

informed you that the reason for this decision was due to a steady decline in enrolment over the past few years and our need to move the music program in a new direction.

You acknowledged that the number of students taking music has been on the decline. Moreover, you also stated that you found English to be an easier course to teach and had commented that you didn't mind the marking that comes with teaching English. As well, you commented about the students at Sutherland not taking music seriously and that they wanted to take other electives at the higher grades and that Sutherland music students thought Argyle's program had better music trips as opposed to the Sutherland Japan trip.

In considering your request in the context of the criteria outlined in E.24.4, this letter serves to confirm your full-time assignment in the English Department for the 2014/15 school year.

Mr. Bodnaruk had never had an occasion to write such a letter in the past and was advised a copy of this letter of a "critical nature" was to be placed in Ms Workman's personnel file.

44 Ms Workman has not yet succeeded in competitions for vacant Music positions at other district secondary schools.

45 A nine week Grade 8 elective Exploring Music paired with Computer and Media Literacy was added for the current school year. It has 53 students. The Grade 8 student course selection sheet for the current school year was revised to highlight Concert Band as a yearlong alternative to Grade 8 Physical Education and that Choir is offered twice a week before school outside the timetable. The Grade 9 sheet similarly highlights Music courses.

46 In the current school year there are four Music classes with 122 students -- one Concert (Choir) 41 students; two Band (Concert) 64 students; and one Band (Jazz) 18 students. This is an increase of 24 students over the 2014-15 school year although school enrolment declined from 780 to 720 students.

4. Summary of Union and Employer Arguments

47 The union acknowledges that each spring principals decide the specific positions and duties of teachers for the following school year. However, the assignment of Ms Workman away from Music after 16 years was an unfair and unreasonable exercise of management rights contrary to Article A.24 (Management Rights). Mr. Bodnaruk failed to give meaningful consideration to her 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.

48 Without any prior notice of concerns about declining enrolment or the direction of the Music program or advice with respect to her Music assignment, the totality of the decision making and process was unfair, arbitrary and disrespectful to Ms Workman's service as a dedicated professional. She was a passionate Music teacher whose identity was as a Music teacher and whose devotion was to her students and teaching Music in a warm, vibrant and engaging program. Her reward has been public humiliation, disrespect and harm to her emotional and professional well-being. The assignment away from Music can only negatively reflect on her reputation and prejudice her ability to compete for a position to teach Music again.

49 The union submits it is not reasonable to attribute the steeper decline in enrolment in the Music program than in the school to Ms Workman or her approach to teaching Music. It is reasonable to attribute the decline to the absence of any enhanced academic programs at Sutherland and the composition of the resulting student population.

A change in the identity of the music teacher is not going to help Sutherland compete with other schools who can offer students not only a solid music program but also an enhanced academic program. ... What the employer needs is not a new teacher but rather a comprehensive plan for addressing enrolment in both the music program and the school as a whole.¹

50 The union submits the evidence does not support the conclusion the decline in Music program enrolment was attributable to Ms Workman or that a new teacher has increased enrolment. It was as likely enrolment would increase with Ms Workman as the Music teacher as it was with a new teacher if she had been given the opportunity, direction and the new Grade 8 Exploring Music elective.

51 The union submits Ms Workman's expressed preference to teach Music was not considered in a meaningful way because the employer failed to consider the importance of her preference to her and the consequences for her if it was not granted.

52 The union submits the employer did not need either a teacher to teach more English or a new Music teacher. Any need for increased enrolment could be achieved by working with Ms Workman, but the employer did not identify program needs or work with Ms Workman to develop a plan to meet its needs. "It was not reasonable for the employer to conclude that the grievor was unable to take the band program in a new direction when the employer had never instructed her to do so."² Failure to do so is not applying the criteria in a fair and transparent manner, the underlining purpose of the entire process.

