

IN THE MATTER OF AN ARBITRATION UNDER THE
LABOUR RELATIONS CODE, R.S.B.C. 1996, C. 244

BETWEEN:

BC PUBLIC SCHOOL EMPLOYERS' ASSOCIATION
(SCHOOL DISTRICT NO. 73-KAMLOOPS/THOMPSON)
(the "Employer" or "SD No. 73")

AND:

BRITISH COLUMBIA TEACHERS' FEDERATION
(KAMLOOPS THOMPSON TEACHERS' ASSOCIATION)
(the "Union")

(Rachelle Brasseur Grievance)

ARBITRATOR: Corinn Bell, Q.C.

COUNSEL: Jennifer Russell
for the Employer

Stephanie Drake
for the Union

WRITTEN SUBMISSIONS: March 6, 23 and April
3, 2018

DECISION: May 17, 2018

I. INTRODUCTION

The BC Public School Employers' Association (School District No. 73 – Kamloops/Thompson) (the “Employer” or the “SD No. 73”) and the British Columbia Teachers' Federation (Kamloops Thompson Teachers' Association) (the “Union” or the “KTTA”) agree that I have the jurisdiction to determine this matter in dispute. By agreement, the parties presented this case by way of written submissions. The parties agree that my role is to ascertain the mutual intention of the parties to the Collective Agreement. The Union summarizes the issues in dispute as follows:

- (i) Does the Collective Agreement provide for a lunch break for one room school teachers?
- (ii) Whose obligation is it to arrange for supervisory coverage so that the teacher in Blue River can take a break during the lunch intermission?

The Employer submits that the single issue in dispute is as follows:

Was the fact that Ms. Brasseur performed supervisory duties on up to 56 days of the 180 instructional days during the 2015-2016 school year contrary to the terms of the Collective Agreement, and in particular, Article D.19 of the Collective Agreement?

II. JOINT STATEMENT OF FACTS

The parties have provided the following Joint Statement of Facts:

1. There are three one-room schools in School District No. 73 (Kamloops/Thompson) (the “District”): Vavenby, Westwold and Blue River.
2. The Grievor, Ms. Rachelle Brasseur, was the sole teacher at Blue River for the 2015-2016 school year. When the roads are clear, Blue River is approximately a one-hour drive from the nearest town of Clearwater.

3. Ms. Brasseur's position was posted as a temporary backfill for a teacher on leave. It was initially posted for the period of September 1, 2015 to December 18, 2015, or until the return of the incumbent. The incumbent did not return, so Ms. Brasseur remained in the position for the duration of the school year.
4. During the 2015-2016 school year, there were 12 students who attended Blue River, which is a K-7 elementary school.
5. There is a single principal who is responsible for Blue River, Vavenby and Raft River Elementary. Given that s/he is responsible for multiple schools, s/he periodically attends at Blue River, but does not regularly attend at Blue River.
6. At Blue River, the Grievor provided supervision at recess during the 2015/2016 school year. This is, and has generally been, the case at all one-room schools. Teachers at schools other than one-room schools also provide recess supervision to varying degrees.
7. In the District as a whole, lunchtime supervision of children at one room schools is often provided by community members/parents and/or Classroom Education Assistants ("CEAs") that are assigned to a school. The community members/parents have generally been organized by the teachers themselves, including by the Grievor in 2015/2016.
8. Where a community member/parent performs lunchtime supervision, the District pays them a \$10 "per diem" if the individual fills out a form which the teacher collects and provides to the District. If no form is submitted, supervision coverage is not tracked for the dates in question.
9. When a community member/parent performs lunchtime supervision at one-room schools, the teacher at the one room school is not required to perform supervisory duties and can take a duty-free break for the lunch hour, except if the teacher is required to perform first aid, attend to a behavioral issue, etc. This incidental attendance to behavioral issues etc. during the lunch hour takes place at non-one-room schools as well.
10. A normal instructional day under the Collective Agreement is 6 hours with lunch break included as per Article D.18 of the collective agreement.

