

Case Name:
**British Columbia Teachers' Federation
(North Vancouver Teachers' Assn.) v.
British Columbia Public School Employers'
Assn. (Workman Grievance)**

**Labour Relations Code
(Section 84 Appointment)
Arbitration Decision
Between
British Columbia Teachers' Federation
(North Vancouver Teachers'
Association), Union, and
British Columbia Public School Employers'
Association (The Board of
Education of School District No.
44 (North Vancouver)), Employer
(Re: Michelle Workman -- Assignment in School)**

[2016] B.C.C.A.A.A. No. 30

No. A-026/16

British Columbia
Collective Agreement Arbitration

Panel: James E. Dorsey, Q.C. (Arbitration)

Heard: February 15 and 16, 2016.

Award: April 8, 2016.

(73 paras.)

Labour Arbitration -- The collective agreement -- Interpretation -- Rules of construction.

Labour Arbitration -- Management rights -- Assignment of work.

The grievor was hired by the employer school board as a teacher in 1998. She worked mostly as a music teacher for a number of years but also taught some English courses. In 2014 the grievor was assigned to teach seven English blocks and no music blocks. She lost her identity as the music teacher. She was refused a vacant part-time position to teach music. The union filed a grievance alleging the employer violated the collective agreement by removing all music blocks from the grievor's teaching assignment. The union argued that the school principal failed to give meaningful consideration to the grievor's stated preference to teach music and his decision was based on an arbitrary conclusion a new teacher was needed to take the music program in a new direction or to increase elective music course enrolment.

HELD: Grievance dismissed. There was no dispute student selection for music in March 2014 was extremely low. The principal was correct in concluding the program's past portended the future if there was no change in program leadership. The principal acted in good faith to do what was needed for the school and its current and future students. Recurring assignments over the years did not create proprietary rights even if they did create a sense of entitlement for teachers and within the school community. The grievor's assignment was made in accordance with the collective agreement.

Statutes, Regulations and Rules Cited:

Labour Relations Code, s. 84

Appearances:

Representing the Union: Gretchen Brown.

Representing the Employer: Lindsie M. Thomson.

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AWARD

1. Grievance and Jurisdiction

- 1 Michelle Workman did her practicum at Sutherland Secondary School in 1998 and was hired as

a full time, continuing contract teacher the following school year. At that time, the elective Music program had nine blocks. Her annual assignments included Music, Planning, Drama and English. When the senior Music teacher retired, Ms Workman became the sole Music teacher for the following decade.

2 In the 2013-14 school year, Ms Workman taught five Music and two English blocks. In the annual reorganization of the school in the spring of 2014, Principal Ray Bodnaruk assigned her to teach seven English blocks and no Music blocks. She lost her identity as the Music teacher and her assignment to a program for which she was passionate.

3 The School District posted a vacant part-time position to teach Music. Ms Workman applied and asked Mr. Bodnaruk to reconsider her assignment. He did, but he did not change her assignment. He wrote a letter stating the reasons he refused to change her assignment. The vacancy was filled by a junior applicant.

4 While the additional English blocks assigned to Ms Workman reduced the number of English blocks available to other senior teachers, the impact on English department teachers was lessened by the retirement of a teacher.

5 The union grieves that removing all Music blocks from Ms Workman's assignment contravened Article E.24 (Assignments in School) of the collective agreement. This article contains an agreed process for giving information to teachers and to the Staff Committee, which can assignment recommendations and the factors on which annual in school assignments must be made. Article E.24.4 states:

Assignments within a school shall be based on the following criteria:

- a. the needs of the Board;
- b. the documented qualifications and experience of the employee;
- c. *[removed by legislation/intentionally left blank]*
- d. personal preference of the employee;
- e. Staff Committee recommendations.

6 This dispute relates to "a. the needs of the Board." Ms Workman was qualified and experienced. She had stated a personal preference to teach Music. There were no Staff Committee

recommendations that spring.

7 The union and employer agree I am properly constituted as an arbitrator under their collective agreement and the *Labour Relations Code* with jurisdiction to finally decide the merits of the grievance.

2. Competition for Declining Enrolment and Student Elective Selection

8 Public secondary schools compete to enrol students who live within and beyond the school's catchment area and its elementary feeder schools. The size of catchment areas and number of feeder schools vary. All secondary schools have the traditional array of course offerings. The school district places enhanced programs in some secondary schools, which attract enrolment across and outside the district. The programs become part of the school's brand. Each secondary school has to find its brand and compete to have students and their parents in the catchment feeder schools select them rather than a neighbouring secondary school.

