LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION AWARD

BRITISH COLUMBIA TEACHERS' FEDERATION /
VANCOUVER TEACHERS' FEDERATION

UNION

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATON
on behalf of
BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 39 (VANCOUVER)

EMPLOYER

(Re: Layoff Notice to Teachers on Maternity Leave)

Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	Robyn Trask
Representing the Employer:	Lindsie M. Thomson
Dates of Hearing:	March 15 and April 18, 2011
Date of Decision:	April 30, 2011

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1. Grievance and Jurisdiction

[1] In May 2010, the employer gave layoff notice to continuing contract teachers on maternity leave at the same time it gave layoff notice to other teachers for whom the layoff was to be effective June 30th. The effective date of layoff for a teacher on maternity leave was suspended beyond June 30th until the end of her leave.

[2] The union grieves the layoff notices to teachers on maternity leave. The union says layoff notice cannot be given to a continuing contract teacher while she is on maternity leave or during the period the leave is extended with parenthood leave. The notice must be delayed until her return from leave because giving layoff notice to a teacher on maternity leave is contrary to the collective agreement, *Employment Standards Act* and *Human Rights Code*.

[3] The employer replies the timing of the layoff notice: (1) is not contrary to the collective agreement or either statute; (2) is in accordance with both an express 2002 agreement with the union and a related arbitration decision; (3) is most beneficial to continuing contract teachers on maternity leave; and (4) is required under the collective agreement to respect the seniority of all employees and not bestow an opportunity for greater accumulation and exercise of seniority by teachers on maternity leave.

[4] The union and employer agree I have jurisdiction under their collective agreement and the *Labour Relations Code* to make a final and binding decision on the

merits of the grievance. Most of the facts and all relevant documents were entered by agreement.

2. Agreed Maternity Leave and Extension with Parenthood Leave

[5] Section G of the collective agreement addresses leaves of absence for various reasons and in various circumstances. The local provisions of Section G include provisions for maternity and parenthood leaves. (Articles G.18, 19 and 25) There are distinct provisions for short term parental leave on the occasion of adoption or assuming legal guardianship of a child or the birth of a child by a spouse and as provided in Part 6 of the *Employment Standards Act*. (Articles G.23 and 24) The collective agreement defines maternity leave.

> Maternity leave shall be defined by the *Employment Standards Act* with certain improved provisions contained in this section which have been designed to ensure adequate protection for an employee who is pregnant and to make certain that the transfer of the employee's responsibilities is made with as little disruption as possible. Personal leave, without pay, may be granted in the case of an employee who wishes to extend the period of her absence prior to the birth of a child or Parenthood Leave may be granted following the birth of a child to provide a longer period of absence than that provided by the *Employment Standards Act*. (Article G.18)

[6] The maternity leave period is a total of up to 18 weeks. (Article G.18.e) Employees on maternity leave are issued a Record of Employment for Employment Insurance purposes. The employer has entered into a Supplemental Unemployment Benefits (S.U.B.) Plan agreement with the Employment Insurance Commission. (Article G.19)

[7] During maternity leave an employee can apply for parenthood leave instead of returning to work after 18 weeks. (Article G.18.d) Parenthood leave is unpaid and not considered to be a break in service. Absence on maternity leave counts towards an employee's length of service. Absence on parenthood leave does not. (Article G.25.f; see also Article C.3.d.ii and e))

[8] Failure to maintain employment status while on parenthood leave is regarded by the employer as "termination of employment by that employee." (Article G.18.d) An employee must request "to return to active duty at the beginning of a new term or semester" within thirty-six months after the commencement of parenthood leave. If she

does not, she is considered to have resigned. (Article G.25.d) The employee is guaranteed "a return to the same position or a comparable one." (Article G.25.e)

[9] Parenthood leave can also be taken if a parent feels "it is necessary to stay at home with a dependent child" commencing January or February 1st if an application is made before September 30th or commencing September 1st if an application is made before March 31st. (Article G.25.a and b)

3. Legislated Employment Standards Pregnancy and Parental Leaves

[10] Part 6 of the *Employment Standards Act* provides for unpaid leaves from work and jury duty. Two of the unpaid leaves are pregnancy and parental leaves. The period of pregnancy leave is up to 17 weeks with an additional 6 weeks if, for reasons related to the birth or the termination of the pregnancy, the employee is unable to return to work when the leave ends. (s. 50) Immediately following pregnancy leave, a birth mother may take up to 35 consecutive weeks parental leave. A birth mother or father may take 37 weeks parental leave beginning within a year after the birth. (s. 51) Further,

> If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional 5 consecutive weeks of unpaid leave, beginning immediately after the end of the leave taken under subsection (1). (s. 51(2))

[11] The *Employment Standards Act* protects certain benefits during these unpaid leaves of absence.

> ***Employment deemed continuous while employee on leave or jury duty***
> 56 (1) The services of an employee who is on leave under this Part or is attending court as a juror are deemed to be continuous for the purposes of
> (a) calculating annual vacation entitlement and entitlement under sections 63 and 64, and
> (b) any pension, medical or other plan beneficial to the employee.
> (2) In the following circumstances, the employer must continue to make payments to a pension, medical or other plan beneficial to an employee as though the employee were not on leave or attending court as a juror:
> (a) if the employer pays the total cost of the plan;
> (b) if both the employer and the employee pay the cost of the plan and the employee chooses to continue to pay his or her share of the cost.
> (3) The employee is entitled to all increases in wages and benefits the employee would have been entitled to had the leave not been taken or the attendance as a juror not been required.
> (4) Subsection (1) does not apply if the employee has, without the employer's consent, taken a longer leave than is allowed under this Part.

[12] During an employee's absence on pregnancy or parental leave, there can be any number of ownership, location, operational or other changes in the employer's business. The *Employment Standards Act* protects continuity of the employment relationship during the leave. It also provides a measure of protection for the employee's orderly return to work after the leave. It does this by imposing return to work duties on the employer moderated by an express recognition that business circumstances can change while an employee is on leave.

Duties of employer

54 (1) An employer must give an employee who requests leave under this Part the leave to which the employee is entitled.

(2) An employer must not, because of an employee's pregnancy or a leave allowed by this Part,

(a) terminate employment, or

(b) change a condition of employment without the employee's written consent.

(3) As soon as the leave ends, the employer must place the employee

(a) in the position the employee held before taking leave under this Part, or

(b) in a comparable position.

(4) If the employer's operations are suspended or discontinued when the leave ends, the employer must, subject to the seniority provisions in a collective agreement, comply with subsection (3) as soon as operations are resumed.

[13] As reflected in section 54(4), Part 6 of the *Employment Standards Act* applies to employees covered by a collective agreement. Under section 3(7) of the *Employment Standards Act* enforcement of Part 6 for employees covered by a collective agreement is through grievance-arbitration under the collective agreement.

[14] While there are no legislated seniority rights in the statute, section 54(4) recognizes there are seniority rights in employment relationships for which there are collective agreements. Placement of the employee in a position on return from leave is subject to collective agreement seniority provisions in circumstances where there is a suspension or discontinuance of operations at the end of the employee's leave.

[15] Similarly, the employment standard in section 63 of the *Act* for employer liability on termination of individual employment based on length of service is subordinate to, and does not apply, if there is a collective agreement containing any provision respecting seniority retention, recall, termination of employment or layoff. (s. 3(2))

[16] The *Employment Standards Act* does not seek to address the broad range of varied employment circumstances in which sections 54(3) and (4) apply, such as partial

suspension or discontinuance of operations. This task is left to those interpreting, applying and adjudicating disputes over the interpretation and application of the statute.

[17] In one instance, the employer lost core business, reduced staff and abolished the employee's position during her leave. She refused to return to the different position the employer offered, which had an equivalent salary to her former position. She complained she had not been placed in a comparable position in accordance with section 54(3). The Employment Standards Board determined the employer did not abolish her position and change this condition of her employment because of her leave. (s. 54(2)(b)) The Board found no change could be said to have occurred until she actually reported to work, which she did not do. Therefore, there was no basis on which the Board could determine if the old and new positions were comparable. Like employees at work who have not taken leave, an employee on pregnancy leave is not insulated from changes in her conditions of employment which are made for business reasons wholly unconnected to the reason for her leave.

> It is my view, as it appeared to be the adjudicator's, that it is unreasonable to impose a duty on an employer to place an employee, at the end of several months pregnancy leave, in the same position, or a comparable position, if the business of the employer has undergone significant changes for reasons unrelated to the employee's pregnancy. It would otherwise place an employee who has taken pregnancy or parental leave in a better position than another employee who may have continued to work through that period, and had been offered other work, or laid off, because of that significant change. (*Kimberley Flint* [2000] B.C.E.S.T.D. No. 458, ¶ 24 reconsidering and affirming *Creative Surfaces Inc.* [2000] B.C.E.S.T.D. No. 185)

[18] Similarly, the Employment Standards Tribunal has held:

> Although it appears that the Employer did change a condition of the Appellants employment without her written consent, it has been demonstrated that this was not because of the Appellants pregnancy or leave such that there is no breach by the Respondents of the obligations under Section 54(2)(b) of the Act. (*Michele Gurney* [2002] B.C.E.S.T.D. No. 226, ¶ 26)

As a general proposition, the determinative factor is whether the employer's motivation for making the change without the employee's written consent was influenced in any way by the fact the employee took the pregnancy or parental leave.