The notion that the board may "need" to have a different teacher in a certain subject area despite the fact that the current teacher is qualified, competent, has never had a negative evaluation, and has never received any direction regarding

how to do her job is not reasonable. This is particularly so in the absence of any reason for either needing the current teacher elsewhere (for example, no other teacher qualified for a certain position) or needing the specific attributes of the new teacher.³

53 The union submits the decision to assign Ms Workman, a specialist teacher, out of her preferred area of teaching was arbitrary in the same manner as not to assign a preference was arbitrary in a 1997 arbitration decision in the Surrey school district.⁴

The *Surrey* case is significant in that it analyzes what it means to consider teachers preferences in a meaningful way. Simply collecting preference forms and then considering teacher requests against district needs is not adequate. Administrators need to put their mind to the significance of the request relative to a teacher's career. This may be straightforward where there are only minor changes to a teacher's assignment and those changes reflect normal year to year variations. But where, as is the case here, the change in assignment involves a complete removal of all blocks of the teacher's specialist area, in a manner where there is no expectation that any of those blocks will be returned to her in future years, a deeper level of consideration is warranted.

If the employer did have a need which conflicted with the grievor's preference to teach music, the employer should have made further inquiries before determining that there was a need to post a music position. The employer should have considered what it would mean to the grievor to have all her music blocks removed. There is no evidence that they did so.⁵

54 The union submits there simply was no thoughtful, considered or good reason not to assign Ms Workman the preferences she expressed and had taught for 16 years with the resulting devastating impact on her personal, social, community and professional identity. Concerns were not communicated to Ms Workman, an important element in making in-school assignments.⁶ There was no reason to remove Ms Workman from her assignment after all her years as the sole teacher and driving force in the Music program. She had a legitimate expectation of remaining in her assignment.⁷

55 The employer submits the process and structure in the annual organization of schools in Article E.24 was adhered to in making Ms Workman's assignments for the 2014-15 school year. There was a vital need for this secondary school to have a viable Music program. It was solely toward that end that Mr. Bodnaruk assigned Ms Workman to her second preference to teach English so a new Music teacher could be recruited.

The Employer's position is that principals have a duty to develop the best programming possible for their school. This is not an inconsequential duty. It sets

the stage for learning in the school for that school year -- and beyond. Principals have an obligation to carry out that duty in a way which serves the interests of students as well as meeting the requirements of the Collective Agreement. Principals are required to make judgement calls, sometimes unpopular and difficult judgement calls, concerning teaching assignments.⁸

56 The employer submits teachers have no proprietary right to teach previous assignments and no contractual right to be given their stated preference. The inclusion of Article E.24.5 contemplates teachers will not necessarily be given their preference.

... the language expressly contemplates the precise scenario which occurred in this case -- that a teacher on staff in a school may not be assigned to teach their preferred class even if there are no other qualified teachers on staff in the school at the time of spring staffing.⁹

57 In this case:

This was not an easy decision, nor was it taken lightly. The Principal knew it would be difficult for the Grievor, but nevertheless felt that it was in the best interests of the school. At two sections, the music program would not be viable. Without a viable music program, there would be even more reason for students in their catchment to choose Argyle or Carson Graham.¹⁰

58 The employer submits the "needs of the Board" easily encompasses staffing changes with a view to rejuvenating a program. Such decisions, while perhaps unpopular at times, are not unreasonable or unfair. They are part of principals' statutory duty in administering and supervising their schools.¹¹ "The statutory scheme reflects and reinforces the arbitral principal that management has an inherent right to manage its enterprise, including making work assignments."¹² While the collective agreement can state the manner in which assignments are made, it cannot limit the scope of the principal's discretion.

59 The employer submits the foundation of Article E.24 is recognition of the principal's right to make assignments. The use of the phrase "based on" in Article E.24.4 is an agreement that the four criteria are to be "a foundation, a starting point or main or important ingredient when making teaching assignments."¹³ This precludes consideration of extraneous factors, which Mr. Bodnaruk did not.

60 The employer submits the "needs of the Board" are not limited to assigning qualified teachers on staff to courses required to be taught.