9 In the North Vancouver School District, there are Advanced Placement programs at Argyle and Handsworth Secondary Schools; French Immersion at Argyle, Handsworth and Windsor Secondary Schools; International Baccalaureate at Carson Graham Secondary School; Performance Learning at Seycove Secondary School; Soccer and Hockey Academies at Windsor; Digital Media Academy at Argyle; and an Arts Academy at Carson Graham. There are Field Hockey and Volleyball Academies at Sutherland Secondary School, which has a semester system that some students prefer. Sutherland has programs available in all secondary schools, such as Apprenticeship Training and Work Experience and the Peak Performance Program.

10 Some secondary schools successfully compete for students in specific elective courses in the traditional curriculum. For example, in the 2013-14 school year, Seycove with only 505 students and no French Immersion, International Baccalaureate or Advanced Placement program had twelve Music blocks. Its program includes trips to Carnegie Hall. Argyle, which is only 2.5 km from Sutherland, had fourteen Music blocks for 1,200 students. Sutherland had five Music blocks for 830 students. Mr. Bodnaruk describes Argyle as a "music magnet" with a vibrant student "music pack" and an actively engaged community of music parents raising money.

11 Competition for student enrolment among secondary schools is part of the landscape within and between school districts. Mr. Bodnaruk's opinion is that it is necessary for schools to engage communities and offer viable programs to maintain and attract enrolment. Parents and students must have a reason to choose a school.

12 For several years, Sutherland has had a steadily declining enrolment -- from 900 students in the 2012-13 school year to 720 students in the 2015-16 school year. The potential enrolment from Grade 7 students leaving feeder schools fluctuated.

Elementary Feeder School	Sep-12	Gr. 7	Sep-13	Gr. 7	Sep-14	Gr. 7	Sep-15	Gr. 7
Ridgeway Elementary	441	45	455	47	472	43	255	39
Eastview Elementary	227	40	265	32	283	31	275	48
Brooksbank Elementary	330	34	341	29	370	33	400	48
Queensbury Elementary	255	28	284	25	303	30	307	31
Gr. 7 Totals	1,253	147	1,345	133	1,428	137	1,237	166

13 Declining school enrolment results in the school district allocating fewer teachers for the school. Sutherland's teacher allocation, based one FTE for each seven blocks, declined from 50.99 FTE to 43.78 FTE from the 2012-13 to the 2015-16 school years.

14 Fewer teachers results in fewer elective choices for students in the final timetable for the school year and less administrative flexibility to construct a timetable that allows student choice without encountering conflicts. Students can consider options outside the timetable, such as taking desired courses by distributed learning and obtaining external credits recognized by the Ministry of Education.

15 In a time of declining enrolment in a school, competition becomes more intense among elective programs in the school for students to select courses in the programs.

16 The Sutherland Music program was not attracting local or international students and contributing to increase school enrolment. Among students in the school, it was declining as a selected elective. When students progress from Grades 8 to 12, the pool of students eligible to elect the higher grade Music courses decreases because it consists primarily of those who chose Music at lower grades. Declining student selection in lower grades predicts program attrition at higher grades. Students will not have the prerequisites for higher grade Instrumental Music (Concert and Jazz Band) or Choral Music (Concert Choir and Vocal Jazz).

17 In 2014, Mr. Bodnaruk had been Principal and Vice-principal at Sutherland for four school years. Despite declining enrolment during that time, the school had maintained five Music blocks to provide variety for students. If elective programs do not attract students to a school, providing choice can help keep students at the school. This was not done for other courses such as Mathematics 11 when the selection numbers did not warrant the number of classes. Some course, like French 12, must be offered to retain enrolment. If they are maintained because of low student selection, the students and their parents will choose to go to another school.

18 Despite the allocation of resources to the Music program, some parents did not find the smaller program appealing. Others were pleased with the program and the friendly Music teacher. Despite the profile given to the school in community and school music events, parents were choosing music programs at other schools and students were not continuing in the program.

19 In the 2012-13 and 2013-14 school years, the number of new Grade 8 students choosing Music was higher than the number of graduating Grade 12 Music students.

