

In this Issue:

- **Preparation Time — Non Instructional Day and Statutory Holiday**
 - **Award 1: Arbitrator Burke, SD No. 75 (Mission), April 26, 2005**
 - **Award 2: Arbitrator Lanyon, SD No. 68 (Nanaimo-Ladysmith), January 29, 2007**
 - **Award 3: Arbitrator Kinzie, SD No. 73 (Kamloops-Thompson), April 2, 2007**
 - **Action: District Analysis of Preparation Time Language**

Preparation Time — Non Instructional Day and Statutory Holiday

On April 2, 2007, a third award was rendered in School District No. 73 (Kamloops/Thompson) by Arbitrator John Kinzie on the issue of preparation time scheduled on a non-instructional day or statutory holiday. A summary of the award will be included in the May issue of the *Grievance and Arbitration Update*, however, as this award may have an immediate effect on a district's decision regarding next year's elementary timetabling, the following information is provided for your consideration and attention.

Award 1: Arbitrator Burke, School District No. 75 (Mission), April 26, 2005

Arbitrator Burke concluded that even when a statutory holiday or a non-instructional day occurred during that week, given the specific language of their collective agreement and inconsistent practice in this area, the Mission school district was required to provide elementary teachers with 90 minutes of preparation time per calendar week.

School District No. 75 (Mission) had the following preparation time language:

“The maximum weekly instructional assignment for a full-time elementary teacher shall be 1425 minutes per week, less 90 minutes which shall be provided for the purpose of preparation.”

Following this award, BCPSEA notified the BCTF that we do not accept this arbitration award as necessarily being applicable to any other district in the province.

Award 2: Arbitrator Lanyon, School District No. 68 (Nanaimo-Ladysmith), January 29, 2007

School District No. 68 (Nanaimo-Ladysmith) had the following preparation time language:

“One hundred and ten (110) minutes preparation time per week, exclusive of recess, shall be scheduled for full-time regular elementary classroom teachers effective July 1, 1994.”

Arbitrator Lanyon concluded that the clear past practice was not to make up preparation time lost as a result of non-instructional days and statutory holidays. The language throughout the collective agreement provided a direct link between the amount of preparation time and instructional time; i.e., a

reduction of instructional time in a week also reduced the required amount of preparation time. The arbitrator concluded that as long as the appropriate amount of preparation time was “scheduled” in a week, the Nanaimo-Ladysmith school district was not required to make up preparation time that was missed by a teacher due to a non-instructional day or statutory holiday falling in that week.

Award 3: Arbitrator Kinzie, School District No. 73 (Kamloops/Thompson), April 2, 2007

School District No. 73 (Kamloops/Thompson) had the following preparation time language:

“Effective September 1, 1991 full-time elementary teachers assigned full-time to classroom instruction and learning assistance teachers shall be provided with a minimum of eighty (80) minutes preparation time per week.”

Arbitrator Kinzie concluded that unlike the preparation time article in the Nanaimo-Ladysmith collective agreement, in Kamloops/Thompson the obligation was not only to “schedule” 80 minutes of preparation time per week but also to actually “provide” 80 minutes of preparation time per week. As a result, he was unable to reach the same conclusion as Arbitrator Lanyon and ruled that, based on the language of the collective agreement, the Kamloops/Thompson school district was still required to provide 80 minutes of preparation time per week.

However, Arbitrator Kinzie found, as did Arbitrator Lanyon, a direct link between the amount of preparation time and instructional time in the language of the collective agreement. This link, coupled with the fact that “week” was not defined in the preparation time article as a “calendar week,” led Arbitrator Kinzie to rule that the district was not required to provide 80 minutes of preparation time in a “calendar week” but, instead, had the option of providing the 80 minutes of preparation time in an “instructional week”; i.e., 80 minutes over five instructional days.

Arbitrator Kinzie indicated that in order for the employer to meet its obligation to provide 80 minutes of preparation time per week, one option would be to adopt the employer’s alternate argument of a rotating schedule for elementary schools. The employer’s alternative argument for a rotating schedule is described on page 8 of his award:

“A third suggested solution was for elementary schools to adopt a rotating schedule like the secondary schools. Elementary schools would retain the five day schedule but where a statutory holiday or non-instructional day interrupted its operation, that day would not simply be cancelled and thereby lost. Instead, that day’s blocks would take place on the first day back at school after the statutory holiday or non-instructional day. The schedule would no longer be a Monday through Friday one running its course during the calendar week. Instead it would cover Days 1 through 5 and would repeat itself throughout the school year as is the case in the secondary schools.”

Further, on page 23 of the award, he writes:

“Having considered all of the evidence and arguments in light of the principles I have related above in this award, I have concluded that the use of the term “week” in Article IX, Section 4.1.1 as opposed to the phrases “calendar week” or “instructional week” gives the Employer some flexibility in its ability to schedule preparation time. In my view, it can use either the calendar week or an instructional week of five days so long as over that five day period every elementary school teacher is provided with a minimum of 80 minutes of preparation time.

Thus, in smaller schools, the Employer might decide to use the calendar week and schedule all preparation time on Tuesdays, Wednesdays and Thursdays. In these schools, all of the preparation time could be provided by one preparation teacher in those three days so that the

educational continuity and facilities difficulties would not arise as they would in larger elementary schools.

Alternatively, it could use a five day rotating schedule. In these circumstances, if Day 3 on the schedule, which included teachers' preparation time blocks, fell on a statutory holiday or a non-instructional day, it would take place the school day following the holiday or the non-instructional day. That way no preparation time blocks would be lost and every teacher would receive her minimum of 80 minutes preparation time over a period of five instructional days as the parties, by the words in their collective agreement, intended.

I agree that such a rotating schedule would be a change for elementary schools, although it is the type of schedule commonly used in the Employer's secondary schools. I am not persuaded on the evidence before me that the use of such a schedule would be too confusing for elementary students to handle. Further, I am of the view that the fact that this interpretation might impact some individual part-time teachers who prefer to teach on specific days and not on others does not render it and this schedule unreasonable. Nor does it, in my view, make it administratively unfeasible or create an anomaly."

In this award, arbitrator Kinzie also addressed the issue of preparation time missed due to reasons other than statutory holidays and non-instructional days such as field trips, school assemblies, young peoples' concerts and sports days. On page 27 he states:

"In these circumstances, where the cancellation of the preparation time block has occurred as a result of the voluntary decision or action of the classroom teacher, I am of the view that she would not be entitled to claim that the Employer had not complied with its obligation under Article IX, Section 4.1.1. In my view, the Union is only entitled to claim relief in respect of these events where the elementary school teacher has been compelled to attend and thereby lost her preparation time block. Where the teacher has lost her preparation time block as a result of her own decision, I am of a view that she would not be entitled to relief."

Action: District Analysis of Preparation Time Language

There are now three arbitration awards concerning the issue of preparation time for elementary teachers. These awards are based on the specific language in the district involved. **It is recommended that each district now analyze its collective agreement in light of the three awards to determine whether any action or change is required with respect to providing or scheduling elementary preparation time in the district and/or ensuring that teachers are aware that other school activities are voluntary.**

Questions

Should you require assistance or wish to discuss this issue further, please contact your BCPSEA labour relations liaison.

Distribution of this Bulletin

Please ensure that this bulletin is circulated to all administrative staff in both the district office and schools who must rely on the collective agreement in the performance of their duties.