

IN THE MATTER OF AN ARBITRATION

BETWEEN:

RAINBOW DISTRICT SCHOOL BOARD

("the Employer")

AND:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 895

("the Union")

IN THE MATTER OF:

POLICY GRIEVANCE REGARDING UNION LEAVE
– GRIEVANCE No. 01-2015

SOLE ARBITRATOR:

Kevin M. Burkett

APPEARANCES FOR THE EMPLOYER:

Kathleen Stokes	- Counsel
Kim Little	- Assistant Manager, Human Resources
Nathalie Mousseau	- Manager, Facilities Maintenance and Operations
Vanessa DiFeo	

APPEARANCES FOR THE SOCIETY:

Frank Lapensée	- National Representative
Robin Campagnaro	- President, Local 895
Rob Lisi	- Vice President, Local 895

Hearing in this matter held on June 6, 2016 in Sudbury, Ontario

A W A R D

The Union grieves in this matter that the Employer is in breach of article 14 of the collective agreement by reason of charging the Union for the wages of Union representatives who attended investigation meetings for the purpose of representing bargaining unit employees under investigation. There were three separate instances cited. There is no dispute with respect to my authority to hear and determine this matter.

It was ascertained at the outset that the three instances cited all occurred during the open period after the expiry of the predecessor collective agreement and the ensuing freeze period but prior to the current collective agreement being entered into. The freeze period having expired and there being no binding collective agreement in effect, none of the instances complained about can be found to have been in breach of either the predecessor collective agreement or the current collective agreement.

Nevertheless, because the relevant collective agreement language was incorporated into the current collective agreement from the predecessor collective agreement without amendment, the parties are desirous of having the interpretation issue resolved. Accordingly, the parties conferred jurisdiction to decide the interpretation issue; that is, to decide whether, under the current collective agreement, there is a contractual requirement upon the Employer to pay the wages of Union

representatives for time spent representing bargaining unit employees at investigations conducted during the representatives' working hours.

The Union relies upon what it refers to as a longstanding past practice and asserts that that practice supports its interpretation of article 14.01(d) of the collective agreement. Firstly, there is no basis upon which to conclude that there was a consistent practice under which the Employer paid stewards who were scheduled at work for time spent at investigation meetings held during their working hours as would support the Union interpretation. Secondly, the Employer served the Union with an estoppel letter under which it advised that regardless of any practice, it would be relying on the strict meaning of the contractual language going forward. As noted, article 14 of the current collective agreement was transported from the predecessor collective agreement without amendment.

The Employer argues that there is a distinction under this collective agreement between investigations, grievances and complaints and that while the Union has bargained payment for Union representatives to deal with complaints and grievances, it has not bargained payment for Union representatives to deal with investigations. The Employer is correct in its interpretation of the collective agreement. Article 10.01 defines a grievance and article 10.02 defines a complaint. Neither definition encompasses an investigation. Article 14.01(a) provides that "other than complaints or grievances" stewards or committee members who are required to be absent from work must make written application. This would include, therefore, the requirement to make

written application to be absent for the purpose of taking part in an investigation. Article 14.01(d) stipulates that, "The Employer will not make any wage deductions from Union Stewards and Committee members who have permission to deal with complaints or grievances...." Again, given the distinction in this collective agreement between investigations, grievances and complaints, investigations are excluded from this stipulation. Finally, article 10.05(b) states that, "At any time the Employer deems it necessary to suspend or discharge an employee, a Steward shall be invited to be present at a meeting when the written document is presented." It is not disputed that if such a meeting occurs during the steward's working hours, he/she is paid by the Employer, i.e. no wage deduction is made. When these provisions are read together, it is clear that the Employer is required to pay, i.e. not make any wage deduction, for the Union representative at a grievance or complaint meeting, held during the representatives' working hours but not for an investigation meeting held during the representatives' working hours. For the purposes of payment, the meeting at which the disciplinary letter is provided to the employee is considered as part of the grievance procedure. It must be found from the foregoing that there is no requirement under this collective agreement for the Employer to pay, i.e. not make any wage deduction, for Union representatives present at investigation meetings held during the representatives working hours or at any other time.

It is to be noted that at the hearing, the Employer committed to use its best efforts to schedule investigation meetings outside the working hours of the representative, who

may then attend without there being an issue with respect to payment. The Union, for its part, confirmed its intention to have a single representative attend such meetings in the future.

This grievance is dismissed.

Dated this 15th day of June 2016 in the City of Toronto.

Kevin Burkett

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