 20.01, classes exceeding thirty-one (31) pupils shall be allowed when formed by the grouping of other classes for team teaching or similar purposes. The Employer agrees that the application of Clause 20.03 is subject to the modifications outlined in Clauses 20.02, 20.04, 20.05 and 20.06.
- 20.04 Notwithstanding Clause 20.01, it is agreed that the maximum class size for grades 1 and 2 shall be twenty-three (23) pupils.
- 20.05 Notwithstanding Clause 20.01, the maximum class size for Grade 3 shall be twenty-eight (28) pupils; however, if unforeseen circumstances arise, the maximum class size may be increased to twenty-nine (29) pupils.
- 20.06 The maximum class size for kindergarten shall be twenty-three (23) pupils.
- 20.07 (1) If it is necessary to combine two (2) or more grades in one class with one teacher, the maximum class size for such a combined class shall be as follows:

Grades 1-3

18

Grades 3-5

25

Grades 5-12

26

- (2) A kindergarten class which is combined with any other grade shall not exceed eighteen (18) pupils.



This information is also available on the NBTF Web site in Latest News. Visit this site regularly at:

www.nbtf-fenb.nb.ca

POLICY 701

*Advice and Explanations
from your Federation*



January 2007

New Brunswick Teachers' Federation



Policy 701 Pamphlet Distributed to All Teachers

With the January issue of FOCUS, all teachers in the province received a new pamphlet on Policy 701, *Policy for the Protection of Pupils*, prepared and produced by the New Brunswick Teachers' Federation.

The information brochure gives advice and explanations on what teachers should expect if they are involved in a Policy 701 complaint. A PDF copy of the pamphlet is also available on the Federation Web site and can be downloaded at any time: www.nbtf-fenb.nb.ca.

The Federation stresses the importance for teachers to read very carefully all of the Department of Education's policies (202, 311, 701 and others). Teachers have the responsibility to keep informed on all documents related to their working conditions (Education Act, Collective Agreement, Department Policies, etc.).

Teachers wishing to receive further information, advice or guidance on Policy 701, or on any other issue related to their working conditions should contact a member of the Federation Administration Staff at 506-452-1736.

Trends in Collective Bargaining: A Canadian Perspectives Summary Review by CTF

When comparing collective bargaining priorities between Canadian teacher organizations, the most frequently cited item among all groups reviewed is 'salary'. To date, a number of key issues and themes affect collective bargaining and contract negotiations for our Member organizations:

Centralized Bargaining

A number of jurisdictions that are functioning under local bargaining have faced circumstances that have necessitated utilizing mechanisms more commonly found in regional or provincial bargaining processes. With provincial and territorial governments holding the 'purse strings', it is at this level where pressure is applied for resolving such things as percentage salary increases and working conditions.

Workload

This item is one that has been given increased attention by Member organizations and growing priority by teachers. In the past, workload and working conditions related-issues had often been deferred, but recent bargaining and the resultant collective agreements show gains. For example, New Brunswick, Prince Edward Island and British Columbia have lowered their class sizes in the last year and ETFO's successful "200

minutes" campaign has secured 200 minutes of preparation time for its teachers by contract expiry in 2008.

Political and Economic Agenda

Across the country, teacher organizations are often contending with a political and economic climate that is geared to balancing budgets, fiscal restraint and assessment initiatives.

Consequently, government intrusion in collective bargaining is all too common. Results have included the imposition of settlements and/or severely stripped collective agreements, restrictions on the scope of bargaining, subverting job action, and modifying bargaining unit(s). Teachers have also had to contend with governments [and public] that are more focussed on the priorities of the health sector.



Salary, Benefits and Other Provisions

Commonly, jurisdictions are realizing percentage salary increases around the 3% range. Percentage wage increases are a reflection of a number of factors including inflation, competitiveness and a recognition of recruitment and retention challenges. In addition, with a

--- Article continued on Page 5--

IMPORTANT INFORMATION FOR FEMALE SCHEDULED D CONTRACT TEACHERS

Teachers who have a Schedule D contract and who become pregnant are entitled to the maternity benefits under Article 33 (A) of the Collective Agreement.

