IN THE MATTER OF AN ARBITRATION

BETWEEN:

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION/BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 73 (KAMLOOPS/THOMPSON)

(the "Employer")

AND:

BRITISH COLUMBIA TEACHERS' FEDERATION/ KAMLOOPS THOMPSON TEACHERS' ASSOCIATION

(the "Union")

ARBITRATOR:	John Kinzie
COUNSEL:	Judith Anderson, for the Employer Allan Black, Q.C., for the Union
DATES OF HEARING:	November 29 and 30, 2006 and February 15 and 16, 2007
PLACE OF HEARING:	Kamloops, British Columbia

AWARD

I

This proceeding is concerned with a grievance by the Union dated November 15, 2005 in which it alleges that the Employer is not providing its elementary school teachers

with the preparation time called for under Article IX, Section 4.1 of the collective agreement.

Article IX, Section 4.1 reads as follows:

> "4.1 Elementary
>
> 4.1.1 Effective September 1st, 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.
>
> 4.1.2 Teachers in one-room schools may accumulate preparation time and take such time in blocks of one full day.
>
> 4.1.3 Part-time teachers of .4 or more assigned full-time to classroom instruction will receive preparation time for classroom instruction pro rated according to their F.T.E. status.
>
> 4.1.4 Preparation time shall be for periods of not less than thirty (30 minutes)."

In referring this matter to arbitration, the Union specifically complained that where preparation time was lost during a week because of a statutory holiday or a non-instructional day, the Employer was not making that time up. It submits that the language used in Article IX, Section 4.1.1 is clear and unambiguous, and in this regard, it relies on the decision in *Board of School Trustees of School District No. 75 (Mission)*, Award dated April 26, 2005 (Burke) (hereinafter the "Burke decision"). It maintains that the Employer is obliged to furnish full-time elementary classroom teachers with a minimum of 80 minutes preparation time per week, and that if a teacher's preparation time is cancelled for whatever reason the Employer must make it up so that that teacher in the end receives her 80 minutes preparation time that week.

The Employer disagrees. It says that Article IX, Section 4.1.1 only requires that the Employer provide each full-time elementary classroom teacher with a minimum of 80 minutes preparation time per week on her weekly timetable or schedule. It says that if any of that preparation time is lost because of a statutory holiday or non-instructional day, it is not obliged to make it up. Its obligation is to schedule the required preparation time, not guarantee that each teacher receives it.

II

The background facts to this proceeding are as follows.

Both parties agree that the provision of preparation time for elementary school teachers is important for effective classroom instruction. One elementary school principal, Roxanne Dauncey, agreed with the suggestion in cross examination that preparation time was sacred to teachers and she added that she regarded it as such herself.

Teachers use their preparation time for a variety of activities. They include preparing lesson plans and means for assessing students on what they have learned, marking those assessments, collaborating with colleagues such as the learning assistance teacher regarding their students, discussions with the principal concerning discipline and behaviour issues in their classes, meeting and otherwise communicating with parents of students in their classrooms, and reviewing professional journals regarding matters relevant to what is going on in their classrooms. Preparation time is not just free time to be used by teachers to do whatever they want.

I now turn to the evidence concerning the scheduling of preparation time for elementary school teachers.

The parties' collective agreement defines the "regular work year" in Article IX, Section 2 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 26th, the last day scheduled will be June 30th;
>
> 2.2 the first day of the winter break shall be the Monday preceding December 26th. Schools shall reopen on the Monday following January 1st. If January 1st 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" also includes one day for district-wide professional development, four days for inservice and/or professional development, one year end administrative day, two non-instructional days for the purpose of parent-community interaction, up to four early dismissal days, and a school opening day that may be shortened.

Article IX, Section 3 then goes on to provide that the duration of the instructional day in an elementary school shall not exceed six consecutive hours and shall include:

> "3.1.1 five (5) hours of instructional time which shall include fifteen (15) minutes of recess and preparation time as outlined in Article IX.4;
>
> 3.1.2 a regular lunch intermission."

Article IX, Section 4.1 then provides that full-time elementary classroom teachers and learning assistance teachers are to be "provided with a minimum of eighty (80) minutes preparation time per week." Further, these blocks of preparation time are to be given in periods of not less than 30 minutes.

In addition to these collective agreement provisions, the schedules or timetables for elementary classroom teachers are also affected by the requirements of the school calendar. Section 77(1) of the *School Act* requires that a school board

> ". . . must, in accordance with the regulations and for each school in its school district, make a school calendar for the following school year available to every parent of a student in the school."

Section 78(1)(a) of the Act gives the Lieutenant Governor in Council the authority to "set a standard school calendar that is applicable to a period of 5 consecutive school years . . . ."

The Employer has adopted the standard school calendar and Section 4(1) of the *School Calendar Regulation*, B.C. Reg. 114/02, then defines what individual school calendars must contain as follows:

> "(a) set out the same number of days in session as are set out in the standard school calendar,
>
> (b) set out the same dates for the administrative day, the school opening day, the school closing day, the vacation periods and the holidays as are set out in the standard school calendar,
>
> (c) provide for not less than the minimum number of days of instruction specified in the standard school calendar for the school year,
>
> (d) provide for not less than the minimum number of hours of instruction specified in section 8 (2),
>
> (e) provide for not more than the maximum number of non-instructional days specified in the standard school calendar for the school year,

(f) set out, for each non-instructional period for the school year, its date and, if the non-instructional period is scheduled for a portion of a school day, the time for which it is scheduled,

(g) subject to section 9 (1), specify the purpose of each non-instructional period,

(h) specify the following:

(i) the length of school days;
(ii) the number of minutes of school operation to be provided in a school day;
(iii) the number of hours of instruction to be provided in a school day;
(iv) the number and length of recesses to be provided in a school day, and

(i) set out such other dates, times and information as the board considers necessary."

There was no suggestion that there was any conflict between the requirements of the standard school calendar and the requirements of the parties' collective agreement insofar as it regulated teachers' "regular work year", instructional time during an instructional day, and preparation time.

Principals of individual schools are responsible for developing the teaching timetables or schedules for their schools. They do this in consultation with the teachers in their schools. Those timetables or schedules must be consistent with the requirements established by the standard school calendar and those set out in the collective agreement. Thus, those timetables or schedules must respect, *inter alia*, the statutory holidays and the non-instructional days that occur during the school year, the length of the instructional day specified in the collective agreement, as well as the requirement for a minimum of 80 minutes preparation time per week.