11. Teachers in one-room schools have complete autonomy over their class for the day; they do not share instructional time with any other teacher.
12. In schools other than the three one-room schools, if community/parent lunch hour supervision is not available and there is no CEA available, supervision may be performed by administrators in the school such as the principal or vice-principal. This could happen on occasion in one-room schools when the principal happens to be on-site. Indeed, the Principal at Blue River during the Grievor's tenure recalls that, on occasion, he would supervise and eat lunch with the children to give the Grievor a break.
13. At Westwold, there have been CEAs working at the school since 2011 because there have been students identified as requiring CEA support. Those individuals have provided for consistent lunch-time supervision at Westwold. There was also a CEA in 2014/15 at Vavenby.
14. There was no CEA at Blue River during the Grievor's tenure.
15. The total amounts paid by the District for lunchtime supervision since 2013/2014 at Vavenby and Blue River are set out in the attached as Exhibit A.
16. There were 180 instructional days during the 2015/2016 school year.
17. On the up to 56 days where no community supervision was available at Blue River in 2015/2016, the Grievor was required to perform supervisory duties during her lunch.
18. Every school in the District is required to provide an annual proposed "Supervision Plan" to the District Office. A proposed Supervision Plan for 2015 – 2016 was provided to the Grievor on September 24, 2015 by the Vice-Principal of Blue River for her comment. A copy of this document is attached as Exhibit B.
19. The District requested \$1800 in funding for the 2015-2016 school year to pay for lunchtime supervision at Blue River. This funding would have been sufficient to pay for someone to perform lunchtime supervision for each of the 180 instructional days.

20. The District ended up having a budget of \$1620 to pay for lunchtime supervision at Blue River during the 2015 – 2016 school year. The decision on the budget amount for this purpose is not made by human resources; it was made by the District's finance department in consultation with the administration about estimated need given various factors such as usage in previous years.
21. The Grievor raised the issue of supervision for breaks for the first time in or about October 2015 with the then-President of the Union, Mr. David Komljenovic. Mr. Komljenovic brought the matter to the attention of the Human Resources Manager, Mr. Shayne Olsen. The Grievor also raised the issue with her Principal, Mr. Shaun McKenna.
22. Mr. McKenna attempted to assist the Grievor in arranging additional lunchtime supervision by contacting some of the parents of students who attended Blue River and by raising the issue at a meeting with parents in November, but he was not successful in finding further supervision assistance. The Grievor also posted a request for further assistance in the newsletters she sent to parents.
23. After some discussions with Mr. Komljenovic on the matter, Mr. Olsen advised the Union of the Employer's position that Ms. Brasseur was not guaranteed a supervision-free lunch break under Article D.19 of the Collective Agreement.
24. Pursuant to Article B.27 of the Collective Agreement: *Allowances for Posts of Special Responsibility*, teachers in one-room schools are paid an allowance in addition to scale placement income in accordance with Appendix B of the Collective Agreement. While the Collective Agreement does not describe what specific tasks these allowances are intended to compensate for, the parties understand that these allowances are intended to compensate teachers in one room schools for the "special responsibilities" associated with their positions, including but not limited to performing administrative responsibilities in the absence of a principal regularly on site, and additional student supervision responsibilities.
25. Article B.27 and Appendix B provide for an allowance for Head Teachers which is equivalent to the amount paid to teachers in one room schools. There are currently two Head Teachers in the District. Both work at small schools where there is no

dedicated principal on site. Again, the collective agreement does not set out what extra duties this allowance is intended to compensate for. However, the parties understand that the “special responsibilities” of Head Teachers include but are not limited to the supervision of the other teachers in the school, the performance of administrative responsibilities in the absence of the principal on site, and the limited responsibilities with respect to supervision of students that a principal would normally perform in exigent circumstances, as required.

- 26. Pursuant to Article B.29, teachers at Blue River are also entitled to an annual “isolation allowance” as set out in Appendix B.

III. THE COLLECTIVE AGREEMENT

The relevant provisions of the Collective Agreement are:

ARTICLE A.6 GRIEVANCE PROCEDURE

...

8(d) Authority of the Arbitrator

...

- ii. The arbitrator shall not have jurisdiction to alter or change the provisions of the Collective Agreement or to substitute new ones.

ARTICLE A.26 MANAGEMENT RIGHTS

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.

ARTICLE B.27 ALLOWANCES FOR POSTS OF SPECIAL RESPONSIBILITY

- 1. The Board agrees to draw up job descriptions for all current and future posts of special responsibility. The Board agrees

to consult and receive Association input in preparation of job descriptions. The Board and Association will negotiate allowances for posts of special responsibility.