[19] For the information of employees and employers the Ministry of Labour's *Interpretation Guidelines Manual for the Employment Standards Act* advises with respect to sections 54(2) and (4):

> Any change in a condition of employment must be with the employee's written consent. An employer may not use the employee's leave of absence to make significant changes to the employee's job. Changes are only acceptable if they are unrelated to the employee's absence and would have occurred even if the employee had been at work.
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> If the employer's business operations have been suspended or discontinued at the time an employee's leave ends, the employer must comply with Part 6, s.54(3) when operations resume.
>
> If an employer reduces operations for genuine business reasons during an employee's leave, and the employee returns to a significantly different or lesser job, it must be determined what would have happened had the employee not taken leave under this Part. If the employee would have been affected in the same manner if they had continued working and had not taken leave, the employer has not contravened this section. (www.labour.gov.bc.ca/esb/igm/esa-part-6/igm-esa-s-54.htm)

It is noteworthy the *Manual* speaks to when an employer "reduces operations for genuine business reasons" as being captured by or included in the legislative phrase "operations are suspended or discontinued."

[20] In 2003, I interpreted the employer's duty under the provisions of a local agreement and section 54(3) of the *Employment Standards Act* to place a teacher on her return from maternity leave in a "position" according to an agreed hierarchy of the same or a comparable position in the school or a comparable position in the school district.

> The question in this grievance is not whether the assignment to counsel PSLC students and all that entailed was a plum or a prune or whether the assignment was fair and reasonable or an appropriate exercise of managerial authority. The question is whether Ms Dunnett was "reassigned to the same position" on her return to work from maternity leave.
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> As the arbitration awards reflect, the terms "appointment", "position" and "assignment" are often used imprecisely and sometimes in a confusing manner. One reason is that the language of a collective agreement accrues over time with different provisions negotiated and written by different authors. One example in this collective agreement might be a provision addressing the posting and filling of vacancies which require that all postings "include the nature and location of the assignment position" (Article E.4.4).
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> The intended meaning of the use of the "position" in Article G.16.7.1 is captured in a reference to this provision in another provision of the collective agreement. Article E.4.5 sets the agreed order of priority to fill vacant positions. The first order is "Reassignment of continuing staff within the school including teachers with employment rights returning to the school from leave of absence, and teachers returning to the District from leaves of absence as specified in Article A.8.0 and G.16.0." The first article is past union presidents and the second is new mothers.
>
> These teachers, and those returning from parental leave (Article G.20.0), are seen as returning to the "District" from leave of absence from their employment. On their return, they have the right to reassignment in the same school and then to a comparable position in the same school and then a comparable position in the District. Because they are seen

as returning to the District from leave, Articles A.8.6.1and G.16.7.1 specify that they are to be "assigned" or "reassigned" to the same position "in the same school."

The "position" to which they return is the one that the employer must preserve for them, usually through posting vacancies for temporary replacement during their leave. The leave may be short-term or up to two years for new mothers and longer for a union president. The normal and annual reorganization of teaching assignments is not suspended during the term of leave taken by one or more teachers at a school. The collective agreement does not require the employer to recreate the precise assignment the teacher on maternity leave had before the leave and reassign it to her on her return.

During the term of a maternity leave, there might have been any number of changes in circumstances at a school, such as changes in enrolment or curriculum or teacher transfers or departures for other reasons, such as retirement. In the case of a retirement or other departure, the teacher returning from leave might aspire to the teaching assignment formerly held by the departed teacher. The returning teacher cannot claim reassignment to the same assignment she had before taking leave. At the same time, no one at the school can say that the teacher returning from maternity leave could not be given a different assignment that she desires because the collective agreement mandates that she "shall be reassigned to the same position."

The school calendar and annual reorganization of the workplace to meet student needs and public education goals is ingrained in this employment context and underlies extensive provisions of the collective agreement. The characteristics of work, such as age and mix of students, location of classroom or office within the school, colleagues in immediate proximity and familiarity with courses, tasks and materials to be used are each an important component of the demands, degree of stress, satisfaction and pleasure of the work. However, unlike the relatively static employment environments of other occupations, like that of the Counsellor II at Open Hands Inc. in Ontario, the annual reorganization of a school can include significant changes and challenges from year to year for a teacher. This is a known and established characteristic of a teaching position at a public school.

The language of the collective agreement would have to be more explicit and specific than it is to exempt teachers on union president, maternity or parental leave from being included in the annual reorganization. It may be this is why counsel were unable to locate an award dealing with a grievance that an employer had not met its obligation to reassign a teacher returning from maternity leave to the same position in the same school, a common requirement and occurrence under public education collective agreements.

The new assignment on the teacher's return from maternity leave should not differ so much from the assignment at the time of the leave that it bears little or [no] resemblance to the teaching position at the time of the leave. If it does, it might be that the reassignment is not to the same, but to a comparable or other position.

In Ms Dunnett's case, I find that her counselling position on her return form leave was the same counselling position as at the time of her leave. I find that each of the changes in work that Ms Dunnett experienced on her return from maternity leave - less opportunity to volunteer for work outside the regular school year, the different student population to counsel, the new work location within the school, the new environment and program at the PSLC, the support work for students with severe and moderate behaviour previously done by other counsellors, the new staff room, and so forth - do not individually or accumulatively constitute a change in position. Ms Dunnett was not demoted in her profession. Her request for a part-time counselling assignment, rather than a full-time assignment like she had when she took leave, was met.

While the Principal of the school gave her a new counselling assignment, her employer reassigned her to the "same position in the same school." She was returned to "the

> position the employee held before taking leave" (*Employment Standards Act*, s. 54(3)(a)). Therefore the grievance is dismissed. (*British Columbia Public School Employers' Association and Board of School Trustees of School District No. 67 (Okanagan Skaha)* [2003] B.C.C.A.A.A. No. 138 (Dorsey), ¶ 74 - 84; 120 L.A.C. (4th) 301)

4. Employment Context – School Calendar and Annual School Reorganization

[21] Just as "the school calendar and annual reorganization of the workplace to meet student needs and public education goals" is ingrained in the employment context and underlies many of the provisions of the collective agreement, they direct and dictate the workplace context in which the layoff provisions of the collective agreement have been negotiated and operate.

[22] They are also the context in which my 2002 arbitration decision approached answering the submitted layoff questions.

> This annual reorganization of the distribution of teaching assignments within each school and across each school district gives a layoff notice a different character than it has in an industrial operation. In an industrial operation, a layoff notice can arise at any time during the production year and the collective agreement might provide for abbreviated or no notice in the case of an emergency. In public education, notices to teachers are usually given to take effect at the end of a school year as part of reorganization for the next school year.
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> In an industrial operation, a layoff notice generally results in senior employees bumping junior employees, who end up off work without pay or benefits. Teachers do not have a right to bump. They have the opportunity to apply for and compete, on the basis of seniority and qualifications, for any vacancies that might be posted before the end of June, during the summer and perhaps for temporary positions in September or later in the year as teachers go on leaves of absence.
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> The inter-relationship of layoff notice and leaves of absence for public school teachers must be considered in the context of the annual reorganization of educational services and posting and filling vacant positions for the next school year through competitive applications. (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 22 - 24; 108 L.A.C. (4th) 351)

[23] One characteristic of the public school teaching context is that program reductions or class or school closures precipitating layoffs do not occur during the school year. Reductions in required or altered levels of service and program delivery that happen because of reduced year-over-year student enrolment or levels of provincial government funding occur at the beginning of a school year or term. The reductions are planned and prepared for during the elaborate processes beginning in December to reorganize staffing for schools and districts for the following September based on projected enrolment and funding.

[24] Continuing contract teachers do not leave their assignments during the school year to take other assignments that become vacant because of illness, retirement or leave of absence or to bump others from their assignments because they prefer another's assignment over the one they have. The public education system and the collective agreement are structured so that teachers assigned to a class, course of study, program or school or district-based support role fulfill their assignment for the school year. Accumulated seniority does not entitle a teacher to leave an assignment and take another assignment. Seniority is used to make assignment changes through applying for posted vacancies in the annual reorganization.

[25] The work pattern is that, throughout their career, teachers have successive teaching assignments that begin and end with each school year or term. Each year classroom teachers receive a new assignment which might be the same as the previous one, although with a different group of students, whose number, composition and dynamic can vary greatly from year-to-year. Non-enrolling school-based teachers and itinerate district-based teachers have different circumstances. As do teachers in alternate, distance learning and other programs.

[26] In most other workplaces, the employer determines the number of employees to be laid off because of a reduction in production or service shifts or hours of work. The reduction or layoff will happen relatively quickly. Notice is given to the number of employees the employer plans to lay off. The industrial context, the frequency of fluctuation in production or service demand and the nature of the work that must be done to prepare for the closure of a production line, reduction of service or other imperative associated with a complete or partial shutdown or cutback will influence the length of notice negotiated in a collective agreement.

[27] Once notice is given in those other workplaces, senior employees on the shift, in the production line, at the worksite, work base or depot or other situation who are given layoff notice will be able to exercise their seniority to displace junior employees in positions where operations will continue or to select shifts to maintain or maximize their hours of work. Some might suffer partial layoffs through reduced hours of work.

[28] Consistent with the public school education context and the absence of teachers having seniority based bumping rights, notice of potential layoff at the end of a school

year or term is an integral component of annual school and district reorganization. Layoff notice precedes the annual reorganization for the next school year or school term and the accompanying spring posting and transfer process during which teachers exercise seniority rights. The number of teachers to whom the employer gives notice of layoff is much larger than the number it plans to reduce in the district complement for the next school year. Teachers use their qualifications and seniority in successive rounds of vacancy postings to secure a position for the next school year.

[29] The actual layoff outcome and the identification of the teachers laid off will not be known until the entire process is completed in the first weeks after the commencement of the new school year or term. For any number of reasons, including personal teacher assignment preference, the teachers who are displaced and placed on recall might not be the most junior teachers. Some teachers might have partial layoffs in the sense they are working less than the full time equivalent assignment they had in the previous school year.

