

IN THE MATTER OF:

AN ARBITRATION

AND IN THE MATTER OF:

**A GRIEVANCE FILED BY THE CANADIAN
UNION OF PUBLIC EMPLOYEES, LOCAL
3465 – GRIEVANCE 99-06**

BETWEEN:

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 3465,
(hereinafter called the "Union"),**

-and-

**TRANSCONA SPRINGFIELD SCHOOL DIVISION NO. 12,
(hereinafter called the "Division").**

AWARD OF ARBITRATION

A. Blair Graham, Q.C.
Grant Rogers
Gerald Parkinson

Chairperson
Nominee of the Union
Nominee of the Division

APPEARANCES

Kathy McIlroy
Robert Simpson

Counsel for the Union
Counsel for the School Division

AWARD

This matter was heard on February 6th and 7th, 2001.

The parties confirmed at the outset of the hearing that the arbitration board had been properly appointed and had jurisdiction to determine the matters at issue.

The grievance giving rise to these proceedings, which is referred to as Policy Grievance 99-06, was filed by the Union in December 1999 on behalf of certain paraprofessionals employed by the Division.

The grievance alleges that:

"The School Division has misinterpreted and/or misapplied and/or violated Articles 3, 17.02, and other relevant Articles of the Collective Agreement, and the Labour Relations Act, s.80(2). The School Division has improperly arranged a Special Needs position to a Resource position."

The paraprofessional positions in question are positions within the Bridge program. The students enrolled in the Bridge program have significant cognitive impairments. The objective of the program is

to help students learn the functional life skills they will require to live as independently as possible, and to enable them to become active, contributing members of their communities.

The Division denies that it has misinterpreted, misapplied and/or violated any articles of the collective agreement, or the Labour Relations Act. The Division also argues that no individual employee has been adversely affected by any decisions or actions of the Division in relation to the subject matter of the grievance.

THE EVIDENCE

The evidence introduced in the proceedings consisted of the testimony of five witnesses called by the Union, two witnesses called by the Division and 22 exhibits. In many respects the background facts are uncontested. They are summarized below:

1. The Bridge program was established in 1994. Since its inception, the program has been located in, and operated from the Transcona Collegiate Institute ("Transcona Collegiate").
2. The program is designed for students with significant cognitive impairments (sometimes referred to as students with low IQs), who have difficulty with abstract reasoning and must therefore learn concretely. Many of the students are non-readers; the remainder of the students would read at a relatively rudimentary level. The program is not designed to prepare the students for a post-secondary education, but is rather designed to prepare them to live as independently as possible, to provide them with life skills, and to provide them with some practical and marketable employment skills.
3. In the first year of the program (1994-1995), one teacher, and one paraprofessional delivered the program to seven students enrolled in the program. In 1995-1996, one teacher and two paraprofessionals provided the program to seven or eight students.
4. Over the course of time, the program grew. Currently the program consists of two levels, Level I for students 14 to 16 or 17 years of age, and Level II for students 17 to 21 years of age. Two teachers are involved, one for each level; both of the teachers are assisted by two paraprofessionals. According to the teachers, the current enrolment in the program is 20, 10 students in Level I, and 10 students in Level II. In summary the program has grown from one teacher and one paraprofessional assisting seven students, to two teachers and four paraprofessionals assisting 20 students.
5. The paraprofessionals employed by the Division are employed on 10 month contracts, commencing in September of any given year, at the commencement of the school year. The paraprofessionals are 'laid off in June, at the end of that school year. If they wish to work as paraprofessionals in the Division again, commencing in the following September, they apply to do

so by participating in an application/bidding process in the spring. The Division prepares a binder of paraprofessional position descriptions consisting of all of the paraprofessional positions to be filled in the Division in the ensuing September. The positions are also bulletined at appropriate locations and for appropriate time periods within the Division. The interested paraprofessionals are invited to submit applications for the positions in which they are interested (or to "bid" on the position, as it was sometimes referred to during the hearing). The paraprofessionals, particularly those of low or middle level seniority, typically apply for more than one position, and indicate their relative preferences for those positions on their "bid form". They do so because there may be a higher number of applicants for particular positions, than the number of those positions actually available to be filled. In that event the paraprofessional with the most seniority will be assigned to the position in question, and the more junior paraprofessional will then be considered for other positions according to the preferences which they have indicated on their "bid form". As is common in many workplaces, a junior paraprofessional may be "bumped" from a position which they had occupied during the previous year, if a more senior paraprofessional with appropriate qualifications applies for that position for the upcoming year.