Year	Choir (Concert)		Choir (Jazz)		Band (Concert)		Band (Jazz)		New Gr. 8 Enrolment	
	2012-13	2013-14	2012-13	2013-14	2012-13	2013-14	2012-13	2013-14	2012-13	2013-14
Gr. 8	7	[2]			27	[21]	3	[5]	37	[28]
Gr. 9	14	6			24	28	8	13		
Gr. 10	3	5			14	12	5	5	Leave Gr. 12	
Gr. 11	6	8			20	9	11	3	2012-13	2013-14
Gr. 12	[3]	7		1	[10]	8	[6]	5	[19]	20
	33	28		1	95	78	33	31		

Student Totals		New minus Graduating	
2012-13	161		+ 18
2013-14	138		+ 8
Classes			
2012-13	1	3	1
2013-14		1	3
			1
			5

20 However, the gain did not offset the decline in the number of current Grade 8 to 11 students who chose not to take Music in their next school year. As a consequence, total Music program enrolment declined from 161 to 138 students. Despite the decline, administration maintained five classes.

21 In March 2014, student selection of elective Music courses for the next school year declined dramatically. Only 48 of the 117 current Grade 8 to 11 Music students selected Music. Twenty-two Grade 7 students coming to Grade 8 at Sutherland selected Music. A total of only 70 students selected Music.

Year	Choir (Concert)		Choir (Jazz)		Band (Concert)		Band (Jazz)	
	2013-14	Mar-14	2013-14	Mar-14	2013-14	Mar-14	2013-14	Mar-14
Gr. 8	2	1			21	20	5	1
Gr. 9	6	3			28	8	13	0
Gr. 10	5	3			12	9	5	0
Gr. 11	8	6			9	12	3	0
Gr. 12	-	2		1	-	3	-	1
	21	15	0	1	70	52	26	2

Student Enrolment

2012-13 161

2013-14 138

Student Selection

2013-14 Grade 8 to 11 Students in Music 117

Mar-14 Grade 8 to 11 Students selecting Music 48

Mar-14 Incoming Grade 8 Students 22

Students selecting Music 70

22 The decline in Concert Band selection was not a consequence of student scheduling conflicts within the school day and timetable. The course was offered at times outside the semester timetable for the normal school day (8:30 a.m. to 3:00 p.m.) and allows students, if they wish, to take more classes than required.

23 Ms Workman testified Jazz Band was her favourite class to teach. She taught at 7:15 a.m. four or five days a week depending on the semester. There is no explanation in the evidence why student selection for this class in March 2014 declined so dramatically. Ms Workman first learned about the "extremely low" selection for Music courses in a meeting with Mr. Bodnaruk in late April.

24 A 70 student enrolment supported two, perhaps three, Music classes. For any number of reasons, including students and parents changing choices, teachers and counsellors recruiting or recommending or counsellors enrolling international students, Music course enrolment in September can be higher than selection in March. But a dramatic increase seemed unlikely.

25 By September, the actual enrolment increased to 98 students, 40 students less than the previous year. There were two Band and one Choir classes. There is no clear evidence to explain the increase. Choir increased from 15 to 35 with higher numbers at each grade level. Band increased from 52 to 63. Eight of the student increase was at one grade level. There was no Jazz Band class.

3. Principal Decides Drastic Measure Necessary to Rejuvenate Program

26 Ms Workman is a competent, qualified, passionate Music teacher. Teaching Music was a

career goal since she was 16 years of age. She volunteered time for band programs when she was a secondary and university student. She chose to become a public school teacher to teach Music. She has played semi-professional over the years.

27 Since her practicum at Sutherland, Ms Workman has been committed to its Music program, which shrunk from nine blocks in 1999 to six blocks when her predecessor retired and for a decade had been five blocks. At times, several international students were enrolled to supplement local student enrolment.

28 Ms Workman identifies as a Music teacher and identifies herself in the community and online as a Music teacher. She was known as the Music teacher at Sutherland.

29 In her career teaching Music at Sutherland, Ms Workman has organized, pursued and committed to all the activities dedicated Music teachers undertake outside the classroom in their schools and communities to enrich student experience and promote a school's Music program. These include:

- a. School and community student performances;
- b. Field trips, retreats and zone concerts;
- c. Student exchanges with schools in Japan;
- d. Performances in elementary schools;
- e. Online profiling and promotion of the program and its activities; and
- f. Tutoring and providing other support for struggling students.

