

IN THE MATTER OF AN ARBITRATION

BETWEEN

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION  
SCHOOL DISTRICT NO. 73 (KAMLOOPS THOMPSON)

AND

BRITISH COLUMBIA TEACHERS' FEDERATION  
KAMLOOPS THOMPSON TEACHERS' ASSOCIATION

(School Professional Development Committees)

Arbitrator : Donald R. Munroe, Q.C.

For the School Board : Judith Anderson

For the Association : A. David Mardiros

Date of Award : January 16, 2007

## AWARD

### I

The origins of this arbitration proceeding lie in a stage III policy grievance filed by the Kamloops Thompson Teachers' Association (the Association) on November 22, 2004 and a stage I grievance filed by the Association on November 30, 2004.

By its terms, the stage III policy grievance was in relation to "...a letter sent by [the] principal of [Arthur Hatton Elementary School] to Mr. Blake Blueman, [a] teacher applying for individual Professional Development, and to the two chairs of the School Professional Development Committee stating that the principal, and not the School Pro-D Committee, determines whether or not a teacher can pursue individual Pro-D".

That stage III policy grievance was amplified and clarified by the Association in a pair of letters dated December 3, 2004. One of the letters adds to the grievance by referring to a letter written by the then-principal of Brocklehurst Secondary School to Carole Gillis, a teacher, stating that the making of a "request to the school's Professional Development Committee" (rather than to the principal) to participate in an individual professional development activity "was not appropriate". The other letter dated December 3 asserts, as the Association's position under the collective agreement, that "... it is the School Professional Development Committee and not the school principal who determines whether a teacher may or may not pursue alternate (individual) activities on school PD days".

The stage I grievance dated November 30, 2004 is an individual grievance filed by the Association on behalf of Blake Blueman, the teacher named in the Association's November 22 letter initiating the stage III policy grievance.

The referral to arbitration by the British Columbia Teachers' Federation, on behalf of the Association, describes the grievances as follows:

This case concerns the locus of authority for approving teachers' individual professional development activities. Specifically, Article 14.2 of the Kamloops/Thompson collective agreement provides that "P.D. activities at the school level shall be determined by [the school professional development] committee". The local parties disagree over whether the committee has the power to approve alternative professional development activities for individual teachers.

In argument, counsel for the Association described the dispute in this case as being "...whether the School Professional Development Committees, as contemplated by the collective agreement, have the right and responsibility for approving not only professional activities done on a school-wide basis, but also professional development activities done on an individual basis".

The School Board's position, as described in argument, is that "...the Principal of the school has the responsibility and the authority to determine whether a teacher is excused from participating in the school level professional development activities planned by the School Professional Development Committee for the school". In the submission of the School Board, it is for the principal, as the school manager, to determine whether a teacher will be exempted from participation in the school-based professional development activities that have been determined by the School Professional Development Committee. That is to say, it is the school principal who "...may permit the teacher to opt out or not attend the school planned professional development activities and instead engage

in alternate activities that could include alternate professional development activities”.

The contractual centrepiece of the Association’s argument is Article IX.14.2 of the collective agreement which provides as follows:

14.2 School Professional Development Committees

Each school shall operate a Professional Development Committee, consisting of the Administrative Officer [now called the Principal] and other teachers on the staff. P.D. activities at the school level shall be determined by this committee.

I will outline below the collective agreement history and full contractual context of that provision. But first, let me sketch a fact pattern (which, while hypothetically expressed, is drawn from the evidence) as giving real-life meaning to the parties’ dispute. Suppose that a school Professional Development Committee has determined that for a particular school-based professional development day, the theme and program will be in relation to classroom management including the control of student bullying. Suppose further that one of the teachers at that school wishes to work that day on the Master’s program she is pursuing, rather than attending the planned school-based professional development activities; and another of the teachers at that school, for example a math teacher, wishes instead to get together that day with colleagues from other schools to review and discuss recent developments in math instruction. Do those teachers apply to the school Professional Development Committee for permission not to attend the school-based professional development activities, and to engage instead in their own individually-chosen activity, or must that permission be sought and obtained from the school principal -- i.e., from management?