Existing positions of special responsibility shall not be eliminated or changed without consultation with the Association.

2. All positions of special responsibility shall be voluntary.
3.
 - a. The positions of Middle and Secondary Co-ordinator and Teacher in Charge will be posted internally within individual work locations by May 30th. The school administration, after consultation with staff or school Staff Committee shall wherever possible, confirm appointments to the aforementioned posts prior to the end of the school term. Middle and Secondary Co-ordinators will be paid an allowance between the minimums and maximums in Article B.27.4 of this article as determined by the school administration with consultation and input from staff.
 - b. Teachers in Charge will be paid an allowance as per Article B.27.4.
 - c. Teachers in Charge shall not be required to provide more than one hundred and fifty (150) hours of principal relief time. Teachers in Charge required to work over one hundred and fifty (150) hours will be paid an allowance of \$20 per day or part day.
 - d. All other positions of special responsibility will be posted in accordance with Section E as they become vacant.
4. Teachers assigned to a position of special responsibility shall be paid in addition to scale placement allowances as outlined in Appendix B.
5. Teachers paid on all scales other than PA (CAT 6) will receive an allowance of one thousand dollars (\$1,000) over scale placement if required by provincial regulation as a condition of employment to possess a Speech Therapist, Hearing Impaired or Visually Impaired Diploma, providing this training was not included as part of a degree program.

6. Teachers paid on PB (CAT 5) will receive a bonus of one thousand dollars (\$1,000) over scale placement if they possess a diploma in education from U.B.C., S.F.U. or U.Vic.

ARTICLE B.29 ISOLATION ALLOWANCE

The teacher working at Brennan Creek and Tranquille Valley shall receive an annual allowance, as outlined in **Appendix B** Teacher Allowances. Teachers working at Blue River shall receive an annual allowance as outlined in **Appendix B** Teacher Allowances.

ARTICLE D.18 HOURS OF WORK/INSTRUCTIONAL TIME

1. Elementary

In an elementary school the duration of a teacher's instructional day shall not exceed six (6) consecutive hours and shall be inclusive of:

- a. five (5) hours of instructional time which shall include fifteen (15) minutes of recess and preparation time as outlined in Article D.4.3;
- b. a regular lunch intermission.

ARTICLE D.19 SUPERVISION

1. Except in one-room schools no teacher shall be required to perform any supervisory duties during the regularly scheduled lunch break.
2. Other supervisory duties shall be assigned on an equitable basis by the school administration and shall not exceed the equivalent of twenty (20) minutes per week.

IV. POSITIONS OF THE PARTIES

(i) Position of the Union

The Union argues that the Employer has breached Article D.19 by failing to ensure supervisory coverage during the lunch hour so that the Grievor could have a break during the instructional day.

The Union submits that the Collective Agreement language supports the position that the Grievor, a teacher in a one-room school house, is entitled to a lunch break and that coverage for that break must be provided by the Employer. The Union refutes the Employer's claim that the Union has the onus to prove that its interpretation of the Collective Agreement is correct; the Union relies on arbitral cases that reject the argument that there is an onus on the Union to prove that it has negotiated language restricting management rights. The Union argues as follows at paras. 26-29 of its written submissions with respect to Article D. 19 of the Collective Agreement:

26. As noted above, the Collective Agreement provides, in Article D.18, that the work day of an elementary school teacher includes 5 hours of instructional time (including prep time and recess) and "**a regular lunch intermission**" (emphasis ours). The intermission is one hour given the length of the instructional day, which is 6 hours.
27. Article D.19, Supervision, must be read in light of this requirement for an intermission in the instructional day. As noted above, D.19 states that "except in one room schools no teacher shall be required to perform any supervisory duties during the regularly scheduled lunch break". That provision does not permit the Employer to ignore the requirement for a regular lunch intermission in Art. D.18 and state that one room school teachers get no break at all unless they arrange for their own coverage.
28. Clearly, the effect of the opening phrase in D.19, "except in one room schools" is that one room school teachers may be required to perform some work during the lunch hour. It is acknowledged that the Collective Agreement does not guarantee them a duty free lunch. However, there is nothing in the Agreement, express or implied, that would dictate the interpretation that the Employer urges in this case, which is that by virtue of the phrase "except in one room schools" one room school teachers are not entitled to any lunch break at all.
29. The second half of Art. D.19 also assists the Union's position. It states: "Other supervisory duties shall be assigned on an

