IN THE MATTER OF AN ARBITRATION

AND IN THE MATTER OF A GRIEVANCE FILED BY
THE THOMPSON TEACHERS' ASSOCIATION
OF THE MANITOBA TEACHERS' SOCIETY
DATED APRIL 15, 2005

BETWEEN:

THE THOMPSON TEACHERS' ASSOCIATION OF THE MANITOBA TEACHERS' SOCIETY,

(hereinafter referred to as the "Association"),

and

THE SCHOOL DISTRICT OF MYSTERY LAKE,

(hereinafter referred to as the "District").

AWARD

A. Blair Graham, Q.C. - Sole Arbitrator

Appearances:

Valerie Matthews Lemieux - On behalf of the Association
Robert Simpson - On behalf of the District

AWARD

INTRODUCTION

The hearing of this grievance took place on June 23, 2005, in Winnipeg, Manitoba.

The parties confirmed at the commencement of the hearing that I had been validly appointed as sole arbitrator and that I had jurisdiction to determine the matters at issue in the grievance.

This grievance relates to a Letter of Understanding dated June 30, 2004 (the "Letter of Understanding"), dealing with timetabling and preparation time within the District. The letter is signed by Robert Bushey, the Chairperson of the Board of Trustees of the District and was sent to Cathy Neziol, the President of the Association.

The Letter of Understanding was attached to the Collective Agreement between the District and the Association signed in June 2004 (the "Collective Agreement"). Pursuant to clause 1.01(a) of the Collective Agreement, the agreement was in effect from July 1, 2003, and remained in effect for the 24 month period thereafter, and was to continue in effect from year to year, unless either party gave notice to the other by April 1 of an intention to terminate, or seek an amendment to, the Collective Agreement.

Teachers in Manitoba do not have the right to strike. However, in the event that school divisions and teachers' associations are unable to agree on the terms of renewed or revised collective agreements, either of the parties, after certain time periods have expired, may refer any matters in dispute with respect to the terms and conditions of a new collective agreement to mandatory arbitration under what is currently Part VIII of The Public Schools Act, RSM (the "P.S.A.').

Section 101, which is within Part VIII of the P.S.A., provides:

"Terms and conditions of agreement continue in effect

101

> Unless the parties agree otherwise, if notice has been given to commence collective bargaining under s.60 or 61 of The Labour Relations Act, the terms and conditions of the collective agreement then in operation continue in effect until the parties conclude a collective agreement or until an arbitration award is made under this Part."

The time period between the date the notice referred to in s.101 of the P.S.A. is given, until the date the parties either conclude a new collective agreement, or the terms of a new collective agreement are set by arbitration, is commonly referred to as the "statutory freeze period".

By letter dated March 18, 2005, notice was given to the District by the Association of its intention to amend the Collective Agreement. The parties acknowledge that any new collective agreement, regardless of when it is concluded, will be effective from July 1, 2005.

The issue to be resolved in these proceedings is whether or not the Letter of Understanding is within the ambit and operation of s.101 of the P.S.A. and therefore will continue to apply beyond the 2004/2005 school year which ended on June 30, 2005. In other words, is the Letter of Understanding caught within the statutory freeze period?

If so, the timetabling and preparation time provisions in the Letter of Understanding will continue to apply until the provisions of a new collective agreement have been concluded, or set by arbitration, and, more particularly, will continue to apply when the new school year commences in September 2005. The Association asserts that those provisions continue to apply. The District says that they ceased to have effect as at June 30, 2005.

Inasmuch as the new school year is rapidly approaching, the parties have asked that this Award be issued promptly. As a result, this Award will be briefer than might otherwise have been the case, and I will not outline all of the evidence and background facts which the parties introduced at the hearing on June 23, 2005.

BACKGROUND

The Letter of Understanding deals with timetabling and preparation time in all schools throughout the District. However, the contentious issues between the parties relate to the timetabling and preparation time provisions applicable to R.D. Parker Collegiate. The Letter of Understanding as it applies to the R.D. Parker Collegiate is reproduced herein, in extenso:

"School District of
Mystery Lake

June 30, 2004

Cathy Neziol, President
Thompson Teachers' Association

Dear Mrs. Neziol;

Re: Letter of Understanding Regarding Timetable and Preparation Time for the 2004/2005 School Year

It is understood and agreed that effective September 2004:

a . ...

b. (i) The timetable at R.D. Parker Collegiate shall be a 5 period day or a 4 period day as determined by the Board in any school year.