30 Ms Workman testified that despite doing school and community outreach and all her best efforts, enrolment in the Music program declined. In her testimony, she ruminated that perhaps the students were not inspired by the teacher. Although she saw the declining enrolment, she did not expressly ask administration for help. She thought a Grade 8 music survey or appreciation course might boost student selection in later grades, but she did not ask administration to consider or offer a course.

31 Over the years, the administration had been supportive and appreciative of all her endeavours and activities. She was supported in the in-school activities she organized, which administrators attended and voiced support. Trips to Manning Park and the Japanese exchange program were

supported. One principal travelled as a chaperone on a trip to Japan. There were recurring discussions about declining enrolment, a concern for both teachers and administration. Courses were offered on a linear, rather than semester, basis to minimize conflict.

32 Despite Ms Workman's engagement with students and parents and school administration support, students were not choosing to study Music at Sutherland and students attending Sutherland were not selecting Music courses.

33 The trend could not be ignored in March 2014. Mr. Bodnaruk testified he had never seen such a "bottoming out" of course selection. He decided enrolment for two or three Music blocks was not a viable program. Despite Ms Workman's best efforts to maintain and grow the program, the Music program was collapsing. Students were leaving, not coming to, her classes. If the program failed completely, it would be another reason for students graduating from feeder schools in the catchment area and elsewhere to choose another secondary school.

34 Mr. Bodnaruk testified that, with school administration support, the person ultimately responsible for program success is the teacher who is the school and community face of the program. The teacher must build the program over time and it had not been happening with Ms Workman.

35 After compiling and reviewing the declining enrolment in the Music program, Mr. Bodnaruk decided staying the course was not the route to recovery. He decided a course correction was needed. A new teacher and new direction were needed to save the program; to inject a new vibrancy in the program to give it a chance to grow; and to ensure the school is offering a viable program attracting enrolment, at least within its catchment area.

36 With knowledge of the pending retirement of a teacher in the English department, he decided to assign Ms Workman to teach English and to recruit a new Music teacher in the hope a new teacher would rejuvenate the Music program. He knew there were qualified Music teachers on the district list of teachers teaching on call.

37 He knew, because of declining enrolment in the school, that assigning Ms Workman to seven blocks of English would create a surplus of English teachers, some of whom would be forced to leave the school. He also knew a newly hired Music teacher might have less seniority than one or more of the English teachers forced to leave the school.

38 Mr. Bodnaruk was making a decision that overrode Ms Workman's expressed assignment preference, which is not frequently done in circumstances where a sense of assignment ownership has evolved because a teacher has been given the same assignment for several years.

39 He delivered his decision to Ms Workman in a private meeting on April 22, 2014. She was dumbstruck and devastated. The bottom was falling out of her world. After 16 years, she would no longer be the Music teacher. Mr. Bodnaruk did not state any "new direction" he preferred or

envisioned. It was for the Music teacher exercising professional autonomy to design and implement a direction that would reverse the trend of declining enrolment. A collective bargaining strike began the next day.

40 By email on May 13, 2014, Ms Workman asked Mr. Bodnaruk his reasons for not assigning her any Music classes. He did not reply. The union grieved May 26, 2014.

41 A 0.43 FTE vacancy for a secondary Band and Choir teacher was posted. Mr. Bodnaruk testified it was for three blocks for 70 students, at that time, to maintain some semblance of a program and hopefully attract a qualified applicant.

42 Ms Workman was qualified and applied. Article E.24.5 states:

5. a. If a vacant position is posted according to Article E.20 (Posting and Filling of Vacant Positions), and an employee in the same school wishes to be considered for reassignment to the vacant position, the employee shall inform the administrator in writing of a request for reconsideration no later than the expiry date of the posting.

- b. Prior to considering any candidate outside the school, the administrator shall reconsider the employee's assignment using the criteria in Article E.24.4. **The administrator shall inform the employee in writing of the decision with reasons, regarding the outcome of the reconsideration no later than five (5) days subsequent to the employee's request.**

(Emphasis added)

43 Mr. Bodnaruk wrote Ms Workman June 18, 2014:

Your name has been forwarded to me as an applicant for the Secondary Band and Choir posting advertised in Round 3.

I take your application to this posting to be an expression of interest to add Band and Choir to your assignment for the 2014/15 school year in accordance with Collective Agreement Article E.24.5, rather than an application for a 0.438 FTE position only.

As per our meeting on April 22, 2014, I informed you that you would not be teaching any of the music classes at Sutherland next year. In that meeting, I