

# **ARBITRATION BULLETIN**

September 25, 1998

**SEVEN OAKS SCHOOL DIVISION NO. 10**

**AND**

**SEVEN OAKS TEACHERS' ASSOCIATION**

## **BOARD OF ARBITRATION :**

P.S. Teskey, Chairperson

G.D. Parkinson, Nominee of the Division

M. Gabbert, Nominee of the Association

## **DATES OF ARBITRATION :**

October 15, 20 and 22, 1997

April 20, 21, 22, 23 and 24, 1998

Did the Division have the right to establish the position of Curriculum Leader by way of Board Policy (as opposed to collectively bargaining the new position into the Collective Agreement) and are the Curriculum Leaders performing duties which should be allowed the appropriate allowance.

## **AWARD**

The "Agreed Statement of Acts" filed by the parties as Ex. 1 encapsulates in very brief form the background to this grievance. It reads as follows:

- ? " In the 1980 collective agreement, article 4.04, an allowance was paid to department heads at the junior high and senior high levels.
  
- ? In the 1981 collective agreement, the department head classification for the junior high level was deleted and from 1981 to 1989, the classification in each collective agreement was called Senior High Department Heads, with different allowances being paid where there were 6 or more teachers in the department or less than 6 teachers.
  
- ? In the 1990/91 collective agreement, the classification was renamed Senior High Team Leaders and has remained as such through to the 1995/96 collective agreement which is currently in effect.
  
- ? A revised policy on Department Heads, Policy GBBAF, became effective on January 13, 1986 and remains in effect, although the Division advised the Department Heads and other teaching staff that the Department Head or Senior High Team Leader positions would be eliminated for the 1995/96 school year.

- ? On May 8, 1995, the Board of Trustees, by motion #95-128, established a Curriculum Leader classification in the Board Policy Manual.
  
- ? On May 10, 1995, Pat Isaak, then President of SOTA wrote to John Wiens, Superintendent indicating that it was SOTA's view that the change was a unilateral change to the collective agreement.
  
- ? On May 12, 1995, John Wiens responded to the Isaak letter indicating that the Curriculum Leader positions were a change in policy.
  
- ? On February 20, 1996, Pat Isaak wrote to John Wiens, which letter was received in the Division office on March 22, 1996, to advise that it had come to the attention of the Association that senior high teachers were carrying out the responsibilities of Department Heads.
  
- ? On April 22, 1996, John Wiens responded to the Isaak letter by indicating that to his knowledge, no senior high teachers were carrying out the duties of department heads under the direction of division or school administrators.
  
- ? On June 11, 1996, one Association grievance and ten individual grievances were filed by Pat Isaak on behalf of the grievors.
  
- ? The Division denied the grievances.
  
- ? Senior High teachers previously known as Department Heads were paid by the Senior High Team Leader allowance in the 1995/95 school year.
  
- ? Senior High teachers known as Curriculum Leaders from the 1995/96 school year to the present have not been paid the Senior High Team Leader Allowance."

The issues are substantially whether the Division had the right to establish the position of Curriculum Leader by way of Board Policy (as opposed to collectively bargaining the new position into the Collective Agreement) and whether or not the Curriculum Leaders are performing the functions which ought properly to be allowed the appropriate allowance referred to in Article 4.04(3).

The ten individual grievances and policy grievance of the Association were all filed on June 11, 1996 (Ex. 14) and were ultimately denied by letter of February 11, 1997 (Ex. 15) from the Board, which letter read:

*"At its regular meeting of February 10, 1997 the Board of Trustees passed the following motion in regard to the above grievances:*

***That** the Board uphold the Superintendent's decision regarding the Seven Oaks' Teachers Association Grievance."*

The Board's decision reflects its view that factually there are no people acting as either Senior High Department Heads under policy GBBAF or as Senior High Team Leaders as conceptualized in Article 4.04 of the Collective Agreement.

