

IN THE MATTER OF AN ARBITRATION

BETWEEN:

DISTRICT SCHOOL BOARD OF NIAGARA

("the Employer")

AND:

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

("the Union")

IN THE MATTER OF:

POLICY GRIEVANCE - DATED MAY 14, 2018
MINISTRY FILE NO. 10234-XR-18

SOLE ARBITRATOR:

Kevin M. Burkett

APPEARING FOR THE EMPLOYER:

Dirk Van de Kamer - Counsel

APPEARING FOR THE UNION:

Stephanie Hobbs - Counsel

Hearing in this matter was held in St. Catharines, Ontario on October 25, 2018

A W A R D

The Federation grieves in this matter (Policy Grievance, May 14, 2018, Ministry File No. 10234-XR-18) that the Board is in breach of Article 19.02(a) of the collective agreement by reason of its failure to specify the grade to be taught in job postings for teacher vacancies.

By way of general background, prior to the 2018 job postings the Board had, with a limited number of exceptions, specified in these job postings the grade to be taught. However, all of the 2018 postings specified the division (i.e. primary, junior, senior) without indicating the specific grade, thereby giving rise to the instant grievance.

The Federation position is that Article 19.02 requires that all teacher vacancies posted be identified by reference to the specific grade. The Federation sought to rely on past practise evidence in support of its position that the Board must maintain the status quo consistent with its long-standing practise. The Board, on the other hand disputes that Article 19.02(a), read in conjunction with the remainder of Article 19, requires it to specify the grade to be taught in job postings under the clause. It is the further position of the Board that because the disputed clause does not require it to specify the grade to be taught, the practice cannot be relied upon to somehow now

estop it from bringing itself into conformance with the clause (i.e. identifying the posted vacancies without reference to the grade to be taught).

There is no dispute with respect to my authority to hear and determine this matter.

The parties entered into settlement discussions at the hearing on October 25, 2018 and agreed as follows:

1. For the life of the current collective agreement, including any statutory freeze period, the Board agrees to maintain on the same basis the pre-2018 practice of specifying, the grade to be taught in job postings under Article 19.02(a).
2. With regard to the doctrine of estoppel, as a general proposition only practices that are at variance with the provisions of the collective agreement (either express or implied) may give rise to an estoppel. Conversely, practices that are not referable to either the express or implied terms of the collective agreement cannot be relied upon to estop a party from exercising its legal rights under a collective agreement.
3. Arbitrator Kevin Burkett remains seized and shall be available to deal with any matter arising under the foregoing on an expedited basis.

Having been apprised of the issue in dispute and of the respective positions I hereby adopt the foregoing agreements of the parties as my Award in this matter and direct compliance therewith.

I continue to remain seized in the event of any difficulty with respect to the implementation of this Award.

Dated this 11th day of December 2018 in the City of Toronto.

Kevin Burkett

Kevin M. Burkett