For some years now, it was not clear on the evidence how long, principals in elementary schools have used a five day repeating timetable tied to the calendar week. Each day has been broken down into seven blocks with each block being 40 minutes in length. The balance of the instructional day has included a 20 minute recess in the morning, a 55 minute lunch break and five minutes at the beginning or end of the day for announcements or personal planning for students. The fact that blocks are 40 minutes in length has made it easier for principals to schedule teachers' preparation time. Each teacher is given two blocks off in order to satisfy the collective agreement requirement for a minimum of 80 minutes preparation time per week.

If a statutory holiday or a non-instructional day occurs during a calendar week, that particular day on the elementary school's five day timetable is just lost along with all of the blocks that have been scheduled for that day. This situation is to be contrasted with what occurs in the Employer's secondary schools. These schools operate on rotating schedules or timetables of mostly four days in length, but with some six days in length. When a statutory holiday or a non-instructional day occurs, that particular day on the secondary school's timetable is not cancelled. Instead, it occurs on the next school day, i.e., the day after the statutory holiday or non-instructional day.

It is to be noted that the collective agreement provision governing preparation time for secondary school teachers is worded differently from that governing elementary school teachers. In Article IX, Section 4.2.1, it provides that:

> "Full-time secondary teachers assigned full-time to classroom instruction and learning assistance teachers shall be entitled to a minimum of 12 ½% of total instructional time for preparation."

Once a principal of an elementary school knows the number of full-time and part-time (over .4 FTE) teachers he will have for a given school year, he will be able to determine the number of preparation time blocks he will have to schedule that year. Each full-time teacher will have to have two blocks of preparation time scheduled per week. Schools will generally try to schedule specialty courses such as music, computer education, French and physical education into these blocks so that the teachers providing preparation time relief are teaching substantive courses to their classes that do not conflict with or duplicate the courses being taught by the regular classroom teachers. The principal generally consults with his or her teachers regarding the subjects they would prefer to have the preparation time teacher teach. With that information and the number of preparation time blocks he must cover, the principal then requests the Employer to post a vacancy for a teacher with the desired qualifications and the specific full-time equivalency based on the number of blocks to be covered. In the larger elementary schools, more than one preparation time teacher may be required.

What happens in a week in which a statutory holiday or a non-instructional day falls? As we have seen, that day is lost in the five day elementary school timetable or schedule. The blocks of teaching that would have occurred that day are simply cancelled and lost. Schools move on to the next day on the timetable or schedule when school resumes on the day following the statutory holiday or the non-instructional day. Blocks providing preparation time for teachers are also cancelled and lost if they have been scheduled for that day. That fact means that a teacher scheduled to receive part of her preparation time allotment on that day would not receive her minimum of 80 minutes preparation time over that five day period. It has not been the practice of the Employer or the principals in its elementary schools to make up these lost preparation time blocks or to reschedule them so that they are not cancelled and lost in the first place.

Blocks of preparation time are also cancelled and/or lost for a variety of other reasons as well. These reasons include field trips, school assemblies, young peoples'

concerts, sports days, and early dismissals for parent-teacher interviews. The evidence indicated that as a general rule these lost blocks of preparation time were not made up, but there were some exceptions. One occasional exception involved informal arrangements being made between classroom teachers and the preparation time teacher agreeing to switch preparation time blocks so that one of the classroom teachers could go on a field trip or to a concert. Another example involved two principals who decided to make up some missed preparation time blocks because the demands on his or her time had caused teachers to miss their preparation time blocks. A similar situation occurred when a learning assistance teacher scheduled a school based team meeting to consider a student's individual education plan during a teacher's preparation time block without consulting her in advance. This lost preparation time was made up.

The Employer maintains that it is not obliged by the collective agreement to make up these cancelled and lost preparation time blocks. It submits that this is so because it is only obliged to schedule the required blocks of preparation time; that it is not obliged to ensure that teachers receive them. However, it did call evidence regarding the possible ways of meeting the Union's interpretation of Article IX, Section 4.1.1 and, more particularly, the difficulties that would occur as a result of implementing them.

One possible solution that was suggested was specifying that all preparation time blocks be scheduled on Tuesdays, Wednesdays and Thursdays. This solution is premised on the fact that most statutory holidays and non-instructional days occur on Mondays or Fridays. However, as Dan Cairnie, the Employer's Assistant Superintendent of Schools responsible for Human Resources, pointed out, some statutory holidays like Remembrance Day and some non-instructional days occur mid week so that this solution would not be a complete answer.

The evidence established that in some of the smaller elementary schools, this practice had been adopted with a view to avoiding as much as possible, preparation time blocks being affected by statutory holidays and non-instructional days. However, in schools with more than 10 teachers, the implementation of this practice is not as straightforward. Because only 21 blocks would be available in this time period, 11 or more teachers could not be provided with all of their preparation time in the three days. They would require 22 blocks or more. Thus, more than one preparation time teacher would have to be hired and each would be limited to a maximum .6 FTE assignment. Preparation time teachers having assignments in excess of .6 FTE would have to be laid off and the position(s) reposted. This could have a detrimental effect on school specialty programs such as music, computer education, physical education and French. Further, having two or more preparation time teachers in the fields of music, computer education and physical education could create demands on physical spaces such as computer and music rooms and equipment and gymnasiums that could not be met.

Another suggested solution was schools engaging teachers-on-call to cover the preparation time blocks that needed to be made up. Cairnie expressed concerns about the cost of this solution in light of the fact that teachers-on-call cost a school $278.00 a day to bring in. He also questioned where they would work and what they would teach. The

teacher the teacher-on-call would be providing preparation time for would still be in her classroom undertaking her preparation time. The regular preparation time teacher would be in his classroom providing preparation time for some other teacher. As to what the teacher-on-call would teach, would it be from the courses that the classroom teacher would teach or from the course that the preparation time teacher would have taught in that block but for the statutory holiday or non-instructional day? The answer to this question is important because of the further question that arises as to who would prepare the lesson for the teacher-on-call.

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.

A number of the elementary school principals who were surveyed by the Employer on a number of issues pertaining to the Union's grievance suggested the rotating schedule as a solution. However, several of them pointed out some possible difficulties with it. One principal expressed the view that such a schedule would not be a good option in elementary schools. A second said it would be a big change for elementary schools. Finally, Gurdeep Pannu, the Principal of Westmount Elementary School, testified that a rotating schedule would be confusing for students of elementary school age in that schools and teachers would be asking them to be more organized than they are used to being.