6. The paraprofessional positions involved in these proceedings are presumed to be positions involving six hours of work per day. When the Bridge program commenced in 1994, the paraprofessional involved was classified as a special needs professional for the purposes of the salary schedule referred to in the collective agreement. However in the spring of 1998, the paraprofessional positions associated with the Bridge program were reclassified, and effectively became hybrid positions whereby the positions were designated as 5.0 Resource/1.0 special needs position.
7. The Division witnesses were, Ms K. Baskerville, employed by the Division as the Special Education Consultant, and Mr. J. McWilliams, employed by the Division as Assistant Superintendent/Personnel. According to Ms Baskerville, there was a change over time in the entrance criteria relating to the Bridge program. One of the factors underlying that change was an initiative or directive from the Department of Education in 1995, which was phased in over several years, whereby the Bridge program was assigned an "M" designation. The significance of this designation was that students enrolled in the program, in order to graduate were required to earn certain credits (28) related to the regular senior years curriculum. The "M" designation was therefore different than the "I" designation which had previously applied to the Bridge program, which allowed students to be offered a completely individualized program of instruction, which was not required to relate, even

minimally, to the regular senior years curriculum.

8. Ms Baskerville testified that the change in designation had an effect on the composition of the children in the Bridge program. After the change, all of the children in the program had significant cognitive impairments but no significant mental health issues, whereas in the early years of the program some of the students had had significant mental health issues (i.e. psychiatric problems), and some of those students may not have had significant cognitive impairments. The change to the "M" designation resulted in students applying to the program being required to undergo a psychological assessment in order to be sure that they did not have a significant psychiatric or psychological disorder.
9. Exhibit 5 in the proceedings is a document entitled "Guidelines For Paraprofessional Job Classification". Ms Baskerville sat on the committee that developed those guidelines sometime in the early or mid 1990s. Exhibit 5 refers to three types of paraprofessionals, special needs, resource, and program, and sets forth, among other things the role and function of each type of paraprofessional. These proceedings do not involve program paraprofessionals. Ms Baskerville compared and contrasted resource and special needs paraprofessionals. She testified that resource paraprofessionals assist in the delivery of programming to students which requires some modification as a result of the learning disabilities of the students involved. A special needs paraprofessional will also assist in the delivery of programming to students which requires some modification, but in addition special needs paraprofessionals will be required to perform other functions. Those other functions may include providing a personal level of care with respect to toileting, feeding, and personal hygiene for the students, or using, or being familiar with adaptive equipment such as modified computer equipment or voice synthesizers. Students in the program may also require monitoring for personal safety. The paraprofessionals may be involved in providing assistance to students with severe emotional or behavioural needs, which in the words of Exhibit 5 "may result in physical assaults to adults and students in the environment".
10. Every year for the last several years, a Bridge program open house has been held in late February or early March for interested students, parents and teachers. Thereafter, applications from students interested in enrolling in the program for the next year are received and considered. A screening committee hears individual presentations with respect to the students who are applying for admission into the Bridge program. The presentations are typically made by the then current teachers of the students, accompanied by the students themselves. Students from any of the middle years schools in the Division may apply.