## II

Teacher collective bargaining was introduced into British Columbia in 1988. In the pre-1988 period, teacher salaries and benefits (but not other conditions of employment) could be arbitrated. Some school boards and their respective teacher associations had voluntary framework agreements dealing with certain non-monetary matters. However, I gather from the evidence that there was no framework agreement between this School Board (or its predecessors) and the Association (or its predecessors) dealing with professional development.

The first collective agreement between these parties (1988-90) contained the following provisions as Articles IX.6, 7 and 8:

6. Professional Development

In order to assist teachers financially in undertaking individual professional development, the Board shall pay annually, each November 15<sup>th</sup> an amount equal to ½ of 1% of teacher payroll to the Association for Pro-D. The Association will provide the Board with an annual accounting of the funds.

Short-term leaves under this Article shall be granted in accordance with Article X-14 at the cost of a substitute teacher.

7. Non-Instructional Day

The Board shall approve, subject to the provisions of the school calendar, non-instructional days as follows:

- a) one day for administrative purposes and/or parent teacher interviews to be determined by the Administrative Officer,

- b) three days for in-service and/or professional development to be determined by the Administrative Officer in consultation with staff,
- c) one day for District-wide professional development to be determined by the K.D.T.A. with approval of the Superintendent.

In the event a District-wide professional development day is not held, it will be included in b) above.

Should the number of non-instructional days available through the school calendar be increased during the term of this Agreement, the parties to the Agreement will negotiate the distribution of the additional days.

Non-instructional days shall be considered instructional days for salary purposes.

#### 8. Joint Professional Development Committee

The Joint Professional Development Committee which shall be chaired by the Association's professional development chairperson shall comprise an equal number of Board and Association representatives and shall be responsible for planning joint professional development activities.

Thus, the parties' first collective agreement required the fixing of a certain number of non-instructional days within the school calendar as inservice/professional development days; empowered the school administrative officer (now principal) to fix the dates, in consultation with the school staff, for the three days of inservice and/or professional development contemplated by Article IX.7(b); but did not require or contemplate the establishment of school-based Professional Development Committees.

In the negotiations for the second collective agreement (1990-92), the Association tabled a number of proposals dealing with professional development.

By some of the proposals, the Association sought greater funding for professional development. By others of the proposals, the Association sought effective control over professional development. Included in the latter category were the following two proposals:

### PROFESSIONAL DEVELOPMENT

1. The board and the association agree that all programs, services, courses and funding which promote and foster the professional development of teachers, shall be covered by this clause with the exception of the implementing of educational and/or curriculum change...
  
8. Non-Instructional Days
  - a. The board agrees that a total of ten non-instructional days shall be available to each teacher during the regular school year. The days shall be designated as follows:
    - i. five non-instructional days for professional development activities;
    - ii. five non-instructional days for educational/curriculum change activities. These days shall be in addition to the year end administration days and days established for parent/teacher consultations.
  - b. Non-instructional days shall be considered as instructional days for salary purposes.
  - c. Professional Development activities shall be determined by teachers at the school staff level or the local association level.

Those proposals were resisted by the School Board, and did not find their way into the collective agreement. Rather, after various exchanges, the parties settled on language which has not been materially altered in the intervening years,

and which today is included in Articles IX.2 and IX.14 of the collective agreement.

Article IX.2 is headed "Employee's Work Year", and provides as follows:

2. EMPLOYEE'S WORK YEAR

The annual salary established for employees covered by this agreement shall be payable in respect of the teachers' regular work year which shall be defined as follows:

- 2.1 all days in session shall be scheduled -- excluding Saturdays, Sundays and general holidays, including Easter Monday, as well as winter and spring breaks -- between Labour Day and the last Friday in June. If the last Friday falls before June 26<sup>th</sup>, the last day scheduled will be June 30<sup>th</sup>.
- 2.2 the first day of the winter break shall be the Monday preceding December 26<sup>th</sup>. Schools shall reopen on the Monday following January 1<sup>st</sup>. If January 1<sup>st</sup> is a Saturday or Sunday, school shall reopen on the Tuesday.
- 2.3 the first day of the spring break shall be the third Monday in March. School shall reopen on the fourth Monday in March unless that day is Easter Monday in which case schools would reopen on Wednesday.