Brian Beck, the Principal of A.E. Perry Elementary School, pointed out a different problem with rotating schedules in his evidence. He said that part-time teachers sometimes liked to have certain days off in their teaching schedules. Their desires in this regard would be affected if the Monday to Friday schedule was changed to a rotating schedule because a particular day on the schedule would not necessarily fall on a specific day of the calendar week throughout the school year.

Evidence was also adduced concerning the collective bargaining that brought Article IX, Section 4.1 into the collective agreement. This evidence was adduced through Simon Mason who was the Employer's Director of Human Resources at the relevant time and its chief spokesman in bargaining with the Union.

The issue of preparation time for elementary school teachers arose in the first round of collective bargaining in 1988 under the provisions of the then *Industrial Relations Act*. At that time, bargaining took place at the local as opposed to the provincial level. Thus, the employer at that time was the Board of School Trustees of School District No. 24 (Kamloops) (hereinafter the "Kamloops School Board") and the union was the Kamloops District Teachers' Association (hereinafter the "KDTA").

Mason testified that the KDTA's initial proposal in that round of bargaining did not include an express provision for preparation time for either elementary or secondary school teachers. Instead, its proposal limited "a teacher's weekly instructional assignment" to not exceeding 20 hours. A part-time teacher's instructional time would be pro-rated based on a full-time weekly assignment of 20 hours. The Kamloops School Board did not agree with this proposal, but at the end of the day it did agree with the KDTA on the following provision which became Article IX, Section 3(b) in the 1988-90 collective agreement:

> "Effective September 1, 1989 each full-time elementary teacher assigned full-time to classroom instruction shall be provided with a minimum of thirty (30) minutes per week of non-instructional time. Such non-instructional time shall be exclusive of recess and lunch periods."

Part-time teachers of .5 or more assigned to classroom instruction were to receive preparation time proportional to their full-time-equivalent status.

In bargaining for a renewal of the 1988-90 collective agreement, the KDTA first proposed language similar to its initial proposal in the 1988-90 round limiting a teacher's weekly instructional assignment to not exceeding 20 hours. Its proposal then added the words that "the remainder of the school's instructional time shall be used for preparation and collaboration." The Kamloops School Board did not agree with that proposal and it countered with language that would provide that:

> "All full-time teachers covered by this agreement shall:
>
> a) at the elementary level, provide (950 x .95) = 902.5 hours of instruction annually.
>
> b) at the secondary level, provide (1045 x .875) = 914.375 hours of instruction annually.
>
> Instructional time includes recess at the elementary level and period changes and long breaks at the secondary level."

Mason explained that the Kamloops School Board defined the work year for teachers at 190 days. The figure 950 represented that number of days times five hours of instruction for each day for elementary school teachers. 902.5 hours amounted to 95% of the 950 hours which left 5% of the annual instruction time available to elementary school teachers for preparation. The KDTA did not accept this proposal.

The parties then returned to the language in Article IX Section 3(b) of the 1988-90 collective agreement. The KDTA proposed that it be amended to read that "elementary teachers shall receive not less than 100 minutes of preparation time per

week." The Kamloops School Board did not agree with "provided" being changed to "receive" and proposed that the minimum amount of preparation time be increased to 75 minutes per week. Ultimately they settled on 80 minutes per week as well as the addition of learning assistance teachers to its coverage. In the result, the language in the 1990-92 collective agreement read as follows:

> "4.1.1 Effective September 1st, 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."

There is no evidence that the question of what would happen when a statutory holiday or a non-instructional day occurred during a week was ever raised or discussed by the parties during either of these rounds of bargaining. Nor is there any evidence that absences during preparation periods due to field trips, concerts, assemblies and the like were discussed.

Article IX, Section 4.1 of the collective agreement has remained unchanged from the time of the 1990-92 collective agreement through until the most recent collective agreement commencing July 1, 2006. Effective September 1, 2006, preparation time for elementary school teachers in School District No. 73 (Kamloops/Thompson) was increased from 80 to 90 minutes per week.

Several grievances have been filed by the KDTA and the Union since preparation time for elementary school teachers was included in the first collective agreement.

In March, 1990, the KDTA grieved the Employer's failure to provide preparation time for teachers in one-room schools. With preparation time at 30 minutes per week, they were entitled to four full days of preparation time over the September to June period. The Employer did not dispute the grievance and made up the preparation time that had not been provided.

On September 24, 1991, the KDTA grieved the loss of preparation time "on statutory holidays and on inservice days (Article IX.4.1.1)." Mason testified that he found this grievance in the Employer's grievance file along with a summary of the disposition of a number of the KDTA's grievances around that time prepared by his executive assistant. With respect to this grievance, the summary recorded that:

> "As of today's date, (October 28/92), nothing futher (sic) has been heard on this grievance and it is considered resolved."

Mason could not recall any discussions he had had with the KDTA regarding this grievance. He agreed that he had not written to the KDTA to indicate that the Kamloops School Board considered it resolved.

In January, 2002, the Union raised an issue with the Principal of Pacific Way Elementary School, Joe Small, about the fact that the block prior to the lunch intermission in his school's timetable was only 35 minutes in length. Some of the teachers at the school received their preparation time during this block with the result that they only received 70 minutes in preparation time per week rather than 80. Small agreed that this schedule resulted in the teachers concerned not receiving the preparation time to which they were entitled. He took steps to rectify the situation by making up the teachers' missed preparation time.

On October 4, 2002, Sheila Park, then the Vice President of the Union, wrote to Ross Dickson, an Assistant Superintendent of Schools for the Employer advising him that:

> "On behalf of members of Arthur Stevenson Elementary staff the Association is submitting a grievance pursuant to but not limited to Article IX.4.1.1 of the Collective Agreement. Elementary teachers are to be provided with a minimum of 80 minutes preparation time per week and the preparation time schedule in the school limits her to 40 minutes per week in the six weeks that they have non-instructional days."

This letter was copied to Mason.

Mark McVittie, the current President of the Union, testified that this grievance arose out of the fact that a teacher lost her preparation time due to a non-instructional day. He said that the grievance was resolved for the future with the principal directing her to take her preparation time during the non-instructional day.