5. Vancouver School District 2010 Layoff Process and Procedure

[30] Some of the complexity of implementing an anticipated teacher layoff for the school year commencing September 2010 is reflected in the employer and union planning, processes and procedures that began in December 2009.

[31] In late November 2009, preliminary financial projections forecast the possibility of a $35 million shortfall in the 2010-11 school year, which would likely necessitate a reduction in the district teacher complement from the complement in the 2009-10 school year. The union was advised of this in December 2009.

[32] At the time of a previous layoff situation in 1995, the union and employer had established a joint layoff and recall committee. The need for the Committee to meet is triggered by the employer giving notice when it determines a layoff is likely. The Committee is to develop a procedure to govern layoff and recall and make a preliminary determination of which teachers are vulnerable to layoff. This group of teachers is identified by designating a point on the seniority list below which teachers might be subject to layoff. (*Board of School Trustees of School District No. 39 (Vancouver)*, unreported, November 20, 1995 (Hope))

[33] The most recent layoff had been in 2005. Among the Committee members, Associate Superintendent - Human Resources Paul Wlodarczak had experience serving on the Committee. The other three members in 2010, Labour Relations Officer Nancy Stair representing the employer and Vancouver Elementary Teachers' Association President Chris Harris and Vancouver Secondary Teachers' Association President Anne Guthrie Warman representing the Vancouver Teachers' Federation, had not previously served on the Committee. The Committee began meeting in January 2010.

[34] The employer projected the reduction in teacher FTEs and the Committee determined the number of teachers who might be affected by that reduction, which is higher than the number of FTEs. The Committee initially determined there was a potential to lay off up to 800 teachers. This established a five-year service point on the seniority list. Over time, as events unfolded the number was lower.

[35] To expedite and streamline placement in the upcoming spring reorganization process, the Committee agreed, among other things, to change the selection process to place greater weight on seniority.

[36] In order to administer the process, the employer needed to have complete and current qualifications of potentially affected teachers. In mid-January, the employer and union sent a joint letter to 800 teachers giving them notice that due to a budget shortfall there might be a layoff and the teacher might receive a layoff notice in May. Each teacher was asked to complete and return an enclosed *Qualifications* form. The teachers were encouraged to attend an information meeting on January 25th or 27th. It was decided to give this early notice to ensure no teachers made financial or other decisions without knowledge their future employment income might be in jeopardy.

[37] The Committee and the BCTF and BCPSEA achieved two agreements in April 2010 for the period May 3, 2010 to March 31, 2011. The agreements affirmed and modified the vacancy post and fill process and enabled online access to vacancy postings. The agreements make no mention of teachers on maternity leave, but provision was made for all teachers on leave to receive paper copies of vacancy postings at their homes.

[38] To further expedite and facilitate the spring reorganization process, the BCTF, VTF, BCPSEA and employer agreed to a pilot post and fill project and suspended the

operation of certain provisions of the collective agreement during the period of the pilot. Among other changes, Categories B and C in the hierarchy of interviewing and offering positions were collapsed into a new Category T (continuing contracted employees), which included continuing contract teachers on maternity and parental leave.

[39] At April 30th, the anticipated extent of the layoff was 273 FTEs, which was a headcount of 340 teachers. There were ongoing discussions between the Board of Education and Ministry of Education about funding with an accompanying public debate about their respective responsibilities.

[40] On May 3, 2010, notice of layoff letters were sent to the 340 teachers informing them their assignment was "affected by a significant budget shortfall for the 2010-2011 school year" and their assignment will end June 30th. Article C.23.5.b states, in part: "The Board shall give each employee whose contract it intends to terminate pursuant to this Article a minimum of thirty (30) days' notice in writing, such notice to be effective at the end of the school term, and to contain the reason for the layoff."

[41] The letters informed the teachers they should apply for continuing postings in the spring transfer posting process. In this process, after individual school reorganization for the coming school year, any unfilled teaching assignments are posted as full time or partial FTE vacancies. This included assignments in schools that would continue in the next year in which the incumbent teacher was given layoff notice.

[42] Layoff notices to teachers who competed and secured a position before June 30th would be rescinded. If a teacher did not secure a position, the teacher would be placed on the recall list effective July 1st and could exercise recall rights or elect to receive severance pay. Recall rights elapse after twenty-eight months "from the date of termination and the employee has not been re-engaged." (Article C.23.6) This would be October 2012.

[43] As a pragmatic matter, for the purpose of applying for postings, the union and employer agreed teachers given layoff notice would be placed immediately on the recall list and have that vacancy filling selection priority (Category D) even though they were not laid off until July 1st.

[44] During the twenty-eight months on the recall list, the right of recall is lost if a teacher refuses to accept two positions offered in writing for which the teacher

possesses the necessary qualifications. It was agreed for the pilot period that any rejection of an offer before July 1, 2010 by a teacher given layoff notice did not count and did not affect the teacher's recall rights.

[45] To facilitate and expedite the process, the qualifications of teachers given layoff notice would be assessed on the basis of the completed *Qualifications* form and what was in the teacher's file. If a teacher is the most senior qualified applicant, the teacher is to be selected without an interview.

[46] There were agreements on other matters directed to expediting what was anticipated would be an extensive process by limiting some teachers' ability after successfully applying for a position to apply for subsequently posted positions in the successive rounds of posting that are an integral part of the spring transfer posting process.

[47] The scheme of the Committee's decisions and agreements and the agreed pilot project enlarged the period of informed notice for all teachers potentially affected; provided enhanced opportunities for those who received notice to secure an assignment; respected and enhanced the value of seniority; provided greater choice to those on the recall list than they would otherwise have; and sought, in the circumstances, to ensure equality of treatment for all teachers.

[48] The May 3rd layoff notice advised teachers there was to be a joint union and employer information meeting about the layoff process on May 10th at which questions would be answered. It was questions at this meeting from teachers on maternity leave that alerted Mr. Harris that the Committee had not discussed their situation and whether any special arrangements or accommodations had to be made for them.

[49] At a subsequent meeting with the employer, which Mr. Wlodarczak was unable to attend, the union raised concern that teachers on maternity leave should not and could not be laid off. The union and employer met again on May 25th. Mr. Wlodarczak explained from his experience what the employer does in the event a teacher on maternity leave is potentially subject to layoff and given layoff notice. No leave benefit or other entitlement is affected by the layoff notice.

[50] On May 26th, the employer sent letters to some junior continuing contract teachers on maternity leave informing them their layoff was suspended for the duration

of their leave and would take effect at the end of their leave. During the period of suspension, the teachers on maternity leave maintain both non-salary medical and group life benefits and salary related benefits such as pension contributions; accrue seniority; and have the SUB plan.

[51] The union grieved on May 28th that issuing layoff notice to teachers on maternity leave was contrary to Articles G.21.18 and C.23 of the collective agreement and the *Employment Standards Act*. Later, it added that it was also a contravention of the *Human Rights Code*.

[52] Recently, the union and employer have been notified a teacher on maternity and parenthood leave from September 2009 to September 2010 complained to the Human Rights Tribunal in September 2010 that she was discriminated against because of her family status. The complaint includes an allegation she was laid off while on pregnancy/parental leave contrary to section 54 of the *Employment Standards Act*.

[53] The union's position is that a teacher on maternity leave should have been able to return to the same school in the same or a comparable position, which the principal should have protected for the teacher and filled in the interim with a temporary assignment to a teacher who would be displaced when the teacher returns from maternity leave. Layoff notice would be given to the returning teacher on the day of her return effective, in accordance with Article C.23.5.b, at the end of the term in which she returns or the next term depending when the minimum of thirty days' notice took effect.

[54] The union says the stated reason for the layoff would not be that there was no position for the teacher, which she would fill until the expiration of the notice, but that the teacher was within the seniority group of teachers given notice in May 2010, when she was not given notice. To effect this delayed layoff notice to teachers returning from maternity leave, the group of teachers given layoff notice in May should have been enlarged to include a number of more senior teachers corresponding to the number of teacher FTEs on maternity leave.

[55] If the teacher returned more than thirty days before the end of the first term, she would be laid off at the end of that term and could apply for any vacancies posted after her notice of layoff. She would be entitled to benefits available to employees on layoff such as Employment Insurance.

[56] As a practical matter, if she returned less than thirty days before the end of the first term, the notice would not take effect until the end of the next term. If the layoff was not effective until June 30th, it was not explained what her status would be for the spring school reorganization for the following school year or the district spring transfer process.

[57] If the layoff was effective at the end of the first term, the returning teacher's assignment would be posted. She or another more senior qualified teacher on the recall list would be successful. If the posting and filling process took beyond the end of the first term, the returning teacher would be displaced and a teacher-on-call would be assigned until the posting process was completed. The employer says the teacher-on-call could be the third teacher assigned to the class, which would be taught later by a fourth teacher who successfully applied for the vacancy.

[58] It is the union's hope that there would be a continuing contract vacancy posting at the time the returning teacher is looking for a vacancy. Her application would be considered in accordance with the qualifications, seniority and category hierarchy in the collective agreement.

[59] In 2010, there were 249 continuing contract postings in the spring transfer posting process. There were 47 continuing contract postings during the summer posting process. There were 66 continuing contract postings in the weekly posting process after September 1st.

[60] Most postings after September 1st are temporary contract postings. As is normal with positions being filled for the school year and teachers working with their assigned classes, the number of posted vacancy opportunities for a teacher returning from leave significantly diminished after September 2010. The distribution of the 66 continuing contract postings was as follows:

Posting Period	Number	Posting Period	Number
September 13	14	November 17	1
September 20	7	November 22	6
September 27	16	January 10	3
October 13	2	January 31	1
October 18	5	February 21	1
October 25	3	February 28	1
November 1	2	March 7	1
November 8	3	Total	66

[61] At June 30, 2010, there were 167 teachers on the recall list. Currently, there are 114 teachers. Under the collective agreement, teachers may be assigned to a temporary position and remain on the recall list. Of the 114 teachers, 72 are in temporary positions and 42 are on the teacher-on-call list.