The regular work year shall include:

- 2.4 one (1) day for district-wide professional development to be determined by the KTTA with the approval of the Superintendent;
- 2.5 four (4) days for inservice and/or professional development to be determined by the school Professional Development Committee. One of these days at the discretion of the staff, can be used by the staff for parent-teacher interviews;



- 2.6 one (1) year end administrative day;
- 2.7 two (2) non-instructional days for the purpose of parent-community interaction, to be scheduled and utilized in consultation with the KTTA;
- 2.8 up to four (4) early dismissal days as provided in the Regulation to be scheduled and utilized in consultation with the KTTA;
- 2.9 a school opening day that may be shortened and may include different starting and dismissal times for different students.

Article IX.14 of the collective agreement is headed “Professional Development”. It reads as follows:

#### 14. PROFESSIONAL DEVELOPMENT

In order to assist teachers financially in undertaking individual professional development, the Board shall pay annually, each November 15<sup>th</sup> an amount equal to ½ of 1% of teacher payroll to the Association for Pro-D. The Association will provide the Board with an annual accounting of the funds.

Short-term leaves under this article shall be granted in accordance with Article X.16 at the cost of a substitute teacher.

##### 14.1 Joint Development Committee

The Joint Professional Development Committee which shall be chaired by the Association’s professional development chairperson shall comprise an equal number of Board and Association representatives and shall be responsible for planning joint professional development activities.

#### 14.2 School Professional Development Committees

Each school shall operate a Professional Development Committee, consisting of the Administrative Officer and other teachers on the staff. P.D. activities at the school level shall be determined by this committee.

As I have said, the articles that were negotiated into the 1990-92 collective agreement that touch on the dispute at hand have not been materially altered in the intervening years. However, I was informed by counsel that in practical terms, given the changing circumstances over the years, there are now understood to be six non-instructional days which are used for inservice and/or professional development. They are as follows:

1. One day for district-wide professional development, the date being selected by the Association with the approval of the Superintendent (Article IX.2.4). This is typically a day in February.
2. Three days for school-based inservice/professional development, the dates being selected by the individual school professional development committees (although these are now common dates throughout the school district), plus one so-called "provincial day" (Article IX.2.5).
3. One "Minister's Day" pursuant to section 9 of the *School Calendar Regulations* (B.C. Reg. 114/02) which states that the minister may designate, by order, up to one school day of non-instructional periods to be scheduled and used for a specific purpose; and pursuant to an order dated May 29, 2003 by the then-minister directing school boards to schedule one non-instructional day in a school year "...for the purpose of facilitating activities that in the board's opinion are designed to enhance student achievement, with particular focus on literacy". The "Minister's Day" is typically in October.

In argument, the Association characterized the present dispute as being in relation to what it described as the three school-based days only; that is to say, as not also being in relation to the so-called “KTTA day” (i.e., Association day) established by Article IX.2.4., nor in relation to the so-called “provincial day” (about which more will be said later), and nor in relation to the “Minister’s day”.

For its part, the School Board agrees with the Association that this dispute does not relate either to the KTTA day or to the Minister’s day, but says that the dispute *does* relate to the provincial day -- i.e., in addition to the three school-based days.

That relatively-narrow point of disagreement is effectively subsumed in the larger substance of the parties’ dispute. I will return to the point later in this award. For the moment, my focus is the three school-based days, and the representative fact pattern which I earlier sketched.

