



August 21, 2020

Mr. Brian Evans  
Assistant Deputy Minister  
Department of Education  
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**Via Email and Mail**

Dear Mr. Evans:

I write at this time regarding the August 11, 2020 letter to NLTA President Dean Ingram from Elizabeth Lane, Assistant Deputy Minister, Human Resource Secretariat, in which Ms. Lane states, in part, as follows:

*The position of Government of Newfoundland and Labrador is that staff who are exhibiting such [COVID-19] symptoms shall remain at home and utilize sick leave for this period of time away from the workplace. Government respects the concerns that NLTA staff have regarding utilization of their sick leave. However, the intent of sick leave benefits in the collective agreement is for employees to avail of this leave when they are not feeling well. Furthermore, this approach is consistent throughout the public service when employees are exhibiting Covid-19 symptoms and cannot attend work.*

As referenced in Mr. Ingram's July 8 letter to Premier Dwight Ball, to which Ms. Lane was responding, NLTA members have long been expected and entitled to assess their own fitness for work under Articles 15 and 27 of the Provincial and Labrador West Collective Agreements (the Agreements), respectively. Teachers, administrators and teaching and learning assistants, like many busy professionals who have limited access to paid sick leave, will often choose to attend work when not feeling quite 100%, as long

as they otherwise feel well enough to do their job. This has never been questioned. Indeed, the parties to the Agreements have negotiated specific language to address the particular circumstances and conditions under which the employer may require an NLTA member to take leave from work for health reasons, which are limited to pregnancy related health issues, as per Clauses 17.05 (Provincial) and 28.05 (Labrador West) of the Agreements. Otherwise, the *Schools Act, 1997*, addresses the school districts' authority to require employees to access sick leave:

***Powers of boards***

**76. (1) A board may ...**

- (f) by notice, in writing, require an employee or other person to undergo a physical examination by a medical practitioner appointed or approved by the board or a psychological examination by 2 medical practitioners or 2 psychologists registered under the Psychologists Act and to submit a certificate acceptable to the board signed by the medical practitioners or psychologists setting out the conclusions regarding the physical or mental health of that employee or person;*
- (h) where a certificate submitted to a board under paragraph (f) shows that an employee or other person's physical or mental health would be injurious to an employee of the board or the students, direct the employee or other person to take sick leave or other earned leave or, where he or she has no sick leave or other earned leave or the sick leave or other earned leave is exhausted, require the employee or other person to take unpaid leave;*

The application of these provisions is well established. When a school district feels it is warranted, they may require an employee to undergo a medical examination(s). Typically, this authority has been exercised in situations where the employer feels a teacher's physical or mental health may be an issue in the workplace and/or significantly impacting their ability to do their job. NLTA members have always been placed on paid leave, approved by the school district, if absence from work is required to attend for the examination(s) and/or pending the outcome of the examination(s). If the results of the examination(s) disclose that, for health reasons, it would be "injurious" to other staff and/or students for the employee to be at work, then, and only then, may the school district direct/require the employee to take sick leave (paid or unpaid).

The intent of the sick leave provisions of the Agreements is clear in the language of Clauses 15.01 (Provincial) and 27.01 (Labrador West):

*15.01 A teacher is eligible for sick leave with pay when the teacher is unable to perform duties because of illness, injury or other disability provided the necessary sick leave credits have been accumulated and provided the other requirements of this Article have been complied with.*

*27.01 A teacher is eligible for sick leave with pay when that teacher is unable to perform his/her duties because of illness, injury or other disability, provided that teacher has accumulated the necessary sick leave credits and provided that teacher has complied with the other requirements of this Article.*

Exhibiting symptoms that are similar to those experienced by individuals who have contracted COVID-19 does not prove that an individual has an “illness, injury or other disability”, nor does it render someone “unable to perform their duties”. The current Public Health list of potential COVID-19 symptoms is extensive and includes many that may be attributable to the common cold, flus, certain points during a woman’s menstrual cycle, allergies, or just not getting a good night’s sleep. Indeed, we submit that NLTA members, and likely most public and private sector workers, have often reported to work without question and have successfully fulfilled their employment responsibilities despite experiencing such symptoms.

Ms. Lane noted in her letter that government’s position is, “consistent throughout the public service when employees are exhibiting Covid-19 symptoms and cannot attend work”. Respectfully, if this is indeed accurate, it is not relevant. The rights of NLTA members in this regard are governed by their own collective agreements and provincial legislation, not general practices within the public service. As well, public sector employees represented by NAPE, CUPE, RNUNL and AAHP have, since March 30, 2020, been subject to the provisions of a Good Neighbour Agreement, which specifically provides for the required use of sick leave for employees exhibiting COVID-19 like symptoms. No such agreement on this matter exists for NLTA members. As well, government’s approach for other employees cannot be applied consistently to NLTA members given that they do not have access to annual leave or time off in lieu, as expressly contemplated for employees covered by the Good Neighbour Agreement whose sick leave is exhausted.

Therefore, in accordance with Clauses 31.20 (Provincial) and 50.21 (Labrador West) of the Agreements, the Newfoundland and Labrador Teachers' Association hereby files grievance against the Department of Education of the Government of Newfoundland and Labrador. Government's position, as stated in Ms. Lane's August 11 correspondence, that NLTA members who exhibit COVID-19 symptoms must access sick leave when required by the employer to be absent from the workplace, is in violation of Articles 15 (Provincial) and 27 (Labrador West), as well as sections 76(1)(f) and (h) of the *Schools Act, 1997*. The Association further contends that Government's position in this regard constitutes an unreasonable, arbitrary and bad faith exercise of management rights, in violation of Clauses 39.01 (Provincial) and 13 (Labrador West) of the Agreements.

The relief sought is the proper application of the Agreements, namely:

1. A declaration that NLTA members shall be provided with approved paid leave (not sick leave), with no loss of pay or benefits, if/when required to be absent from their workplace due to experiencing COVID-19 related symptoms, such paid leave to continue until such time as the results of COVID-19 testing have been received or the symptoms have resolved, whichever occurs first;
2. Monetary redress (damages); and
3. All other appropriate redress.

I would appreciate the meeting required pursuant to Clauses 31.20 (Provincial) and 50.21 (Labrador West) of the Agreements at your earliest opportunity. I look forward to your reply.

Sincerely yours,

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Stefanie Tuff  
Assistant Executive Director