[62] When layoff notices were given in May 2010, sixteen teachers were on maternity or parental leave. Four others were scheduled to begin leave before June 30th. The available information about these teachers is included in an appended table sorted according to return to work start date.

[63] There is no evidence why individual teachers who succeeded on a competition have a higher or lower FTE assignment than at the start of leave. There is no evidence whether any of the teachers extended their parental/parenthood leave. There is no evidence whether those whose return to work date is more than one year after the leave start date chose to take leave longer than one year. In some instances, the leave commenced in June and the start date is in September, fourteen months later.

[64] Consequently, it is not possible to determine the extent to which any of the twenty-two teachers were adversely affected by notice of layoff in May 2010 with a deferred effective date or whether any would have been more or less adversely affected if notice had been delayed until their return from leave. Similarly, it is not possible to determine the influence delaying notice until the return from leave had on teachers' decisions to accelerate or delay return from leave.

[65] It is agreed the experience in obtaining assignments varied. By way of example, one teacher (MC) with a 1.0 FTE continuing contract succeeded by June 3rd in the second round of the spring transfer posting process to secure for September the same assignment she had when she took leave. She currently remains on leave. Another teacher (AC) had a 1.0 FTE assignment at the time she took leave. She did not secure an assignment. Her leave ended December 1, 2010 and she was laid off. Shortly afterwards she was offered a choice of two temporary assignments – 0.79 FTE to May with a likelihood of extension to June 30th or 0.6 FTE certain to June 30th. She chose the latter. If she does not secure an assignment through recall, she will remain on the recall list when her temporary assignment expires June 30th. If she does not secure a

continuing contract assignment by early April 2013 she will lose her recall rights and her employment will be terminated.

6. Prior Arbitration on Layoff Notice to Teachers on Leave (2002)

[66] In 2002, I described the circumstances in which there were projected teacher layoffs across the province and the union and employer's response to the anticipated layoffs.

> The circumstances in which school boards are planning for the 2002/03 school year are unusual. These circumstances have been created by legislative and fiscal decisions by the provincial government in the past year.
>
> The collective agreement between the union and employer expired June 30, 2001. The Legislative Assembly amended the *Labour Relations Code* in August 2001 to enable the Minister to designate educational services under the *School Act* as an essential service. (*Skills Development and Labour Statutes Amendment Act*, 2001, SBC 2001, c. 33) The Minister made that designation.
>
> The Union served strike notice in November 2001 and job action began. In January 2002, the Legislative Assembly enacted the *Education Services Collective Agreement Act*, SBC 2002, c. 1, which, among other things, imposed a new collective agreement on the union and employer with three increases to the teacher's salary grid of 2.5% each effective July 1st 2001, 2002 and 2003.
>
> At the same time, the Legislative Assembly enacted the *Public Education Flexibility and Choice Act*, SBC 2002, c. 3. It repeals provisions of the *Public Education Labour Relations Act*, RSBC 1996, c. 382, excludes workload and class size as negotiable subjects in collective bargaining and overrides existing collective agreement provisions. It directs new average class sizes "in the aggregate" and delegates various powers to Cabinet. The *School Amendment Act, 2002* (Bill 34) is the latest legislative change.
>
> This year, the Ministry of Education changed some of the formulae for determining the amount of the operating grants for each school board for the school year 2002/03. The Ministry later provided more funding in the form of a grant to the school boards.
>
> The increase in teacher salaries, the changes from negotiated to legislated class size and composition standards and the amount of funding made available to each school board have combined to change the planning process this spring. Across the province, more school closures are being announced and more teachers have received, or will receive, notice of layoff than in previous years. It is expected that in several districts school and district reorganization will result in teachers becoming truly laid off and unemployed.
>
> As a consequence, both the union and employer have received inquiries and requests for advice on actual and anticipated issues related to layoff notices and layoff. Some school districts have had limited experience with the administration of their local agreements in a circumstance where layoff notices lead to unemployment for teachers placed on a recall list.
>
> The union and employer have discussed and resolved most of the issues that have arisen or are anticipated to arise before the commencement of the 2002/03 school year. They are pleased that they were able to resolve most issues through discussion and agreement.
>
> On the interaction of layoff and leaves, as a general proposition, the union and employer agree that a teacher who is on leave of absence at the time a notice of layoff is issued is

> insulated from layoff. The notice of layoff can be given to the teacher, but the notice and any subsequent layoff are suspended for the period the teacher continues to be on leave. In making this agreement, the union and employer are aware of both the general schemes of the applicable provisions in local school district agreements and the principles applied by grievance arbitrators under collective agreements. (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 25 - 34)

[67] The union and employer agreed to arbitrate unresolved issues concerning the interaction of leaves and layoffs. In May 2002, the union and employer identified two questions, which were submitted to arbitration on May 17th.

> The union and employer have agreed to refer to me for a final and binding answer two specific, and relatively narrow, questions on the interpretation, application and operation of their collective agreement. The union and employer have a mutual interest in having these questions answered so there can be an orderly reorganization and layoff process before the end of the school year.
> Because these questions relate to subjects addressed by different provisions in the local school district agreements, the union and employer agree that my answers are subject to any anomalous language, past practice or negotiating history in a specific school district. The union and employer agreed to refer to two local agreements, called agreements "A" and "B", which they chose as generally representative of the scheme and structure of the local agreements across the province. The two questions are:
>
> 1. Can a school board give a valid notice of layoff to an employee who has applied for and is entitled to, but has not commenced, as of the effective date of the layoff, a leave of absence?
> 2. If an employee requests a leave after receiving a layoff notice, but before the layoff is effective, and would otherwise be entitled to the leave, is that employee insulated from layoff during the leave? (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 1 - 2)

[68] The concern was with all types of leaves, not just maternity leave. The union's position was teachers are insulated from layoff when they become entitled to a leave. The employer's position was the insulation approach was contrary to the union and employer agreement that layoff notice may be given to teachers on leave.

> The union submits that within the context of the arbitral awards and legislation, a teacher is insulated from layoff at the moment the teacher becomes entitled to a leave of absence. For example, if the circumstances for a pregnancy/parental leave exist and the teacher has requested the leave then the entitlement has crystallized, even though the leave will not commence until some date in the future. That teacher cannot be given notice of layoff or, if notice was previously given, the layoff cannot take effect.
> Similarly, if a teacher becomes entitled to sickness leave by scheduling surgery before the layoff notice is given for a later date or becomes ill and takes leave after the notice is received, the layoff notice is not valid in the former instance and the layoff cannot be effected in either situation. For some leaves, such as discretionary leaves, it might be more difficult to determine when the entitlement to the leave crystallizes, but the teacher is insulated from notice or actual layoff when that does occur.
> The employer has examined the questions in light of the logistics associated with reorganization in the spring. Exempting teachers who have applied for or requested leave

> before or after layoff notice has been given, but before the effective date of the layoff, will create special entitlements for them. Junior teachers will escape notice of layoff. Their positions will not become vacant or they will not have to apply for vacancies to secure an assignment for September. This cannot be the consequence of a short-term leave in May or June. Will the teacher who requests pregnancy/parental leave to commence in October be on layoff in September or exempt from the layoff procedure?
> The employer submits that layoff places a teacher on a recall list from which the teacher can apply for a vacant position. A leave to which a teacher is entitled will be triggered when there is available work for the teacher. The employer submits the union is seeking to obtain indirectly what is contrary to what is agreed directly. It is seeking to shelter some teachers from notice of layoff while it agrees layoff notice can be given to a teacher on leave, even though the effective layoff date is suspended for the duration of the leave. (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 50 - 53)

[69] I answered in the affirmative to the first question, relying, in part, on the agreement to which the employer referred.

> By agreement, teachers on leaves of absence can be given notice of layoff, but the notice and the effective date of the layoff is suspended for the period that the leave continues. Teachers who have not yet commenced leave can be in no better position.
> The importance of a timely notice in the context of school district reorganization is that if the notice is delayed, the effective date can be delayed six months, regardless of the length of the leave. Collective agreement "A" provides that a sixty calendar day notice is to be effective "at the end of a school term." Collective agreement "B" provides for a thirty day notice "effective for a December 31st or a June 30th termination." This reflects the pattern of work reorganization built around the school year and teaching assignments for terms of the school year depending on the grade levels - Kindergarten to Grade 12 - and the educational programs for those grades.
> The mandatory school attendance year is currently from September to June. Notice of layoff and leave requests and responses are centred on a cycle of spring reorganization for fall classes, with more variables in the curriculum of the higher grades, which have mandatory and elective courses. The summer school programs are voluntary for students and teachers.
> Spring applications and requests by teachers for leaves of absence for the following school year are for leave from whatever assignment the teacher might have following school and district reorganization and the vacancy post and fill process. The request, application or entitlement to a leave does not guarantee an assignment from which the teacher can take the leave or insulate the teacher from participation in the reorganization process. A teacher can be entitled to a leave at a future date, then receive a layoff notice and be laid off and placed on the recall list before the leave commences. (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 54 - 57)

[70] In answering in the negative to the second question, with an exception for certain leaves, I also relied, in part, on the union and employer agreement.

> Question 2: If an employee requests a leave after receiving a layoff notice, but before the layoff is effective, and would otherwise be entitled to the leave, is that employee insulated from layoff during the leave?