In his evidence, Mason said he had not seen Park's letter. He said he had reviewed the Employer's grievance file for 2002 and he could not find a copy of it there.

On April 26, 2005, Emily Burke issued her decision in School District No. 75 (Mission). In it, she concluded that Article D. 14(1) of the collective agreement in her case required the Mission School Board to provide elementary teachers with 90 minutes of preparation time per week even if a statutory holiday or a non-instructional day occurred during that week. Article D. 14(1) read as follows:

> "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."

A good part of the Burke decision dealt with the Mission School Board's preliminary objection that the matter was not arbitrable because of the union's withdrawal of two previous grievances. She was not persuaded by the school board's arguments in that regard.

Ms. Burke then turned to the merits of the grievance. In allowing the grievance, she commented that:

> "I note first whether the clause is ambiguous or not, the most that can be said about practice as established by the evidence, as the Union described, it is a 'mixed bag' of preparation time being made up. Further, I agree with the Union the real issue is *not* re-scheduling per se but whether the clause itself requires the provision to elementary teachers of 90 minutes of time for the purpose of preparation. While re-scheduling may be an aspect of preparation, the real issue is whether 90 minutes of preparation time for elementary school teachers is required by the collective agreement.
>
> . . .
>
> In my view the language in Article D. 14 (1) is clear and unambiguous. The provision of preparation time is modified by the word 'shall'. The case law setting out the mandatory nature of this proposition is well established. Further, as pointed out by the Union, where the time is to be pro-rated, it is specifically done so as in Article D. 14 (4). The clause provides that part-time teachers of 0.4 FTE or more shall receive preparation time pro-rated to their FTE status.
>
> Furthermore, in my view Article D. 14 does not refer to re-scheduling but rather the obligation to provide a specific amount of preparation time. The previous case between the parties, *School District 75, supra* (Larsen) (sic) supports this conclusion. This same Employer was of the view in that case it had to provide preparation time. The only issue was whether that time was to be provided in the same semester. The case commenced with the comment:
>
>> 'The issue in this case is narrow, which is to say, whether under the terms of the collective agreement teachers are required to be provided with preparation time on a weekly basis. While the Employer acknowledges that it has an obligation to provide preparation time, it takes the position that it is entitled to allocate it in a single semester . . .'
>
> (at p. 2)
>
> There was no issue in that case that teachers were getting the proper amount of preparation time. The arbitrator found, however, there was:

> '. . . no ambiguity in that provision (Article D. 4 (2)). What is important to understand is that subparagraph 2 prescribes a formula for the assignment of preparation time which is integral with the maximum instructional assignment of 1545 minutes per week. While preparation time is not defined by subparagraph 3 as being part of an instructional assignment, the 193 minutes is required to be deducted from the maximum 1545 minutes per week . . .'
>
> (at p. 7)

. . .

The Union in this case points out the clause before me is essentially identical with the substitution of different amounts of time and its applicability to elementary teachers. I agree. Those are the only differences between the clauses. As Arbitrator Larsen (sic) noted the language is clear. It requires the provision of 90 minutes of preparation. If that is missed, the preparation time must be provided. Under clause (2), secondary teachers are provided with the 193 minutes set out in the clause. Under clause (1) elementary teachers must be provided with the 90 minutes of preparation time as set out in Article D. 14 (1).

. . .

Finally, as noted earlier, past practice is ultimately not helpful to the Employer in this case. First, as I have found no ambiguity in the language, it is not of assistance. Even if ambiguity were present, however, it is not helpful. The most that can be said is that there was a 'mixed bag' of practice or a mixed practice. The fact the Agreed Statement of Facts records a comment from Junek that a survey of principals he had done in 1991 confirmed no practice of making up preparation time does not establish a mutual understanding. There is no evidence of a consistent direction from the Employer on this point. Rather, throughout it was clear the parties had a difference of opinion over the years on this matter. Indeed the comments of Trask about this area amply confirmed that reality. This is also evident by the bargaining proposal and the different way each party treated the nature of that proposal. The fact no grievance was filed in a four year period does not change this conclusion in view of the differences historically identified between the parties on this point."

(at 30-34)

Following publication of the Burke decision, the B.C. Teachers' Federation (hereinafter the "BCTF") wrote to the B.C. Public School Employers' Association (hereinafter the "BCPSEA") on June 6, 2005 under the heading "Weekly Preparation Time – Estoppel Notice":

> "In consideration of the recent decision in SD 75 (Mission) concerning the above-referenced matter, the BCTF will be advising its constituent locals, where parallel language exists, to file grievances in any situation where the full allotment of weekly preparation time is not provided in any week in which a non-instructional day, board-ordered school closure or a statutory holiday occurs."
>
> This change of practice is effective September 1, 2005."

On July 26, 2005, BCPSEA responded in a letter to Brian Porter of the BCTF from Jacquie Griffiths, its Manager Consultant for Collective Bargaining Services, stating that:

> "Please be advised that it is BCPSEA's position that this arbitration decision is specific to the factors considered in School District No. 75 (Mission). Although there may be parallel language in other districts, we do not accept that the arbitration decision is necessarily applicable to any other district. As such, we will not be advising districts with parallel language that the arbitration decision has applicability for their situation."

On August 30, 2005, McVittie sent an e-mail to Cairnie and Mason drawing their attention to the Burke decision and then stating that:

> "As our collective agreement mirrors the language in Mission upon which this decision was made, we will be informing our Elementary members that they can expect that prep time will not be lost due to holidays and non-instructional days, and further that they are entitled to 80 minutes (for 1.0 fte) of preparation time each and every school week."

Employer and Union representatives discussed this matter through September and October, 2005 without coming to any understanding on the issue. On November 2, 2005, Cairnie then wrote to McVittie advising him that the Employer did not think that the Burke decision applied in School District No. 73 (Kamloops/Thompson). He then told McVittie that:

> "We will advise principals to continue to apply the prep time provisions in the Collective Agreement as they have in the past,

> even if this would result in a teacher's prep time falling on a statutory holiday."

In response to this letter, the Union filed its grievance on November 15, 2005 in a letter from David Komljenovic, its 1st Vice President, to Terry Sullivan, the Superintendent of Schools for School District No. 73 (Kamloops/Thompson). After a further exchange of correspondence between the parties, the Union referred the matter to arbitration. This was done in a letter dated January 18, 2006 from Murray Geiger-Adams, Legal Counsel for the BCTF, to Joseph Strain, an Employee Relations Specialist with BCPSEA. In that letter, Geiger-Adams advised Strain that:

> "This matter involves a Kamloops case raising the issue whether the board is obliged to give elementary teachers their full contractual entitlement to weekly prep. time, whether or not a week includes a statutory holiday or non-instructional day. This issue was determined in the union's favour, on parallel language, in a recent Mission case, which BCPSEA did not appeal. The union is seeking remedies including a declaration of the violation and an order for future compliance."

