

Issue # 5
April, 2005

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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.

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FOCUS

Employer Must Make a Reasonable Effort to Replace All Absent Teachers

The Employer has resolved a complaint filed by the Federation with the Labour and Employment Board. The Federation had complained that some school districts were failing to make a reasonable effort to ensure that supply teachers were made available to replace absent teachers, thus violating Article 21.01 of the Collective Agreement.

In a previous grievance, the adjudicator had decided that districts are violating Article 21.01 when they adopt a policy not to replace teachers during certain days of absences (e.g., replaced the first day, but not the second and third) and / or not replacing certain teachers (e.g., resource teachers, literacy specialists) until the fourth day of absence. In these instances, the Employer would not have made a reasonable effort.

The Department of Education has sent a memo to all districts to inform them of this obligation, regardless of which teacher is absent, the reason for the absence or its length.

Thirty-Five Years of Loyal Service

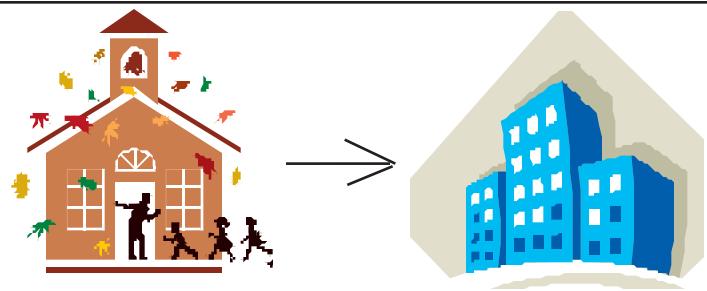


Ernie Pendrigh has recently celebrated 35 years of service to teachers with the NBTF. Ernie is a printroom equipment operator.

On behalf of all teachers, the NBTF Co-Presidents, Brian Bawn and Gilberte Michaud, wish to thank Ernie for his valued professional work and hope he continues to offer his services for many years to come.

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.

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."

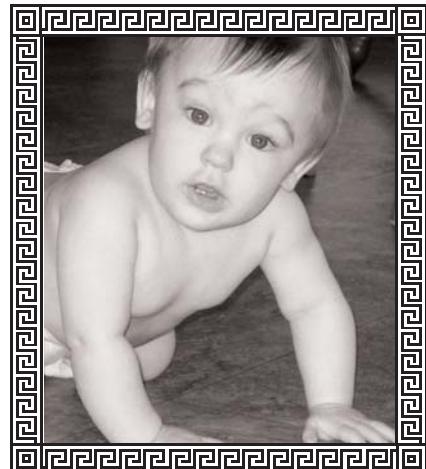
For more information on the application of Article 45, you may contact Robert Gagné, Kevin Sheehan or Marilyn Boudreau at 506-452-1736.

INFECTION IN PREGNANCY

Minimizing The Risk In Schools

Fifth Disease

Note from the Editor: This article is reproduced with the written consent of the Elementary Teachers' Federation of Ontario. We thank the ETFO for its generosity, thus providing valued information to New Brunswick teachers. The medical information has been provided by medical specialists from The Hospital for Sick Children, the University of Toronto and Mt. Sinai Hospital in Toronto.



Fifth Disease, also known as “slapped face disease”, is a viral infection that manifests itself as a mild rash and occurs most commonly in early childhood. The ill child typically has a “slapped cheek” rash on the face and a lacy red rash on the trunk and limbs. Occasionally, the rash may itch. An ill child may have a low-grade fever, malaise, or a cold a few days before the rash breaks out. The child is usually not very ill, and the rash lasts 7 to 10 days.

What Causes Fifth Disease?

Fifth Disease is caused by a virus called human parvovirus B19. While Fifth Disease outbreaks can happen anytime, they most often occur in the spring with large outbreaks occurring in 4 or 5 year cycles. The outbreaks can last for several months and usually involve elementary school-age children.

How Does It Spread?

Fifth Disease spreads from person-to-person like other respiratory viruses through respiratory secretions and from hand to mouth contact. Spread of the virus occurs before the rash appears. Once the rash appears, immunity has developed so that children with a rash are not contagious and do not have to be excluded from school. The incubation period is usually 4 to 14 days but may be as long as 3 weeks. About 50-65% of adults are immune to infection, having had infection previously, with or without symptoms.

How Will Fifth Disease Present Itself In the School?

The rash-like symptoms are often the first indication of an outbreak in a school, but children who have infection will not always show any symptoms.

In a child with symptoms, a blood test can confirm that Fifth Disease is the cause. This confirmatory test is necessary because if you are pregnant and exposed - you could be susceptible and will need to take appropriate action. Also, the blood test confirms it is in fact Fifth Disease because there are other diseases that resemble parvovirus infection.

What Is The Risk Of Getting Infected?

Approximately 50% of adults are immune to Fifth Disease due to prior infection. About 20% of teachers who are susceptible (i.e., non-immune, previously uninfected) become infected during an outbreak.

If Pregnant, What Are The Risks To My Baby?

