

IN THE MATTER OF AN ARBITRATION UNDER THE  
*LABOUR RELATIONS CODE OF BRITISH COLUMBIA, R.S.B.C. 1996 c.244*

BETWEEN:

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS'  
ASSOCIATION/BOARD OF EDUCATION DISTRICT NO. 73 (KAMLOOPS -  
THOMPSON)

(the "District")

AND:

BRITISH COLUMBIA TEACHERS FEDERATION/KAMLOOPS -  
THOMPSON TEACHERS ASSOCIATION

(the "Association")

Re: Marra Grievance

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| ARBITRATOR:       | Nicholas Glass                            |
| COUNSEL:          | Chris Leenheer<br>for the District        |
|                   | Sebastien Anderson<br>for the Association |
| DATES OF HEARING: | February 6 & 7, 2012                      |
| PLACE OF HEARING: | Kamloops, B.C.                            |
| DATE OF AWARD:    | March 12, 2012                            |

## A W A R D

### I. Issue

The grievor applied on a posting dated June 1, 2010, for a 1.0 FTE position, Technology Education/Soccer Academy, Woodwork and Photography, grades 7 and 8, at Brocklehurst Middle School, in the Kamloops area. His application was rejected on the grounds that he did not have the necessary qualifications. The posting required Community Coach Senior ("CCS") designation available through the BC Soccer Association. The grievor, and the association on his behalf, admit that he did not hold the CCS designation at the time of his application, but say that he nevertheless had the necessary qualifications as defined in Article C.3 1(a) of the collective agreement.

### II. Facts and Background

The grievor held a 1.0 FTE continuing appointment as a technical education teacher at Sa-Hali Secondary School in District 73. On the 7<sup>th</sup> of May, 2010 he received layoff notice.

The grievor was laid off effective June 30, 2010 and was placed on the re-engagement list. The relevant provisions of the collective agreement governing layoff and recall are reproduced below:

#### ARTICLE C.3 STAFF REDUCTIONS, LAYOFF, RECALL AND SEVERANCE PAY PROVISIONS

1. "Qualifications" For Layoff and Recall
  - a. "Necessary qualifications" in respect of a teaching position means a reasonable expectation based on the teaching certification, training, education or relevant recent experience of a teacher, that the teacher will be able to perform the duties of the position in a satisfactory manner.

b. Layoff

- i. For the purposes of determining which employees shall be laid off, the employee unit shall be defined as the district. The manner by which layoff shall be applied shall be the reverse order of seniority, subject only to necessary qualifications for the position available. All positions in outlying schools shall be bypassed, subject to appeal.
- ii. The Board shall give each teacher it intends to layoff pursuant to this article 30 days' notice prior to the end of the school term (December 31<sup>st</sup> - June 30<sup>th</sup>) in writing before layoff is effective. Information on positions held by less senior teachers will be available through the Superintendent's office to teachers in receipt of layoff notices.

c. Recall

- i. For re-engagement purposes, teachers on the re-engagement list shall be listed in decreasing order of seniority.
- ii. After all transfers have occurred pursuant to terms of this agreement and a position is designated vacant by the Board, the Board shall:
  1. post all vacancies on the district website;
  2. send notification to all schools;
  3. send notification to the KTTA office;
  4. notify all teachers on the re-engagement list who request electronic notification
- iii. The Board shall offer the vacant position to the applicant with the greatest seniority and the necessary qualifications currently holding a part-time assignment or on the re-engagement list. If that person declines the offer, the Board shall offer the position to the applicant with the next greatest seniority, and the necessary qualifications, and so on, until the position is filled.

On June the 1<sup>st</sup>, 2010 the district posted Bulletin #80, open to a variety of applicants, including teachers on recall, in which category the grievor was included. The second position listed on that posting was for Brocklehurst Middle School and was a 1.0 FTE position. The description and the posting were as follows:

Technology Education/Soccer Academy

Woodwork and Photography 7 and 8, and Soccer Academy.

Community Coach Senior (Formerly Level 3) Soccer Coaching Certification Required.

A booklet entitled “BC Soccer Coaching Clinic Information Package” was introduced into evidence by the district without objection from the association, apparently prepared and published by the British Columbia Soccer Association (“B.C. Soccer”) based on Water Street in Vancouver, B.C., which provided detail about the different certifications towards which a coach could aim.