Answer: No, except in the following circumstances. In the cases of pregnancy/parental leave and long-term medical, workers' compensation and any other leave because of incapacitation, if the leave commences before the effective date of layoff then the employee is insulated from layoff for the period of the leave.

By agreement, teachers on leaves of absence can be given notice of layoff, but the notice and the effective date of the layoff is suspended for the period that the leave continues. Teachers who commence long term leaves after the date of the notice of layoff, but before the date the layoff commences, should be in no worse or better a position.

In this scenario, a proper notice has been given in a timely manner. No subsequent event can affect the validity of the notice or the time for which it runs. If the teacher is entitled to leave for either a short or long duration before the effective date of the layoff, the reason for the leave might interfere with the teacher's ability to participate in the reorganization and vacancy post and fill process. The teacher is in much the same position as the teacher who was on leave when the notice was validly given.

If the teacher is able to participate and secures a position for September, the notice will be revoked. If not, the notice does not lose its effect or become void or invalid. A few days absence on leave for illness, family responsibilities, bereavement, work related illness or injury, jury duty, court appearance, to write exams, to attend summer classes, to participate in personal or professional development activities or to serve or participate in a planned community, scientific, arts or athletic event and similar leaves does not suspend or extend the notice period.

Similarly, the validity or effect of the notice is not affected if the reason for the leave subsequent to the date of notice incapacitates or prevents the teacher from participating in the reorganization and vacancy post and fill process or the teacher is absent on the effective date of the layoff.

As in the answer to the first question, if the teacher requests the leave after receiving notice of layoff, but before the effective date of the layoff, and the leave is to commence at a date subsequent to the effective date of the layoff, the teacher is not insulated from layoff during the leave. If the teacher is recalled or applies and obtains a vacant position, the teacher can return to work and subsequently take the leave or if the circumstances for the leave exist at the time work is available, the layoff can be converted to a leave of absence.

The real issue is not the validity or continuing effect of the notice, but whether the school board can layoff the teacher when the effective date of layoff arrives at the end of June. At that date, either the teacher will have returned from the leave or will still be absent on leave. If the teacher has returned from leave, then the layoff will become effective. If the teacher is absent due to a short-term leave that occurs at the end of the notice period, the layoff will become effective.

However, if the leave, which commenced before and continues at the effective date of layoff, is a pregnancy/parental leave the teacher's status cannot be changed from being on pregnancy/parental leave to laid off. This would be a failure to give full effect to the statutory and contractual right to pregnancy and parental leave. The teacher is entitled to any benefits that accompany this leave. The layoff is suspended for the duration of the leave and will only take effect at the end of the leave.

Similarly, but for different reasons, a teacher who commences long-term medical or workers' compensation or other leave because of incapacitation before the effective date of the layoff cannot have his or her status changed to laid off. Because the teacher is unable to participate in the reorganization and vacancy post and fill process, the teacher

> remains on leave and is entitled to the benefits accompanying the leave. The layoff is suspended for the duration of the leave and will only take effect at the end of the leave. (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 548 - 565)

7. Agreed Notice to Teachers on Maternity Leave with Deferred Date (2002)

[71] The two questions submitted to arbitration in 2002 dealt with two situations:

1. Layoff notice is given to employees who have applied for leave to which they are entitled and which will commence after the layoff date. The sequence is: application for leave → entitlement → layoff notice → layoff date.
2. Layoff notice is given to employees who subsequently apply for entitled leaves. The sequence is: layoff notice → application for leave → entitlement → layoff date.

A third situation arises when employees are on leave at the time of layoff notice. This sequence is: leave → layoff notice → layoff date → return from leave date.

[72] The union and employer discussed submitting a question about whether employees on leave could or should be given notice with a deferred effective date. The employer agreed (1) layoff notice to employees on leave would not affect their benefit entitlement and (2) notice would have a deferred effective date that coincides with the expiry of the leave, but not the date of return from leave. With these conditions, the union agreed the employer could give layoff notice to employees on leave with a deferred effective date for the layoff.

[73] Because of this agreement, the third situation was not submitted to arbitration and I was informed of the agreement at the hearing on May 17th. The agreement was affirmed in communications from the union and employer to their members.

[74] BCPSEA advised school boards in its May 9, 2002 *Teacher Collective Agreement Administration Bulletin* (10 PCA2) to give employees on leave layoff notice with an effective date deferred to the expiry date of the leave. In an email to school boards on May 17th, BCPSEA reported the agreement with the union and provided an example: "For example, a board may give an employee entitled to maternity leave ending November 1 a timely layoff notice effective that date, and need not wait for the end of the school term to make the layoff."

[75] On May 22nd, the day after my decision, the union distributed an email to its local presidents reporting the decision. The email states, in part, as follows:

> It is important to recognize that BCTF and BCPSEA agreed before we ever took our questions to Dorsey that employees on any form of leave before the effective date of layoff were insulated from layoff until the end of the leave. That is, they can be given notice, but notice cannot be effective until the end of the leave.
>
> **********
>
> Where a teacher is on leave now, for whatever reason, a layoff notice can be given to that teacher but that teacher is not actually laid off until the first day of return. The teacher's layoff is suspended and takes effect the actual date of return and not at the end of the school term or after another period of notice. The provision of the C/A does not apply in terms of layoff at the end of the term in such a case. The key is that the employment status of a teacher on leave cannot be changed while they are on leave but it can change the day the leave ends.

[76] In subsequent years, the employer adhered to the agreement. In May 2003, the Vancouver Board gave layoff notice to teachers on maternity leave with the layoff date deferred to the expiry date of their leave. The employer followed the same practice in 2004 and 2005. In all three years, copies of the layoff notice letters were sent to the local union. It did not grieve. There were no layoffs from 2006 to 2009.

[77] In 2007, the union grieved an analogous situation of a teacher on maternity leave being declared surplus in September. It said the declaration contravened the collective agreement and Section 54 of the *Employment Standards Act*. The union confirmed in a December 18, 2007 letter that the grievance and a second grievance were resolved on terms stated in the letter. The two teachers would retain the continuing positions they successfully applied for in the 2007-08 spring transfer posting process. The recited terms of settlement are:

> For a school situation where it becomes necessary to transfer a teacher because of surplus staffing and the teacher with the least seniority is a teacher on maternity leave, then prior to effecting the transfer, the teacher on such leave will be informed of two options in writing.
>
> Option 1: The transfer is initiated immediately in order to allow the teacher to participate in the transfer posting process.
>
> Option 2: The teacher will remain on the staff organization with no position assigned, and the transfer is delayed until the expiration of the leave. If, at the expiration of the leave, the school situation continues to require the transfer of a teacher because of surplus staffing, then the teacher with the least seniority will be transferred. If the teacher with the least seniority is the teacher returning to duty from maternity leave, then HR will place the teacher returning to duty in a position. If no position is available, then the Teacher returning to duty will be assigned as a **permanent** Employee on Call until a placement is available.

[78] On June 5, 2008, the union wrote the employer, in part, as follows:

> We have agreement that this resolve does not apply to employees who are on Parenthood leave.
> However, it does apply to employees on Parental leave as per the Employment Standards Act and the Collective Agreement Article 10.Y. The provisions of Article 10.S are inclusive of the 52 weeks allowed by the Employment Standards Act in relation to pregnancy, maternity, and parental leave.

The employer replied there was agreement the resolution applied to the 52 weeks covered by Articles 10.S and 10.Y and *Employment Standards Act* Pregnancy and Parental leaves. That settlement is now Article G.18.i of the collective agreement.

8. *Employment Standards Act* – s. 54

A. Union and Employer Submissions

[79] The union submits a layoff notice with the effective date suspended to the end of the maternity leave does have some immediate effect to change teachers' status, results in a posting of their assignments and denies them a working notice period. This is not insulation from layoff and denies teachers opportunities, while at work, to search for an assignment. Teachers on maternity leave might be incapacitated and unable to participate in the spring or subsequent transfer posting process.

[80] The union submits discrimination on the basis of pregnancy leave is discrimination on the basis of sex. Discrimination on the basis of parental leave is discrimination because of family status. (*Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219; *British Columbia Public School Employers' Association (Bernier Grievance)* [1999] B.C.C.A.A.A. No. 183 (Munroe) review application dismissed *Surrey School District No. 36* [2000] B.C.L.R.B.D. No. 367)

[81] The union submits its 2002 agreement with the employer purports to waive the benefit of legislation, which cannot be waived. (*Ontario (Human Rights Commission) v. Etobicoke (Borough)*, [1982] 1 S.C.R. 202, pp. 8 - 9) The agreement ignored the human rights of teachers on maternity leave and their rights under the *Employment Standards Act*. Therefore, the agreement with the employer was legally impermissible and cannot be enforced.

[82] The union submits the notice period is an important element of the layoff process because it provides time to search for employment. The courts have found the notice

period should not coincide with maternity leave. After an employee had begun maternity leave in 1987, the employer terminated her employment and refused to pay her in lieu of common law notice because she was not available for work. The British Columbia Supreme Court held the employer could not say it gave early notice and refuse to compensate the employee for termination of her employment contract because she was not available for work. The effective time for notice was when she returned from leave. (*Aimola v. Cooper Market Ltd.,* [1989] B.C.J. No. 1419)

[83] Similarly, in 1998 the British Columbia Supreme Court invoked the policy underlying maternity leave to hold the leave period did not coincide with the required period of reasonable notice of termination of the employment contract.

