



Redundancy, Reassignment and Layoff

Introduction

The Provincial Collective Agreement (PCA) and the Labrador West Collective Agreement (LWCA) both contain provisions to deal with redundancy, reassignment and layoff of teachers. The articles in both agreements are quite similar; however, there are unique aspects applicable in Labrador West. This Infosheet is designed to provide comment on the provisions contained within the Provincial Agreement and should therefore be examined in that context.

Article 9 in the Provincial Agreement (Article 47 in the Labrador West Agreement) has developed over time as a result of intense collective bargaining, experience and precedent. In the event of redundant teaching positions, a method of staff reassignment based upon seniority, subject to teacher capability is utilized. Since Article 9 (Article 47) may be subject to more than one interpretation, the reader should recognize that this document will serve to review the provisions according to the understanding and interpretations of the Newfoundland and Labrador Teachers' Association.

Seniority

9.01(a) *“Seniority” herein shall be determined on the basis of the total length of time employed as a teacher in Newfoundland and Labrador both before and after the signing date of this agreement.*

(b) If the length of teaching experience defined in (a) is equal, the teacher to be declared surplus shall be determined by the School Board.

(c) Employment as a teacher referred to in (a) means periods of employment with all School Boards in the Province, schools operated by the Department of Education, schools in Churchill Falls and schools in Conne River.

(d) During a legal work stoppage, no teacher covered by this agreement shall accumulate seniority.

(e) In determining the relative seniority of teachers for the purpose of reassignment and layoff, calculation of seniority shall be done as at May 7 in the school year at the end of which reassignment and/or layoff is to be effective.

Redundancy, Reassignment and Layoff

Clause 9.02 outlines the procedure to be followed if it is determined by a school board that a teaching position or positions within a school have become redundant. The clause itself reads as follows:

“Where it is determined by the School Board that a teaching position within a school has become redundant, the senior teachers of that school shall be reassigned to the remaining positions within the school which they are capable of fulfilling. Subject to the requirement of capability, the teachers to be retained at the school shall be given priority, based on seniority in the following sequence: (a) tenured teachers; (b) teachers on a one-year probationary contract; (c) teachers on a two-year probationary contract; and (d) teachers on probationary contracts in accordance with Clause 7.05.”

Steps in the process are as follows:

1. The school board has the responsibility to define programs within the district and to assign teachers to each school to ensure that appropriate programs can be implemented. If, in making this determination, the school board is faced with the reality of having fewer teachers in a given school one year than it had in the preceding year or if programs cannot be delivered within existing staff capability, the school board must determine redundancies and provide for reassignment or layoff of personnel.
2. The school board must prepare seniority lists based on four groupings. These would include:
 - (a) tenured teachers;
 - (b) teachers on a one-year probationary contract;
 - (c) teachers on a two-year probationary contract; and
 - (d) teachers on probationary contracts in accordance with Clause 7.05.
3. The teacher or teachers on staff with the least seniority will be declared redundant and be reassigned to another school unless the junior teacher(s) is occupying a position which cannot be filled by other more senior teacher(s) on staff. Clause 9.02 provides that the school board must “reassign senior teachers of that school to

remaining positions within the school which they are capable of fulfilling”. There is, then, a responsibility on the school board to reassign all the teachers in the school if necessary, to ensure, as far as possible, that the most senior teachers are retained in that school. Article 9 does not deal with degrees of capability. The school board determines whether the senior teachers are capable, not whether they are the most capable of fulfilling the remaining positions.