(ii) When the timetable is a 4 period day, teachers shall be assigned a maximum of 3 sections of 4 sections to a maximum of 6 assigned sections of 8 sections.

(iii) When the timetable is a 5 period day, teachers shall be assigned 3 of 5 or 4 of 5 to a maximum of 7 assigned sections of 10 sections.

(iv) Any variation to the above assigned sections shall be with the mutual agreement of the teacher and approval by the Thompson Teachers' Association.

Yours truly,

Robert Bushey,
Chairperson Board of Trustees."

Timetabling and preparation time issues at R.D. Parker Collegiate have vexed the District and the Association for several years. The parties filed 24 exhibits by consent at the hearing. Some of those exhibits provided me with useful background information relating to issues associated with preparation time for teachers dating back to the 1991/1992 school year. Many of the other exhibits dealt with the last three collective agreements between the parties, namely;

(i) The collective agreement, which, pursuant to its terms, was initially in effect for the two year period between July 1, 2000, and June 30, 2002. It was not concluded and executed until October 2001 (i.e. more than halfway through its effective period);

(ii) The collective agreement, which, pursuant to its terms, was initially in effect for one year between July 1, 2002, to June 30, 2003. It was not concluded and executed until September 2003 (i.e. after its effective period had expired);

(iii) The Collective Agreement referred to earlier in this Award, which, pursuant to its terms, was initially in effect for two years between July 1, 2003, and June 30, 2005. It was not concluded and executed until September 2004 (i.e. more than halfway through its effective period).

The exhibits relating to those three collective agreements included:

(i) The collective agreements themselves,

(ii) All of the Letters of Understanding appended thereto;

and, in the case of the earliest of the three collective agreements:

(iii) correspondence exchanged between the lawyers for the parties leading up to the conclusion of the agreement;

and, in the case of the latter two of the three collective agreements:

(iv) proposals and other like documents exchanged between the parties leading to the conclusion of the respective agreements.

It as clear from a review of the exhibits associated with the last three collective agreements that timetabling and preparation time issues at R.D. Parker Collegiate have been contentious and the subject of bargaining during each of the negotiations leading up to the conclusion of each of those collective agreements.

Those respective negotiations resulted in agreements between the Association and the District with respect to timetabling and preparation time which were reflected in letters of understanding appended to each of the three collective agreements.

Each of the three letters of understanding were identical with respect to preparation time. Each letter stipulated that the preparation time was to be scheduled in blocks of not less than 30 minutes, and that preparation time for each full time teacher per six day cycle in the various grades was:

K - 6 - 240 minutes
7 - 8 - 300 minutes
S1 - S4 - 300 minutes.

The letters of understanding for the earlier two collective agreements were identical relating to time tabling at R.D. Parker Collegiate and provided that

> " . . . b. The timetable at R. D. Parker Collegiate shall be a 5 period day and assignments shall be 3 of 5 or 4 of 5 to a maximum of 7 assigned sections of 10 sections in any school year."

The timetabling provision applicable to R.D. Parker Collegiate was different in the Letter of Understanding appended to the Collective Agreement. It provided that:

"b. (i) The timetable at R.D. Parker Collegiate shall be a 5 period day or a 4 period day as determined by the Board in any school year.

(ii) When the timetable is a 4 period day, teachers shall be assigned a maximum of 3 sections of 4 sections to a maximum of 6 assigned sections of 8 sections.

(iii) When the timetable is a 5 period day, teachers shall be assigned 3 of 5 or 4 of 5 to a maximum of 7 assigned sections of 10 sections.

(iv) Any variation to the above assigned sections shall be with the mutual agreement of the teacher and approval by the Thompson Teachers' Association."

The letter of understanding appended to the earliest of the three collective agreements was dated July 1, 2000, (the effective commencement date of the collective agreement), although the collective agreement itself was not signed until October 2001. That letter of understanding (although dated July 1, 2000) did not take effect until September 2002 (after the date on which the college agreement had expired), and according to the reference caption in the letter itself, was for the 2002 school year. I construe the reference caption as referring to the September 2002/June 2003 school year.

