



INFOSHEET

Programs and Services



Number

16

2016-09-01

Probation, Tenure, Evaluation and Contract Termination

Introduction

For the teacher who is new to the profession or securing employment for the first time with a school board, three areas deserve particular attention with regard to professional security. These are the issues of probation and tenure, evaluation, and contract termination. This Infosheet is designed to provide teachers with a brief overview of basic considerations in each of these three broad areas.

While the specific references given below refer to the Provincial Collective Agreement, the same conclusions, for the most part, can be drawn with regard to the Labrador West Collective Agreement. Teachers should note, however, that there are certain specific differences in terms of language and procedure with regard to the Labrador West contract.

Probationary Period and Tenure

Article 7 of the Provincial Collective Agreement (Article 41 of the Labrador West Collective Agreement) provides full details concerning these issues and should be consulted in its entirety. However, there a number of key points that warrant particular mention.

Clause 7.01 provides for a required period of probation consisting of two years' service with the same school board for persons who have no previous teaching experience in this province and those who have never been tenured with a school board. A probationary teacher who is in attendance for less than 115 days in any school year may be required by the school board to complete an additional year of service in order to complete the probationary period.

Clause 7.02 goes on to stipulate that any teacher who completes the probationary period and then enters into continuous employment with the same school board shall have tenure with that particular board.

Clause 7.03 outlines a slight variation of the above arrangement, in that a teacher who has previously

completed a probationary period with one board and is subsequently hired by another may be required to enter into a probationary period of one year with the new board. However, provision is also made for the new school board to waive the one-year probationary period, if it so chooses. It is very important to note, within Clause 7.03, that unless the board notifies the teacher in writing at the date of hiring that a probationary period of one year is required, then the teacher is recognized as having tenure automatically with that particular board. A similar arrangement is outlined in Clause 7.04 for a teacher who completes the probationary period with a school board and subsequently leaves the employ of that board for a period in excess of four years. S/he may, upon re-employment, be required by that board to serve a further one-year probationary period.

Clause 7.07 contains the provision that a teacher who leaves the employ of a school board at the end of a probationary period shall be advised in writing by that school board as to whether or not the probationary period has been satisfactorily completed.

Article 37 of the Provincial Collective Agreement (Article 40 of the Labrador West Collective Agreement) – Term Contracts, Clause 37.03 (b) states: *“Notwithstanding Clause 37.03 (a), a maximum of one (1) year of employment in a term contract contiguous to employment in a probationary or continuing contract in a comparable position with the same School Board shall be counted as part of the probationary period in accordance with Article 7.”*

Evaluation

Article 14 of the Provincial Collective Agreement (Article 38 of the Labrador West Collective Agreement) deals with the matter of evaluation and teachers are advised, as with Article 7, to read this particular portion of the agreement in its entirety.

Clause 14.01 states that the main purpose of teacher evaluation is *“the increased effectiveness of personnel in improving instruction and the educational environment.”*

Clause 14.02(a) indicates that evaluations, whether formative or summative, shall be conducted openly and with the knowledge of the teachers, and the teachers shall be informed as to which type of evaluation is being conducted. Clause 14.02(b) defines the distinct nature of both formative and summative evaluation. The clause then goes on to specify that the evaluation of a probationary teacher shall be comprised of both formative and summative processes. Furthermore, probationary teachers will be given an opportunity to address concerns which may be identified during the evaluation process.

A further provision contained in Clause 14.02(b)(iv) stipulates that *“any summative evaluation made on a tenured teacher must be preceded by a formative evaluation.”*

The latter clauses of Article 14 require the results of teacher evaluation to be made known to the teacher being evaluated; as well, results which are produced in writing must be copied to the teacher concerned. Teacher evaluation files shall be held in strictest confidence and may be viewed only by the Director of Education, the Assistant Director of Education (Human Resources), the Assistant Director of Education (Programs), a Senior Education Officer (SEO), an Instructional Education Officer (IEO), a Regional Education Officer (REO) and/or the teacher’s current school principal or vice-principal. Any other person wishing to view a teacher’s file may do so only with the written consent of the teacher. It is the teacher’s right to view his or her file at any mutually convenient time during normal working office hours.

Termination of Contract

Article 12 of the Provincial Collective Agreement (Article 48 of the Labrador West Collective Agreement) outlines the conditions applicable to both the school board and the teacher with respect to contract termination. The portion which is most immediately relevant to new teachers, specifically those on probationary contracts, is Clause 12.01(b). This clause indicates the procedure for terminating such a contract, but more particularly, indicates the restrictions on the applicability of the grievance procedure where difficulties arise in relation to a probationary teacher’s employment. It is essential to note that, *“When a School Board terminates the contract of a*

teacher who is on a probationary contract, the Assistant Director of Education for Human Resources, or the Directeur général with respect to the Conseil scolaire francophone province de Terre-Neuve-et-Labrador, shall review and discuss with the teacher the reason for the termination of the contract.” However, the clause goes on to stipulate that, *“The termination of a probationary contract for reasons of incompetency or unsuitability will not be subject to the grievance procedure.”*

Nevertheless, Clause 12.01(b) does stipulate that *“a probationary teacher shall have the right to grieve as to whether or not the applicable notice (or pay in lieu of notice) was given.”*

Another key aspect of contract termination is contained in Clause 12.03. This provides that any contract may be terminated at any time by mutual agreement of the teacher and the school board.

Teachers are urged to take particular note of Clauses 12.01(c), (d), (e) and (f) which indicate the conditions under which a school board may terminate a teacher’s contract for cause:

“(c) with thirty (30) calendar days’ notice in writing by the School Board (or pay in lieu of notice) when the teacher is incompetent;
(d) without notice, by the School Board, when the certificates of grade or licence of the teacher has been suspended, cancelled, or is no longer recognized under the regulations;
(e) without notice, by the School Board, where there is gross misconduct, insubordination or neglect of duty on the part of the teacher, or any similar just cause;
(f) without notice, by the School Board, when the teacher fails to make a reasonable attempt to obtain a medical examination in accordance with the provisions of paragraphs (f) and (g) of Section 76 of the Schools Act, 1997.”

In the event that such a situation should occur, every teacher is urged to be familiar with the provisions of the grievance and arbitration articles, namely Articles 31 and 32 (Articles 50 and 51- Labrador West) respectively. Any teacher who believes that a contract has been terminated without just cause or who has been disciplined in some manner by his/her employer, has a maximum of fifteen days to enter a grievance against the employer with respect to the alleged offences.

Advice

Members are urged to contact Programs and Services staff, particularly in times when difficulties are being experienced with contractual matters.