If a teacher is declared redundant, Clause 9.03 (a) states: *“A teacher, who is not reassigned in accordance with Clause 9.02, shall have priority, based upon seniority, subject to capability to perform the job function required, to vacant teaching positions and teaching positions held by junior teachers, in the following order of priority: (i) within the community; (ii) within the nearest community, within the school district, where such a position exists; 9.03 (b) states: “In determining which teachers are junior under Clauses 9.03 (a), the sequence of seniority referenced in Clause 9.02 (a) - (d), shall apply.”*

The procedure to be followed in compliance with Clause 9.03 is as follows:

1. The school board must complete its responsibility under Clause 9.02 for all schools in its district before proceeding to 9.03. Once it has completed Clause 9.02, it will then produce a seniority list of those teachers who have been declared redundant in their schools in the same sequence as that contained in Clause 9.02. A seniority list of redundant teachers from the school must be compiled by the school board.

2. The clause then states that the senior teacher on this “redundancy list” shall have priority, subject to capability to perform the job function required, to vacant teaching positions and teaching positions held by junior teachers in the order of priority as outlined in this clause.

3. The reassignment of these teachers by the school board is to be in the following order of priority: (i) within the community; (ii) within the nearest community, within the school district; where such a position exists.

The school board then must reassign the redundant teachers in order of seniority to vacant positions or teaching positions held by junior teachers. A teacher declared redundant in a school does not get to select a position that he/she wants; rather, the redundant teacher must be reassigned by the school board in accordance with the collective agreement.

The Association and the employer agree that a teacher cannot be reassigned to an isolated community, as defined in Article 24 unless the teacher is already assigned to a school in an isolated community.

Redundant teachers on the island portion of the province will not be reassigned to Labrador until all vacant position held by junior teachers on the island have been

considered. The reverse will apply for teachers in Labrador.

4. When the teacher who has been declared redundant in his/her school has been reassigned in accordance with Clause 9.03, a teacher who may be subsequently displaced as a result of this procedure is to be added to the seniority list of displaced teachers and the procedure continued.

Clause 9.03(c) states “notwithstanding Clause 9.09, any teacher *who refuses reassignment in accordance with Clause 9.03(a) in any particular year shall not be entitled to further consideration for reassignment in that year.*” This means that from the point of redundancy notice (before May 7), until the end of the school year (June), a teacher who has refused a 9.03 (a) reassignment will not receive any further offers of reassignment until after the school year ends. The teacher is able to apply for transfers under 6.11(a) and compete with other teachers. Once the school year is over, the redundant teacher who has refused reassignment is entitled to protection under 9.09 and 9.10, which requires the board to make every effort to recall those teachers in layoff prior to advertising vacant positions.

Clause 9.04 states: *“With respect to Clauses 9.02 and 9.03, in determining capability to fulfil the requirements of the job function, the School Board shall consider the overall ability of the teacher to perform the functions of the position in accordance with the currently modern standards required for the position.”*

The only restriction, then, to be considered when determining capability is that as outlined in Clause 9.04; that is, the board must consider the overall ability of the teacher to perform the function of the position in accordance with the currently modern standards required for that position.

Clause 9.05 states: *“The reassignment contemplated by Clauses 9.02 and 9.03 shall be to a comparable position, where possible.”*

For the most part, this clause is self-explanatory.

However, the notion of what is comparable is sometimes debated.

Clause 9.06 states: *“Layoffs shall be effective only at the end of a contract year.”*

This clause states that teachers may be given a notice that they are to be laid off but teachers cannot be laid off due to redundancies until the end of the contract or school year.

Clause 9.07 (a) states: *“Any teacher who is to be laid off shall be notified in writing as soon as possible and in any event on or before the 7th of May in the current contract year.”*

This clause deals with a notification of layoff from the school board. A teacher who is issued a layoff notice in accordance with 9.07 and is unable to be accommodated by reassignment to another position within the school

district, after due consideration under 9.02 and 9.03, will be unemployed and in a layoff/recall status for three years.