However, depending on the due date, this may affect when the 30 paid days may be taken. If a teacher can finish the school year and her due date is during the Summer or Fall, she will have to have been recalled to a position to benefit from the 30 paid days. **Otherwise, she will have to take the paid leave before the end of the school year, thus before the expiration of her D contract.**



Should she wish to finish the school year while not knowing if she will be recalled, then she will need the district's written commitment that the 30 paid days will be paid after the end of the school year. If this is not possible,

then the 30 paid days will have to be taken before the end of the school year or the teacher would stand to lose this benefit. A written commitment could be obtained by communicating with Human Resources at the district office.

The Employer's position is that once a contract D expires, a teacher loses her "employee status" until she is recalled to another position. Not having employee status means a teacher cannot receive benefits provided in the Collective Agreement. The NBTF does not agree, but unless a teacher loses benefits, it is not possible to file a grievance to challenge the Employer's position.

Therefore, the Federation strongly suggests that pregnant teachers follow the above advice if they wish to receive these benefits.



CONTRACT ENTITLEMENT FOR LONG-TERM SUPPLY TEACHERS

Pursuant to the Department of Education's Policy 202 on "Substitute Teachers", here are the circumstances upon which the school district will award a contract to a supply teacher:



Hiring Practices

A Schedule D contract under the NBTF Collective Agreement will be awarded to a substitute teacher:

i) for an assignment known to last at least one year;

The interpretation is that it must be a "school year", meaning approximately from September until June. The summer period is considered to be a break in service since a new school year begins on July 1st of each year.

ii) for an assignment known to last at least three months, if the assignment is to substitute for a regular teacher taking a secondment, an educational leave or a deferred salary leave;

In cases outlined in i) and ii) a contract would be awarded from the first day of work.

iii) on the first day of the seventh month of continuous service in the same assignment.

"Continuous service" has to occur during the same school year since the summer is considered as a break in service. The Christmas and March Breaks do not constitute a break in service.

Where a substitute teacher is awarded two consecutive long-term supply assignments within the same district, there is deemed to be no break in service. Therefore, a supply teacher may still get a contract under iii) even if he/she replaces more than one teacher in more than one school.

Policy 202 contains information on substitute teaching. A copy is available on the Department of Education's WEB site.

Trends in Collective Bargaining

Article continued from page 3...

swelling shortage of school principals and vice-principals in some jurisdictions, organizations are considering administrator needs and incentives to a greater degree. Finally, in some instances salary increases are being realized at the cost of longer agreements or by restructuring grids.

A major issue in many sectors is the escalating cost of group benefits and the employers' wish to have employees defray the rising expense. In addition, moves by private sector employers to change employee pensions from defined benefit to defined contribution plans, highlight concerns over the cost of defined benefit pension plans and the impact funding pressures are having on economic outcomes of bargaining.

Emerging Trends

A number of items are materializing on teachers' agendas across the country and are being addressed at a variety of levels, including at collective bargaining tables. These include accountability issues, professional autonomy, school safety and shifting member needs. The last 2 items in particular are gaining prominence.

With increased public and political awareness and attention regarding harassment and violence in the schools, greater demands are being made for safer schools for teachers, students and administrators. For example, the Nova Scotia Teachers' Union is collaborating with the Coalition Against Workplace Violence, while the Newfoundland and Labrador Teachers' Association has published a brochure for teachers on "Dealing with Harassment by Students, Parents and Other Adults".

Changing member needs, as reflected by shifting member demographics, are requiring some creativity and an adjustment in perspective at the bargaining table. Member organizations are challenged to balance the needs of teachers approaching retirement with those of newer teachers. Along with balancing pension issues between the 2 groups, differing views of the need for work-life balance are a source of growing tension. Accordingly, teachers' working conditions and the specific impact of class size and class composition are requiring attention.

This article is published with the written consent of The Canadian Teachers' Federation. February issue of bulletin, economic and member services CTF EMSN FEBRUARY 2007-1.