equitable basis by the school administration and shall not exceed the equivalent of twenty (20) minutes per week.". Based on the structure of the provision, this provision would apply to supervision duties other than lunch time supervision duties, which are covered in subparagraph 1. However, subparagraph 2 is of assistance in revealing the intentions of the parties with respect to supervisory coverage generally. The duties in Art. D.19(2) are required to be assigned on an equitable basis. It would therefore be at odds with the overt intent of the provision to visit completely inequitable supervision requirements on teachers at one room schools, as the Employer seeks to do in this case.

Further, the Union argues that it is the Employer's obligation to obtain lunchtime coverage for the Grievor. The Union relies on Article A.26 of the Collective Agreement, the Management Rights Clause, as well as Section 27 of the *School Act* in support of this assertion. While it is acknowledged that it has been the teachers in Blue River that have arranged lunch time supervisor coverage, the Union says that approach is inconsistent with Article 27(3)(c) of the *School Act* which states:

(3) There must not be included in a teachers' collective agreement any provision

...

(c) limiting a board's power to employ persons other than teachers to assist teachers in the carrying out of their responsibilities under this *Act*.

The Union argues that the allowances provided to teachers in one-room school houses are not intended to compensate for situations where the teacher receives no break in the instructional day. In this case, the Grievor was not able to find coverage on 56 occasions amounting to 30% of the school year. The Union argues that the Employer's interpretation, which requires teachers in one-room school houses to work without a break during the day unless they can find their own coverage in exchange for unspecified allowances, would require clear language in the Collective Agreement. Further, the Union points out that the Employer's position is inconsistent with the fact that supervisors are paid a per diem so that the teachers can take a lunch break.

Finally, the Union argues that should it be found that the Employer has some discretion about lunch breaks for one-room school houses that involve an exercise of management rights, those rights must be exercised fairly and reasonably. The Union argues that there is nothing reasonable about the premise that one-room school teachers can only have a break during the instructional day if they arrange their own coverage. The Union submits that the Employer's interpretation is contrary to the principles in *KVP Co. v. Lumber & Sawmill Workers' Union, Local 2537 (Veronneau Grievance)*, [1965] O.L.A.A. No. 2; 16 L.A.C. 73 (Robinson) and cannot stand. The Union argues that for one-room schools, some lunch break supervisory duties are clearly contemplated, but the Collective Agreement is silent as to how much. The Union argues that in assigning those duties, the Employer is required to exercise that discretion fairly and reasonably within the context of Article D.19 and the Collective Agreement as a whole.

The Union relies on the following case law to support its position: *I.A.M., Local 1740 v. John Bertram & Sons Co.*, [1967] O.L.A.A. No. 2, 18 L.A.C. 362; *Simon Fraser University (Re)*, [1983] B.C.L.R.B.D. No. 169; *Pacific Press v. G.C.I.U., Local 25-C*, [1995] B.C.C.A.A.A. No. 637; *Black's Law Dictionary*, 10th ed., s.v. "per diem"; *School Act*, RSBC 1996, c. 412 (section 27 excerpt); *British Columbia School District No. 39 (Vancouver) (Re)*, [1996] B.C.C.A.A.A. No. 87; *Pope and Talbot v. CEP, Local 1092*, [2006] B.C.C.A.A.A. No. 224 (excerpt); *Durham (Regional Municipality) and O.N.A. (Re)*, (April 9, 2008), unreported award of M. Bendel; *Catalyst Paper (Elk Falls Mill) -and- Communications, Energy and Paperworkers Union of Canada, Local 1123 (Policy Grievance #2010-3 re Denial of Retirees' Benefits and Pop-up Bridge)*, (May 3, 2012), unreported award of John B. Hall; *Howe Sound Pulp and Paper Limited -and- Unifor Union of Canada, Local 1119 (Contracting out Notice Issues)*, (January 2, 2014), unreported award of John B. Hall.

The Union asks that the grievance be upheld and asks for the following orders and declarations:

- i. A declaration that the grievance is allowed; and
- ii. An Order that the Employer cease and desist from these breaches of the Collective Agreement; and;
- iii. Such other Orders and directions as deemed appropriate.