One final event by way of background. This matter was also grieved in School District No. 68 (Nanaimo-Ladysmith). It went to arbitration before Stan Lanyon, Q.C. He rendered his decision on that grievance on January 29, 2007 in *British Columbia Public Schools Employers' Association/Board of School Trustees of School District #68 (Nanaimo-Ladysmith)* (hereinafter the "Lanyon decision").

Article 20.7.1.3 of that collective agreement dealt with preparation time for elementary school teachers. It provided that:

> "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."

Part-time teachers with a .4 FTE or greater assignment were entitled to receive preparation time on a pro-rata basis.

Article 20.5.1.1 defined the weekly instructional assignment as follows:

> "The length of the weekly instructional assignment for a full time teacher of a Grade 1 through Intermediate Grade 7 class(es) shall be twenty-five (25) hours inclusive of:
>
> (a) homeroom registration(s);
> (b) one daily fifteen (15) minute recess; and
> (c) preparation time."

Mr. Lanyon heard evidence concerning the parties' negotiations leading to the inclusion of Article 20.7.1.3 in the collective agreement as well as evidence as to how principals had administered the clause in respect of statutory holidays and non-instructional days. He referenced the definition of the noun "schedule" in the Canadian Oxford Dictionary (2001). He also noted that arbitrators in the past had made distinctions between "regularly worked" and "regularly scheduled".

With respect to the evidence concerning past practice, he stated that:

> "I conclude that the past practice in regard to preparation time that was lost due to statutory holidays, non-instructional days and parent/teacher interviews is clear, consistent, pervasive and was understood by both parties responsible for the negotiation and administration of the collective agreement; and that practice was not to make up preparation time lost as a result of those three circumstances."
>
> (at para. 100)

He then concluded that:

> "As argued by both parties, in interpreting Article 20.7.1.3 it should be read in the context of the other provisions of the collective agreement which are directly linked to it. Preparation time is an integral part of weekly instruction which in turn is part of the regular work year. Article 20.4 defines the regular work year. Article 20.4.3 excludes all statutory holidays from the regular work year.
>
> Article 20.6 sets out the duration of the school day which amounts to six (6) hours, inclusive of lunch, recess, homeroom registration and preparation time. Article 20.5.1.1 sets out the maximum amount of instructional time at twenty-five (25) hours a week amounting to five (5) hours per day Monday through Friday. However, where a statutory holiday or non-professional day arises instructional time is reduced to twenty (20) hours or less. For ease of reference Article 20.7.1.3 reads as follows:
>
>> '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.'
>
> The Employer agrees that it cannot schedule and then arbitrarily cancel the scheduled preparation time. However, it states that it is entitled to schedule preparation time Monday through Friday:

first, because scheduling preparation time within the days of Tuesday through Thursday would be extremely difficult and costly; and second, because the preparation provision time does not read that preparation time can only be scheduled on 'instructional days'. Conversely, the Union argues that it has an absolute entitlement to the one hundred and ten (110) minutes of preparation time. Although it acknowledges that preparation time is directly related and included within the definition of instructional time, it states that it does not have to make up any lost instructional time in any shortened week. In arguing for an absolute entitlement, the Union deliberately divorces preparation time from instructional time.

First, as I stated earlier, I conclude that what the past practice evidence actually demonstrates is that parties have since the beginning balanced preparation time and instructional time. When the number of instructional days has been reduced, preparation time has been reduced. This has also been applied where school events requiring primarily supervision, rather than instruction, has been required. I recognize, however, that there have been informal arrangements made between teachers in regard to the loss of preparation time in relation to such school wide events.

Second, the collective agreement provisions as a whole directly link preparation time to instructional time. Not only is preparation time included within the definition of instructional time, its primary purpose is to increase the quality of instruction. Thus, this direct conceptual link arises not only in the language but underlies the very purpose of the provisions as a whole.

Third, both instruction and preparation time are pro-rated. Article 20.5.3 pro-rates part time teachers instructional assignments:

> 'The instructional assignment for part-time teachers shall be pro-rated on the basis of the hours in accordance with Article 20.5.1 or 20.5.2, as applicable.'

And Article 20.7.1.4 pro-rates preparation time for elementary school teachers with 0.4 or greater FTE:

> 'Elementary teacher with a 0.4 or greater FTE regular classroom assignment calculated over the school year shall be provided with preparation time on a pro-rata basis.'

> Therefore reducing preparation time when instructional time has been reduced is directly contemplated, not only by the past practice of the parties, but by the very terms of the collective agreement.
>
> . . .
>
> I conclude that a pro-rata interpretation best fits the current collective agreement scheme."
>
> (at paras. 104-111 and 114)

III

I now turn to address the issues that arise for determination in this proceeding.

The central issue before me is what did the parties intend when they said in Article IX, Section 4.1.1 of their collective agreement that elementary school teachers "shall be provided with a minimum of eighty (80) minutes preparation time per week." What did they intend would happen if preparation time was lost during a week because of a statutory holiday or non-instructional day?

The Employer submits that nothing should happen because all the Employer has agreed to in Article IX, Section 4.1.1 is to schedule the required preparation time during each week. It maintains that each of its elementary schools have done so. If that preparation time is lost for reasons beyond its control, for example, because a statutory holiday or non-instructional day falls during a week, it is not obliged to reschedule that preparation time or otherwise make it up.

The Union disagrees. It maintains that the Employer is obliged to provide each elementary school teacher with a minimum of 80 minutes of preparation time each week. It says that the obligation to do so in Article IX, Section 4.1.1 does not make any provision for that time to be reduced because a statutory holiday or non-instructional day or any other event occurs during that week. It submits that the Employer's obligation is not limited to scheduling the required preparation time. Instead, it is obliged to supply it, and it is not doing so when a preparation time block is cancelled because of a statutory holiday, non-instructional day, or for any other reason and it is not replaced or otherwise made up.