The letter of understanding appended to the next following collective agreement was dated June 30, 2003, (the date on which that collective agreement was to expire), although the collective agreement itself was not signed until September 2003. That letter of understanding took effect in September 2003 (after the date on which the collective agreement had expired), and, according to the reference caption in the letter itself, was for the 2003 school year. I construe the reference caption as referring to the September 2003/June 2004 school year.

The Letter of Understanding appended to the Collective Agreement was dated June 30, 2004. The Collective Agreement itself was signed on June 8, 2004, approximately halfway through its effective period. The Letter of Understanding took effect in September 2004, and, according to the reference caption in the letter itself, was "for the 2004/2005 School Year."

The dating of the letters of understanding and their effective dates, and the dating of the three most recent collective agreements and their effective dates, are somewhat confusing, and accordingly Exhibit 24, which sets forth the salient information as to dates in chart form, is set forth below:

Collective Agreement	Duration	Dates	Date Signed	LOU Effective Date	School Year LOU Implemented
2000/02	2 years	July 1, 2000 to June 30, 2002	October 2001	September 2002	2002/03
2002/03	1 year	July 1,2002 to June 30, 2003	September 9, 2003	September 2003 .	2003/04
2003/05	2 years	July 1, 2003 to June 30, 2005	June 8, 2004	September 2004	2204/05

THE POSITIONS OF THE PARTIES

It is the position of the Association that the Letter of Understanding is caught within the statutory freeze period, and that its provisions with respect to timetabling and preparation time issues continue to apply throughout the District, including at R.D. Parker Collegiate.

The primary arguments of the Association in support of that position are that:

(i) The Letter of Understanding is part of the Collective Agreement. Accordingly, by operation of s.101 of the P.S.A., once notice was given by the Association on March 18, 2005, of its intention to amend the Collective Agreement, the Letter of Understanding continued in effect, and will continue in effect, until the parties conclude a collective agreement or until an arbitration award is made;

(ii) In this case, it is necessary and appropriate to look at the evidence of the past practices of the parties and the negotiating history related to the last three collective agreements. Such evidence establishes that the parties have consistently entered into letters of understanding with respect to timetabling and preparation time which have had prospective application following the expiration of the effective periods of the collective agreement to which they were appended;

(iii) There was no agreement reached that the Letter of Understanding would cease to have effect after June 30, 2005.

It as the position of the District that the Letter of Understanding is not caught within the statutory freeze period and that its provisions do not continue in effect beyond June 30, 2005. The District is therefore free to implement new arrangements with respect to timetabling and preparation time for the 2005/2006 school year, which will apply throughout the District, including at R.D. Parker Collegiate.

The primary arguments of the Association are that:

(i) The Letter of Understanding is a "time limited" agreement, which, by its express terms, applies only to the 2004/2045 school year, which ended on June 30, 2005;

(ii) The Letter of Understanding is clear and unambiguous as to the agreement which the parties reached relating to timetabling and preparation time issues, and therefore evidence of past practice and negotiating history ought not to be considered or relied upon;

(iii) The evidence as to past practice and negotiating history is inconclusive and unhelpful because there was no consistent past practice. Each of the three most recent collective agreements had letters of understanding with respect to timetabling and preparation time issues appended thereto, but each of those letters reflected agreements that were unique, both as to their content and as to their duration, based on the circumstances that prevailed at the time they were concluded.

ANALYSIS

Twenty-four exhibits were introduced in the proceedings. Three witnesses testified, Thomas Kelly and Larry Macauley (both long-serving executive members and past Presidents of the Association and teachers at R.D. Parker Collegiate), on behalf of the Association, and Greg Penny, the Superintendent/Secretary-Treasurer of the District, on behalf of the District. The exhibits and the testimony provided much evidence of the past time tabling practices at R.D. Parker Collegiate, and the negotiating history from 2000 onwards with respect to time tabling and preparation time issues applicable to R.D. Parker Collegiate.

The Association stressed the importance of that evidence. From the Association's perspective, the evidence as to past practice and negotiating history is noteworthy for the following reasons:

(i) In the previous two collective agreements, the letters of understanding appended thereto, dealing with time tabling and preparation time issues, were stated to apply for one particular school year, whereas in relation to both of those agreements, the letter of understanding arguably applied for two years. More importantly, the letters of understanding appended to each of those two collective agreements applied prospectively, and specifically applied to periods of time after the stated effective periods of each of those respective collective agreements had expired;

(ii) With respect to the specific negotiations leading to the conclusion of the Collective Agreement (for the period July 1, 2003, to June 30, 2005), there were no specific discussions between the two parties as to the period during which the Letter of Understanding would apply. In the absence of any such discussions, it cannot be argued that the Letter of Understanding constituted a time limited agreement that would only be in effect until June 30, 2005.