11. Once decisions have been made as to the students who will be in the Bridge program in the upcoming year, Ms Baskerville consults with the teachers in the program, and using Exhibit 5 questions the teachers as to the type of functions the paraprofessionals will be required to perform, with specific reference to the students who will be in the program in the upcoming year. Job assignment forms are then prepared by one or both of the teachers who will be teaching the program, with some input and assistance from Ms Baskerville. The job assignment forms for 1997/1998, 1998/1999, 1999/2000, 2000/2001, are Exhibits 6, 7, 8 and 9 respectively in these proceedings. The job assignment forms are then placed in a binder and bulletined. Those documents are used by the paraprofessionals to determine which jobs they will apply for pursuant to the process described in paragraph 5 hereof. As part of the process of consulting with the teachers as to the type of functions the paraprofessionals will be performing in the upcoming year, (with reference to Exhibit 5), and preparing the job assignment forms, a decision is made as to the classification of the particular job assignment. This is an annual process, but the classification of the job assignment from 1998/1999 to the present has remained unchanged and is 5.0 resource/1.0 special needs. In all previous years the classification had been 6.0 special needs.
12. According to the Division, the decision to change the assignment in 1998 was based on an analysis of the essential, or core functions being performed by the Bridge program paraprofessionals in relation to the guidelines as set forth in Exhibit 5. The Division concluded that the core functions being performed were those of resource paraprofessionals, but that given the large number of field trips, and trips to work experience and employment sites, the Bridge program paraprofessionals were performing mobility training and street safety training functions, which were within the special needs classification, for at least one hour per day.
13. When the classification was changed for the 1998-1999 school year, Ms Baskerville recalled receiving a telephone call from one of the teachers who reported that one of the paraprofessionals involved had expressed the view that the classification of the position should have remained as at 6.0 special needs. The call prompted Ms Baskerville to review with the teacher the job assignment in relation to Exhibit 5. Ms Baskerville was satisfied that the 5.0/1.0 classification was correct.
14. In December 1999, shortly after the filing of the grievance by the Union, Mr. McWilliams received a request to consider reclassifying the Bridge program paraprofessionals. The request was from the Union, on behalf of the paraprofessionals, who asserted that they were performing many functions in addition to mobility and safety training that were essentially special needs

functions. The paraprofessionals placed emphasis on the behavioural problems manifested by students in the program. Mr. McWilliams conducted a review of the classifications. Ms Baskerville accompanied Mr. McWilliams. He attended at the Transcona Collegiate, discussed the matter with the principal, and with one of the teachers in the Bridge program, Colleen Main Donald, and spent several hours reviewing the data binders relating to several of the students who had been identified as presenting the greatest behavioural challenges. Mr. McWilliams concluded that although there were periodic episodes of behavioural problems, they were not extraordinary in scope, or disproportionate to the behavioural problems in the rest of the school population.

15. Mr. McWilliams wrote to the Union on January 20, 2000 (Exhibit 3) advising that he had concluded that the classification of the paraprofessionals in the Bridge program was correct, and advising that the classification would be annually as the student population changed. The Union was dissatisfied with Mr. McWilliams' decision, and proceeded with this grievance.

I think it is appropriate to note that I was most impressed with all of the witnesses who testified in these proceedings. The teachers, Ms Main Donald, and Ms Aubrey wee candid and forthcoming. They presented their evidence in an objective and balanced way and provided very useful information to the arbitration board about the Bridge program and the students enrolled in the program.

The paraprofessionals, Mssrs. Wyse and Marentette, and Ms Dilay seemed to me to be extremely dedicated, caring and competent individuals, who provide invaluable support and assistance to their students and to the community at large. The work they do is very important, and in my opinion is not fully understood or appreciated by the general public.

I was equally impressed by the witnesses called by the Division, Ms Baskerville and Mr. McWilliams, and specifically by the straightforward, non-adversarial manner in which they gave their evidence.

ANALYSIS

PRELIMINARY ISSUES

Two issues dealt with by counsel in their arguments warrant comment at the outset of this analysis.

Ms McIlroy, in her submission on behalf of the Union relied on Article 17.02 which states:

"17.02 Reclassification/New Position

When a new job is established by the Division the rate of pay shall be subject to negotiation between the Division and the Union. If the Parties are unable to agree on the rate of pay such disagreement shall be submitted to Arbitration as provided under Article 6 (Arbitration Procedure). The rate of pay shall be

retroactive to the date when the new position was first filled by the employee."

This case deals with the reclassification of paraprofessional positions. The Union contends that Article 17.02 applies in the circumstances of this case because although the wording of the article itself apparently refers only to the establishment of a new position, the heading of the article includes: "reclassification", and it is therefore open to the arbitrator to determine what rate of pay should apply to the reclassified paraprofessional positions in the Bridge program.

Mr. Simpson, on behalf of the Division referred me to Article 6.01 which provides in part that:

"...All grievances shall be submitted, in writing, within ten (10) working days of the alleged incident stating the Articles in the Collective Agreement violated and the solution sought."