The principal source for determining the intentions of the parties is the words they have used in their collective agreement. Those words are to be given their normal or ordinary meaning unless doing so would lead to some absurdity or inconsistency with the rest of the collective agreement. Thus, consistent with the last observation, the parties' words in the provision in dispute are to be read in the context of the collective agreement as a whole with a view to achieving harmony amongst those provisions and avoiding conflict. Arbitrators have referred to dictionaries and other arbitral and judicial decisions

to assist them in understanding what the parties meant when they used the words they did.

The authors of Brown and Beatty, *Canadian Labour Arbitration* (3rd edition) para. 4:2100 have suggested that where the words of the collective agreement under consideration are capable of

> "... two linguistically permissible interpretations ... arbitrators have been guided by the purpose of particular provision, the reasonableness of each possible interpretation, administrative feasibility, and whether one of the possible interpretations would give rise to anomalies."
>
> (at 4-46)

If after all of this, there is still some doubt about what the parties intended with the words they have used in their collective agreement, the arbitrator may have regard to extrinsic evidence concerning the exchanges between the parties in bargaining the disputed provision and the past practice of the parties in administering the provision. With respect to such evidence, the arbitrator is looking for the mutual understanding of both parties and not the unilateral intentions of one or the other. However, when considering extrinsic evidence, it is important for arbitrators to remember the words the parties have used in their agreement. As the Labour Relations Board of B.C. said in *Board of School Trustees of School District No. 57 (Prince George)*, BCLRB No. 41/76, "it is the agreement and not the extrinsic evidence which musts be interpreted" (at 9). In my view, this comment is consistent with the admonition in *John Bertram & Sons Co.* (1967), 18 L.A.C. 362 (Weiler) that past practice evidence should only be used where there is

> "... no clear preponderance in favour of one meaning, stemming from the words and structure of the agreement as seen in their labour relations context. . . ."
>
> (Quicklaw, at 4)

I now turn to apply these principles to the circumstances of this case.

While the parties disagree over the nature and scope of the Employer's obligation under Article IX, Section 4.1.1, they do not disagree that whatever that obligation is, it is mandatory in nature given the use of the word "shall". The same conclusion was reached in the Burke decision. There was no dispute on this point in the Lanyon decision.

The real dispute between the parties is whether the Employer's obligation is limited to scheduling preparation time or whether it is obliged to provide it in such a way that the elementary school teachers receive it. One difficulty with the Employer's submission in this regard is that the word "schedule" is not used in Article IX, Section

4.1.1 unlike in Article 20.7.1.3 in the School District No. 68 (Nanaimo-Ladysmith) collective agreement which was under consideration in the Lanyon decision. If the parties had intended the Employer's obligation to be limited to scheduling the required preparation time, why did they not say so expressly?

The Union refers me to the *Webster's II New Riverside University Dictionary* (1988) and the definition of the verb "provide" which reads in part as follows:

> "1. To furnish: supply . . . 3. To make available: AFFORD . . . ."

While Webster's is an American dictionary, the *Concise Oxford Dictionary* (7th ed.) also defines the verb "provide" as "supply, furnish, (person *with* thing, thing *for* or *to* person) . . . ." This same dictionary defines the verb "furnish" as meaning to "provide, afford, yield . . . ." It defines the verb "supply" as meaning to "furnish, provide, (thing needed, or person receptable, etc., with or *with* thing needed) . . . ." The verb "afford" is defined in part as meaning "provide; (of thing) yield supply of . . . ." Finally, the word "schedule" is defined as including the making of a timetable.

In my view, a consideration of these dictionary definitions suggests that the parties contemplated that elementary school teachers would be furnished or given a minimum of 80 minutes of preparation time per week. In that sense, they would be entitled to receive it. I observe that such a conclusion would be consistent with the other provisions of the parties' agreement pertaining to preparation time. Article IX, Section 4.1.3 states that part-time elementary teachers "will receive preparation time for classroom instruction pro rated according to their F.T.E. status." Article IX, Section 4.2.1 states that "full-time secondary teachers . . . shall be entitled to a minimum of 12 ½% of total instructional time for preparation." There is, in my view, no indication from the words used in their collective agreement, that the parties intended there to be any difference in the entitlement to receive preparation time between elementary school teachers on the one hand and part-time elementary school teachers and secondary school teachers on the other. In my view, they all are entitled to receive the preparation time that the collective agreement gives them.

In my view, the Burke decision supports the conclusion that the use of the verb "provide" conveys an obligation on the Employer's part to furnish or give its elementary school teachers a minimum of 80 minutes of preparation time per week, rather than just schedule it on a timetable. The language in the School District No. 75 (Mission) collective agreement also described the obligation in terms of preparation time being "provided".

However, the Webster's dictionary definition of "provide" does indicate that it could mean to "make available" something. The definition of "afford" in the Concise Oxford Dictionary says that it can mean to yield the supply of something. Applying these definitions to the verb "provide", it can be argued that the Employer's obligation in respect of preparation time is to make available, or more cumbersomely to yield up the

supply of, the required preparation time and that once it has done so it has satisfied that obligation. If that time is cancelled subsequently due to a statutory holiday or non-instructional day, that cancellation does not detract from the fact that it was made available in the first instance.

The counter argument to this interpretation is that the required preparation time is not really being made available to the elementary school teachers because the Employer knows that blocks on statutory holidays and non-instructional days will be cancelled and not made up. As of the start of the school year, there is no secret as to when the statutory holidays and non-instructional days will occur.

Since we have possibly two permissible interpretations of the Employer's obligation to provide preparation time in Article IX, Section 4.1.1, the arbitral jurisprudence suggests regard should be had to the purpose of the provision, the reasonableness of each possible interpretation, administrative feasibility, and whether either interpretation would give rise to anomalies, in trying to determine which one best reflects the intentions of the parties.

There is no dispute between the parties as to the purpose of including preparation time for teachers in the collective agreement. It is there to assist those teachers in preparing to carry out their classroom duties. In my view, the link between preparation time and teachers' instructional responsibilities is reflected in Article IX, Section 3.1.1 of the collective agreement which defines the instructional day as including "five (5) hours of instructional time which shall include fifteen (15) minutes of recess and preparation time as outlined in Article IX.4 . . . ." Pursuant to Section 4.1.1, elementary school teachers are to be provided with a minimum of 80 minutes of preparation time per week. A week of teaching has five instructional days in it. Those five instructional days equal 1500 minutes of instructional time. Out of that 1500 minutes, a minimum of 80 minutes are to be provided for preparation time. Thus, over those five instructional days, 5.33% of the instructional time is to be provided to elementary school teachers to prepare for their classroom duties. In my view, that purpose is what the parties intended to achieve with Article IX, Section 4.1.1 in their collective agreement.