EDUCATIONAL LEAVES

2007-2008

Under Article 37 of the Collective Agreement, every teacher who has been employed as a teacher in New Brunswick for five years shall be eligible for educational leave up to one year with 70% of the salary which he/she would have received had he/she been employed during the period of the educational leave in the position which he/she held at the time his/her application was made. Here are the recipients for the 2007-2008 school year as determined by the Educational Leave Committee:

District 01: Gilberte Godin, Lise (Aline) Robichaud, Debra Kerry

District 02: Lena Cormier, France Rina Côté-Allain, Joseph Grondin, Renée Landry, Blaine MacIsaac, Nancy Mellish, Karen Stewart, Lori Ward, Kevin Williams

District 03: Éric Marquis, Daniel R. Martin, Vickie Cyr, Nathalie Damboise

District 05: Liliane LeBlanc-Drapeau, Pierrette Vienneau-Cyr

District 06: Glenna Cameron, Charlene Carroll, Kelly Coughlan, Susan Walsh, Ellen Whittaker-Brown, Heather Wilson, Peggy Woolsey

District 08: Jonathan Bidgood, Todd Cormier, Paul Holder, Heather Hudson, Cheryl Kennedy, Nancy McGuire, Jill Muise, Adrienne Tomilson, Daniel R. Marmen

District 09: Gail DesRoches, Micheline Albert-Lagacé, Nicole Saulnier, Pierre Benoit

District 10: Tom Hart, Richard Lloyd, Donna Stewart

District 11: Juguette Ferland-Babin, Isabelle Mazerolle-LeBlanc, Réjean E. Robichaud

District 14: Cynthia Crowhurst, Andrea Fletcher-Boomer, Sherry Fox, Mary Ellen Kilfillen, Susan Mabie

District 15: Gail Blanchette, Kathy Grebenc

District 16: Rodney Buggie, Katherine Halas Moulton, Mary Tozer, Krista Underhill-Hamilton

District 17: Beth Hubbard, Corie Smith, Marie Turley

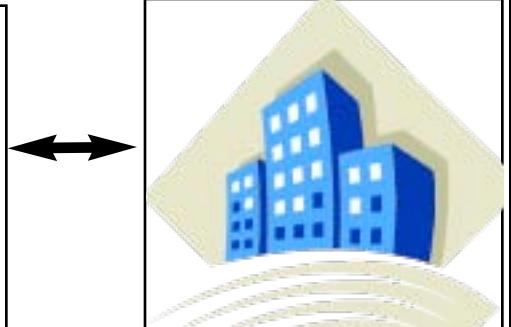
District 18: Holly Currie, Michael Gange, Tracey MacInnis, Tone Meeg, Natasha Spencer, Tanya Walsh-Mckillip, Lorna Wayne-Munn



CONGRATULATIONS TO ALL !

ARTICLE 45:
**TRANSFERS IN THE CONTEXT OF
 SCHOOL CLOSURES AND SCHOOL
 REORGANIZATION**

Every year transfers can occur from one school to another as a result of a reorganization or a reduction in the number of students. The following explains the transfer provisions of Article 45 of the Collective Agreement.



Transfers by Mutual Agreement

Generally, when the Employer is faced with the necessity of transferring a number of teachers from one school, it may issue a general call for transfers by mutual consent. The Employer usually tries to accommodate most transfers in this fashion. When the number of requests for mutual transfers is equivalent to the number of transfers required, the issue may be resolved regardless of how seniority usually applies.

In some cases, transfers by mutual consent may result in the “bumping” of teachers from a school where no transfers may have been previously required. This is not necessarily “bumping” in the sense that unions in other sectors refer to it. For example, if a school closes, the Employer may decide to transfer all the teachers from that school to the school where the students are being transferred. This may result in a surplus of teachers in the latter school thereby causing transfers which may be done by mutual consent or by the application of Article 45 on the basis of seniority.

