

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TORONTO DISTRICT SCHOOL BOARD

(The "Board" or "Employer")

- and -

**ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION
DISTRICT 12**

(The "Federation")

**AND in the matter of a Federation policy grievance, 2 group grievances
and 4 individual grievances**

ARBITRATOR: William A. Marcotte

APPEARANCES:

FOR THE BOARD:

T. Moutsatsos, counsel
A. Gold, sr. mgr. sec. teaching

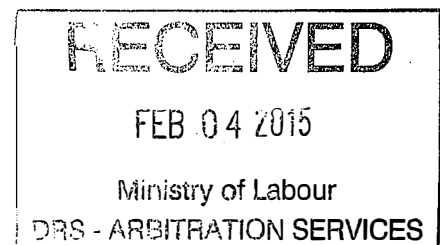
FOR THE FEDERATION:

H. Goldblatt
and others

REL. 10: 23826

00569-RR-12/530398 (M/2201599)
00570-RR-12/530401 (M/2201602)
00571-RR-12/530400 (M/2201601)
00572-RR-12/530399 (M/2201600)
00573-RR-12/580967 (M/2201598)

Hearing held in Toronto on January 27, 2015.



SECOND INTERIM AWARD

An Interim award dated October 17, 2013, states, at p. 4:

At the commencement of the hearing on September 26, 2013, the Board raised two preliminary objections: firstly, that I exercise my jurisdiction and not act as sole arbitrator for the grievances. Secondly, if I decide to hear all the grievances, that the matters not be consolidated but that each matter be heard separately. On agreement of the parties, this Interim award deals only with the first preliminary objection raised by the Board.

In that award, I found, at p. 10, "...it appropriate to retain jurisdiction over the four individual grievances in addition to the policy and group grievances."

At the hearing on January 27, 2015, the Board raised its second preliminary objection, that "the matters not be consolidated but that each be heard separately" (pp. 4-5, *supra.*) The Board submitted essentially the same arguments as it had in respect to its first preliminary objection, namely: individual grievances concerning the Teacher Performance Appraisal (the "TPA") process are extremely time consuming, involve numerous documents associated with TPA procedures and entail presentation of extensive evidence. Given that each individual grievance will involve multiple days of hearing, it is appropriate to deal with each of the four grievances individually, i.e., each grievance be heard in complete fashion prior to dealing with subsequent grievances. The Board submitted this is an appropriate process or procedure because the facts as to why an individual grievor was recommended unsatisfactory under the TPA are completely separate from the facts related to the other individual grievances, notwithstanding the common theme of discrimination raised in each of the four grievances. If that process is not followed and a procedure, whereby the Federation puts in its case on all four grievances is followed, it could be

years later when its witnesses are cross-examined by the Federation, a possibility not conducive to their ability to recall their evidence in examination-in-chief.

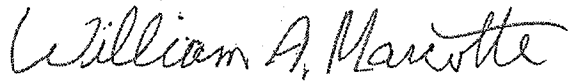
The Federation submitted that in order to present its case on the allegation of discrimination, it is necessary for its 4 individual grievances to be heard together rather than as discrete matters as submitted by the Board, given the nature of this allegation which is separate and apart from its complaint of improper application of the TPA in the 4 individual grievances. Further, the Federation pointed out that some of the TPA evaluators were involved in the evaluation of more than one of the grievors, and, were involved in more than one evaluation of each grievor. In that regard, should the Board's procedure be followed, those evaluators will have to testify as each individual grievance is heard, rather than testifying at one time about their involvement in the evaluations of all 4 grievors.

Following completion of the parties' presentations on the matter of which suggested procedure ought to be followed, I ruled the Federation procedure will be followed in this hearing. As requested by the Board, I provide my reasons in writing.

The reason for doing so is that some of the evaluators were involved in the TPA evaluation process for more than one grievor. The exact number of such evaluators was not put forward, nor was the number of their involvement in the multiple TPA evaluations of each grievor. However, it would seem from the presentations that it is simply more efficient for these evaluators to speak to all the evaluations they conducted with the grievors on one occasion of being called to testify than for them to be called to testify about their involvement in each grievor's evaluations, which process would undoubtedly multiply the number of hearing days and lengthen the period of time for the completion of the hearing.

The Federation procedure is more efficient than the procedure suggested by the Board.

Dated at Toronto, this 4th day of February, 2015.



William A. Marcotte
Arbitrator