> The policy basis underlying maternity leave – protecting pregnant women against penalties with respect to their job tenure and other terms of their employment by reason of pregnancy and childbirth – would be defeated if an employer could terminate a pregnant employee at the commencement of her maternity leave so that her period of notice was spent during that leave. (*Whelehan v. Laidlaw Environment Services Ltd.*, [1998] B.C.J. No. 847, ¶ 19; 55 B.C.L.R (3d) 129)

In that case, the employee was given notice when she was seven months pregnant. It was "of no practical assistance" and not included in the applicable eight months' notice period for termination of employment. The policy of s.56 of the *Employment Standards Act* is to confer job security, but no financial benefit on the employee by deeming service while on leave to be continuous service for certain purposes. (See also *Wells v. Patina Salons Ltd.*, [2003] B.C.J. No. 2615; and *Kyluik v. Cardiac Wellness Institution of Calgary Inc.*, [2005] A.J. No. 189 (notice while on maternity leave of intention to terminate employment on return from leave was, in effect, termination contrary to the Alberta *Employment Standards Code*))

[84] The union submits the rationale for insulating employees on maternity and parental leave was stated in arbitration decisions referred to in my 2002 decision and summarized as follows:

> The union relied on the decision in *Ontario Blue Cross* [1994] O.E.S.A.D. No. 203 (Office of Adjudication, Ministry of Labour, David A. Muir). Adjudicator Muir had concluded that:
>
> > … a purposive approach to the pregnancy leave provisions of the Employment Standards Act clearly requires that once an employee has reached the stage where she is entitled to go on pregnancy leave, she is absolutely protected from having her employment dealt with in any other way than by granting that leave; she simply may not be terminated or laid off and any rights which the employer may have in respect of terminating her employment must wait until she returns to work ….

> The union also relied on a 1998 grievance arbitration award involving the City of Toronto and another union under a collective agreement with similar language. A majority of that arbitration board held that the employer contravened the collective agreement when it laid off an employee on pregnancy/parental leave and, as a consequence, deprived the employee of benefit coverage and wage top-up. (*City of Toronto* (1998), 73 LAC (4th) 232 (Howe))
>
> The majority of the arbitration board in 1999 agreed with the union. It observed that:
>
> > The weight of arbitral authority in Ontario favours the union's position that an employer cannot lay-off an employee who is already absent from work by reason of pregnancy/parental leave, medical leave, workers' compensation etc. (p. 332)
> >
> > *****
> >
> > In Ontario, the weight of arbitral jurisprudence indicates that, in the absence of language in the collective agreement which expressly permits otherwise, an employer cannot lay-off an employee on leave. In the case of employees absent from the workplace because of pregnancy/parental leave, the employer cannot lay-off the employee until the expiration of her pregnancy/parental leave. In the case of an employee on medical leave, or workers' compensation, the employer cannot lay-off the employee until the employee is fit and able to return to work. (p. 333)
>
> It is a corollary that an employee on leave cannot be required to exercise seniority rights until the termination of the leave. The employer was ordered to compensate the employee for loss of benefit coverage and wage top-up. (*British Columbia Public School Employers' Association* [2002] B.C.C.A.A.A. No. 149 (Dorsey), ¶ 39 - 40)

[85] The union submits employees on maternity or paternity leave cannot look for work, therefore: "There is a good arguable rationale for an approach that preserves the employment status of those on leave due to sickness, injury or maternity/parental leave, when the employment status of other employees without work is not preserved." (*Brewers Distributor Ltd.* [2004] B.C.C.A.A.A. No. 133 (Pekeles), ¶ 16; 128 L.A.C. (4th) 134) As a consequence, a casual employee on maternity leave, who did not have any hours of work for the period after which a casual employee lost seniority, did not lose her seniority during her maternity leave and could not have her employment terminated because she did not work during the period.

[86] Similarly, in the case of a fixed term employee in Alberta where the *Employment Standards Code* prohibits an employer from terminating the employment of an employee or laying off an employee who has started maternity or parental leave or is entitled to parental leave, the employer could not terminate the employment of the employee after she took maternity leave at the end of the fixed term employment contract. When the employer did, the employee had lost the benefit of the employer's Maternity SUB plan. Arbitrator Ponak found the employer had terminated her

employment contrary to the *Employment Standards Code*. (*Glenbow-Alberta Institute* [2008] B.C.C.A.A.A. No. 12 (Ponak); 170 L.A.C. (4th) 288)

[87] The union submits the *Employment Standards Act* excludes a period on leave from the required period for notice of termination of employment in Part 8. (s. 67(1)(a)) Although section 63 does not apply to a teacher employed by a board of education (ss. 67(3)(a) and (a.1)) , the protections of section 67(1)(a) do apply to group termination under section 64. Therefore, teachers on maternity leave must be exempted from any group termination notice under Part 8.

[88] The union submits failing to give teachers on maternity leave thirty days' working notice of layoff is contrary to Part 6 of the *Employment Standards Act*. Their conditions of employment are being changed without their written consent while they are on maternity leave.

[89] The employer submits "a deal is a deal." The 2002 agreement should be enforced and the union prevented from resiling from its agreement and, indirectly, seeking to reverse the 2002 arbitration decision. (*British Columbia Ferry Corporation* [1980] B.C.L.R.B.D. No. 7)

> The evidence before you is that the Employer provided all teachers below the layoff cut-off line with layoff notices and advised those who were on leaves that their layoff would not take effect on June 30 but would become effective when they returned from their leave. Employees on leave therefore remained on leave and were not changed to "laid off" status at June 30th. They retained all of their contractual benefits associated with their particular leave such as SUB Plan top up and health and welfare benefits. They were given the opportunity to apply for positions so as to rescind their layoff notice prior to their return to work. Alternatively, they could choose to apply for positions from the recall list which were available when they returned to work at the end of their leave.
>
> The evidence is that the Employer has followed this practice since your May 2002 award without any challenge from the Union or individual employees until this grievance in May 2010. (*Argument of the Employer*, April 18, 2011, ¶ 54 - 56)

In addition, in 2010, there were no teachers on the recall list. All teachers given layoff notice had the added benefit of being placed in Category D, although they had not been laid off, and an opportunity for selection for a posted vacancy to which they applied without an interview. If a teacher on maternity leave was not given notice, she would have been denied these benefits. Could she claim she was being discriminated against?

[90] The employer submits the Committee obviously discussed the circumstances of teachers on leave in April 2010. The Committee, union and employer specifically agreed teachers on leave, because they were not in schools to see posted vacancies, would receive paper copies of postings at their homes in addition to being able to access postings online.

[91] There was no change in status or benefits for teachers on maternity leave at the time notice was given or on July 1st, as happened to other teachers who did not secure a position in the spring transfer posting process. Teachers on maternity leave continued to be employees entitled to be on leave, to receive benefits, to accumulate seniority and to compete for vacancy postings. They were given, rather than denied, the opportunity to have their layoff notice rescinded. Several took advantage of the opportunity and had their layoff notice rescinded. Alternatively, they could wait until there return from leave and be placed on the recall list.

> The Employer's position is that nothing in the *Act* [*Employment Standards Act*] prevents the Employer from providing layoff notices to teachers who are on leave and making their layoff effective upon the expiry of their leave. Nothing in the *Act* prevents the Employer from giving those teachers the opportunity to rescind their layoff notice by applying for positions as a "D" prior to the effective date of layoff and nothing in the *Act* prohibits the layoff notice from running during maternity or parental leave. (*Argument of the Employer*, April 18, 2011, ¶ 92)

[92] The employer submits section 54(1) of the *Employment Standards Act* is not at issue and sections 54(2) and 67 are not applicable. Nothing has been done by the employer because an employee took or was on maternity leave. Layoff is a function of seniority not leave. "All teachers who are subject to layoff lose the right to their teaching assignment for the following year and must apply to either rescind their layoff or after they are laid off apply for recall. There is therefore no basis for a finding that the Employer has violated section 54(2) of the *Act*." (*Argument of the Employer*, April 18, 2011, ¶ 101)

[93] The employer submits a teacher returning from maternity leave may be subject to layoff "if the employer's operation has undergone significant changes unrelated to the employee's pregnancy." (*Argument of the Employer*, April 18, 2011, ¶ 103) This is the interpretation of sections 54(3) and (4) by the Employment Standards Tribunal and the British Columbia Supreme Court. (*Koren v. White Spot Ltd.* [1988] B.C.J. No. 1155)

> As a result, section 54(3) is of no assistance to the Union in this case. According to the cases, it does not prevent the Employer from giving layoff notices to teachers on pregnancy or parental leave and treating those teachers as laid off at the expiry of their leave. As stated by the Tribunal in *Flint, supra*, if this were the case, then employees on pregnancy and parental leave would be in a better position than those who are not on leave. Far from being used as a protective provision, the Union is attempting to use this provision contrary to how it has been interpreted and applied and for the purpose of giving an advantage to those on pregnancy or parental leave over other teachers who are either on other types of leaves or who are not on leave.
>
> This interpretation of section 54(3) is also consistent with section 54(4) of the Act. That section makes it clear that the legislature did not intend employees on leaves to obtain any advantage in a layoff situation over those employees not on leave. Instead, those employees are subject to reductions in the employer's business and a return to their former position or a comparable position is subject to seniority provisions in a collective agreement. (*Argument of the Employer*, April 18, 2011, ¶ 110 - 111)
>
> *********
>
> Nothing in section 54 prohibits the Employer from doing the three things the Union says are contrary to the Act.
>
> a. Nothing in section 54 prevents the Employer from treating teachers on pregnancy or parental leave who are subject to layoff as category "D" for the purpose of the Spring Transfer Process, Summer Posting Period or weekly posting periods so they can rescind their layoff notices. This is not a change in a condition of employment "because" of pregnancy and therefore section 54(2) has no application. Section 54(3) also has no application because it only relates to restrictions once the leave ends.
> b. Nothing in section 54 prevents the Employer from planning its staffing process in the spring to take into account that teachers on pregnancy or parental leave will be laid off the day their leave expires and therefore will not have the right to a continuing contract unless their layoff is rescinded.
> c. Nothing in section 54 prevents the Employer [or] speaks to when and how layoff notice can be given.
>
> In the result, there is nothing in s. 54 of the Act which requires the Employer to do anything different than it is currently doing, anything different than was agreed to in 2002 and anything different than is set out in your May 2002 award. (¶ 114 - 115)

[94] The employer submits all the facts of a situation will direct whether the touchstone for determining respective employer and employee rights are the minimum protections for unpaid maternity leave of the *Employment Standards Act* or more generous contractual or employer policy rights as in *Wilson v. UBS Securities Canada Inc.*, 2005 BCSC 563. Here the entire context must be considered.