Do either of the parties' interpretations of Article IX, Section 4.1.1 reasonably achieve this purpose? Or instead, do either of them give rise to administrative difficulties or anomalies?

In my view, the Employer's interpretation that its obligation is restricted to scheduling the required preparation time does not achieve that purpose because it does not give all elementary school teachers a minimum of 80 minutes preparation time over five instructional days. Instead, those teachers whose preparation time was scheduled on a statutory holiday or non-instructional day that week would only receive one-half of their preparation time that week. Other teachers whose preparation time was not scheduled for that day would still receive their full allotment. The result would be an unfair and inequitable distribution of preparation time, something which, in my view, is not contemplated by Article IX, Section 4 of the collective agreement.

The Union's interpretation meets this difficulty with its assertion that the Employer is obliged to make up the missed preparation time thereby restoring fairness and equity. The problem with its assertion is that there really is no room within elementary school schedules for this make up to take place. Those schedules are full. The Union suggests that the solution to this problem is to bring in teachers-on-call to cover the lost blocks. However, I agree with the Employer that there are administrative difficulties with that solution, both financial and educational. I am satisfied that if this solution had been intended by the parties, these financial and educational difficulties would have been the subject of discussions at the bargaining table. There is no evidence that they were.

A second alternative solution advanced by the Union is that the Employer schedule all of the preparation time on Tuesdays, Wednesdays and Thursdays on the basis that most statutory holidays and non-instructional days take place on Mondays and Fridays. This solution does not provide a complete answer to the administrative conundrums of the Union's interpretation because some statutory holidays and non-instructional days do occur on Tuesdays, Wednesdays and Thursdays. In this regard, I refer to the standard school calendar and the dates for the Remembrance Day holiday and the dates when school is to reopen after the spring school break.

It might be feasible to overcome these difficulties in the smaller elementary schools where a preparation time teacher could perform all the preparation time blocks required in those three days. Then, in those limited circumstances where a statutory holiday or non-instructional day does fall on a Tuesday, Wednesday or Thursday, it might be possible to switch the blocks that would occur on the day that is the statutory holiday or non-instructional day with the blocks that would ordinarily fall on a Monday or Friday.

However, I agree with the Employer that this second alternative solution is much less feasible and more unreasonable in the larger elementary schools where more than one preparation time teacher would be required to cover all the preparation time blocks if they could only be scheduled on Tuesdays, Wednesdays and Thursdays. It could result in the disruption of the continuity of specialty courses such as music, physical education, French, and computer education because these are the courses preparation time teachers are commonly hired to provide and now there would be at least two of them. This would be so because each such teacher would be restricted to a maximum .6 assignment because no preparation time would be provided on Mondays or Fridays. As well, this solution could produce unmeetable demands on school facilities such as the music room, computer room and the gymnasium where two or more teachers try to use those facilities during three days of the week.

The Union's interpretation is based on the proposition that "week" in Article IX, Section 4.1.1 means calendar week. I am not persuaded that that is the only interpretation that can reasonably be given to that word. In *Board of School Trustees of School District No. 65 (Cowichan)*, Award dated June 26, 1992 (Kinzie), the parties expressly agreed to

use the term "calendar week". Elsewhere in their collective agreement, the Employer and the Union have agreed to use the phrase "normal instructional week". See for example Article IX, Section 7.2:

> "All school staff meetings shall be held between the hours of 8:00 a.m. and 5:00 p.m. and during the normal instructional week. Teachers will only be required to attend up to twenty (20) staff meetings per year."

Having considered all of the evidence and argument 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 scheduled 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 summary, I am of the view that the interpretation of Article IX, Section 4.1.1 that says that the intention of the parties was that elementary school teachers in School District No. 73 (Kamloops-Thompson) would be provided with or given a minimum of 80 minutes of preparation time for every five instructional days taught is more in line with the purpose of that provision, more reasonable, more administratively feasible and gives rise to fewer anomalies than any of the other suggested interpretations. In my view,

it also better accords with the words used by the parties in their collective agreement read in context.

In my view, the evidence from the bargaining that took place surrounding elementary teachers' preparation time during the 1988-90 and 1990-92 rounds shows that the parties always related the concepts of instructional time and preparation time. In the KDTA's initial proposals in both rounds, it sought to specify a maximum weekly instructional assignment. The remainder of the instructional week would be for preparation and collaboration. In the 1990-92 round, the Kamloops School Board sought to address the matter on a full school year basis, specifying that elementary teachers would be responsible for 902.5 hours of instruction annually. The remaining 47.5 hours or 5% of the school year's annual hours of instruction would be for preparation time.

Neither of these proposals were acceptable to the other side with the result that the parties turned to negotiating an acceptable level of preparation time minutes to be provided to teachers every week or every 1500 minutes of instructional time. They ultimately settled on a minimum of 80 minutes which represented 5.33% of a week's or five days' instructional time.

However, the evidence of collective bargaining does not show that the parties ever considered the issue of what would happen in those weeks during which a statutory holiday or non-instructional day occurred. In these circumstances and with respect to the central issue before me, I am of the view that the evidence from collective bargaining is not of much assistance in determining the intentions of the parties. Further, in light of the wording of Article IX, Sections 4.1.3 and 4.2.1, I do not place much significance in the Union's failure to have the verb "receive" substituted for the words "be provided with" in Section 4.1.1. There was no evidence of any discussion on this point either.

Does the evidence of how the parties have applied Article IX, Section 4.1.1 in the past assist in determining those intentions? The evidence from Cairnie's survey of the Employer's elementary school principals, the evidence given *viva voce* by eight of those principals and the evidence from several district staff representatives of the Employer disclose a consistent practice of not making up preparation time lost as a result of a statutory holiday or a non-instructional day. There were some exceptions, but not many. Regarding statutory holidays, teachers were given their 80 minutes of preparation time during their first week of school even though Labour Day occurred during that week. However, the full 80 minutes were given to teachers on the first day of school when no classes had been scheduled. It was not a situation where preparation time blocks were being cancelled and then being rescheduled to make them up. A second exception involved the Union's grievance in 2002 where a teacher lost a preparation time block due to a non-instructional day. By way of remedy, the teacher was instructed to take her preparation time block during the non-instructional day.