Both Clause 31.02 (PCA) and Clause 50.03 (LWCA) of the grievance procedure stipulates that a teacher who has a grievance over a matter within the scope of authority of the school board shall submit the grievance in writing to the Director within 15 calendar days of the occurrence or discovery of the incident giving rise to the grievance. A teacher should be aware, when notified by the school board that he/she has been declared redundant in his/her school in accordance with Clause 9.02, that he/she has only 15 days to grieve that decision. The article does not stipulate that the notice by the school board is to be in writing. The notification could be oral. The same grievance procedure should be followed by a teacher who contends a violation of 9.03. For example, if a teacher is notified by the school board that he/she cannot be reassigned within the community and the teacher disagrees with that decision and wishes to grieve it, then the teacher would have 15 days from the time he/she was notified of that to grieve the decision. The same would follow for school systems and school districts.

Clause 9.07 (b) states: *“A teacher who has been reassigned and notified in writing in accordance with this Article shall, by no later than 12:00 noon on the fifth (5th) working days following notification, notify the School Board in writing of acceptance or rejection of the position to which the teacher has been reassigned. Teachers on leave will be considered employed for purposes of this Article.”*

The above clause provides a maximum timeline for responding to a proposed reassignment.

Clause 9.08 states: *“When a teacher is notified of a layoff after the 7th day of May of the current contract year, the layoff shall not become effective until the end of the subsequent contract year.”*

The clause is clear and states that any teacher who has not been properly notified in writing by the 7th day of May cannot be laid off for that contract year.

Clause 9.09 states: *“A School Board will not advertise any positions or hire any teachers until it has made every effort to place those teachers who have been laid off or who have been notified in writing that they are to be laid off.”*

The above clause includes reference to those teachers identified in Clause 9.07 who have been notified that they are to be laid off, and after the end of the school year (June) applies to teachers who have refused reassignment under 9.03 (a) in that particular year.

Clause 9.10 (a) states: *“If a vacancy comparable to the position a teacher held should occur in the subsequent three (3) school years, it shall be offered to any teacher who has been laid off as a result of redundancy and is still unemployed as a teacher or is still employed*

in less than a full-time position. It is the responsibility of the teachers to inform the appropriate School Boards prior to September 1 in each of the subsequent three (3) school years of their interest and availability to fill positions that become vacant on or after September 1.”

Clause 9.09 and 9.10 should be read concurrently. Clause 9.10 stipulates that if a comparable vacant position should occur in the school district for the subsequent three school years, it shall be offered to any teacher who has been laid off and is still unemployed as a teacher or is employed less than full time. The question which often arises is: What about vacant positions which occur in the current school year? Must they be offered to any teacher who has been laid off? The answer is contained in Clause 9.09 which stipulates that the school board cannot advertise any positions or hire any teachers until it has made every effort to place those teachers who have been or are to be laid off. Laid off teachers are given first choice of any vacant positions in the school district, in the current school year and in the subsequent school year.

It is important to note that the onus is on the teacher to inform the appropriate school board prior to September 1 in each of the subsequent three school years of their interest and availability to fill positions that become vacant on or after September 1 of each school year. As well, Clause 9.10 (b) provides that if a teacher is offered a position, then that teacher must reply within five (5) calendar days or the offer will be deemed to be rejected.

Clause 9.10 (c)(i) states: *“Teachers who are laid off and are on recall shall, subject to Clause 6.03, be given priority for replacement, term and substitute positions which are known to be of more than one (1) month’s duration; however, rejection of offers of such positions does not eliminate the teacher’s right to recall for available permanent positions.”* The phrase “subject to Clause 6.03” is a reference to the basic criteria for the hiring of teachers being “competence, suitability and qualifications as assessed by the school board.”

Clause 9.10 (d) states: *“A teacher whose position is declared redundant, and who accepts a term and/or replacement contract(s) for a subsequent entire school year (one hundred ninety-five (195) days) with the same School Board shall not have the period of recall under Clause 9.10 (a) terminated until three (3) years following the completion of the term and/or replacement contract(s).”*

Clause 9.11 stipulates that the filling of vacancies in accordance with Clauses 9.09 and 9.10 shall be in order of seniority.