Mr. Simpson noted that the change in the classification of the paraprofessional positions in the Bridge program occurred in or about June, 1998, and yet the grievance in this matter was not filed until December, 1999. Therefore Mr. Simpson, on behalf of the Division, asserted that there was no change which adversely affected any of the Bridge program paraprofessionals at any time material to this grievance, namely in or around December, 1999. In effect Mr. Simpson was arguing that the Union cannot grieve with respect to the change in classification occurring in June, 1998, because the grievance, at least with respect to the events occurring in June 1998 was out of time.

In view of my assessment of what is fundamentally at issue in this case, I believe I am able to readily deal with both the Union's position based on Article 17.02, and the Division's position based on Article 6.01.

In these proceedings I am being asked to assess the core job functions which the Bridge program paraprofessionals are required to perform. Put in a slightly different way, I must determine whether or not the Bridge program paraprofessionals are performing functions outside of those within their current job classification.

Therefore I do not believe the Union requires a specific article with respect to reclassification in order to succeed. There is a pay scale applicable to paraprofessionals associated with the collective agreement. It is set forth in "CLASSIFICATION AND SALARY SCHEDULE "A""; it forms part of the collective agreement. If the Bridge program paraprofessionals are not being paid the salary they are entitled to be paid because the core job functions they perform are within a separate, higher paying, job classification, there has been a violation of Schedule "A" of the collective agreement, and their grievance should succeed, whether or not Article 17.02 applies in the circumstances.

Similarly, I am not prepared to decide these proceedings on the basis that this matter was not grieved within the ten days contemplated by Article 6.01. If the paraprofessionals are being underpaid because they have been assigned to an incorrect job classification, they are suffering an ongoing detriment and are entitled to a remedy.

PRIMARY ISSUES

An important aspect of the Division's case is that the classification of the Bridge program paraprofessionals occurs on an annual basis, and is dependent on the composition of the student population that is accepted into the program for the upcoming year.

The Division points out that the classification of the Bridge program paraprofessionals occurs after consultations with the teachers who will be teaching the program, and with specific reference to the attributes, abilities and limitations of the students. The job assignment forms, which are essentially job descriptions, are prepared by the teachers, after consultations with Ms Baskerville.

The Division emphasizes these points in order to demonstrate that:

- (a) The classification process for the Bridge program paraprofessionals is fair and reasonable and is undertaken in good faith. The classification process is significantly affected, if not determined by, the input of the teachers in the program, after they have considered the abilities and limitations of the students.
- (b) The process is an annual one affecting paraprofessionals who are employed pursuant to ten month contracts. Therefore the Division asserts that the Union is wrong to focus on, and complain about the change in classification which occurred in the spring of 1998.

The Division also relies on Article 3, The Management Rights Clause in the Collective Agreement. It states:

"ARTICLE 3 MANAGEMENT RIGHTS

3.01 The parties specifically recognize the Division's responsibility and right to manage all of the affairs of the Division, and all of its activities, and hereby confirm that responsibility and right, except as it is clearly and specifically altered by the terms of this agreement.

3.02 The specific terms of this agreement shall be the source of any rights that may be asserted by the Union against the Division."

The Division characterized the above noted Article as being "very broad", and argues that the classification process for paraprofessional positions is well within the management rights of the Division.

With respect to the classification process, I am satisfied that the teachers in the program play an important part in that process on an annual basis, and actually prepare, or assist in preparing the job assignment forms for each year. I would observe however that the teachers had little or no involvement in the preparation of Exhibit 5, the Guidelines For Paraprofessional Job Classifications. Those guidelines were prepared by a committee, one of the members of which was Ms Baskerville. The evidence was not clear as to the identity of the other members of that committee, but I understood that the committee had been created by the Division, and likely had little or no input from the teachers or the paraprofessionals in the Bridge program.

Exhibit 5 is the most important document in the classification process, because it defines the functions which fall within the special needs classification, and the resource classification respectively. It was the document used by Ms Baskerville and the teachers when considering the type of functions which will be performed by the paraprofessionals in the upcoming year, and when determining the appropriate classification for the paraprofessionals in the Bridge program.

I have carefully examined Exhibit 5. Knowledgeable and experienced paraprofessionals, educational administrators and teachers, or people within any or all of those groups, may disagree as to how to properly define and/or categorize the functions of special needs paraprofessionals relative to resource paraprofessionals.