There are some parts of the text in this booklet or package which seem relevant to the issue before me and I will quote:

BC Soccer Coach Education Program exists to support and foster the development and education of coaches from the grassroots to elite levels of play throughout British Columbia. The series of clinics within the program *will not focus on teaching coaches how to play the game, so much as preparing coaches to impart their knowledge more efficiently and effectively to the players that they work with on a daily basis....*

*...Just because a coach has excellent technical skill or a wealth of playing experience, does not necessarily mean that they can convey their knowledge to a willing athlete in an effective manner.* Consequently if a coach wishes to become truly successful at what they do, it is important that they acquire the skills required of a successful teacher and leader.

[emphasis added]

There is also a portion of the package which provides an overview of the soccer coach certificate program. Pages 7 and 8 of this publication describe the certificates which are available and the purpose of them.

As the governing body for soccer in Canada, the Canadian Soccer Association, in conjunction with BC Soccer, is responsible for training coaches from grassroots to national team level. With the increasing number of players registering with clubs across the country this represents a considerable challenge. In order to meet this challenge a three tiered certification program has been developed in conjunction with our provincial/territorial partners that we feel will meet the needs of both

developing coaches and the sport itself. In ascending order, the tiers or levels through which a coach can advance are:

A License - Administered by the Canadian Soccer Association  
B License Part 2-Administered by the Canadian Soccer Association  
B License Part 1 – Administered by BC Soccer  
Community Coach Certificate-Administered by BC Soccer.

In order to achieve a Community Coach Certificate a coach must attend three sets of clinics in three categories, totalling 50 units, (at about 45 minutes per unit). These are Community Coach – Children (CCC) which is 10 units; Community Coach Youth (CCY) which is 20 units: and Community Coach Senior (CCS) which is a further 20 units.

A coach who has attended only one or two of these clinics has no certification but only has a designation accordingly. Only by attending all 50 units of clinic time can a coach achieve certification, and then he/she obtains a Community Coach Certificate.

According to the clinic equivalency table at page 17, the old NCCP Level 3 was equivalent to holding a full Community Coach Certificate. The designation or qualification actually required by the posting in question was Community Coach Senior (CCS) which is equivalent to NCCP Level 2. The posting mistakenly describes this as Level 3. Some confusion therefore arises as this was not clarified at the hearing. In the end it does not affect the result, but the parties would be well advised to clear this up for future purposes.

The lowest category, “Community Coach – Children” (CCC) requires 10 clinic units. This category is described as follows:

The largest number of coaches, at the community club level, is parents involved in small-sided soccer programs, and are new to the game. These parents/coaches are generally interested in gaining a rudimentary understanding of the task at hand but, due to other commitments, cannot make coaching certification a high priority. With this in mind, the program makes it possible for a coach to complete the ten units of the children’s clinic in one day and be awarded the designation “Community Coach – Children”. This designation is recognized for small-sided soccer coaches only.

The next categories up from that designation are “Community Coach Senior” (CCS) and “Community Coach Youth”. (CCY). These categories are described as follows:

Coaches working with players aged 10 – 14 years or older may enter the Program through the respective youth or senior category if they do not wish to gain full certification at the community level. They will undergo twenty units (i.e. two days) of instruction in order to gain the designation of either Community Coach Youth, or Community Coach Senior.

Note that these levels are “designations” and do not attract a “Certificate”.

The next level up is the full “Community Coach Certificate”. This is described as follows:

Coaches may gain the full Community Coach Certificate by attending all fifty units involved in the children’s, youth and senior clinics (approximately five days in total). It is recommended this designation entitles the coach to coach a team at any age group, in any amateur competition/tournament, at the club level.

There are further higher levels of coaching certification described in the package, referred to earlier.

In any event, the grievor applied for the position, which included teaching woodwork and photography, grade 7 and 8, and also teaching at the Soccer Academy which covered grades 7, 8 and 9. This replaced PE and one other elective.

In the Brocklehurst Middle School Sport Academy descriptions document, placed in evidence by the association, the school literature includes the following description:

Our soccer academy is the newest addition to a range of sport academies, and will begin its first year of operation (enrolment permitting) the end of 2010-2011 school year. At this time the name of the instructor is yet to be confirmed. Our commitment is to ensure that, similar to our hockey and aquatics academies, *the instructor is properly credentialed and experienced in the coaching of this sport.* Students in this academy will be on the field every second day throughout the school year, alternating between full mornings and full afternoons. This academy is intended for students who are passionate about soccer and intend on playing community soccer in the 2010 – 2011 season ...