Clause 9.13 states: *“A teacher who refuses reassignment in accordance with this Article 9 shall be deemed to have been laid off.”*

The intent of the above clause is to ensure that the process of reassignment does not continue indefinitely to

the detriment of other teachers. If a school board has followed the reassignment procedure properly for a teacher whose position has been declared redundant, then that teacher must accept the position offered or be considered laid off. If the teacher refuses reassignment, the school board, in fact, has no further obligation to that teacher under article 9, with the exception of that provided in Clause 9.09 and 9.10, beginning at the end of the school year (June).

The teacher may choose to accept an undesirable position to avoid layoff. In this event, teachers might want to indicate to the board that they are not totally satisfied with the placement and would like to transfer to a more suitable position should one become available.

Clause 9.14 (a) states: *“Redundant administrators will be considered for reassignment during the three (3) years subsequent to the date of their redundancy in accordance with Clause 9.04, to vacant comparable administrative positions before the position is posted.”*

This period of reassignment privilege is extended for a subsequent three years if the administrator accepts a term or replacement contract for a subsequent entire school year. Under Clause 9.15, seniority lists are to be posted in each school on or before December 31 of each year, listing the seniority which has been accumulated as of August 31 of that year.

Relocation Expenses

Article 53 of the Provincial Collective Agreement (Article 58 of the Labrador West Collective Agreement) provides that a teacher is to be compensated for certain expenses related to relocation from one geographical location to another, as a result of reassignment due to redundancy. Such compensable expenses include:

1. Real estate agency fees up to a maximum of five percent of the selling price of the teacher's private dwelling;
2. Reasonable and necessary legal fees encountered because of the sale of the teacher's house or the purchase of a new dwelling at the place of relocation;
3. Carting, packing and unpacking and transportation of the teacher's and his/her dependents' personal effects;
4. Hotel accommodations and meals approved in advance by the school board for a consecutive period not exceeding 14 calendar days at the time of the move.

The article provides for such compensation where the distance from the teacher's residence to the new school exceeds the distance from the teacher's residence to the

old school by more than 40 kilometers or where the teacher is required to relocate to or from an isolated settlement as defined within Article 24. Teachers are reminded that receipts or other satisfactory proof of purchase must be provided and that discussion should be held with the employing school board before expenses are incurred or moving contracts are undertaken.

Redundancy Provisions

Article 56 of the Provincial Collective Agreement (Article 61 of the Labrador West Collective Agreement) provides for a redundancy benefit to any teacher who is declared redundant and not reassigned in accordance with Article 9 (Article 47 of the Labrador West Collective Agreement). The amount of the redundancy benefit depends upon the teacher's age, years of service and annual salary on the salary scale. If a teacher is offered a reassignment in accordance with Article 9, but does not accept it for valid reasons, the redundancy benefit will apply. Teachers are reminded that they must apply for the redundancy benefit, through the Teachers' Payroll Division at the Department of Education. If, subsequent to receiving the redundancy benefit, the teacher is reassigned or attains a teaching position, he/she must repay the difference between the benefit received and the amount of benefit equivalent to lost salary as a result of being declared redundant and being without a teaching position for a period of time. In essence, this article requires that any teacher who receives the redundancy benefit and subsequently obtains employment as a teacher, will only be permitted to retain that portion of the redundancy benefit equivalent to the salary lost while out of teaching because of the layoff. Thus, a teacher who receives the redundancy benefit is required to remain totally out of teaching for the period of time equivalent to the redundancy benefit received, or to repay the remaining proportionate part of the benefit if he/she is re-employed as a teacher.

Conclusion

Perhaps the strongest advice that can be offered is that teachers who are declared redundant should contact the Association to discuss their circumstances. We suggest that in no circumstances should a teacher immediately refuse a reassignment in writing. Rather, if any member has strong reservations about the measures adopted or reassignments given with respect to Article 9, they should contact the Programs and Services Division as soon as possible for clear advice as to appropriate procedures to be followed.