Some of the functions listed under the resource category may be more challenging and more demanding than some of the functions listed under the special needs category in Exhibit 5.

However I am not in a position to criticize Exhibit 5 or to determine whether some of the functions described therein have been improperly categorized, or whether there should be additional functions added to one or both of the special needs or resource categories.

I have concluded that it is within the management rights of the Division to prepare guidelines for paraprofessional job classifications. The Division did so by preparing Exhibit 5. I see nothing in the collective agreement that requires the Division to consult with the Union before doing so. Therefore the guidelines prepared by the Division are the guidelines to be used in determining the classification of paraprofessionals employed by the Division.

As previously stated in these reasons, I have concluded that a determination of the issues in this grievance involves an assessment of the core job functions which the Bridge program paraprofessionals are required to perform, and a decision as to whether the Bridge program paraprofessionals are performing functions outside of those within their current job classification.

The Union submits that the core job functions of the Bridge program paraprofessionals are essentially the functions of a special needs paraprofessional. The Union introduced a large amount of evidence with respect to many of the individual students enrolled in the Bridge program (without referring to their last names, so as to preserve student confidentiality). I will not review that evidence in detail in these reasons, not because I do not consider it relevant (I do), but because I think it is sufficient to refer only to a few examples to illustrate the significance of that evidence to my overall analysis.

An important feature of the Bridge program is the work experience component of the program. This component requires the students to spend time away from Transcona Collegiate, travelling to and from various work sites, and acquiring useful skills while working, or being trained at those sites. The paraprofessionals working with the students therefore spend much time travelling with the students and supporting their efforts at the work site. For example, Mr. Wyse estimated that for at least part of the time he has been involved with the Bridge program, work experience related activities comprised 30% - 40% of his time. Street safety training and mobility training are a necessary part of the paraprofessional's role in assisting in the delivery of the work experience component of the program, and those types of activities are within the special needs classification.

The evidence was also clear that in the circumstances where some Bridge program students are integrated into the regular program for certain subjects, those students require "constant shadowing" by one of the paraprofessionals to ensure that they are able to function safely and positively in the regular program.

All of the paraprofessionals who testified referred to behavioural problems experienced by many of the students in the program, some of which involved threatening or menacing conduct on the part of some of the students, and some of which involved a lack of control on the part of some of the students with the associated risk of personal injury to the students themselves, or to the those working with the students, including the paraprofessionals. Examples would include Chris's fascination with knives, James' threats towards Mr. Wyse while Mr. Wyse was supervising other students on a group outing, and the injuries sustained by Ms Dilay during a flag football game and while working in the food preparation class.

Other students were referred to who required a significantly modified reading program. Consequently the paraprofessionals working with those students performed tasks analogous to those performed by reading tutors who fit within the special needs paraprofessional classification. Similarly at least one example was provided of a student with speech difficulties. Those difficulties required the paraprofessional working with that student to utilize skills normally associated with a speech and language pathologist assistant. Such an assistant would be classified as a special needs paraprofessional.

Based on the large amount of evidence introduced with respect to the individual students enrolled in the Bridge program, the characteristics of those students, and the task performed by the Bridge program paraprofessionals in order to meet the challenges presented by those students, the Union presents two main arguments:

- (a) The initial classification of the Bridge program paraprofessionals was correct, and nothing occurred in the spring of 1998 to justify the change from a 6.0 special needs to a 5.0 resource/1.0 special needs position. Indeed the Union argues on the basis of the evidence introduced at the hearing, that if anything, the job requirements and actual job functions performed by the Bridge program paraprofessionals became more challenging and demanding after the change in classification, because of the increased enrolment in the Bridge program and by virtue of the serious behavioural problems and other challenges presented by the students. The Union specifically contends that the Division acted unfairly and unreasonably, in breach of Section 80 of The Labour Relations Act, when the Division changed the classification of the Bridge program paraprofessionals in the spring of 1998.
- (b) the functions performed by the Bridge program paraprofessionals are essentially those of special needs paraprofessionals. The Bridge program paraprofessionals perform tasks which are beyond those performed by a resource paraprofessional. For example the Union's submits that:
 - (i) the street safety training and the mobility training activities are extensive and are beyond the 1.0 level which the Division has assigned to those activities in the present classification;
 - (ii) the activities of the Bridge program paraprofessionals in providing assistance for students with severe emotional needs are the same as those contemplated by Item A4 in Exhibit 5 within the special needs classification;
 - (iii) the activities of the Bridge program paraprofessionals providing assistance to students with reading and speech deficits are similar to those provided by Reading Tutor and Speech and

Language Pathologist Assistants which are positions within the special needs classification.