As I understand it, the District's position distinguishes between the evidence of past practice and negotiating history with respect to the earlier two collective agreements and the evidence as to negotiating history with respect to the negotiations leading to the conclusion of the Collective Agreement, for the period July 1, 2003/June 30, 2005.

The District says that the evidence of past practice and negotiating history relating to the earlier two collective agreements is unhelpful and ought not to be relied upon for the simple reason that there was no consistent past practice. Both of the earlier collective agreements and the letters of understanding appended thereto were negotiated in a specific and unique set of circumstances. Although the letters of understanding ultimately agreed to in the earlier two collective agreements were identical in their provisions relating to time tabling and preparation time at R.D. Parker Collegiate, the circumstances giving rise to that result, and the basis for the periods during which the letters of understanding would apply, were different.

It should be noted, in terms of past practice, that the District disagrees with the Association's contention that the letters of understanding associated with both of the earlier two collective agreements applied for two years. It is the District's position that both of the earlier letters of understanding were in fact time specific and each of them applied to only one specific school year. The District does not dispute that each of those two letters applied to periods of time after the stated effective periods of the respective collective agreements had expired.

The District does indicate that there is an aspect of the negotiations leading up to the conclusion of the Collective Agreement that is noteworthy and helpful to the District's position.

The District's opening stance in those particular negotiations was that there would be no letter of understanding with respect to time tabling and preparation time. The District wanted the ability to implement new arrangements to maximize its flexibility in dealing with various organizational and financial challenges it was facing. The Association's position was contrary. During negotiations, which took place on April 15, 2004, an overall agreement between the parties as to the terms of a new collective agreement was essentially reached, which included an agreement as to the time tabling and preparation time arrangements at R.D. Parker Collegiate. Those arrangements were ultimately included in the Letter of Understanding appended to the Collective Agreement.

The District contends that their position, namely that an agreement was reached on scheduling and time tabling issues which was time limited and was to apply for only the September 2004/June 2005 school year is entirely logical and consistent with the background evidence relating to those particular negotiations. The District agreed to a limited compromise, namely they altered their opening position that there would be no letter of understanding, and agreed to a revised letter which provided the District with some increased flexibility at R.D. Parker Collegiate, but which would only apply for 2004/2005 school year. The District also suggests that the position of the Association that the Letter of Understanding would apply beyond June 2005, until a new collective agreement was reached or set, is illogical and inconsistent with the negotiations which had taken place.

With respect to the issue of past practice and negotiating history, as it relates to the earlier two of the last three collective agreements, the evidence relating to that issue was detailed and somewhat difficult to interpret. As noted above, there is disagreement between the Association and the District as to whether the two earlier letters of understanding applied to one specific school year or, in the actual result applied to two school years.

Although there are some aspects of the past practice evidence that are undoubtedly helpful to the Association (such as the fact that the earlier two letters applied to periods of time after the stated effective periods of the respective collective agreements had expired) I tend to agree with the District's submission that there was no clear or consistent past practice, and that the evidence related thereto is therefore ultimately unhelpful in resolving this dispute. I have read with interest the decision of arbitrator Christie in *Strait Crossing Joint Venture and I.U.O.E. (1997) 64 L.A.C. (4th)* 229, in which he reviewed the authorities relating to admitting and relying upon extrinsic evidence and concluded, correctly in my view, that such evidence must be clear and cogent in order to be used as a basis for determining what the parties have agreed upon.

Accordingly, I will not rely on the extrinsic evidence as to past practice and negotiating history relating to the earlier two of the three collective agreements.

However, there is still an issue to be resolved relating to the evidence with respect to the negotiations leading to the conclusion of the last of the three collective agreements, namely the Collective Agreement for the period from July 1, 2003/June 30, 2005.

Ultimately, one of the primary tasks of an arbitrator is to construe the agreement that the parties have reached. The District says that the agreement reached by the parties as to time tabling and preparation time effective September 2004 is clear and unequivocal, namely that the provisions of the Letter of Understanding were to apply for the 2004/2005 school year only. The District also says that this agreement is plainly set forth in the reference caption to the Letter of Understanding, and there can be no doubt that the parties had a mutual understanding that the 2004/2005 school year, meant the period from the beginning of September 2004 to the end of June 2005.

