

## **BCPSEA/School District No. 71 (Comox Valley) v. BCTF/Comox District Teachers' Association**

On January 5, 2017 Arbitrator John Hall issued his decision regarding two provincial matters grievances filed by the BC Teachers' Federation (BCTF) with respect to the district's scheduling of preparation time, specifically the implementation of what the parties refer to as Alternative Instructional Week (AIW) schedules for the 2016-2017 school year. AIW schedules were implemented in both elementary and secondary schools in response to a district budgetary shortfall.

The central union complaint in both the secondary and elementary grievances was the district's decision to schedule preparation time outside of teachers' instructional time. Under both AIW schedules, preparation time was scheduled in teachers' overall school day; however, for secondary teachers all preparation time was scheduled outside of instructional hours and for elementary teachers, a portion of their preparation time was scheduled outside instructional hours.

The union grieved both AIW schedules as breaches of the collective agreement and characterized the change in preparation time scheduling as an increase in teacher workload for full-time teachers without a commensurate increase in compensation. The union further relied on the doctrine of estoppel to assert the district was precluded from implementing AIW schedules during the duration of the collective agreement and further, made arguments that even if there was no breach of the collective agreement, there is a reasonableness requirement and the doctrine of *quantum meruit* applies whereby teachers should be compensated for the additional work they perform under the AIW schedules.

### **Secondary Grievance**

Previously, the schedule for secondary schools in the district was a semester system with four courses in four blocks of 75 minutes per day, or a linear system of eight courses running the entire year in eight blocks. Under these schedules, full-time enrolling secondary teachers were typically assigned seven out of eight blocks over the school year and the remaining block was assigned as preparation time, which was scheduled during instructional time. Under the AIW schedule, preparation for secondary teachers is scheduled before school for the first four days of the week and during the afternoon on Fridays.

Arbitrator John Hall found there was no breach of the collective agreement through the district's implementation of the secondary AIW. He noted that the terms of a collective agreement are critical to determining the entitlement of teachers to, and the scheduling of, preparation time and noted a prior arbitral decision of Arbitrator Orr between the parties regarding the specific collective agreement at issue:

“It is significant that this particular collective agreement, unlike several other teachers’ agreements, makes no reference to “preparation time.” It must be assumed that in negotiating this agreement the parties were aware of the other agreements and the long history of collective bargaining in relation to “preparation time.” It is evident that the parties negotiated a different way of approaching instructional time. A flexible approach was taken giving the Employer the ability to structure teaching assignments over the school year provided the Employer complies with [now Article D.23 – Hours of Work].”

Article D.23 – Hours of Work makes no reference to preparation time and provides:

- “2. Teachers with fulltime classroom teaching assignments at other than elementary schools shall not be required to provide classroom instruction of more than twenty-four (24) hours per week averaged over the course of the school year.
  
- ...5. A secondary teacher shall not be required to offer instruction beyond an interval of six (6) hours and thirty (30) minutes inclusive of:
  - a. instructional time not to exceed five (5) hours and thirty (30) minutes, inclusive of homeroom and time for students to change classrooms;
  - b. a regular noon intermission.”

Arbitrator Hall agreed with the district that, unlike collective agreements in other districts, “preparation time” is not an express term of the parties’ collective agreement and again, unlike collective agreements in other districts, “preparation time” is not included explicitly in the calculation of instructional time so that the district has the flexibility under its collective agreement language to schedule preparation time outside instructional hours.

Arbitrator Hall further found no estoppel in this case in the absence of anything the union could point to as constituting a representation by the district that preparation time will be provided within instructional time.

Arbitrator Hall found no violation of the average weekly hours of instruction provision in the collective agreement. He did not agree with the union proposition that only “full weeks” should be included in the averaging calculation. He divided the total number of classroom instruction hours during the school year by 193 days, and found no contravention of the maximum weekly average restriction in Article D.23 of the collective agreement.