With respect to the change which occurred in 1998, I agree with the Division's position that the circumstances of that change are not determinative of the issues in this grievance. The initial classification of the Bridge program paraprofessionals may or may not have been correct based on the student composition at the time, and the activities undertaken by the paraprofessionals to support those students.

I have already outlined my conclusion that the creation of Exhibit 5 was within the management rights of the Division. I also believe that the annual classification of the Bridge program paraprofessionals utilizing Exhibit 5, and with reference to the specific composition of the student population, is a fair and reasonable exercise of the Division's management rights.

The Division has also explained that the change which occurred in 1998 was as a result of the application of the "M" designation to the program, and the change in the composition of the student population in the program which occurred over a time as a result of the application of that designation.

Therefore I do not think it would be correct for me to start my analysis from the assumption that the initial classification was correct and to require the Division to prove something had occurred which would justify a change in the classification.

The Union in this case bears the onus of establishing that the work being performed by the Bridge program paraprofessionals was actually work that belonged to a higher classification, namely the special needs classification.

Brown v. Beatty in Canadian Labour Arbitration (3d) at 5:2430 cites several authorities in support of the proposition that the standard to be met by the Union is as follows:

"A grievor must not only establish that his ability and work are beyond his present job description, but he must bring himself squarely within the description of the classification he seeks both as to ability and responsibility."

The Division points out that Exhibit 5 does not set forth a series of mutually exclusive tasks and responsibilities. The Division contends that a special needs paraprofessional will perform most, if not all of the functions of a resource paraprofessional, but that a resource paraprofessional will generally not perform the functions of a special needs paraprofessional.

In order for the Union to succeed in this grievance, it must prove that the Bridge program paraprofessionals perform substantially the same tasks that would be performed by a special needs paraprofessional.

The Division responds to the Union's main arguments relating to the Bridge program paraprofessionals performing tasks within the special needs classification as follows:

- (a) Mobility Training/Street Safety Training - the Division concedes

that there are elements of those functions in the work performed by Bridge program paraprofessionals, but the extent of that work is properly reflected in the 1.0 Special Needs Component of the classification;

- (b) Providing Support for Students with Severe Emotional/Behavioural Needs - the Division says that the students in the program have significant cognitive impairments, but they do not have serious psychiatric or psychological disorders. The severe emotional/behaviour needs referred to in the special needs category are of a different nature and magnitude than those encountered in the Bridge program. For example, a special needs student with severe emotional/behavioural needs may regularly be subject to physical restraint, whereas physical restraints would rarely be applied, if at all, to any student in the Bridge program. Mr. McWilliams' review, which consisted primarily of an assessment of the behavioural problems being manifested by the students in the Bridge program, lead him to conclude that the behavioural problems being experienced in the Bridge program were roughly equivalent to those occurring within the regular student population;
- (c) Reading Tutors/Speech and Language Assistants - these are specific positions within the special needs classification, and the individuals occupying those positions would spend substantially all of their time performing the specific tasks associated with those positions. The Division points out that there are no such specific positions within the Bridge program.

In addition to reviewing the evidence as to the individual students currently enrolled in the Bridge program, and the tasks and duties undertaken by the Bridge program paraprofessionals in relation to those students, I have also considered Exhibits 6 through 9, the Job Assignment Descriptions for 1997 - 1998, 1998 - 1999, 1999 - 2000, and 2000 - 2001, with a view to determining whether the job descriptions and duties set forth in those exhibits properly reflect the actual duties performed by the Bridge program paraprofessionals. I have also cross-referenced the job descriptions and duties in Exhibits 6 through 9, with the Guidelines for Paraprofessional Job Classifications (Exhibit 5).

I did so in order to decide whether the Union had discharged the onus of establishing that the work being performed by the Bridge program paraprofessionals was in fact work that belonged to the special needs classification.

Exhibits 7, 8 and 9 contain the following references:

Exhibit 7

. . . Students may require the delivery of special programs such as O.T./P.T. program and Speech and Language programs . . .