Notwithstanding this position, the Superintendents' Team is expected, as always, to address conditions teachers deem to be unfair or unreasonable. The Board wishes to be assured that all teachers are treated justly and equitably."

It should be noted that the Collective Agreement does not require that vacancies for either Senior High Department Heads or for Senior High Team Leaders be posted or filled.

All of the individual grievors testified. Ms. R. Topping was the first witness.

It was her view that the primary responsibilities did not change despite the change in name of the position. A certain amount of the administrative duties the Department Head previously performed might have lessened but, in substance, there had been very little real change. The duties referred to in Ex. 9, had all been performed by the Department Heads or the Senior High Team Leaders including involvement in departmental and administrative meetings, involvement in the budgetary process, dealing with books and resources, organizing and coordinating assessment in examinations and sharing of materials, coordination of field trips and special events, etc.

She had held the position of Curriculum Leader in 1995/96 and, in direct examination, recalled that not much changed in the sense of things continued to have to be done and the administration expected the Curriculum Leaders to continue to do what they had previously done (while receiving the allowance) and there was no indication given of any significant change.

Since she had become Vice-Principal (part of the Administrative team) the Curriculum Leaders were doing essentially the same duties as she had performed although they might have somewhat more involvement in professional development and school issues.

It was her testimony that she had never been told by the Administration to do anything significantly different from what she had done before and felt that Mr. Wiebe had been sympathetic to the fact that the change was being done by policy, not by bargaining, and her perception was that his view was that the position should not diminish in terms of any responsibility.

She was sure that Mr. Wiebe had said that he disagreed with the way that the change had been done and felt that it should be grieved. She had never been told by the Administration not to do any of the duties she was performing (including the administrative duties), nor had she ever been told to delegate more of the responsibilities.

The remaining grievors' evidence was essentially the same.

The first witness presented by the Division was Mr. B. O'Leary who is currently the Principal of Maples Collegiate (and has been there since the beginning of the school year in 1994). He was previously Principal at Garden City Collegiate commencing in the fall of 1991 when he arrived in the Division. As with the other individuals, Mr. O'Leary has considerable experience within the educational system and has held a number of different positions but we do not need to detail all of same. Suffice it to say that when commenced his employment with the Division at Garden City Collegiate, the Department Head policy was in place but there was much discussion about changing the system. The majority of the changes happened in his first year at Maples Collegiate. He had been one of the Principals who appeared before the Advisory Committee in 1992.

While he had been at Garden City Collegiate, Mr. O'Leary recalled that while some Departments had Department Heads, others did not which created certain anomalies and some unfairness. He had personally requested that a Guidance Department Head be appointed but that was not granted.

Discussion took place at Administrator's meetings for the senior high schools and it was agreed that they wished a more shared leadership concept and to involve more areas than were considered to be "Departments" in the traditional disciplinary approach. Efforts were made in that direction but the individuals who were involved from various areas had similar responsibilities to the paid Department Head positions but were not paid themselves. It was Mr. O'Leary's view that a broader and more representative leadership structure was required in the schools in order to make the necessary educational and curricula changes. The previous structure also had the disadvantage of being rigid, non-inclusive, and did not promote teacher collegiality.

Mr. O'Leary began to implement the new policy in May, 1995. He notified the staff that the positions would be available and asked for volunteers. In situations where no volunteers were forthcoming he acknowledged that he had approached individuals such as Ms. May, Mr. Biluk, and Mr. Pawlychyn. He had also circulated the draft policy and it was his recollection that he had talked to the staff concerning the changed role of the position. that being more a "chairperson" type role of a particular curriculum group. The point was to see that things were done, not to do it themselves and to share administrative duties.