(ii) Position of the Employer

The Employer argues that the arbitrator's task in this case is to interpret the language of the Collective Agreement, in accordance with the principles articulated in *Pacific Press and Graphic Communications International Union*, [1995], B.C.C.A.A.A. NO. 637. The Employer asserts that this issue can be resolved on the plain language of the Collective Agreement.

The Employer asserts that Article D. 18(1) contains a general provision regarding the instructional hours of teachers in elementary schools and that Article D. 19(1) contains a specifically negotiated exception to that general rule. The Employer submits that the specific provision must prevail over the general provision. The Employer argues that the specific wording of the Collective Agreement provision at issue, makes it clear that one-room school teachers are required to perform supervisory duties during the regularly scheduled lunch break. The Employer argues that had the parties intended to place a limit on the amount of lunch time supervision for teachers in one-room school houses, such limits would have been negotiated, such as the limits found in Article D. 19(2).

The Employer submits that the context of Article D. 19(1) must also be considered. That Employer describes that context as follows at para. 24 of its submissions:

24. The context of the particular language of Article D.19(1) includes:

- a. the unique circumstances in play at a one-room schools where other supervisory coverage would not be readily available;
- b. the additional amounts paid pursuant to Article B.27 of the Collective Agreement to teachers who work in one-room schools to compensate them for the special responsibilities associated with their positions, including but not limited to additional student supervision responsibilities (para. 24, ASF); and
- c. the context of the rest of Article D.19 where the parties did negotiate specific limits on the amount of “other” supervisory duties a teacher could be required to perform and set them out in D.19(2), but failed to do the same in respect to the requirement that teachers in one-room schools perform lunchtime supervision.

The Employer submits that the Union’s arguments relating to fairness must be dismissed as irrelevant in the task of interpreting the language of Articles D.18 and D.19. The Employer argues that the job of arbitrator is to determine the mutual intention of the parties when they arrived at the language and it is not the role of the arbitrator to impose their subjective sense of equity into the dispute. Further, with respect to the issue of fairness in this case, the Employer notes that teachers in one-room schools are provided with additional compensation, which includes compensation for additional supervision responsibilities.

With respect to whether there is a responsibility on the Employer to provide for supervisory coverage, the second issue which the Union argues is before me in this case, the Employer tenders the following written response at paras. 38-40 of its submission:

The Union has asserted that there is a second issue before you in this case: a question of whose responsibility it is to arrange for lunch supervision for teachers in one-room schools.

However, this issue presumes that there is indeed an obligation to arrange for lunch supervision for one-room school teachers, which does not exist on the plain language of the Collective Agreement. Indeed, the Union's argument in this regard is a red-herring. The Employer's willingness to pay \$10 per day to community members who are willing to conduct lunch supervision at one-room schools does not create a collective agreement requirement to provide such supervision.

Indeed, as stated in the ASF, the long-standing practice of the parties has been that teachers at one-room schools are responsible for performing lunch time supervision responsibilities, unless:

- a. there is a Classroom Education Assistant ("CEA") working in the school; or
- b. the teacher (or the administration, which sometimes assists) is able to arrange for a community member or parent to perform such supervision in which case the District will pay the community supervisor \$10 per day.

This general practice has been in place for many years with the full knowledge of the Union and has not been grieved or disputed by the Union (prior to the case at hand). In the result, even if the Union's interpretation is correct, which is denied, then the Union is estopped from enforcing this interpretation until the parties negotiate a new collective agreement: *Insurance Corporation of BC and OPEIU (2002)*, 106 LAC (4th) 97 (Hall).

The Employer disputes that the *KVP* line of cases has application in this case as *KVP* relates to the implementation of unilateral employer policies, while here the parties are disputing the interpretation of a bargained collective agreement requirement. The Employer further argues that the line of cases respecting discretionary decisions is not relevant in this case as the language in this case is not discretionary. The Employer argues that the language makes clear that teachers in one-room schools are required to perform supervisory duties and there is no obligation on the District to arrange or budget for assistance in this regard.

Finally, the Employer submits that the Union's reliance on s. 27(3)(c) of the *School Act* is also not applicable to these circumstances. Specifically, the Employer asserts that provision relates to the ability of school boards to retain their power to hire non-BCTF members to assist teachers in performing their work. According to the Employer, that provision facilitates SD 73's ability to pay community supervisory volunteers to perform supervisory duties that would otherwise be required of the one-room school teachers. The Employer argues that s.27(3)(c) does not prevent teachers from making arrangements to have those community volunteers perform supervisory duties.