The KDTA did grieve the issue generally in 1991, but it appears, did not pursue it beyond Stage II of the grievance procedure. However, Article I, Section 13.9 (c) of the collective agreement provides that:

> "If the Local or the BCTF does not present a grievance to the next higher level, they shall not be deemed to have prejudiced their position on any future grievance."

In light of this provision, I have not placed any weight on the KDTA's failure to pursue the 1991 grievance through to arbitration. I do not accept its failure to pursue that grievance as evidence of its agreement with the Kamloops School Board's practice at the time. However, it does establish that the KDTA was aware of that practice.

When all of this evidence is considered, I am satisfied that it has been the Employer's longstanding practice not to make up preparation time blocks for elementary school teachers where they have been cancelled as a result of their falling on statutory holidays or non-instructional days.

In my view, past practice evidence can be used for two different purposes. One is to assist the arbitrator in determining what the parties' intentions were when they agreed to a particular provision in a collective agreement where a *bona fide* doubt exists from a consideration of the words they used alone. A second purpose arises where there is no doubt about what the parties' intentions were. An established practice inconsistent with those intensions which has been acquiesced in by the other party may form the basis of an estoppel against that other party enforcing its collective agreement rights until the estoppel is brought to an end by reasonable notice.

I am of the view that a *bona fide* doubt does not exist as to what the parties intended in Article IX, Section 4.1.1. They intended that elementary school teachers would be provided with or given a minimum of 80 minutes of preparation time every five instructional days. With the Employer's use of a calendar week schedule, if a teacher's preparation time block was lost due to a statutory holiday or non-instructional day and not replaced, she would only be given 40 minutes of preparation time over four instructional days. In my view, this result would not be consistent with the Employer's obligations under Article IX, Section 4.1.1.

In this case, there is a "clear preponderance in favour of one meaning" to use the words of the arbitration board in *John Bertram & Sons Co., supra*, and the Employer's practice is inconsistent with that meaning. In these circumstances, that practice does not assist me in determining the intentions of the parties in Article IX, Section 4.1.1. However, it may create an estoppel against the Union in respect of its enforcing its rights under that provision. I note that the BCTF appears to have been of that view when it sent its estoppel notice to BCPSEA on June 6, 2005 following publication of the Burke decision.

In conclusion, by providing some elementary school teachers with only 40 minutes of preparation time during a week as a result of their other preparation time blocks being cancelled due to a statutory holiday or a non-instructional day, I am of the

view that the Employer has breached its obligations under Article IX, Section 4.1.1 of the collective agreement. Accordingly, the grievance must succeed. It is so awarded.

I should make note of the fact that the Employer advanced an alternative interpretation of Article IX, Section 4.1.1. That interpretation proposed that this provision contemplated a pro-rating of the minutes of preparation time during any week in the school year that had fewer than five days. This was the conclusion reached in the Lanyon decision. Having considered the matter, I am of the view that such an interpretation of Article IX, Section 4.1.1 would not be justified. In my view, it does not accord with the words used in that provision. The 80 minutes of preparation time per week are expressed to be a "minimum". Secondly, where the parties intended there to be a pro-rating, they expressly said so. See by way of example, Article IX, Section 4.1.3 dealing with part-time teachers' preparation time. Finally, neither the bargaining history nor the past practice of these parties supports that interpretation.

I now turn to the issues raised by the parties concerning remedy.

The Employer is directed to comply with its obligations under Article IX, Section 4.1.1.

With respect to compensation, the Union, through its counsel's opening, advised that it was also claiming relief for teachers who lost preparation time blocks because of such activities as field trips, concerts, assemblies and the like. The Employer objects because it says those events, as opposed to statutory holidays and non-instructional days, were never raised as part of the grievance and were not included in the referral to arbitration. It submits that it was too late for the Union to expand the grievance at the commencement of the hearing.

I do not agree with the Employer's contention that I do not have jurisdiction to deal with the Union's claim based on these other events. In my view, those events raise the same issue as is raised by the cancellation of preparation time blocks because of statutory holidays and non-instructional days, i.e., if they are lost and not made up, has the Employer complied with its obligations under Article IX, Section 4.1.1? Further, I am of the view that the Employer has not suffered any prejudice as a result of the Union's raising these events at the late date that it did. Cairnie testified that the Employer's position was the same for them as it was for statutory holidays and non-instructional days. As well, the Employer had asked about these very same events in the survey it conducted of its elementary school principals in preparation for this arbitration. Question 4 in that survey read:

> "Is scheduled preparation time for teachers in your school lost due to any activities in addition to statutory holidays and professional development days?"

In response to the Employer's argument, the Union maintains that these other events were raised during the parties' discussions regarding this dispute. On the evidence

I have, I do not agree. Thus, while I agree with the Union that I have the jurisdiction to grant relief in respect of these events where they give rise to a breach of Article IX, Section 4.1.1, I have concluded that the Union will not be entitled to claim relief in respect of any such events that occurred prior to the date of the commencement of the hearing when the Union first included these events in its claim.

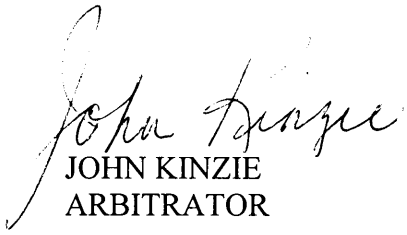
In my view, these events raise an additional substantive issue. From the evidence I have heard, it seems that a number of these events such as field trips are organized by the classroom teacher who then takes her students on them, thereby missing her preparation time block. With respect to some other events, the school organizes them and therefore they are the responsibility of the Employer, but the classroom teacher voluntarily elects to attend as opposed to permitting the preparation time teacher to take the class and supervise them. Such events would include school assemblies as well as sports events and concerts occurring at the school. 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 obligations under Article 1X, 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 the view that she would not be entitled to relief.

I refer the remedial issue of compensation for lost preparation time back to the parties for resolution in accordance with the terms of this Award. This referral back also includes the issue of whether the Union is estopped from claiming relief for such losses and, if so, for how long. These estoppel issues were not argued before me during the original hearing.

I retain jurisdiction to complete my Award in this matter and to deal with any difficulties that might arise in connection with its implementation.

Dated this 2nd day of April, 2007.



JOHN KINZIE
ARBITRATOR