

July 6, 2022

Hello CUPE 728 Members

Re: Statutory Holiday Arbitration Case

The Union has received the decision for the Statutory Arbitration case and the Unions case was unfortunately dismissed. The Union had grieved that the Employer had failed to adhere to the long-standing past practice of moving the January 1st, 2021, Statutory holiday to the following Monday as had occurred in every case prior when the Statutory Holiday fell on a weekend. The Arbitrator did not find that this long-standing past practice met the criteria required to create an Estoppel (which would have prevented the Employer from changing the past practice until a period of negotiation.) As such based on the arbitrators ruling, the Collective Agreement language on statutory holidays that fall on a weekend shall apply going forward.

Article 14.14 of the Collective Agreement states:

“When any of the above-noted statutory holidays fall on an employee's scheduled day off, or should an employee be required to work on a statutory holiday because the statutory holiday is declared to be a regular school day, the employee shall receive another day off with pay at a time mutually agreed upon between the Board and the employee. If an employee is subsequently required to work on a day off scheduled in lieu of a statutory holiday, then statutory holiday overtime provisions will apply.”

In light of this decision and there being no practice of moving the statutory holiday forward that can be relied upon, the Collective Agreement language is considered to be in force. The Union will not engage in negotiating the statutory holiday being moved on behalf of the membership as a whole and instead individual employees shall be able to negotiate a date that is mutually agreeable with their supervisors on when they would like to take the statutory holiday when one occurs on a weekend. This will allow for flexibility for members to be able to take the day off at a time that is convenient for them.

As for the January 1st 2022 statutory holiday all members who qualified for the statutory holiday will have one banked statutory holiday that they can book at a time that is mutually agreeable with their supervisor.

The employer stated under oath at the arbitration they have the capacity and ability to reschedule individual days off for the January 1, 2022, statutory holiday. Please work with your manager or human resources to book this day. The Union stresses that this date must be agreeable to **both** the employee and the Supervisor, and the Employer should not impose unreasonable perimeters or roadblocks to be able to take this day at a mutually agreeable time. For ten-month employees Article 14.212 is applicable and scheduling a statutory holiday during a vacation period would result in an additional day of vacation being granted with pay, and so it is not advisable to substitute a vacation day with a statutory holiday.

The upcoming statutory holidays this year will be December 25th, 2022, and January 1st 2023. Employees will be required to work with their supervisors to determine a mutually agreeable time to take these days off in lieu of the statutory holidays.

If members are being denied the time that they request and are unable to book the statutory holidays at a mutually agreeable time, we encourage you to contact the Union to determine if a grievance should be filed on your behalf. The Union will be updating members further at a meeting where questions can be answered in more detail. Please watch for that meeting and attend if you have questions.

In Solidarity



Tammy Murphy
President
CUPE Local 728

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The Collective agreement provisions that are important to note are the following

Statutory Holidays

14.14

"When any of the above-noted statutory holidays fall on an employee's scheduled day off, or should an employee be required to work on a statutory holiday because the statutory holiday is declared to be a regular school day, the employee shall receive another day off with pay at a time mutually agreed upon between the Board and the employee. If an employee is subsequently required to work on a day off scheduled in lieu of a statutory holiday, then statutory holiday overtime provisions will apply."

Ten Month Employees Vacation Pay

14.212

"If a statutory holiday falls within or is observed during an employee's annual vacation period, he or she shall be granted an additional day's vacation with pay for each such statutory holiday."

Article 14.210 which establishes 10 month employees vacation to be during winter and spring break closures.

14.210

"Notwithstanding 14.206 to 14.2084 preceding, employees employed for the ten (10) month school year, shall be paid vacation pay (that they would normally not be entitled to until the following June 30th) during the Christmas and spring school closures. Notwithstanding the foregoing, employees shall only receive vacation pay for the winter and spring break periods based on the applicable percentage of wages earned during a work period prior to the applicable break. A bus driver may request in writing that vacation monies earned prior to the applicable break that exceed the paid vacation hours being paid for the break, also be paid. After spring school closure any vacation pay accrued shall be paid out on each bi-weekly pay until the last pay period of the school year."