The Employer relies on the following cases in support of its positions: *Finning (Canada), a Division of Finning International Inc. and IAM, District Lodge 250 (Pension Grievance)*, [2013] B.C.C.A.A.A. 111; *HEABC and HSABC*, [2011] B.C.C.A.A.A. No. 124; *Catalyst Paper Corp. (Port Alberni Division) and CEP, Local 686*, [2010] B.C.C.A.A.A. 49; *Kootenay-Columbia School District No. 20 and CUPE*, [2013] B.C.C.A.A.A. 97; *Truro (Town) and CUPE (2001)*, 67 CLAS 112; *Insurance Corporation of BC and OPEIU (2002)*, 106 LAC (4th) 97.

The Employer asks that this grievance be dismissed.

V. DECISION

As stated above, my duty is to decide what the intent of the parties was in negotiating the Collective Agreement language. I have considered the language and evidence in this case with that duty in mind and I agree that the principles set out in *Pacific Press, supra* are instructive. Those principles are the following:

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for an interpretation is the collective agreement.
3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.

4. Extrinsic evidence may clarify but not contradict a collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
7. All clauses and words in a collective agreement should be given meaning, if possible.
8. Where an agreement uses different words one presumes that the parties intended different meanings.
9. Ordinarily words in a collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

Here, we have sophisticated parties with a long bargaining history. There was no bargaining history produced respecting the relevant articles in the Collective Agreement. The parties tendered past practice evidence with respect to budgets and supervision in the one-room schoolhouse in Blue River to assist in my interpretive task.

I turn first to Articles D.18 and D. 19 of the Collective Agreement. For ease of reference, those provisions are re-produced again as follows:

ARTICLE D.18 HOURS OF WORK/INSTRUCTIONAL TIME

1. Elementary

In an elementary school the duration of a teacher's instructional day shall not exceed six (6) consecutive hours and shall be inclusive of:

- a. five (5) hours of instructional time which shall include fifteen (15) minutes of recess and preparation time as outlined in Article D.4.3;
- b. a regular lunch intermission.

ARTICLE D.19 SUPERVISION

1. Except in one-room schools no teacher shall be required to perform any supervisory duties during the regularly scheduled lunch break.
2. Other supervisory duties shall be assigned on an equitable basis by the school administration and shall not exceed the equivalent of twenty (20) minutes per week.

It is undisputed that, as a general proposition, teachers in elementary schools are not required to perform supervisory duties during the regularly scheduled lunch breaks. It is further agreed that there is an exception to this general proposition bargained by the parties for teachers in one-room schools. The issue before me is to assess the meaning of Article D.19(1) of the Collective Agreement, in the context of the grievance which asserts that there was a violation of the Collective Agreement in these circumstances. The circumstances giving rise to the grievance was the Employer's requirement of the Grievor to work during the regularly scheduled lunch break for 56 instructional days when a community member or parent was not available.

The Employer's submission urges me to find that the language supports the position that teachers in one-room school houses are required to perform all supervisory duties during the regularly scheduled lunch breaks for the entire school year. The Employer argues that the budgeting for additional lunchtime supervision for community members was something the Employer was not obliged to either finance or deliver, given the language of Article D. 19(1).

The Union argues that while there is an exception negotiated by the parties for lunchtime supervision for one-room school houses, the supervision required by the Grievor in this case was excessive. The Union further argues that the Employer is attempting to read in language in the Collective Agreement requiring full time lunch break supervision for the entire school year.

The language in Article D. 19(1) provides an exception to the general rule that elementary school teachers do not perform supervisory duties during the regularly scheduled lunch breaks. I cannot conclude, on a reading of the plain language in Article D. 19(1), that there is a requirement that all lunch break supervision must be performed by teachers in one-room school houses. While I agree that the *KVP* principles are not applicable in this case, for the reasons argued by the Employer, I cannot agree with the Employer's interpretation of Article D. 19(1).

