

concerned with the precise issue at hand which has arisen much more recently. I do not regard the exchange as having the interpretive significance suggested by the School Board.

The Association relies on a different exchange of correspondence as revealing the School Board's concurrence with *its* position in this proceeding. I refer in that connection to a letter dated August 20, 2003 from Dan Cairnie, the director of education services, which was in reply to a letter dated July 9, 2003 from Ms. Knox who was then the Association's president. There is no question that the content of Mr. Cairnie's letter supports the Association's position in this grievance. However, on the date he wrote that letter, Mr. Cairnie had been in the position of director of education services for only a very short time, and had had no prior involvement in professional development in this school district. When the school district's superintendent, Dr. Terry Sullivan, saw Mr. Cairnie's letter, he immediately informed Mr. Cairnie that it was erroneous insofar as the matter at hand is concerned. Within days of the letter, Dr. Sullivan and Mr. Cairnie met with Ms. Knox and another Association officer to inform them of the error; and on September 5, 2003, Mr. Cairnie wrote a letter to Ms. Knox correcting his mistake. I do not place any interpretive weight on Mr. Cairnie's August 20 letter.

IV

I return to the language of the collective agreement. In a general way, the Association relies on the evolution through collective bargaining from complete managerial control over professional development to today's collective agreement regime as outlined in Articles IX.2.4 et seq. and IX.2.14. In the submission of the Association, the collective agreement unambiguously favours its position in this proceeding. The Association points in particular to Article IX.14.2 (earlier reproduced) which states that each school "...shall operate a Professional

Development Committee, consisting of the [principal] and other teachers on staff”, and that “...P.D. activities at the school level shall be determined by this committee”.

There is no dispute between the parties that the word “determined” in Article IX.14.2 effectively means “decided”; nor any dispute that each school’s Professional Development Committee is empowered by Article IX.14.2 to decide on the school professional development program or activity that will occur on school-based professional development days. Neither is it disputed that as an abstract proposition, “professional development” is capable of being undertaken individually as well as in groups. Building on those points of agreement, the Association argues that there is no differentiation in Article IX.14.2 between types of professional development, in the sense of no differentiation between professional development activities that take place in a large group setting, a small group setting or individually; and accordingly, that where a teacher wishes to substitute his or her own individually-preferred professional development activity for the professional development activities that have been organized by the school Professional Development Committee for a school-based professional development day, it is the school Professional Development Committee and not the school principal who is empowered to grant or withhold permission.

Of course, all words in Article IX.14.2 must be examined in the process of determining that provision’s true meaning; and the whole of Article IX.14.2 must be read in context of other provisions of the collective agreement having some relationship to it.

Article IX.14.2 does not simply use the phrase “P.D. activities”; the full formulation is “P.D. activities at the school level”. No doubt, one purpose of the words “school level” was to distinguish between the district-wide professional

development days (Article IX.2.4) and the school-based professional development days (Article IX.2.5). However, an arguable and quite natural reading of the second sentence of Article IX.14.2, examined in full, is that the intended mandate of the school Professional Development Committees was the determination of professional activities *for the school*, on school-based professional development days, which activities would presumably be relevant to the school's teaching staff and to the school's professional development goals or needs as judged by the Committee. The words "at the school level" in Article IX.14.2 are equally as important as the phrase "P.D. activities". Once again, a fairly natural reading of the second sentence of Article IX.14.2 is that the school Professional Development Committee decides the school-level professional development activities that will occur on school-based professional development days; not also any individualized professional development activities that do not occur at the school level.

Certainly, there is no explicit reference in Article IX.14.2 to the school Professional Development Committee approving individual exemptions from the organized school level professional development activities -- i.e., so that the individual teacher can pursue some other professional development activity of his or her own choosing. The Association would argue that no such explicit reference is necessary because that approving power, as I have briefly described it, is necessarily implied in the language as it stands. However, the phrase "individual professional development", which is the concept that the Association would have me imply into the second sentence of Article IX.14.2, can be found elsewhere in the collective agreement in close juxtaposition to that provision; more specifically, in the opening paragraph of Article IX.14. Contrary to the submission of the School Board, I think that paragraph is dealing with individual professional development occurring on instructional days only (not also on non-instructional days). But the point is simply that the parties *have* used the phrase "individual professional development" in their collective agreement; and if individualized

professional development on non-instructional days was intended to be within the mandate of the school Professional Development Committee under Article IX.14.2, in the manner suggested by the Association, one would have expected Article IX.14.2 to include words similar to those found in the opening paragraph of the article of which it is a part.

The School Board rightly says that Article IX.14.2 must be considered in the light of Article IX.2 -- Employee's Work Year. Although the school-based professional development days are non-instructional days, they are work days for the teachers for which salary is paid. As the School Board argued the point, the school-based professional development days are not days that have been altogether "...given over to the school Professional Development Committees and to individual teachers to decide on without limitation". Again, the limitation is found in the words "...P.D. activities at the school level".