In the case of transfers by mutual consent, the Employer may set requirements and standards which would not otherwise apply since the Employer has the discretion to accept or reject the mutual transfer. If there is a choice to be made in the granting of transfers by mutual consent, the Federation considers that seniority should be an important factor. However, the Employer may choose other factors such as the distance from the place of residence to the place of work, qualifications and/or experience, etc. If, on the other hand, the number of requests for transfers by mutual consent is less than the number of transfers required, then the following provision applies:

45.03 “...In any such case, the Director of Education shall transfer the teacher who has the least seniority in the School District before any other teacher in his/her school, providing the teachers to remain on staff are capable of satisfactorily fulfilling the requirements of the positions to be maintained in the school and providing the teacher to be transferred is able to satisfactorily fulfill the requirements of the position to which he/she is being transferred.”

Analysis of the Terminology Involved

“Seniority” - As per Article 53, seniority is all service under contract with any district, be it a B, C, D or E contract. Please make sure to read Article 53 to find out

how to have all seniority recognized, more so if a teacher has changed district. The agreement also calls for the Employer to post the seniority list in all the schools in the district so that you may be able to determine your relative position on the district list. Finally, seniority applies to the seniority in the district and not in the school.

“Providing the teachers who remain on staff” -

The Federation has always taken the position that other teachers on staff who may not be involved in the transfer discussions may have to be reassigned to accommodate the seniority rights of others. In other words, the question may not necessarily be: “Can you satisfactorily fulfill the position of someone in the school with less seniority?” but rather, “Can anyone in the school satisfactorily fulfill the position of the least senior teacher to accommodate the seniority of others?”

“Satisfactorily” - This is the term in Articles 45

and (also Article 48 – Layoffs and Recall) which has no doubt been the most often challenged before adjudicators.

These challenges have resulted in the general acceptance by both parties of the following principles:

1. Adjudicators will not intervene in the Employer's decisions affecting teacher qualifications unless there is bad faith, discrimination or unless the decision is arbitrary or unreasonable.
2. What is “satisfactory” in certain situations may not be satisfactory in others.
3. “Satisfactorily” equals minimum qualifications and/or appropriate experience in the given subject.
4. The onus is as much, if not more, on the Employer to show that the employee could not satisfactorily fulfill the requirements of the position; the employee with the greatest seniority has a right to the position even if a less senior employee is clearly more qualified.
5. The Employer is not required to reassign the whole staff to accommodate seniority.
6. The establishment of qualifications for a given position or the school organization must not be used to defeat seniority rights.
7. The Employer must make a fair assessment of the qualifications of any employee involved in a transfer or layoff situation.

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Transfers in the Context of School Closures and Reorganization

Article continued from page 5

When the Employer has done a proper assessment and has been consistent in the decisions taken in this area, arbitrators will hesitate to intervene unless the decision is arbitrary, discriminatory or in bad faith.

There is one general rule which can help determine whether you have been transferred in accordance with the provisions of Article 45. When all the transfers are completed, if you look at your former school and find that there is someone there with less seniority than yourself in the district who is fulfilling a position which you could satisfactorily fulfill, then you may have a legitimate grievance.

Regardless of the qualifications and experience of the persons with more seniority who have been kept on, there is no grievance possible unless the seniority has not been respected. Although the decisions may be questioned on the basis of pedagogical or educational principles, if seniority has been respected they will not be challenged. They may, however, help determine if the Employer has been arbitrary if, in other circumstances, the same Employer sets higher requirements and does not honour the seniority provisions. The Employer could then be shown to be inconsistent.

An example of this has been the issue of specialists in Physical Education at the primary level. In some districts, it has been decided that the teaching of Physical Education at the primary level is assigned to homeroom teachers. In those districts, the Employer can no longer claim that special qualifications are required to teach Physical Education at that level when the seniority provisions apply.

It has been generally recognized that some teaching assignments require special qualifications. These specialist areas are usually Music, Physical Education, Arts, Methods and Resources and in some cases, Special Education, English /French Second Language. Nevertheless, each situation varies and it may well be that in some circumstances, a teacher may be able to show that his or her experience and/or qualifications are such that the minimum requirements can be deemed to have been met.

What To Do?

If you are in a teaching situation which you expect may be the subject of a transfer or a major reassignment within your own school, our advice would be to notify your

school district (transfer) or your school administration (reassignment within the same school) and to indicate your preferences in order of priority. In that sense, you will at least provide your district or your school administration an opportunity to accommodate those preferences.