Blood tests can confirm the mother's susceptibility or resistance to the infection. If a mother is susceptible and has not previously had Fifth Disease infection, the virus may pass from her, whether she has any symptoms herself or not, into the unborn baby. In most cases, the vast majority of babies are born at term completely healthy because the infection does not reach the unborn baby, regardless of whether or not the mother has any symptoms.

If the teacher is known to be susceptible and becomes infected, there is a 2 to 6% risk of the unborn baby becoming infected and developing severe anemia. This means that the chance of an unborn baby having a problem with anemia during a school outbreak if the mother does not know her immunity status, is about 1%.

Article continued on page 5...

Fifth Disease, continued...

If infected, the most common problem occurring in only a small proportion of infected babies is severe anemia that may result in death unless the unborn baby is given a blood transfusion. Damage to the eyes and brain may also occur.

Spontaneous abortion occurs in less than 5% of all pregnant women, usually during the first half of the pregnancy.

How Can I Minimize The Risk Of Getting Infected?

Because there is no vaccine or medication to prevent Fifth Disease infection, the risk of infection cannot be totally avoided.

When Fifth Disease is known to be in a school, an exposed pregnant woman or a woman who has symptoms of infection should tell her doctor. A blood test can confirm whether she has never had infection and is therefore susceptible, if she is immune, or if she has had a recent infection.

When there is continuing exposure, and the mother is not immune, there may be a need for additional blood tests every 2 to 4 weeks. School and child care center outbreaks often indicate that there is wider spread in the community so that women are at some degree of exposure elsewhere in the home and community. Avoiding workplace exposure can decrease but not eliminate the risk of exposure.

When blood tests confirm that a pregnant woman has had a recent parvovirus infection, some experts recommend that the unborn baby undergo repeated ultrasound exams to see if there is any indication that an infection has caused symptoms of severe anemia. Others believe that this approach is still experimental and that given the very low risk of any damage to the unborn baby, that it is not necessary.

Fifth Disease transmission is likely to be decreased through thorough hand washing and appropriate disposal of facial tissues.



NOTICE TO FEMALE CONTRACT D 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.

Depending on your due date, this may affect when the 30 paid days may be taken. If you can finish the school year and your due date is during the Summer or Fall, you will have to have been recalled to a position to get the 30 paid days. **Otherwise, you will have to take the paid leave before the end of the school year, thus before the expiration of your contract.**

If you wish to finish the school year while not knowing if you will be recalled, then you will need the district's written commitment that you will receive the 30 paid days after the end of the school year. If you aren't able to secure this written commitment, then **you will have to take the 30 days before the end of the school year or stand to lose this benefit.** This could be obtained by communicating with Human Resources at the district office.

The Employer's position is that once your contract D expires, you lose your "employee status" until you are recalled to another position. Not having employee status means you 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, it is suggested to follow the above advice to make sure you will receive your benefits.

NOTE FROM THE EDITOR

The November 2004 issue of FOCUS contained an error. The article entitled **Contract Entitlement for Supply Teachers**, page 4 read:

"The Christmas and March Breaks constitute a break in service". Please make note of the following correction: "The Christmas and March Breaks do not constitute a break in service."

Our apologies for any inconvenience.

EDUCATIONAL LEAVE RECIPIENTS for 2005-2006

Educational leaves are awarded to members who meet one of the three criteria : retraining, specialization or professional growth. This year's Educational Leave Committee was composed of the following:

Terry McInerney - Dept. of Education (Chair)
 Marcel Lavoie - Dept. of Education
 Marilyn Ball - Superintendent, District 17
 Solange Haché - Superintendent, District 09
 Gilberte Michaud - AEFNB President
 Brian Bawn - NBTA President
 Bob Fitzpatrick - NBTF Representative
 Richard Caissie - NBTF Representative (Secretary)

Following the receipt of comments and recommendations from Principals and Directors of Education, the Educational Leave Committee met on January 4, 2005 to select this year's educational leave recipients from a list of 117 requests. After much deliberation, here are the names of the successful applicants:

District 1:

One year: Sonia LeBlanc, Annie Lévesque, Julie McIntyre, Denis Gervais.

District 2:

One year: Patty Blanchard, Penny Guitard, Gregory Longaphie, Pam Sheridan, Karen Tanner.

Six months: Kathryn Steeves

Five months: Alan Haggart, Dianne Lavoie, Michel Morin, Barbara Ryan.

District 3:

One year: Lise Bossé-Perron, Judith Lévesque.

District 5:

One year: Michel Thibeault, Annette Roy.

District 6:

One year: Catherine Beckingham, Laura Malatestinic, Marie-Christine Cauchon, Rhoda Wilson.

Six months: Judith Blanchard, Krista Saunders, Bonnie Williams.

District 8:

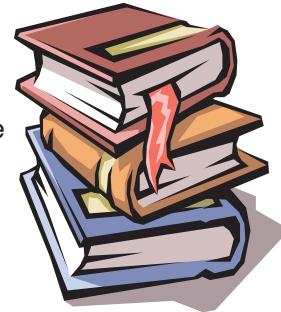
One year: Jennifer Craft, Jennifer Ellis, Tanya Murray, Patricia Slipp, Charles Sullivan.