It was made clear that there was no pay for the position although there was the possibility of some time being made available for the Curriculum Leader to perform their responsibilities. At Maples Collegiate, there had previously been some seven Department Heads but approximately fifteen Curriculum Leader groups were established including interdisciplinary groups. The number of groups had been expanded to recognize all disciplines, not just some. The hope was that the Curriculum Leader would be the "educational leaders" and would coordinate discussions of groups of teachers who would have greater roles to play in terms of such matters as developing curricula, student support, and planning in common. The administrative work was to be shared whereas previously it was recognized that it was to be done by the Department Head.

The next witness presented by the Division was Mr. A. Wiebe. He is currently the Principal of Garden City Collegiate (and he has held that position since August, 1994). Prior to that he had been Vice-Principal of the Collegiate from 1985 through 1992 at which time he became Principal of Edmond Partridge Junior High School. He had taught within the Division from 1967 and in the early 1980's had been a Department Head of the English Department at West Kildonan Collegiate.

It was his evidence that discussions about "breaking down barriers between Departments" had begun in the late 1980's or early 1990's. While he had been VicePrincipal, he, himself, had recognized that there was a problem with the then current structure in that certain Departments had "status" while others did not. That created difficulties in terms of educational issues (such as "seeing education as a whole") and developing an interdisciplinary approach. Not every teacher at Garden City had even been in a

Department and such areas as Technology and Applied Arts were not truly recognized That also applied to student services, guidance, resource individuals, etc.

While certain of those individuals might be involved in meetings, they were not paid upon the same basis as Department Heads.

When the new policy came out, it was intended to promote collegiality as the previous discussions between different Departments had been limited.

As well, the practice of appointment of Department Heads had previously been that the person appointed would serve in that position until they retired, or moved, or something drastic happened. He had received complaints from teachers that such a system was not in the best interest of anyone. Although there had been some discussions in the late 1980's about rotating Department Heads, that also created problems in that when a new person was appointed there was considerable friction and difficulty.

Mr. Wiebe had not been involved to any great degree in the development of Ex. 9 but was very much involved in implementation.

Garden City Collegiate had invited Mr. J. Wiens, the Superintendent (his evidence will be discussed shortly) to a meeting with all staff to discuss the new policy in the spring of 1995.

As an Administrator, Mr. Wiebe appreciated that the new policy was a departure in certain ways and was designed to involve more teachers in educational issues in the school and to break the barriers between Departments. It was his view that Curriculum Leaders had some degree of administrative duties but the extent to which the duties changed from the Department Heads he did not know. He acknowledged that the expectation was that what was necessary would get done but felt that different people would or could do part of it. The extent of that varied within the different curriculum groups.

The last witness was Mr. Wiens. He has been Superintendent since 1989 except for a one year sabbatical in 1993/1994. As at the time of the hearing, he was currently on leave to complete his Doctorate. He is both Superintendent and Chief Executive Officer of the Division and responsible for educational leadership and, basically, all matters relating to the Division. As with the others, he has held a great variety of positions within the field of Education, both teaching and administrative, and was the President of the Manitoba Teachers' Society in 1980/1981.

As Assistant Superintendent, he had been involved in personnel management, special education and student services issues, as well as in curriculum and professional development matters at various times. The Division was the fifth largest Division in the City of Winnipeg comprising some twentytwo schools (three high schools) serving some 9,0009,500 students. Maples Collegiate was the largest high school within the Division involving some 1,100 students and 65/70 staff.

The high schools within the Division were quite differentiated. Maples had the only vocational program, Garden City Collegiate (which has some 900 students) had the French Immersion program and technology and applied arts, and West Kildonan Collegiate (the smallest of the high schools) had the co-operative vocational educational program which is more related to trades.