B. Discussion, Analysis and Decision

[95] The termination notice provisions of Part 8 of the *Employment Standards Act* do not apply in this situation. Section 67 is not applicable to the notice of layoff given in May 2010, regardless of the type of leave on which a teacher might have been absent

from work. There was no layoff in excess of recall rights under the collective agreement and the notices were not individual or group termination notices.

[96] There is no minimum layoff notice requirement under the *Employment Standards Act* and no prescription when, how or to whom layoff notice is to be given. Section 54(3) deals with employer duties at the end of the leave not any notice prior or during the leave.

[97] The judicial decisions about the effect of maternity leave on an employer's obligation to give reasonable notice in lieu of compensation for termination of an employment contract are not helpful or applicable to the employer's rights and responsibilities under this collective agreement. The continuing employment of the employees in those civil suits was terminated. They did not have an ongoing employment relationship with a continuing contract status, security of job tenure for at least twenty-eight months, recall rights, opportunities to compete and exercise their seniority to obtain teaching assignments or continuity of medical, pension and other benefits.

[98] The employer's May 2010 layoff notices were given under the collective agreement not the *Employment Standards Act*.

[99] The layoff notices were given in accordance with Article C.23.5.b of the collective agreement. Each employee, including those on maternity leave, were given notice longer than "a minimum of thirty (30) days' notice, such notice to be effective at the end of a school term, and to contain the reason for the layoff."

[100] The effective layoff dates for teachers on maternity leave were later than for other teachers given notice regardless of the seniority of the teachers on maternity leave and regardless whether they took any steps to have the notice rescinded by successfully applying for an assignment in the spring, summer or fall transfer posting process.

[101] This benefit of having the effective date of the layoff suspended to the end of the leave with the accompanying continuing accrual of seniority and insulation from the effects of layoff after the end of term was a benefit for these teachers agreed in 2002 by the union and employer to improve the provisions of the *Employment Standards Act* to

protect birth mothers and provide support to parents and their children in keeping with the spirit of Article G.18 of the collective agreement.

[102] I find the layoff notices to teacher on maternity leave were not contrary to the *Employment Standards Act* or the collective agreement and were consistent with the agreement between the union and employer. That agreement is not contrary to the *Employment Standards Act* and is an enhancement of teachers' maternity leave rights in the collective agreement.

[103] The grievance that the May 2010 layoff notices to teachers on maternity leave were contrary to the *Employment Standards Act* is dismissed.

9. Discrimination – Article E.20.2.a and *Human Rights Code (s. 13(1))*

[104] Article E.20.2.a of the collective agreement states:

> No employee shall be discriminated against (direct discrimination or adverse effect discrimination) on the basis of race, colour, ancestry, place of origin, religion, gender, sex (including gender identity), sexual orientation, age, marital status, disability or family status. Where there exists a bona fide occupational requirement it shall not be considered discrimination.

A. Union and Employer Submissions

[105] The union submits teachers on maternity/pregnancy or parental/parenthood leave given layoff notice while on leave, all of whom are women, are members of a protected group who experienced some adverse treatment or effect and it is reasonable to infer that the protected ground of sex and family status was a factor in their adverse treatment or effect.

> The affected employees experienced adverse treatment in that they were denied a notice period provided to other employees. These employees were denied a benefit that is available to all other employees.
>
> In *Brooks*, the Supreme Court of Canada clarified that intent to discriminate is not a necessary element of discrimination. Although it may not have been the employer's intention to discriminate against women who gave birth to children while employees in the district, the union submits that the lack of an intention to discriminate is irrelevant to this arbitration board's consideration of this case.
>
> The employer will likely argue that there was no adverse treatment of these employees as, in the employer's view, the employees received a notice period that ran during their leave. The union submits that these employees did not get a notice period, they were absent from work because of their leave and they were not in a position to search for or secure alternative employment. The union submits that they were denied a notice period. (*Union's Outline of Argument*, April 18, 2011, ¶101 - 103)

[106] The union submits it is reasonable to infer the protected ground was a factor in their adverse treatment from the fact that the period of layoff notice was congruent with their leave.

> If it is the board's position that it is not necessary to provide a notice period to employees on maternity and parental leave because their notice period can run congruently with their leave, this establishes that the protected ground was a factor in the adverse treatment of these parents. The union submits that the board cannot say both that (a) the reason the board does not provide them with a notice period is because they are on parental leave (or in other words the reason is because they are mothers/parents); and (b) the fact that they were mothers/parents was not a factor in the adverse treatment.
> In effect, the employer is arguing that because these women were on parental leave, they are not entitled to the same notice provisions afforded to other employees in conformity with the collective agreement. (*Union's Outline of Argument*, April 18, 2011, ¶105 - 106)

[107] Therefore, the union submits it has established a *prima facie* case of discrimination contrary to the collective agreement and *Human Rights Code*. There is no justification that the employer can offer.

[108] The union acknowledges some teachers on maternity leave receiving layoff notice on their return would receive a slightly longer notice period than other teachers whose notice period was two months - May 3 to June 30, 2010. For example, teacher MC, who began her maternity leave March 15, 2010, would return to work and, if appropriate, be given notice on March 15 to June 30, 2011.

[109] However, denying teachers on maternity leave any working notice cannot be rationally connected to a workplace purpose. No matter whether the employer had an honest and good faith belief that there was a connection, giving notice to teachers while on maternity leave was not necessary to fulfill any work related purpose. Finally,

> The union submits that the denial of statutory protections that are afforded to employees facing layoff is not reasonably necessary for the board to ensure that these teachers do not obtain a windfall extended notice period. Although, in accordance with the Collective Agreement, and depending upon their date of return, teachers who were on leave may receive a slightly longer notice period, such notice cannot be denied to them so that they receive no notice period. (*Union's Outline of Argument*, April 18, 2011, ¶114)

[110] The employer submits teachers on maternity/pregnancy and parental/parenthood leave were not laid off during their leave. The layoff notice was not effective until the expiry of the leave. They had the opportunity to compete for vacancies as Category D recall list teachers and to have their notice rescinded. This was not a change in their

leave status. There is no layoff until a loss of work actually happens. (*Mission School District No. 75* [2004] B.C.C.A.A.A. No. 285 (Burke))

[111] The teachers were not discriminated against because of their sex or family status and the *Human Rights Code* does not guarantee anyone working notice of layoff. No burden, obligation or disadvantage was imposed on teachers on maternity leave that was not imposed on any teacher below the seniority cut-off line for layoff. No adverse treatment was given to these teachers because of their sex or family status or because they took maternity leave. They were given notice because of their low seniority ranking among all the teachers. This is the context in which they received notice. (*Hall v. British Columbia (Ministry of Environment)*, 2009 BCHRT 389, ¶ 81)

> In fact, teachers on pregnancy or parental leave had additional rights which those not on leave did not:
>
> a. They retained their continuing contract status into the following school year until their leave had expired.
> b. They retained certain health and welfare benefits during their leave.
> c. They received SUB plan benefits.
> d. They accrued seniority while those on layoff did not.
> e. They gain the benefit of a much later layoff date for the purpose of calculating recall rights.
> f. They could apply for positions in an attempt to rescind their layoff notice any time up until their return from leave. This meant they had a much longer period of time in which to accomplish this. Whereas there were 249 continuing postings in the Spring Transfer Process, there were another 113 continuing positions posted in the Summer Posting Period and weekly posting periods from September to March.
> g. They were provided with hard copies of postings at their home.
>
> The Union's position that teachers on pregnancy or parental leave should not have to exercise their seniority rights during the leaves is not evidence of adverse treatment. Whether a teacher is working full time or is at home full time, they must carve out some of their spare time to apply for positions if they wish to do so. Teachers on leave are in no worse a position than those who are working. In fact, arguably, a teacher on leave has more spare time to look at and apply for postings than a teacher not on leave, particularly if that working teacher also has children at home or is caring for aging family members. Being on leave during the layoff notice does not result in a disadvantage or adverse treatment.
>
> You have evidence before you that teachers applying for positions in the Spring Transfer Process, Summer Posting Period and weekly posting periods as a "D" are not required to personally attend at the Employer's offices or locations. They can review postings on line, apply on applications available on line and have those applications dropped off by anyone at various locations. Teachers applying as a "D" are not entitled to a job interview and so they are not required to attend for an interview. The entire process can easily be accomplished without leaving one's home. It is therefore difficult to imagine how this places any additional burden on teachers who are on pregnancy or parental leave. In addition, a teacher can choose not to apply for positions during her leave and wait until the expiry of the leave.