[emphasis added]

There was a fee for participation of \$400 for the year to cover the cost of transportation to and from the school and the soccer dome, as well as rental costs for the soccer dome during the winter months, academy equipment costs and honorarium payments for guest instructors. There was no part of the fee allocated to providing additional salary or honorarium for the successful applicant to fill the posted position.

The grievor submitted his application on the 7<sup>th</sup> of June, 2010 and included with it a letter or resume as follows:

Dear Mr. John Churchley,

This is what my qualifications are for this job:

- I am a certified technology teacher through BCIT and have full qualifications to be in the wood shop as recognized by the BCTF and TUF (*arguably the most important part of this position as far as SD73 liability issues*)
- I have taught PE at Barrier Secondary.
- I started senior boys and girls soccer with Dennis Desrosiers at Barriere Secondary (as well as rugby on my own).
- I have Level 3 Coaching in wrestling. The coaching theory is sport transferrable. I was the head coach for Kamloops and Region to promote wrestling (this was a paid position that required Level 3 Coaching Certification).
- I have over 18 years of coaching experience with boys and girl athletes through wrestling and soccer, taking them to the Provincials, BC Games and Canadian Nationals.
- Currently coaching my daughter's house soccer team.

Thank you for taking these points into consideration and have a great day!

On the 15<sup>th</sup> of June, 2010, the subject position was posted as awarded to Randy Semenoff. This individual had less seniority than the grievor, but possessed a Community Coach Senior (CCS) designation or Level 3 certification in the field of soccer. It was not clear from the evidence if he held one or the other or both. The grievor did not have either.

The grievor wrote on the 21<sup>st</sup> of June to Mr. John Churchley at the district that he was challenging the successful applicant based on his seniority, qualifications and

experience. In his email setting out the grounds for his challenge, the relevant portion which deals with soccer stated as follows:

Soccer Academy:

Certified Level 3 Sport Theory updated in November 2009.

Soccer Experience:

I have played soccer since I was 4 and continue to play in the Kamloops Men's Recreational League. I have played on two teams that have won the Provincials in total winning the Provincials three times.

Coached soccer at high school through to elementary level.

A reply was forthcoming from Mr. Allen Dodd, who was the Acting District Principal of Human Resources, to David Komljenovic who was then President of the Kamloops-Thompson Teachers' Association. In that letter he stated:

The posting included a requirement for (Level 3 Soccer Coaching Certification). While Matt Marra is qualified for the technology education portion and has coaching certification for wrestling, he does not have Level 3 Coaching Certification for soccer. For the challenge to be successful the applicant must be qualified for the entire assignment.

The challenge is denied.

The matter was then pursued through the grievance stages. By letter dated August 30<sup>th</sup>, 2010 Mr. Churchley wrote to Jason Karpuk, then President of the KTTA, in part, as follows:

The soccer academy course at Brock Middle School is a specialty academy which is an intense program requiring a teacher that is highly trained specifically in the sport of soccer. It is not a regular PE course so those qualifications are not adequate, nor are other coaching qualifications in other sports as the practical component of those qualifications is sports specific. While Mr. Marra holds a high level of coaching credential, it is not in soccer.

The district's position remains that teachers must hold the necessary qualifications for an entire position in order to secure it using their seniority and/or status.

I cannot find that the collective agreement has been violated and therefore deny the grievance.

Mr. John Churchley gave evidence at the hearing. He was asked how the coaching certification requirement was established. His answer was that firstly it was by "the



principal suggesting it to us". He then said that he and Mr. Dodd conferred with another principal highly involved with athletics to confirm the appropriate level. He then referred in his evidence specifically to page 8 of the Coaching Clinic Information Package from BC Soccer which I have quoted from extensively earlier. Mr. Churchley stated that at the time of the posting the coaching body was switching over from the level system to the tiered system listed in the booklet and so "we included both old level and new level".