Non-Violence Crisis Intervention (N.V.C.I.) . . .

experience with adolescents who have a range of special needs: cognitive delays, behavioural disorders, communication/language disorders, physical disabilities, poor organizational skills, exceptional academic disabilities, attention difficulties, personality disorders . . .

anticipate/deal with student's behavioural outbursts by implementing W.E.V.A.S. and Non-Violent Crisis Intervention.....

physically capable of providing a variety of physical assistance/self-care routine.

willingness to dispense medication.

Exhibit 8

Require assistance for moderate - minor emotional/behavioural needs i.e. attention deficits, hyperactivity, verbal assaults . . .

direct and written communications with special needs teacher concerning daily academics, behavioural, and home and school issues . . .

physically capable of providing a variety of physical assistance/self-care routines . . .

experience in dealing with students with behavioural concerns . . .

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experience in Special Needs at the Senior Years.

experience with adolescents who have a range of special needs: cognitive delays, behaviour disorders, communication/language disorders, physical disabilities, poor organizational skills, exceptional academic disabilities, attention difficulties, personality disorders.

Exhibit 9

A. Provide programming for students who: . . .

3. Require assistance for severe-moderate emotional/behavioural needs: i.e. attention deficits, hyperactivity, verbal assaults, P.D.D., F.A.S., etc.

C. Provide programming for students who:

1. Require constant monitoring for personal safety; • mobility training, • street safety training, • classroom and

community safety.

D. Provide support for students who:

1. Require physical assistance to function in the school environment; • assisting students with physical disabilities; • mobility assistance within the school, community and work environment .

anticipate/deal with students' behavioural outbursts by implementing W.E.V.A.S. and Non-Violent Crisis Intervention Strategies."

The evidence introduced by the Union in relation to the individual students in the program was certainly consistent with the Bridge program paraprofessionals undertaking many, but not all of the above referenced duties and functions.

In some respects those tasks are similar to the responsibilities described in the special needs classification in Exhibit 5, particularly in categories A2 and A4.

However on balance, and with particular regard to the evidence from the paraprofessionals themselves as to their day to day activities, I am unable to conclude the Union has met the standard of establishing that the core job functions of the Bridge program paraprofessionals fall squarely within the special needs classification both as to ability and responsibility.

Having reached that conclusion, I have decided that the within grievance must be dismissed.

Before reaching this conclusion, I did consider another option, namely an adjustment to the current 5.0 Resource/1.0 Special Needs Classification. Initially I was attracted to the idea of such an adjustment for two reasons:

- (a) my impression of the evidence was that the Bridge program paraprofessionals, or at least some of them, may be spending more of their time on mobility training and street safety training than is reflected by the 1.0 allocation assigned to those activities in the current classification;
- (b) I also had a sense that some of the emotional and behavioural challenges presented by the students in the program may be more serious than acknowledged by the Division. If so this may be the result of some of the incidents considered serious by the paraprofessionals not being reported pursuant to the prescribed procedures. It may also be that the Division's administrative staff have not fully appreciated the difficulties and challenges presented by students such as Chris, Darrin, James and Tim.

However I ultimately decided that it would be ill advised for me to order an adjustment to the current classification. Such an adjustment could be fairly criticized as an inappropriate indulgence in micro-

management on my part without having an adequate knowledge or information base. For example, I did not hear much evidence as to the type of emotional and behavioural needs of students who are being supported by special needs paraprofessionals, and so my impression of the challenges presented by the Bridge program students relative to the "special needs" students may be incorrect.

However I would urge the Division in the classification process for the upcoming year to seriously consider whether an adjustment in the classification, or a reclassification may be warranted on the basis of the above-noted observations, as well as any others that may be relevant, in addition to the usual assessment of paraprofessional duties based on the expected composition of the student population in the program.

DECISION

The grievance of the Union (9906) is hereby dismissed.

DATED the 7th day of May, 2001.

A. BLAIR GRAHAM

I CONCUR WITH THE ABOVE AWARD

Gerald Parkinson

Nominee of the Transcona Springfield School Division No. 1

I DISSENT FROM THE ABOVE AWARD, AND MY DISSENTING REASONS WILL FOLLOW IN DUE COURSE

Grant Rogers

Nominee of the Canadian Union of Public Employees, Local 3465