Related to that argument is my earlier observation about the largely-unregulated structure of the school Professional Development Committees. I think that at best from the Association's perspective, the phrase "at the school level" in Article IX.14.2, as part of the larger phrase "P.D. activities at the school level", is imprecise in relation to the dispute at hand. And in my view, the absence of structural direction in the collective agreement, beyond simply saying that the school Professional Development Committees shall consist of the school principal and teachers, is reasonably taken into account when interpreting imprecise words about the range of responsibilities assigned to the Committees.

The School Board relies as well on Article II (Management Rights) of the collective agreement:

The Union recognizes the right and responsibility of the Board, subject to the provisions of this agreement or applicable legislation, to manage and operate the school district, and agrees that the employment, assignment, direction and determination of employment status of the work force is vested exclusively in the Board.

As the Association notes, that provision describes the management rights therein contained as being “subject to the provisions of this agreement”, which effectively drives one back to the articles of the agreement more directly pertinent. However, it is useful to refer here to certain parts of Dr. Sullivan’s testimony. Dr. Sullivan said that good professional development is not a “top down process”; that “...it has to occur at the school level”; and that he fully supports the present structure by which the organization and planning of school-based professional development activities “...is dominated by teachers”. But Dr. Sullivan also said that the question of exempting individual teachers from school-based professional development activities so that the teacher can pursue his or her own self-directed professional development “...is a critical issue to the District...that strikes at the heart of issues concerning child learning and student improvement...All the research shows that the most effective way of doing professional development engages the issues connected with this [dispute]”. Given the significance of professional development to the school district’s core mission, it is reasonable to think that were management to agree to turn over to the teacher-dominated school Professional Development Committees the full range of responsibilities suggested by the Association, some greater clarity of expression would have been used to record that agreement. It does seem to me that absent such clarity of expression, where a teacher wishes to be away from school on either an instructional or non-instructional working day, including a school-based professional development day, in order to pursue his or her own self-directed professional development activity, it is for the employer to grant or withhold permission.

I earlier mentioned the parties' disagreement about whether the issue in this proceeding touches the so-called "provincial day" (commenting that in my view, that relatively-narrow point of disagreement is effectively subsumed in the real substance of the parties' larger dispute), and said that I would return to that matter which I now do.

The "provincial day" is a non-instructional day that is common throughout the province, for which (as I understand the evidence) the Provincial Specialists Association of the B.C. Teachers' Federation arranges workshops and seminars at various locations. So, for example, a Prince George science teacher might travel to Vancouver for a workshop with other science teachers on a particular topic; or a Kelowna math teacher might travel to Kamloops for a seminar on a particular math topic; etc.

The teachers in each school district choose for themselves which province-wide workshop or seminar, if any, they will attend. I say "if any" because the teachers are not required to attend one of the province-wide workshops or seminars. Instead of doing so, they may elect to engage in a professional development activity in their home school or home district.

No doubt, the school Professional Development Committees can organize professional development activities at the school level for a "provincial day" for those teachers wishing to remain at their home school. But for such teachers, and in relation to the issue in this proceeding, I see no differences arising from the collective agreement between a "provincial day", on the one hand, and the three school-based professional development days, on the other. The content of a self-

directed professional development activity is subject to the approval of the principal.

In addition to deciding the issue directly raised by these grievances, the School Board asked me to provide guidance as to what constitutes professional development; and more particularly, guidance concerning the appropriate activities for school-based professional development days. But as I have just indicated, any disputes in that latter regard were not directly the cause of these grievances; and I will frankly say that I do not regard the hearing into this matter as adequately equipping me to provide meaningful detailed assistance to the parties as requested by the School Board. I therefore decline the request.

One final note prior to summarily stating my conclusion on the grievances. I earlier recounted certain evidence of past practice as adduced by both sides. In closing argument, the Association submitted that neither side's evidence of past practice met the usual tests of probative value, and that I should therefore simply set such evidence aside. The School Board submitted otherwise, and said that the extrinsic evidence of past practice clearly favoured its position on the issue in dispute. As it happens, it is unnecessary for me to resolve that disagreement between the parties. That is because the conclusion I have reached on the merits of the grievance is in no way dependent on the evidence that is the subject of that disagreement.

VI

My conclusion on the grievances is that Article IX.14.2 of the collective agreement does not provide authority for the school Professional Development Committees to approve a request from a teacher to not participate in the Committee's organized school-based professional development activities and

instead to engage in alternate self-directed professional development activities. Accordingly, the grievances are denied.

DATED THE 16th DAY OF JANUARY, 2004

"DONALD R. MUNROE"
Donald R. Munroe, Q.C.
Arbitrator