In direct examination, Mr. Wiens testified that he was familiar with the Department Head/Senior High Team Leader structure and that he had concerns with same. It tended to isolate or exclude certain teachers and "balkanized" teaching staff. It also created different status for different Departments. All of those were barriers to fruitful discussions at the high school level. Consideration to changing the system had started as early as 1985 and, part of the reason for that, was that teachers had raised concerns about the different status between elementary, middle school, and high school. The concern of the Board of

Trustees was that staff were becoming entrenched and intransigent. That was the reason Ex. 8 provided a four year term but it still remained difficult to have people move from their position or to move from their preconceived motions. It was desirable to have more involvement with people with new ideas who were more current. After Ex. 8, there had been certain pressure placed upon teachers not to apply at the conclusion of a term and, in most instances when they did, there had been great resistance.

There had been a "pecking order" in terms of status of the different Departments which resulted in receiving better funding, or better locations within a school. The less traditional disciplines generally got the short end of the stick in that respect.

There was also concern about "isolation of teachers" in that he had received complaints from some teachers about not being considered as "real teachers" because they were not part of particular departments and were not treated as seriously.

In 1990, collective bargaining had changed the Department Head position to the Senior High Team Leader in the Agreement and that change had been supposed to signal that the role would be different but, generally, the role did not change after that time and it was not satisfactory (with a few exceptions) to the Board, the Administration, or the Principals.

The change in policy had been well known before it was actually passed but was fully circulated throughout the schools and provided to the teachers. It was raised at Administration meetings in August and questions were invited. No grievances had been filed at all from West Kildonan Collegiate concerning the new system and it was in place.

It was his view that most of the staff clearly understood the difference between the various concepts and there had been discussion taking place for some time concerning same albeit there might have been some minimal confusion amongst the teaching staff.

In final submission, Counsel for the Association suggested that the primary issue was whether the grievors were all entitled to be paid allowances in accordance with Article 4.04(iii) of the Agreement although she also noted that with respect to Ms. Topping, Ms. Roche, Ms. Smythe, and Mr. Treller, they might, alternatively, be entitled to compensation pursuant to Article 4.04(iv) as they had been in Department Head positions in the year prior and were transferred to a new administrative position with essentially the same duties. It was conceded that would not be applicable to the Leaders who were not previously Department Heads.

It was acknowledged that the Trustees could develop policies but they had to be clear and the implementation of the policy had to be clear as well which was not the case here. It was important to note that at the same time Ex. 9 was passed, the evidence was that Ex. 8 continued in effect and was not removed from the Board's policies.

Essentially, the propositions were that each grievor was performing the central core functions as required in Ex. 8 and that had been the expectation. They were required to exercise the responsibilities on a regular basis and nothing had changed in fact, only in name. It had been appropriate for the grievors to "obey now and grieve later".

While the wording of this Collective Agreement might allow the Division to determine how many positions should be filled, the work was still required to be done and was being done. The actual job functions were what was most important.

## **DECISION**

There was nothing in the Collective Agreement to require appointment of either Department Heads or Senior High Team Leaders or for how long or when. Accordingly, the Division had the right to determine what was needed to adopt a different structure if it was more beneficial which was precisely what had happened.

It was counsel's submission that the duties between the leaders and the Department Heads or Senior High Team Leaders were distinct and different and that the grievors had not brought themselves within the parameters of the Senior High Team Leaders. The grievors had performed some of the duties, but not all, and some duties had been performed deliberately and voluntarily despite knowing that they could have delegated them. Neither had they taken steps to get assistance to help such process of delegation occur which raised the issue of estoppel.

This Board confesses that it has had some difficulty resolving the issues raised by the grievances in that, given all of the circumstances, the "fairness" of the situation is not readily apparent as will be noted and detailed in the following comments.

We start from certain premises. We agree with Mr. McNicol that the Division does have the right to reorganize and to restructure so long as (and in this respect we agree with the Association) it does not breach or contravene the existing provisions of the Collective Agreement in doing so, and to act reasonably and fairly in administering its rights under the Agreement.

We accept that the intention of the Division was that the Curriculum Leader position would be, both conceptually and in reality, different than the Department Head position and, while we really do not have any role to play in terms of such determination, do feel that greater involvement of the teaching staff in terms of decision making and responsibilities within the schools is a good concept and beneficial to staff development. We might note that the Association did not challenge the change in philosophy; rather, what was challenged was the mechanics of making that change take place.