> In the Employer's submission, the Union cannot point to anything in this case which establishes that teachers on pregnancy or parental leave experience adverse treatment which is connected to either sex (pregnancy) or family status. (*Argument of the Employer*, April 18, 2011, ¶ 158 - 161)

[112] The employer submitted for reasons not summarized here that if any adverse treatment was found "it has reasonably accommodated teachers on pregnancy or parental leave and has met the *bona fide* occupational requirement test." (¶ 162) The union seeks an additional benefit, namely super-seniority, by enabling some teachers to work in a school year in which their seniority does not entitle them to work and to be protected from layoff longer than their leaves. This is an improper attempt to use protective legislation to obtain superior rights. (*Wolverine Tube (Canada) Inc.* [1991] B.C.C.A.A.A. No. 509 (Munroe); 22 L.A.C. (4th) 62; *Boliden Westmin Resources Ltd. – Gibraltar Mine* [2000] B.C.C.A.A.A. No. 91 (Germaine); 87 L.A.C. (4th) 321; application for review dismissed [2000] B.C.L.R.B.D. No. 456; *Gibraltar Mines Ltd.* [2001] B.C.C.A.A. No. 291 (Dorsey))

> The Employer submits that what the Union seeks in this case is not protection from discrimination, but superior seniority for those on pregnancy or parental leave. It wants to have teachers who are subject to layoff, but who happen to be on pregnancy or parental leave to obtain work in the following school year through its claim that they are entitled to "working notice". Working notice is not guaranteed by the collective agreement and it is not necessary to provide "working notice" to these teachers in order to put them on an equal footing with other teachers. Furthermore, any work those teachers perform in the following school year would [be] performed at the expense of more senior teachers who would then be denied a work opportunity for the following school year as a result.
>
> The purpose of human rights legislation is to protect from discrimination, not give employees in a protected group an advantage over other employees. (*Argument of the Employer*, April 18, 2011, ¶ 179 - 180)

[113] The employer submits the resulting violation of the seniority rights of other teachers would be an undue hardship. (*North Vancouver (City)* [2001] B.C.C.A.A.A. No. 307 (Burke); 101 L.A.C. (4th) 229; *Lof Glass of Canada Ltd.* [1999] OLAA No. 432; *Colonial Cookies* (1999), 82 L.A.C. (4th) 101 (Rayner); *Bayer Rubber* (1997), 65 L.A.C. (4th) 261 (Watters))

> The Employer says in this case, allowing the Union's grievance would have the clear effect of violating the seniority rights of other employees or alternatively requiring the Employer to hire back continuing teachers it does not have assignments for. Both of these alternatives result in undue hardship and cannot be required.
>
> There is another seniority issue which must also be addressed. The Union says that the Employer should wait for the teacher to return from leave, and then determine if they should be laid off. The difficulty with this position is that it would give teachers on leave an

> unfair advantage over those who were not. The seniority date for the purposes of layoff is identified at the time the layoff notices are given in the spring of the previous school year. If a teacher returning from pregnancy and parental leave were entitled to use the seniority accumulated during their leave for the purpose of determining whether they are over or under the layoff cut off line, then that teacher would have an unfair advantage over all other teachers not on leave at the time the layoff was determined. (*Argument of the Employer*, April 18, 2011, ¶ 193 - 194)

[114] Finally, the employer submits the union's position results in undue hardship for students by necessitating successive teachers in the same class and creates systemic discrimination against men and older teachers who do not take pregnancy or parental leave due to their gender and age.

B. Discussion, Analysis and Decision

[115] The seniority principle in the collective agreement is that "seniority of service in the employment of the Board entitles employees to a commensurate increase in security of employment." (Article C.23.2.a) The workplace context is annual reorganization of schools and district programs out of which continuing contract teachers have security in their assignment for the following school year or term. It is within this context that the employer must retain those employees "with the greatest seniority, provided that they possess the necessary qualifications" when the employer "is required to effect a reduction in the total number of employees employed by the Board." (Article C.23.5.a)

[116] Because of the cycle of annual enrolment projection, annual funding and annual reorganization of schools and district programs, the reduction becomes effective at the end of a school year or term. Because layoff notice in this context is an integral part of the annual reorganization, it is given to potentially affected employees regardless whether they are at work or on leave. For this reason, there is no entitlement to working notice of layoff in the collective agreement. The layoff, severance and recall article "applies to all employees on continuing contract as provided under the School Act including those on authorized leaves and those otherwise specified." (Article C.23.2.b) The notice is not that each teacher will be laid off. It is an alert to all potentially affected teachers to exercise their seniority and qualifications in the spring transfer posting process to secure a position for the following school year or term.

[117] Teachers are not given working layoff notice and sent home during the school year with a right to exercise seniority to bump other teachers. A reduction in the total number of employees employed by the Board is achieved year-over-year through reorganization of work assignments at the end of a school year or term for the next school year or term. In this way, the specific assignments and locations of reductions across the schools and district are identified. Seniority is exercised with qualifications in the reorganization process.

[118] To enable teachers to exercise their seniority, they are given early notice that they might be affected. Closer to the date of reorganization they are given layoff notice and told they should participate in the transfer posting process. Consistent with this context, the collective agreement recognizes the reorganization "may necessitate the transfer of employees" including those on authorized leave. (Article C.23.5.c)

[119] In this workplace context, the reduction in the total number of employees employed by the employer is the suspension or discontinuance of operations under section 54(4) of the *Employment Standards Act*. As in all workplaces, the placement of a teacher returning from pregnancy or parental leave into the position she had before leave or a comparable position can be delayed, in the circumstance of a suspension or discontinuance of employer operations, because placement is subject to the seniority provisions of the collective agreement. (s. 54(3))

[120] In some workplace contexts, there can be a resumption of suspended or discontinued operations at any time during the calendar year. In public education, the suspension or discontinuance of operations will continue throughout the school year or term and the placement delay for teachers returning from leave is for that period of time. The placement is also subject to the seniority provisions of the collective agreement which are exercised when the suspension or discontinuance is planned and organized for implementation through the spring, summer and weekly transfer posting process.

[121] As is evident in the Appendix, teachers on maternity leave exercised their seniority and qualifications and avoided the delay in placement in the same or a comparable position. Teacher MC had her layoff notice rescinded by June 3rd and might still be on leave from the work assignment she secured starting September 1, 2010. There will be an individual story for each of the sixteen.

[122] None of these teachers on maternity leave was discriminated against because of their sex or family status. Any change in their assignment or the FTE of their assignment or the delay in placing them in the assignment or a comparable one to the one they had before their leave is a consequence of a suspension or discontinuance of operations flowing from the reduction in the total number of teachers required in the current school year compared to the previous school year and the operation of the seniority provisions of the collective agreement.

[123] Employer respect for all teachers' seniority rights, application of the provisions of the collective agreement and the agreement the employer made with the union in 2002 and the employer's duties under section 54 of the *Employment Standards Act* are the reasons the employer gave layoff notice with suspended effect to teachers on maternity leave. This is not discrimination in contravention of Article E.20.2.a or section 13(1) of the *Human Rights Code*. The adverse effect some teachers on maternity leave suffered was a consequence of the staffing reduction and their individual seniority and qualifications. The grievance is dismissed.

APRIL 30, 2011, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey

Appendix: Status of 20 teachers given layoff notice while on maternity leave

Category	Teacher	Leave Requested	Leave Starts	One year	FTE	Offer Date	Start Date	FTE	FTE Difference	Layoff Status
D	MC	2010-01-18	2010-03-15	2011-03-15	1.0000	2010-06-03	2010-09-01	1.0000		rescinded
D	RA	2010-05-04	2010-05-17	2011-05-17	0.7800	2010-06-11	2010-09-01	0.7800		rescinded
E	HA	2009-04-01	2009-05-18	2010-05-18	0.6200	2010-06-04	2010-09-01	0.9901	0.3701	rescinded
E	LR	2009-05-07	2009-06-15	2010-06-15	0.5210	2010-06-03	2010-09-01	0.4921	-0.0289	rescinded
E	IC	2009-05-27	2009-09-01	2010-09-01	0.7575	2010-06-10	2010-09-01	0.3594	-0.3981	rescinded
E	KM	2009-05-14	2009-09-01	2010-09-01	0.8391	2010-09-07	2010-09-01	0.3681	-0.4710	partial recall
E	HF	2009-05-07	2009-09-11	2010-09-11	0.5100	2010-06-03	2010-09-01	0.3918	-0.1182	rescinded
E	LL	2009-09-01	2009-10-05	2010-10-05	1.0000	2010-06-07	2010-09-01	0.5641	-0.4359	rescinded
E	SL	2010-02-01	2010-03-01	2011-03-01	1.0000	2010-05-27	2010-09-01	0.9696	-0.0304	rescinded
S	CC	2009-05-08	2009-06-15	2010-06-15	0.4286	2010-06-23	2010-09-01	0.7143	0.2857	rescinded
S	KH	2009-11-23	2009-12-21	2010-12-21	1.0000	2010-06-11	2010-09-01	1.0000		rescinded
S	ET	2009-07-15	2009-09-01	2010-09-01	0.8571		2010-11-01	0.8571		on recall
E	AC	2009-10-20	2009-12-03	2010-12-03	1.0000	2010-12-13	2011-01-01	0.6000	-0.4000	on recall
E	EN	2009-11-03	2010-01-04	2011-01-04	0.9300	2011-03-01	2011-03-09	0.2143	-0.7157	partial recall
D	AM	2010-01-11	2010-03-15	2011-03-15	0.5000		2011-03-15	0.4000	-0.1000	on recall
E	TP	2009-04-28	2009-09-01	2010-09-01	0.5714					layoff cancelled
E	MF	2009-10-21	2009-11-16	2010-11-16	0.3574					parental leave to 2011-12-31
E	MK	2010-04-19	2010-06-14	2011-06-14	1.0000					parental leave to 2011-06-12
E	ED	2010-03-25	2010-06-21	2011-06-21	0.6338					parental leave to 2011-06-11
E	AH	2010-04-16	2010-06-21	2011-06-21	0.7897					parental leave to 2011-06-30