Therefore, although the evidence as to the negotiations leading to the conclusion of the Collective Agreement are helpful to, and consistent with, the District's position, the District says that it is not actually necessary to consider that evidence in order to properly construe the Collective Agreement and the Letter of Understanding and to uphold the District's position.

The District argues that in view of the clarity of parties' agreement, there is neither a patent nor a latent ambiguity in their agreement and extrinsic evidence ought not to be considered or relied upon.

However, the Association emphasizes another aspect of the discussions and negotiations leading to the conclusion of the Collective Agreement and Letter of Understanding. According to the Association, there was no discussion as to the period of tune during which the Letter of Understanding would apply, and that is evidence I must consider in determining whether the parties had in fact reached an agreement on that issue.

Is there a basis for me to consider the background discussions between the parties, leading up to the issuance of the Letter of Understanding when construing the Letter of Understanding, which otherwise appears clear and unequivocal? This question leads invariably to a consideration of the cases and arbitral authorities starting with the non-labor law case of *Leitch Gold Mines Ltd. and Texas Gulf Sulfur Co.* (1968) 3 D.L.R. (3rd) 161 (Ont. H.C.J.) and including the Ontario Court of Appeal decision in *Noranda Metal Industries Ltd. and I.B.E. W* (1983) 44 O.R. (2nd) 529.

Rather than extensively reviewing and quoting the authorities, I will summarize them by saying that it is now settled that evidence of what was discussed in negotiations leading to the conclusion of a collective agreement is admissible to:

(i) Resolve a patent ambiguity;

(ii) To show that apparently clear language is in fact ambiguous (i.e. to reveal a latent ambiguity);

(iii) To resolve a latent ambiguity.

In this case, even without considering evidence as to what was said in negotiations, I have concluded that there is a latent ambiguity in the agreement reached by the parties. The basis for my conclusion is as follows:

(i) The Association and the District have both had extensive experience in negotiating and implementing collective agreements and were both well aware of the provisions of s.101 of the P.S.A, providing for the continuation of the terms and conditions of the Collective Agreement between the time the required notice was given and the date a new collective agreement was concluded or set. In other words, the parties were aware of the possibility, indeed the probability, that the terms and conditions of the Collective Agreement would continue beyond June 30, 2005, unless they agreed otherwise;

(ii) The signing page of the Collective Agreement bears a notation "Attached to and being part of the Agreement . . . ," which presumably means that the various letters of understanding that were attached, including the Letter of Understanding, formed part of the Collective Agreement. Moreover, the time tabling and preparation time provisions were terms and conditions of employment of teachers and therefore part of the Collective Agreement between the Association and the District;

(iii) Although the reference caption in the letter refers to the 2004/2005 school year, and such a heading is to be considered part of the agreement, the immediately following reference below the reference caption is that the provisions set forth therein are "effective September, 2004", and no end date is included in that subsequent reference, or elsewhere in the text.

Moreover, my understanding of the relevant authorities satisfies me that I am able to consider evidence as to the negotiations to determine whether or not a latent ambiguity exists, and if it does, to resolve it.

The evidence as to the background negotiations leading up to the conclusion of the Collective Agreement reinforces my conclusion that there was a latent ambiguity in the agreement reached by the parties with respect to time tabling and preparation time. The evidence as to the background negotiations is noteworthy in several respects, including:

(i) The initial negotiating position of the District was that they did not want any letter of understanding with respect to time tabling and preparation time;

(ii) The evidence of Superintendent Penny that the district would not have agreed to a letter of understanding applying beyond the September 04/June 05 school year;

(iii) The evidence of both of the Association's witnesses that there were no discussions as to the period during which the Letter of Understanding would apply;

(iv) The evidence of Penny was essentially consistent with the evidence of the Union witnesses on that point; Penny acknowledged that any discussions the District's negotiating representatives had to the effect that the Letter of Understanding would not apply beyond June 30, 2005, were internal discussions among themselves, not discussions with the Association's representatives;

(v) Evidence of the Association's witnesses that at all material times they believed that by virtue of s.101 of the RSA that the Letter of Understanding would continue to apply, either until a new collective agreement was concluded, or was set by arbitration.