### III

Going back to what was negotiated between the parties for inclusion in their 1990-92 collective agreement, one sees that each school was now expected to have a Professional Development Committee, “...consisting of the [principal] and other teachers on staff” (Article IX.14.2); that the school Professional Development Committee was now empowered to fix the dates on which school-based inservice and/or professional development would occur (Article IX.2.5); and that “P.D. activities at the school level [were now] to be determined by [the school Professional Development] committee” (Article IX.14.2).

It is worth noting that the collective agreement provides no direction as to the make-up or operation of each school’s Professional Development Committee,

beyond simply saying that each such committee shall consist of the principal and other teachers on staff. This school district is geographically large and diverse. It has small schools in outlying areas as well as larger urban schools. In some schools, it sometimes happens that it takes awhile each year for a Professional Development Committee to be up and running, while in other schools such committees are fairly quick to be constituted each year. In some schools, the Professional Development Committee at any given meeting of the committee consists of whoever on the teaching staff wishes to show up, which may be as few as one or two teachers (in addition to the principal), and who may not be the same teachers who attended the last meeting or who may be attending the next one. In other schools, the Professional Development Committee is more formally constituted, including in some instances by election of the teaching staff. In some schools, the committee meets as necessary without a schedule, while in other schools the meetings are more regularized.

Both sides adduced evidence of practice. Mark McVittie is currently the president of the Association. He was a teacher at Barriere Secondary School in the period 1995-98, and was a member of that school's Professional Development Committee for two years during that period. Mr. McVittie was the only full-time math teacher at Barriere. He testified that "...on the days our committee organized [professional development] events I did not always participate in the organized events". Mr. McVittie elaborated by saying that on a few occasions, he "...assisted in organizing the [school-based] day but asked to pursue an alternate Pro-D activity with a group of math teachers from [other schools]"; that "...at one of the meetings of the [school] Pro-D committee I mentioned it and asked for permission and they agreed".

Mr. McVittie testified to the same experience at Sa'Hali Secondary School where he taught math in the period 1998-2003, and where he was also a member

of the school Professional Development Committee. He said that, "I asked to do the same thing while I was there...I just brought it up at a committee meeting".

Mr. McVittie agreed in cross examination that at both Barriere and Sa'Hali, the school principal (or in the case of Sa'Hali, either the school principal or the vice principal as the principal's designate) was present at the committee meetings where he made the requests to engage in alternate individual professional development on a school-based professional development day; and that the principal (or vice principal) indicated his concurrence.

Fawn Knox was the Association's president in the period 2001-2004. From 1980 until her recent retirement, Ms. Knox was a teacher-librarian in the school district. In the period 1982-2001, she was a member of the school-based Professional Development Committee at David Thompson School. Ms. Knox testified that on occasion through the years, she would "...work with other teacher-librarians [in the district] on an alternate [professional development] activity" -- i.e., rather than the activity planned or organized by the school-based Professional Development Committee. Ms. Knox also spoke in evidence about Sheila Park, a learning assistance teacher, who likewise was occasionally excused from the planned school-based professional development activity so that she could engage in a professional development activity with other learning assistance teachers in the district. Ms. Knox's recollection was that requests to be excused from the school-based activity were made at meetings of the school Professional Development Committee, but agreed in cross examination that the school principal was present at all such meetings.

Tom Elliott gave evidence for the School Board. For seven or eight years ending in 1993, Mr. Elliott was the vice principal at Chase Secondary School. In the period subsequent to the parties' second collective agreement, Mr. Elliott

served as the principal's representative on the school Professional Development Committee.

Mr. Elliott was the principal at Barriere Secondary School (1993-1995); then the principal at Valleyview Secondary School (1996-98); then the principal at Kamloops Secondary School (1998-2003); then the principal at Brocklehurst Secondary School (2003-2005). Mr. Elliott was a member of the school Professional Development Committees at all of those schools while he was principal. He retired in July, 2005.