Rather, the "needs of the Board" should be given its plain and ordinary meaning. It is the broadest phrase possible, encompassing anything the Board needs to operate its schools. Schools are operated by the Board through the appointment

of principals and vice principals. When they make assignment decisions, the "needs of the Board" in that context means anything the Principal needs to take into account in order to successfully operate the school. This includes deciding if a particular teacher ought to teach a particular subject or class or grade level. Indeed, it has to include this, because which teacher teaches which class is the sole focus of E.24.4.¹⁴

61 This is reinforced by the existence of Article E.24.5 which contemplates postings for positions for which teachers on staff are qualified to teach but have not been assigned. The scheme is that principals have the right to decide qualified teachers in a school will not be given their preferred assignment for reasons relating to the operation of the school.

The language bargained by the parties reflects this reality. E.24 is a relatively mild clause. It requires the employer to share information and listen to recommendations. It then states certain criteria which the Principal must take into account. But it does not state that the criteria are weighted, or in a particular priority. The language does not limit the Principal's discretion as to how to weigh the criteria in a particular case. The weighing of these factors remains squarely within the Principal's domain. This is required by the statutory context.¹⁵

Deference should be given to Mr. Bodnaruk's decision.

5. Discussion, Analysis and Decision

62 The evidence of local bargaining history about which long time union activist and leader Linda Watson testified has not been summarized. It is agreed the purpose and evolution to the current language is to provide a process and structure that advances transparency and fairness in the annual assignments in school reorganization. It is agreed the criteria in Article E.24.4 are not listed in order of priority and are not weighted. While the criteria vary among school districts:

The reorganization process in each school is crucial to the delivery of the curriculum and aspirations of individual teachers on continuing contracts. The final decisions are the domain of the school administration, but the collective agreement directs an agreed process and limitations on the administrator's decision-making authority. Consultation, collaboration and collegiality in the process are required under the collective agreement.¹⁶

63 There is no dispute student selection for Music in March 2014 was extremely low and a marked acceleration of trend that had been mitigated at times by placing international students in the program, perhaps masking the extent of the problem and delaying corrective action.

64 Mr. Bodnaruk was correct in concluding a two or three block Music program was not viable and would not reflect well on the school, its brand, reputation and ongoing competition for

enrolment. He was correct in concluding the program's past portended the future if there was no change in program leadership.

65 This was not decision made to achieve retribution or to punish. It was not to clear a path for selection of a favoured candidate. It was not simply to achieve a personal preference. It was taking a risk and to that extent it was a "speculative hope" in the union's characterisation. But it was a calculated risk with the reasonable conviction that staying the course was not the avenue to rescue and grow a program shrinking from within. It was a decision, in Mr. Bodnaruk's good faith judgment, to do what was needed for the school and its current and future students.

66 There are circumstances in which a principal may change the assignment of a subject specialist teacher regardless of the passion and commitment the teacher has for a preferred assignment or the fact the new assignment might adversely impact a teacher's chosen career path.

67 In this situation, the legitimate needs of the Board prevailed over Ms Workman's preference. Because of the history of Music assignments to her in the school, she was more impacted than teachers whose less visible assignments within a department are varied from the past and can potentially change in future years.

68 Recurring assignments over the years do not create proprietary rights even if they do create a sense of entitlement for teachers and within the school community. Subsequent assignment change might invite closer scrutiny of the reasons and motivation for the change, but the weight to be given to teacher preference in light of a history of preference assignment does not raise its weight above the needs of the Board under Article E.24.4. As I wrote in 2003:

The school calendar and annual reorganization of the workplace to meet student needs and public education goals is ingrained in this employment context and underlies extensive provisions of the collective agreement. The characteristics of work, such as age and mix of students, location of classroom or office within the school, colleagues in immediate proximity and familiarity with courses, tasks and materials to be used are each an important component of the demands, degree of stress, satisfaction and pleasure of the work. However, unlike the relatively static employment environments of other occupations, like that of the Counsellor II at *Open Hands Inc.* in Ontario, the annual reorganization of a school can include significant changes and challenges from year to year for a teacher. This is a known and established characteristic of a teaching position at a public school.¹⁷

69 Mr. Bodnaruk was confronted with objective data in the March 2014 student selection that students were choosing to leave and not enrol in the Music program. It was consistent with the enrolment data for the two previous school years. The trend was not speculative. He reasonably and fairly decided the viability of the program, an unquestionable need of the Board had to be given a higher priority or more weight than Ms Workman's preference to continue teaching Music. She was assigned her second preference.