We have taken a number of factors into account.

It would be difficult for this Board to say that the implementation of the new system was flawless. As was acknowledged by various of the witnesses, this was a significant change in direction and it would have been useful for greater clarification to have taken place as at the time of implementation. It may well be that a full inservice day was not necessary but some further discussion and clearer explanation of the expectations upon all concerned would likely have been of benefit. Given the importance and magnitude of the change (as expressed by the Division witnesses), one would have expected more administrative initiative and resources to be applied in order to make it successful which might have avoided the present difficulties entirely. That reality makes it difficult to find that the Division acted entirely reasonably and fairly in terms of the implementation.

It is equally fair to say that the concerns of the individual grievors, and of the Association, should have been raised upon a more timely and specific basis. While we appreciate that, quite naturally, it would take some time to discover the "bugs" in the new system, we never did receive a clear explanation of why the grievances took so long to file since the evidence was that the situation, at least with respect to certain of the positions, would have been clear much earlier. We also find it difficult to accept that the Administration, both at the school level and the Divisional level, failed to take action to clarify the situation once the grievances were filed. We do not see such clarification as "interfering" in the sense that Mr. Wiens spoke of but we also find it difficult, to a certain extent, to understand why the individual teachers did not make greater efforts to either remove themselves from the positions or to obtain assistance in correcting the situation.

It is somewhat heartening that the evidence indicates that the new system is now working more in the fashion in which it was intended than was the case during the two years in question. Hopefully, that will operate to the benefit of the Administration, the teachers, and the students but it is clear to us that there were difficulties during the transitional period and that certain of the individuals were, in fact, performing the functions of Department Heads rather than Curriculum Leaders albeit, in many cases, they chose that path themselves or did not take the reasonable steps possible to correct the situation.

There are issues of both estoppel and delay to be considered given all of the facts before us (and as we have recited those facts in some detail, we do not intend to do so again). We also understand the "obey now, grieve later" concept but the voluntariness aspect of the new system must also be considered. It is appreciated that teachers would likely wish to please the Administration, and that they would normally complete a task once it was assumed, but it also has to be remembered that they are professionals and, accordingly, a certain level of response is expected. As indicated previously, we have also taken into consideration the failure of the Administration at both levels to respond to the grievances and to clarify the situation in a timely fashion as well as the lack of proper implementation initially.

It is true that there are certain factual differences in the circumstances of the individual grievors. Some were requested to take the position and some volunteered. However, on a more "global" view, we are of the opinion that it is not necessary or particularly useful to draw fine distinctions between them. What appears to us to be of more importance is that this issue have some closure and that the parties (including the grievors) can turn their minds to other matters.

It is our respectful view that the grievances should succeed but only to the extent indicated as follows and, in the following, we have taken into account the conduct of all concerned.

We direct that each of the individual grievors shall receive an amount equivalent to five months of the Senior High Team Leader allowance (which is roughly equitable to half a school year) but no more than that. It does appear to us, as indicated, that the new system is now operating more properly and we find no basis to disturb the operation of it. It is of some concern to us that this Award may be viewed as rewarding some individuals when others did not grieve but the reality is that they did not, and it may well be (and we have no evidence to the contrary) that the new system operated as it was intended to do so in those particular circumstances. What we do know from the evidence is that the new system did not operate as it was intended to do in the case of the grievors but in terms of remedy we have taken into account their own role in that failure.

Accordingly, the grievances succeed only to the extent indicated above.

Each party shall bear the expense of its own Nominee and shall share equally in the expense of the Chairperson

DATED this 12<sup>th</sup> day of June, 1998.  
P. S. Teskey, Chairperson

This award in full (106 pages) is available by contacting the Labour Relations Department at MAST.

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