This is an issue that relates to the mutual intent of the parties when bargaining language in the collective agreement. I cannot find support, based on the plain reading of the Collective Agreement, for the Employer's interpretation that the language in Article D.19(1) mandates that all lunch time supervisory duties must be performed by teachers in one-room school houses.

The parties clearly negotiated a provision that provides an exception to the general principle that teachers do not provide lunchtime supervision. In the past, the Employer has budgeted and funded community members to perform lunchtime supervision. In 2015-2016, the funding would have been sufficient to pay for a community member to perform lunchtime supervision for each of the 180 instructional days. Likewise, there is an established practice that has not been grieved by the Union of having lunchtime supervision regularly performed by the one-room school house teachers in Blue River. I understand that such supervision has been primarily arranged by the teachers at Blue River in concert with the administration and the community members. In the school year prior to the Grievor working in Blue River, the amount of lunch supervision performed by the teacher in Blue River was greater than the lunchtime supervision performed by the Grievor in this case.

I agree that the relevant collective agreement language must be read in context, including the fact that securing supervisory coverage would be more challenging, yet clearly not impossible, for one-room school houses.

The Employer relies on Article B.27 as support for the argument that lunchtime supervision is provided as part of the compensation package to one-room school teachers. While the Article B.27 allowances are provided to teachers who work in one-room schools, those allowances do not specify the nature of the compensation or identify that such compensation correlates to lunchtime supervision for every day of the school year. Rather, teachers in one-room schools are paid allowances for “special responsibilities” associated with these positions, including but not limited to administrative responsibilities in the absence of a principal regularly on site and additional student supervision responsibilities.

Nor do I find Article D. 19(2) provides assistance as to the amount of supervision that was contemplated by the parties as D. 19(2) relates to “other supervisory duties” for teachers in schools other than one-room school houses. Article D.19(1) neither expresses that all supervisory duties for all instructional days would be required of teachers in one-room school houses nor places any limits on the supervisory duties or time frames. I find that the language is silent with respect to the nature and extent of the lunch time supervision exception bargained by the parties.

As such, I turn to the practice of the parties to the Collective Agreement. The undisputed evidence tendered respecting the past practice in one-room school houses is that the School District budgets for substantial (if not complete) coverage for lunchtime supervision and that supervision is facilitated by the teacher, sometimes with the assistance of the Employer. It is plain from the materials tendered by the parties with the Joint Statement of Facts, that the teachers in Blue River immediately preceding and following the Grievor performed more lunchtime supervision than the 56 days out of the 180 school

days performed by the Grievor in the year in question. In the instructional year 2013-2014, two years prior to this grievance being filed, the teacher in Blue River performed lunchtime supervision that was less than the 56 days worked by the Grievor. I have no evidence suggesting that the past practice was ever grieved by the Union or disputed by the teachers in Blue River until this case.

I cannot agree with the Employer's interpretation that Article D. 19(1) obliges a teacher in a one-room school house to supervise students at every lunch break. That said, the language in Article D. 19(1) very deliberately carves out an exception to the general rule respecting lunchtime supervision for teachers in one-room school houses. That language, bargained by the parties, is significant and must be given meaning. Given that I conclude that the nature of the exception is silent in the Collective Agreement, I find the past practice of the parties to be instructive. With respect to the past practice of having the teacher primarily arrange for a community member's assistance, I agree with the Employer that on its face, section 27(3)(c) of the *School Act* appears to facilitate the ability for the School District to pay community or parent supervisory volunteers for lunch time supervision. The general practice of having the teacher, with the assistance and financial support of the administration, arrange for the community member or parent to perform lunch time supervision for portions of the instructional year is a practice that has been in place in Blue River.

In this case, I find SD No. 73's requirement of the Grievor to work 56 of the 180 lunch breaks in the 2015-2016 school year was reasonable. I make this finding after considering: (i) the submissions of parties; (ii) the language of the Collective Agreement which clearly indicates a lunch break supervision exception for one-room school houses; (iii) the provision of special allowances in Article B. 27; and, most notably, (iv) the past practice of the parties in Blue River.

There is no evidentiary basis upon which to disturb the practice in place at Blue River during mid-term of the Collective Agreement. The place to make

such changes to the nature and extent of the exception and the provision of the lunch time supervision is at the bargaining table.

For the reasons described above, the grievance is denied.

Dated at Kamloops, BC this 17th day of May, 2018.



CORINN M. BELL, Q.C.