Considering all of that evidence in its entirety, it is my conclusion that the parties were not *ad idem* in their understanding of the length of time the Letter of Understanding would apply. I am satisfied that the District had an honest and sincere belief that they had negotiated an agreement whereby the provisions of the Letter of Understanding would apply from September 2004 to the end of June 2005, but not beyond. However, I also consider that it was probable that the Association thought that if the parties had not negotiated a new collective agreement prior to July 1, 2005, to became effective on that date (as was likely to be the case), but notice to commence collective bargaining for a new agreement had been given, the terms and conditions of the Collective Agreement, including the provisions of the Letter of Understanding would continue to apply beyond June 30, 2005, by virtue of s.101 of the P.S.A.

The essence of the District's case is that when the parties had agreed upon the terms of the Collective Agreement which was to be effective from July 1, 2003, to June 30, 2005, in the spring of 2004, the parties had also agreed that the time tabling and preparation time provisions in the Letter of Understanding, including those relating to R.D. Parker Collegiate, would be "time limited", and would apply from September 2004 to June 30, 2005.

The case on which the District places the greatest reliance is *Re CNCP Telecommunications and Canadian Association of Communication and Allied Workers* (1987) 31 L.A.C. (3rd) 344. The *CNCP* case involved a dispute between the union and the employer over the banking of overtime earned under two articles in the collective agreement, an article relating to overtime and an article relating to holidays. One of the articles contained a concluding paragraph which stated that the provisions of the two articles "will terminate on expiration of this agreement unless mutually agreed to be extended by both parties".

The nominal expiry date for the collective agreement was December 31, 1985, but the provisions of the collective agreement continued in force by reason of the Canadian Labour Code, R.S.C. In *CNCP* it was the union which argued that the relevant provisions cased to apply as at December 31,1985; the employer maintained that the provisions continued in effect because of, among other things, the effect of the operative provisions of the Canada Labour Code.

In *CNCP*, the parties chose to express their agreement as to the period during which the provisions relating to the banking of overtime would be in effect, by referring to the expiry date of the collective agreement and by stipulating that the banking of overtime provisions would terminate unless mutually agreed to be extended by both parties".

The Board of Arbitration in *CNCP* chose to follow the Ontario Court of Appeal decision in *Re Service Employees International Union arid Broadway Manor Nursing Home* (1984) 13 D.L.R. (4th) 220, and concluded that there was a distinction between the continuation of a collective agreement and a continuation of its terms and provisions. It therefore ruled that the collective agreement had indeed expired on December 31, 1985, and that notwithstanding the provisions in the Canada Labour Code, the banking of overtime provisions terminated effective December 31, 1985, by reason of the express agreement reached by the parties.

The case of *Deer Lake-Saint Barbe South Integrated School Board and N.A.P.E* (1993) 29 C.L.A.S. 265 was similarly decided. That case dealt with a grievor's annual leave entitlement in which the parties had included a provision whereby the employer's agreement to continue any benefits which employees "presently enjoy" would be continued for the "term of the agreement". The arbitrator ruled that the parties had intended the benefits to end at the date of the expiration of the collective agreement, notwithstanding a provision in the Newfoundland Labour Relations Act to continue the provisions of a collective agreement until such tine as it was renewed, or the parties were in a legal strike or lock out position.

However, there are also cases which are to the opposite effect, such as *Re Breakaway Satellite Opiate Addiction Services and U. F. C. W* (2004) 128 L.A.C. (4th) 205 and *Windsor-Essex County Rear Estate Board and Service Employees' Union, Local 210* (1996) 55 LA.C. (4th) 18.

The *Breakaway Satellite* case dealt with a memorandum of understanding attached to the parties' collective agreement and which bore the same expiry date of June 30, 2002, as the collective agreement. The arbitrator was required to determine a preliminary issue, namely the arbitrability of the grievance. In doing so, he considered the *C.N.C.P.* decision. The arbitrators comments about that decision were as follows:

> "It is clear, in my view, that the decision in that case turned on the particular language set out in the last paragraph of Article 9.08. The Parties there had gone out of their way to stipulate not only that the provisions would expire but that if they were to continue to operate the Parties would have to mutually agree to such an extension. That is an unusual stipulation. On the other hand, it is not uncommon for appendices and memorandum attached to and/or forming part of a collective agreement to have a provision stipulating the same nominal expiry date as the collective agreement itself. Typically, if any date is stipulated it is most commonly the same as that set out for expiry in the collective agreement. In the event the Parties wish to stipulate some special treatment with respect to the duration of those matters otherwise frozen by the provisions of the Labour Relations Act, in my view they must be more specific in their purpose and intent. They must include language, as in the CNCP case, which distinguishes clearly the alternative treatment to be afforded to those provisions. It is not sufficient to simply duplicate the nominal expiry date of the collective agreement and trust that the proviso will escape the continued application dictated by legislation. To put it simply if the Parties wish to exempt some provision which would otherwise continue by operation of the legislation, they must be clear and unequivocal in their meaning . . . ."

I agree with the reasoning set forth above. When dealing with the statutory freeze provisions in the P.S.A., and when dealing with a Letter of Understanding attached to and forming part of the Collective Agreement, which outlines terms and conditions of the employment of teachers, if the parties have reached an agreement that certain provisions of the Letter of Understanding are to be treated differently from the balance of the terms and conditions of the Collective Agreement as to the period during which they will remain in effect, such an agreement must be unequivocal and must be expressed in clear and explicit terms.

Unlike the *CNCP* case, in which the parties stated that the provisions would expire on the date of expiry of the collective agreement unless there ways a mutual agreement as to their extension, in the present case, the Letter of Understanding does not express the parties "agreement" as to the duration of the time tabling and preparation time provisions, by referring to the effective date of the Collective Agreement. Rather, the "agreement" as to the duration of those provisions is expressed with reference to the 2004/2005 school year.

The District argues that such an agreement is indeed unequivocal and is expressed in clear and explicit terms in the Letter of Understanding. According to the District, the agreement is therefore sufficiently clear to avoid having the provisions of the Letter of Understanding apply during the statutory freeze period.

However, as noted earlier in this Award, I have concluded that there is a latent ambiguity in the agreement reflected in the Letter of Understanding, and I have also concluded that, based on the extrinsic evidence which I have considered, the parties were not *ad idem* in their understanding of the length of time the Letter of Understanding would apply.

It follows that the agreement, as reflected in the Letter of Understanding, as to the length of time its provisions will apply, is not clear and explicit, and does not operate to remove those provisions from the operation of the statutory freeze period. I have therefore concluded that the Letter of Understanding continues in effect and will continue in effect until the parties conclude a new collective agreement or until an arbitration Award is made under Part VIII of the P.S.A.

I would also observe in passing that counsel for the District, in his very able submission, asserted that he had no doubt, and that there could be no doubt, in view of the negotiations leading up to the conclusion of the Collective Agreement, that both of the parties had a clear understanding that the arrangements described in the Letter of Understanding would only apply for the September 2004/June 2005 school year. However, I note that Superintendent Penny, in his testimony, was not so sanguine.

When cross-examined as to the reasons he had sent a letter dated March 22, 2005, to the Association referring to a "time limited" commitment under the Letter of Understanding, and advising that the Letter of Understanding would have no application for the 2005/2006 school year, Superintendent Penny explained that one of the reasons he sent the letter was because he knew that the Letter of Understanding was important to the Association, and that he also knew that the Association had a different understanding as to when the Letter of Understanding would cease to have effect. Although Superintendent Penny may have been referring to his knowledge of the Association's position as it existed in March of 2005 (as opposed to the spring of 2004 when the Collective Agreement was concluded) his evidence supports the proposition that the parties never had a common understanding on that point. This is particularly so given that, during the negotiations preceding the conclusion of the Collective Agreement, the parties never specifically discussed the length of time the provisions of the Letter of Understanding would continue to be in effect.

DECISION AND REMEDY

The Association's grievance is allowed.

A declaration is hereby granted that the Letter of Understanding dated June 30, 2003, regarding time tabling and preparation time in the District forms part of the Collective Agreement between the parties signed on June 8, 2004, and that the provisions of the Letter of Understanding continue in effect pursuant to s.101 of the P.S.A. until the District and the Association conclude a collective agreement or until an arbitration Award is made under Part VIII of the P.S.A.

In view of the timing of the issuance of this Award, no further remedy and no additional relief will be granted at this time. However, I will retain jurisdiction to resolve any issues or disputes that may arise from this Award.

Dated this 3rd day of August, 2005.

A. Blair Graham,
Sole Arbitrator