Arbitrator Hall further dismissed the union allegations that the secondary AIW is “unreasonable.” He distinguished this case from authorities cited by the union under the heading of reasonableness because those cases pertained to the situation where a subject is not addressed by the collective agreement. In this case there is express language concerning Hours of Work and specifically, the maximum average hours per week for classroom instruction. Arbitrator Hall held that, “provided the district complies with these provisions, a subjective standard of reasonableness cannot be used to imply further restrictions or found a claim for additional compensation.”

## **Elementary Grievance**

Previously, preparation time for elementary teachers was scheduled during instructional hours and there was a recess period in the morning which was regarded as instructional time (even though teachers did not instruct during the recess period). Under the elementary AIW schedule, some preparation time (40 minutes) was removed from instructional hours and scheduled on Friday afternoon when students are no longer at school. The other 60 minutes (as the Provincial Collective Agreement mandates 100 minutes of preparation time for elementary teachers) are scheduled in two 30-minute

periods during instructional hours earlier in the week. Recess was eliminated throughout the week. The union alleged that the elementary AIW schedule violates the collective agreement as a breach of Article D.4 and by the elimination of recess.

In contrast to the secondary grievance, for the elementary grievance there is applicable Provincial Collective Agreement language, specifically Article D.4:

- “1. Each full-time elementary teacher shall receive 100 minutes of preparation time per week scheduled in accordance with the Previous Collective Agreement.
2. Effective June 30, 2019, each full-time elementary teacher shall receive 110 minutes of preparation per week scheduled in accordance with the Previous Collective Agreement.
3. Preparation time for part time teachers shall be provided in accordance with the previous Collective Agreement.”

Arbitrator Hall found an unequivocal direction throughout all of Article D.4 that elementary preparation time shall be scheduled **in accordance with the previous collective agreement** and that, while local Article D.23 is silent on the subject, Provincial Article D.4 provides an express entitlement for elementary teachers as well as direction on how their preparation time will be scheduled, **including a direction that restricts the district’s ability to depart from established scheduling practices** whereby, to the extent that the elementary AIW reduced preparation time for elementary teachers and/or removed it from instructional time, the district breached the collective agreement.

Arbitrator Hall further agreed with the union position that Article D.23.4 was breached by the elimination of recess.

Article D.23.4 provides:

- “4. An elementary teacher shall not be required to offer instruction beyond an interval of six (6) hours, inclusive of:
  - a. instructional time not to exceed five hours, inclusive of fifteen (15) minutes of recess;
  - b. a regular noon intermission.”

Arbitrator Hall found it implicit in this collective agreement provision that there will be 15 minutes of recess and that it is to be scheduled within the five hour maximum.

## Result

The union’s secondary grievance was dismissed. The elementary grievance was upheld on the basis that it contravened the collective agreement in respect to both the scheduling of preparation time and the elimination of recess. As stated by Arbitrator Hall at the conclusion of his award:

“These divergent outcomes are the consequence of material differences in the contractual language governing preparation time as between secondary teachers and elementary teachers in the District. Unfortunately for the Union, the absence of language providing preparation time for secondary teachers within instructional hours cannot be overcome by relying on past practice to imply restrictions not found in the Collective Agreement; nor can the Secondary Grievance be upheld on equitable grounds despite the increase to the instructional workload of enrolling teachers.”

With respect to the elementary grievance result, Arbitrator Hall directed the district to implement a compliant elementary schedule at the earliest practical opportunity. The issue of further remedy was referred back to the parties for consideration with Arbitrator Hall retaining jurisdiction.

## **Impact for Other Districts**

Districts should consider their own collective agreement provisions and specific language with respect to preparation time. This case, specifically in respect to secondary preparation time, involves unique flexibility in terms of scheduling of preparation time.

## **Questions**

Any questions about this decision and its impact for your district should be directed to your BCPSEA district liaison.

Attachment: Hall decision, January 5, 2017