Six months: Deborah Young.

District 9:

One year: William Pinet, Daniel Comeau, Marie-Josée Comeau, Carole McLaughlin.

Five months: Christina Luce.



District 10:

One year: Lori Craig

Six months: Nancy Greenlaw, Patricia Potter

District 11:

One year: Martin Allain, Sylvie Duguay, Jocelyne Gautreau-Després, Josée LeBlanc.

Six months: Lisa Cormier-Walton

District 14:

One year: Stephanie Chowdry, Derrick O'Leary, Brenda Sisson

Six months: Cynthia Hébert

Five months: Nicole Giberson

District 15:

One year: Joan MacMillan

Six months: Cline Gideon

Five months: Lori Johnson

District 16:

One year: Natalee Morehouse, Dean Mutch, Joanne Robichaud

Five months: Heidi Whipple

District 17:

One year: Susan Belliveau-Brown, Lisa Murphy

Six months: Linda Savoy

Four months: Judith Anne Breen

District 18:

One year: Donald Bossé, Wendy Davis, (Sara) Louise Morrison, Janis Walker.

Six months: David Mombourquette, Phillip Wilcox

Five months: Tracy Gatto.

Our best wishes to these teachers for a productive and successful year. And to those applicants who were not successful this year, you are encouraged to apply again next year.



A Word from the Group Insurance Trustees

The NBTF Group Insurance Trustees held a two-day meeting in February and considered several Group Insurance issues of interest for all active and retired members of the various insurance plans.

The two sub-committees reported on their work as follows:

Ad Hoc Committee on Cost Containment and Communications

Wellness activities

This sub-committee suggested that in view of the rather positive financial experience of the plans at this stage, no major short-term cost containment measures are required at this time. However, as a long-term cost savings measure, the committee recommended a greater investment in the Wellness activities in cooperation with the Professional Counseling and Wellness programs already in place. This came as a result of presentations made to the Trustees by the two Directors of the Professional Counseling and Wellness services programs.

The Trustees have approved an immediate 10 % increase in the NBTF portion of the funding provided by virtue of Schedule J of the Collective Agreement, to match the Employer's increase. (The parties have already signed off on that article at the negotiation table). In addition the Trustees will be adding \$30,000.00 to each of the two programs beginning September 1, 2005 to be essentially dedicated to Wellness activities at the district and school levels.

H Pylori testing.

The Trustees were given a presentation on the *Helicobacter Pylori Testing Program* which makes it possible to identify a bacteria causing acid reflux and/or ulcers thus eliminating that bacteria through a one-time antibiotic treatment. For those teachers who have these

bacteria, it means the elimination of medication such as Losec or other similar drugs. Members who are taking this type of medication or who are experiencing difficulties in that area are encouraged to ask their doctor about this program and to have the test administered by their doctor.

Wellness campaign

At the suggestion of the sub-committee, the Trustees have also approved funding for a province-wide awareness and wellness tips campaign with the cooperation of the Wellness coordinators at the provincial and local levels. This campaign will promote healthy lifestyles and wellness initiatives as alternatives to taking medication and will provide information on some of the Group Insurance benefits which constitute preventative measures for long-term absences (EX: physiotherapy and massotherapy, Counseling, Medical exams, non-smoking programs, etc.) .

Ad Hoc Committee on Retiree Premiums

The above committee submitted its interim report outlining some of the options being discussed in terms of a possible plan re-structuring. Once more up-to-date data becomes available, the committee hopes to present a report with specific recommendations for the Trustees. It is expected that such a report might be submitted for October 2005.

In the event of a strike

The Johnson administration and the Trustees have put in place the necessary steps to cover Group Insurance premiums in the event of a strike.

Other issues

In June 2005, the NBTF Group Insurance Trustees will mark the 40th anniversary of their existence and of their association with Johnson Inc. The event will be highlighted at the June meeting of the Trustees and will involve the NBTF Executive.

The Trustees have renewed the annual contract with the Liaison Officer for the period of April 1, 2005 to March 31, 2006.

To contact Edouard Allain please call 452-1836 or by e-mail at :

allained@nb.aibn.com

The Resource Center

The following documents are available on loan, free of charge, from the Resource Center in Fredericton. Teachers are invited to contact Sheila Bourque for further information either by e-mail fedres@nb.aibn.com or by telephone at:

506-452-1726.

Titles



How To Thrive As a Teacher Leader by John G. Gabriel

Teaching & Joy by Robert Sornson and James Scott

The Leadership Brain: How To Lead Today's Schools More Effectively by David A. Sousa

Nicole Hachey NBTF Receptionist Retires in June



Mrs. Hachey will be leaving the Federation at the end of June 2005 for a well-deserved retirement, having contributed 16 years of dedicated service to teachers and to staff members in the Federation building. Please join us in thanking her for the valued services she has provided all of us over the years. Stop by the building or e-mail Mrs. Hachey at : nbtffenb@nb.aibn.com

The Federation's administrative staff welcomes your questions, comments and / or suggestions on any article in this issue of **FOCUS** or for upcoming issues. Please direct them to any one of the following:



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