He stated further that the qualification level that was set at the time of the posting could be used in the future without grievance. Later on in his evidence after describing how he reviewed the grievor's resume and his file, he stated that he found that the reference to the Provincials, Nationals and BC Games all referred to wrestling and not soccer as far as coaching was concerned. He then went on to say "What I got from this was that Mr. Marra was a highly credentialed and successful wrestling coach, but the only soccer coaching was at Barriere Secondary and coaching for his daughter's house team. This did not meet the Community Coach Senior certificate".

I have carefully reviewed my notes of his evidence on this point and it is quite clear that he used the words "Community Coach Senior". He did not refer to "Community Coach Certificate" which is also mentioned at page eight of the information package and involves a five day clinic.

I accept there may well be some degree of confusion on the part of Mr. Churchley and that it is quite possible that he and his colleagues intended to set up the requirement for the full Community Coach Certificate which was the equivalent of level 3 in the old system, rather than the Community Coach Senior designation. However, all I can say is that in his evidence when he was referring specifically to the coaching clinic information package and the language contained therein, he was quite specific to refer to Community Coach Senior as the level he and his colleagues discussed and settled upon. If they thought that was the equivalent of level 3 before,

they were wrong. If they meant to require the full Community Coach certificate then they failed to do so in the posting document. In these circumstances I am proceeding on the basis of the specific evidence of the posting itself (not the incorrect explanatory portion in brackets) and the evidence of Mr. Churchley that the grievor did not meet the Community Coach Senior designation, which involves attending a two day clinic put on by BC Soccer.

Mr. Churchley then went on to say that he understood that Level 3 theory is common to all sports. In other words there is a theoretical component in coaching which can translate, for example, from wrestling to soccer and vice versa. He then went on to say "...but there is a practical and technical credential which is sports specific".

With respect to that aspect, the practical and technical credential at issue here is the requirement of attendance at a BC Soccer two day soccer coaching clinic. For avoidance of doubt my conclusion in this case would be the same whether the requirement in the posting was for a two day clinic (20 units) or a total of five days of clinics (50 units).

Following his failure to be awarded the subject position, the grievor forwarded additional information to Mr. Churchley in support of his application, as described above.

Both when reviewing the initial application and later when considering the grievor's challenge Mr. Churchley and Mr. Dodd ranged beyond just noting the absence of the designation. He and Mr. Dodd reviewed the grievor's application including his attached resume. They reviewed the grievor's personnel file and his resume presented at the time of original hire. Mr. Churchley stated in his evidence "I like to consider everything I can. I reviewed his file *for anything directly related to soccer.*"

What he found was that the grievor had extensive experience and also level three certification as a wrestling coach but his only soccer coaching involvement was at Barriere Secondary, and coaching his daughter's house team.

He also testified about his review of the grievor's challenge. He and Mr. Dodd reviewed the steps they had taken before and considered the additional information the grievor supplied above quoted. He stated "Our conclusion was the same. Mr. Marra was a highly credentialed wrestling coach and was obviously an athlete. He had participated in soccer more than we originally thought, but *not equivalent to the qualification we required.*" I have highlighted this portion of his evidence and that found in the previous but one paragraph because it demonstrates in my view that the district did more than simply reject the grievor's application on the sole ground of not having the Community Coach Senior designation but considered equivalency as required by Article C.3.1 as well.

Although the correspondence seems to suggest that lack of the required designation was the end of the matter, in fact the district's representatives went further and did a broader assessment of whether or not the grievor possessed the necessary qualifications for the position, as is apparent from the evidence and in particular the highlighted portions of Mr. Churchley's evidence quoted above.

Mr. Churchley said "relevant recent experience" in the collective agreement could only refer to experience in the subject position and as the position was brand new there could be no relevant recent experience. The association did not support this view and I am inclined to the view that it can in fact encompass something broader. Accordingly I later examine the extent of the grievor's soccer coaching experience even though it did not involve coaching at the soccer Academy.

At the hearing the grievor gave further evidence about his soccer background and skills including coaching experience. He confirmed the contents of his resume submitted with his original application for hire. He stated that he knew the district

had this. This resume, apart from referring to his skills and training in technological education, referred to his experience as a wrestling coach and referee. There was no mention in his original resume of refereeing or coaching soccer.