Finally, it is to be noted that the above analysis applies to transfers from one school to another only. Reassignments within the same school are not subject to the application of Article 45 and are generally done at the discretion of the school administration. This having been said, the decisions at the school administration level can be reviewed by the superintendent's office subject to the procedures outlined in Policy 43 of the Federation. This policy outlines procedures that should be followed by teachers who find themselves in a reassignment situation which they find very difficult or totally unreasonable. That same policy also encourages principals and school administrators in general not to communicate or make the decision to transfer a teacher from one school to another; this is a managerial decision that should be communicated and made at another level.

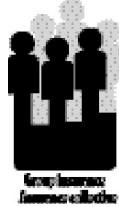
It is of course recognized that principals must provide the superintendents with information on the positions that are available or required in the school and of their perception as to those requirements. The decision, however, must lie with the persons who are in managerial positions, not principals. The Federation is confident that principals are fully aware of this situation and are also respectful of the wording and interpretations of Article 45 of their Collective Agreement.

On a final note, for transfers and layoffs in cases of job sharing, seniority must be applied according to Article 53.08:

“For the purposes of Articles 45 and 48, the seniority of the teacher with the greatest seniority participating in job sharing shall prevail for the purpose of transfer and layoff provided both teachers are to continue job sharing as a team.”

For more information on the application of Article 45, you may contact Robert Gagné, Kevin Sheehan or Marilyn Boudreau at 506-452-1736.





News from the NBTF Group Insurance Trustees

The following article is an update on major topics.

Enrollment Campaign – Accidental Death and Dismemberment

The results of the AD & D enrollment campaign have been rather modest. Overall, about 20 changes have been requested to the current policies held. It seems that Accident Insurance is not a high priority among the membership.

Nutritional Counselling Costs

This benefit has been the subject of some confusion with members. The benefit applies only in those cases where one-on-one nutritional counselling is offered to individual members. It is in no way intended to cover registration for weight loss programs (Weight Watchers, Simply for Life, etc..) or any expenses related to such programs. There may be situations however where a member could receive eligible individual nutritional counselling within such programs if the person offering the one-on-one counselling has the required credentials **as recognized by the N.B. Association of Dietitians- RD, RDN, PDt, Dt.P.**



Meeting with the NBTF Board – February 9, 2007

Representatives of the trustees made a presentation to the Federation Board on February 9 to give an update on the work done by the sub-committee on retiree premiums and to provide an excerpt of the Actuarial Report on the various options being considered by the trustees for the 2008 premiums. The direction the trustees are considering in this area seems to have been well received by the members of the Board. The Actuary's suggestion, which has been accepted in principle by the trustees, will be subject to a final decision in October 2007 within the Market Study exercise. It provides essentially the following major changes:

One plan and one premium for all members for Health Insurance;

The current drug plans would be divided in four categories (Active, Retired under 60, Retired between 60 and 64 and Retired 65 and over) each category paying a premium based on its own experience.

The trustees believe that such a distribution would be more equitable for the overall membership, would ensure a more gradual progression in the retiree premiums and be better suited to their financial situation. Meetings are scheduled with the Retired Teachers organizations (NBSRT and SERFNB) to make them aware of the proposed changes.

Salary Continuation

This table provides an update on the Salary Continuation acceptance ratio of claims over the last five years. The reduction of the premium from 1.1% to 0.7% of salary should result in a significant increase in the number of members enrolled in the plan as of September 2007.

Although the trustees continue to study the advantages of a mandatory and universal LTD plan, the current situation, with an increased participation, seems to be the best one for the overall membership. The Market Study might provide some interesting results in this plan as well as in all the other plans, since we are being told that the market is very competitive at this time.

NBTF -Claims Received and Outcomes 2000 - 2005				
Year	Rec'd	Approved	Denied	Pending
2002	9	9	0	
2003	13	10	3	
2004	11	10	1	
2005	11	8	3	
2006	15	10	4	1
Totals	59	47	11	1