70 He did not consider factors beyond those in Article E.24.4 or act arbitrarily. He made his decision with knowledge there were qualified Music teachers on the district list of teachers teaching on call. He did not use assignment as a means to avoid any other supervisory or administrative responsibility.

71 Mr. Bodnaruk was not required, in the circumstances, to give Ms Workman one more year to rejuvenate the Music program. He was not required to take steps to more actively supervise her professionally autonomous teaching and promotion of the program. She, perhaps better than anyone, knew the trend in past years. She had not asked for any support from administration that she was not given. She did not know and has not testified to the reason there was such a selection exodus from the Music program in 2014. From April to June, she did not advance a plan, with or without options, to reverse the exodus and grow the program or otherwise give Mr. Bodnaruk a reason to reconsider her assignment.

72 Mr. Bodnaruk made a good faith, honest, unbiased, difficult decision based on objective data and a sound educational and organizational purpose. The resulting assignment for Ms Workman was done in a fair and reasonable manner as required by Article A.25. He made her assignment in accordance with Article E.24.4 and his letter in accordance with Article E.24.5, in this circumstance, was properly placed on her personnel file. At Ms Workman's election this letter can be removed from her file on June 18, 2016. (Article E.28.9)

73 The grievance is dismissed.

APRIL 8, 2015, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

1 Union's Written Closing Argument, para 29 - 30

2 Union's Written Closing Argument, para 76

3 Union's Written Closing Argument, para 77

4 *Surrey School District No. 36* [1997] B.C.C.A.A.A. No. 848 (McEwen)

5 Union's Written Closing Argument, para 86 - 87

6 See *Greater Victoria School District No. 93* [2004] B.C.C.A.A.A. No. 301 (Korbin)

7 See by analogy *Burnaby School District No. 41* [1994] B.C.C.A.A.A. No. 469 (Taylor)

8 Employer's Outline of Argument, para 11

9 Employer's Outline of Argument, para 75

10 Employer's Outline of Argument, para 41

11 *School Act*, RSBC 1996, c. 412, s. 20; *School Regulation*, B.C. Reg. 265/89, s. 5; *Statement of Education Policy Order (Mandate for the School System)*, OIC 1280/89

12 Employer's Outline of Argument, para 60; See *Board of School Trustees of School District No. 70 (Alberni)* [1992] B.C.C.A.A.A. No. 230 (*Blasina*), para 66 - 67; *Windermere School District No. 4* [1993] B.C.C.A.A.A. No. 145 (*Kelleher*), para 11

13 Employer's Outline of Argument, para 74; See also *J.P. v. Sinclair* [1997] B.C.J. No. 1327 (CA)

14 Employer's Outline of Argument, para 82

15 Employer's Outline of Argument, para 103

16 *BCPSEA (White Grievance)* [2005] B.C.C.A.A.A. No. 43 (*Dorsey*), para 56. The criteria in that collective agreement were: "District seniority, training, experience, equitable distribution of workload and personal preference of the teacher." There was no "needs of the Board" criterion. See also *Coast Mountain School District No. 82* [2000] B.C.C.A.A.A. No. 217 (*Jackson*)

17 *Okanagan Skaha School District No. 67 v. BCTF*, [2003] B.C.C.A.A.A. No. 138 (*Dorsey*), para 80; See also *Toronto District School Board* [2003] O.L.A.A. No. 141 (*Beck*), para 40; *Hastings and Prince Edward District School Board* [2007] O.L.A.A. No. 627 (*Davie*), para 20; *Nanaimo-Ladysmith School District No. 68* [2011] B.C.C.A.A.A. No. 6, (*Munroe*), para 26; *Board of School Trustees of School District # 65 (Cowichan)* [1996] B.C.C.A.A.A. No. 13 (*Greyell*)