Mr. Elliott said in evidence that during his periods as principal at all the above-noted schools (or vice principal at Chase), it sometimes occurred that a teacher would wish to engage in a self-directed alternate professional development activity on a school-based professional development day -- i.e., alternate to the professional development activity(ies) that had been determined by the school Professional Development Committee. He said that until recently, when the tensions between the parties leading to the present grievances arose, it never occurred that a teacher wishing to opt out of the school-based professional development activity would approach the school Professional Development Committee for permission to do so. Rather, said Mr. Elliott, permission was sought from him as principal of the school. Sometimes he gave his permission; sometimes not. Mr. Elliott testified that in deciding whether to grant permission, he would consider, among other things, whether the planned school-based activity was one that was desirable for all teachers to attend (e.g., an activity aimed at team building or addressing the school learning culture, etc.). If so, permission would be declined. If not, then Mr. Elliott would consider the specifics of the individual teacher's proposed alternate professional development activity, and make a final judgment.

Gordon Davis was the principal of Barriere Secondary School from February 1, 1996 to July 31, 2003 when he retired. He was on the school Professional Development Committee throughout his period as principal. Mr. Davis said in evidence that "...the procedure was to come to me [as principal] if a teacher wanted not to participate in the planned school professional development activity" -- i.e., the activity that had been determined by the school Professional Development Committee. He said that, "I assessed the request; if the [planned activity] was a school-wide plan, for example student discipline or school goals, then I said 'No'; but if it was not of school-wide relevance, then we could work out a plan and I'd say 'OK' if it was appropriate". Mr. Davis said that to his recollection, the school Professional Development Committee was never the approving body in such situations; that "...any request [for approval of an individualized alternate professional development activity] came to me [as principal], and that was my expectation as well".

Gerald Gelowitz was a principal at three schools in the school district (Barriere Ridge, McGowan Park and Dallas Secondary) over a 14-year period ending in June, 2004. He spoke in evidence about his nine years as the principal at Dallas Secondary, where he was also on the school Professional Development Committee. Mr. Gelowitz was asked about "...the process at Dallas when an individual teacher sought to opt out of planned Pro-D activities". Mr. Gelowitz's reply was that "...they needed to speak to me for approval". He was then asked whether there were "...any occasions when a teacher went to the school Professional Development Committee for approval for alternate professional development". Mr. Gelowitz answered that question by saying that there may have been such occasions "...but I was kept in the loop...[and] in any event they needed my approval for the alternate activity". Mr. Gelowitz gave some examples. In terms of the criteria he used for granting approval or not, Mr. Gelowitz said among other things that "...it had to be connected to the goals of our

school, and also with an understanding of the strengths and weaknesses of our staff, and if it could bring something back to improve us as a staff”.

Maureen Hove is in her fourth year as principal at Westside Senior Secondary, prior to which she was the principal at Brocklehurst Secondary (3½ years). Ms. Hove has been aware for some years of tensions between the parties concerning the issue at hand. However, until recently, she did not experience any difficulties. Regarding the school-based professional development days, Ms. Hove said that over the years, teachers wanting to do self-directed alternate professional development have always sought her approval as the school principal -- not the approval of the school Professional Development Committee. Ms. Hove said that upon approval being requested, she determines whether the proposed alternate activity “...meets school goals -- either the school growth plan or a department goal or informal goals”. Citing an example where she declined permission, Ms. Hove identified one factor as being whether the planned school-based professional development activity was something having school-wide implications. Where that is the case, Ms. Hove typically does not give permission.

In support of its position in this proceeding, the School Board referred to exchanges in May-July 1999 between the then-director of education, Jean Borsa, and the then-president of the Association, Wayne Turner. The exchange began when the Association published a “Professional Development Bulletin”, and ended with a letter from Ms. Borsa to Mr. Turner dated July 7, 1999 which apparently resolved matters to their joint satisfaction.

Looking at that exchange, one can construct an argument, as the School Board has done, that it effectively reveals the Association’s concurrence with the position taken by the School Board in the present proceedings. However, that exchange is now at a distance of more than seven years, and was not directly