He then referred to his challenge to the award of the posting to Michael Semenoff. Apart from playing soccer since he was 4 and playing on two teams which had success in the provincial championships, he referred to the fact that he coached soccer at high school through to elementary level. He testified that this was while he was a teacher at Barriere Secondary School from September 2005 until June 2008 on a continuing contract mainly in the field of technological education. He also taught three blocks of physical education, grade 9. The PE program included a number of areas of endeavour including general fitness, stretching, mental health, pre and post game warm up and stretches before and after any given sport; curling, basketball, volleyball, flag football, soccer, baseball and softball and dodgeball.

He testified that he started a soccer program at Barriere Secondary with his colleague Dennis. This involved recruiting from the student population which in a rural setting was somewhat thin for the purposes of putting a team together. He stated the program included setting practice times and organizing for skill practices. The soccer was intended for grades 11 and 12 but they were challenged for numbers in the senior year and so there was recruitment from younger grades. They competed with a number of teams, up to a three hour drive away, including Merritt, Clearwater, Logan Lake, Ashcroft and Chase. During practices there was a focus on fitness including proper warm up, pre and post game stretching; he wanted to emphasize each athlete's behaviour outside the sport, and there were running drills and exercises. He said there were a lot of soccer drills including foot work and team work and maintaining a high heart rate; in general there was an emphasis on making sure the activity was fun. The purpose was to play hard and to develop basic skills.

None of the players who he coached at Barriere were on a Soccer Academy Program or team. He and his colleague, Dennis, organized the practices. Dennis had no

designation or certification as a soccer coach nor had he. Dennis was a PE teacher. He described how the practices were organized and explained that these practices included passing drills; game play simulation; off side trap; use of the field generally. He stated he “looked at his clientele and there was in this case a low skill level and so the coaching was adapted accordingly.” He taught them give and go; keeping space; keeping in position; and talking to each other. They would carry out scrimmages and focus on one touch and two touch play as well as live play with the simulation of a game. He used a bean bag which would be dropped to fix the location of a particular player.

He testified that his major sport was wrestling and he held Level 3 coaching certification for this sport. Level 3 was set by the National Coaching Certification Program or “NCCP”. He explained how he moved up from Level 1 through to Level 3 in the NCCP program for wrestling. He explained that the Level 3 theory side of matters was generic and applicable to most sports. However, the practical side of Level 3 is sport specific.

The grievor explained that Level 2 theory for soccer was much the same for Level 2 theory for wrestling. On the practical side wrestling Level 2 included instruction on how to run practices, warm ups and drills.

He also testified that he coached soccer in the lower division where his own daughter played, and he was a coach for her house team. He explained further that he was, as at the date of the hearing (which was not relevant for the purpose of the merits of this matter), going through the levels of coaching for soccer.

He then went on to describe his career as a player and how he reached a high level of competitive ability playing on two different teams which had been successful at the Provincial championships.

In cross-examination the grievor confirmed that he did not hold Community Coach Senior designation. He also confirmed that he had no formal designation or certification in any form, as a coach for soccer. He also stated that he described orally to Mr. Churchley his soccer experience around the time of his challenge to the award of the position, which accorded with the evidence above described given at the hearing. The gist of his discussion with Mr. Churchley was that he had the skills that were needed in spite of the lack of a formal certification. He confirmed that his time coaching soccer at Barriere occupied two academic years or four semesters. He coached the boys in the fall and the girls in the spring. He also stated that in his capacity as a player playing intramural soccer, he acted as player/coach for one area. Also in the men's league, before he attended BCIT, he was a player/coach for a whole season as a defensive coach. He clarified in re-examination that at Barriere he was coaching as a defensive coach and his colleague Dennis was coaching as an offensive coach. He also worked with the better players to develop their skills. For the rest they concentrated on the team efforts.

There was another important piece of evidence which I should refer to. On December 7, 2011, the parties entered into a settlement agreement involving a number of matters. The heading for the settlement agreement was "Postings (Necessary Qualifications)".

This settlement followed a grievance filed by the association on June 4, 2010 relating to a number of postings from May 2010 regarding the qualifications for certain courses and a combination of courses in the posted assignments. It is not necessary to set out all of the terms of the settlement agreement but the following paragraphs are quoted as they have some relevance to the present dispute:

1. During the May/June/August staffing process, the District will, wherever possible, post assignments the District deems to contain unrelated courses as separate postings that may be combined. If the District intends to post what it deems to be unrelated courses in a combined posting, the District will consult and receive input from the Association prior to posting