

ARBITRATION AWARD

BETWEEN:

NEWFOUNDLAND AND LABRADOR TEACHERS' ASSOCIATION
(hereinafter called the "Association")

AND:

WESTERN SCHOOL DISTRICT
(hereinafter called the "Employer" or the "District")

GRIEVANCE: Policy Grievance re Article 25 - Travel Allowances

COUNSEL: For the Association

V. Randell J. Earle, Q.C.

For the Employer

Ian C. Wallace

ARBITRATION BOARD: James C. Oakley, Chairperson
Ray Goulding
Gary Hatcher

The arbitration hearing was held at Corner Brook on February 23, 24 and 25, and November 2, 3, 4 and 5, 2010 and at St. John's on January 10, 2011. The parties agreed as follows:

1. The Arbitration Board was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Board would remain seized of the matter for sixty (60) days following publication of the Award in the event there is a question of interpretation or compensation arising from the Award.
5. Witnesses were excluded from the hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Provincial Collective Agreement between Newfoundland and Labrador School Boards Association and Government of Newfoundland and Labrador and Newfoundland and Labrador Teachers' Association, effective September 1, 2008 to August 31, 2012
- Consent 2 - Grievance letter dated October 27, 2008 from Don Ash, Assistant Executive Director of the Association to Dr. Ross Elliott, Director, Western School District
- DA - 1 Letter dated September 29, 2009 from Steve Brooks, Administrative Officer of the Association to Dr. Ross Elliott, Director, Western School District
- DA - 2 Memorandum dated December 1, 2008 from Benefits and Economic Services Division, NLTA to all Teachers
- DA - 3 Memo dated September 6, 2009 from Michael Luedee, Education Officer to School Administrators, Western School District
- DA - 4 Travel and accommodations policy review with attached policies
- DA - 5 Government of Newfoundland and Labrador Human Resources Policy Manual, Automobile Requirement Reimbursement Policy
- DA - 6 Government of Newfoundland and Labrador Automobile Requirement Reimbursement Policy

- DA - 7 Government of Newfoundland and Labrador Human Resources Policy Manual, Accommodations Policy
- DA - 8 Government of Newfoundland and Labrador Accommodations Policy
- DA - 9 Government of Newfoundland and Labrador Expense Claims
- DA - 10 Email dated January 12, 2010 from Susan Cardoulis to listed recipients re Notice of Conference for Beginning Teachers, February 11 - 12, 2010
- DA - 11 Western School District list of schools and distance to Corner Brook
- DA - 12 Road map of Newfoundland and Labrador
- DA - 13 NLTA expense claim form
- DA - 14 NLTA opening proposals for provincial contract negotiations 2001, 2004-2005 and 2008 - 2009
- WN - 1 Excerpts from prior Collective Agreements showing lists of School Boards and positions in the bargaining unit
- WN - 2 School District maps
- WN - 3 Excerpts from prior Collective Agreements - Article 25
- JT - 1 Western School District Programs Division organization chart, February 2009
- JT - 2 Map of Western School District showing location of schools
- JT - 3 Western School District professional growth model closeout schedule, 2005 - 2006, 2006 - 2007, 2007 - 2008, 2008 - 2009, 2009 - 2010
- JT - 4 Western School District inservice meetings, 2001 to 2008 with related memos
- JT - 5 Memo dated October 16, 2002 from David Craig, Assistant Director of Programs to all Principals and Program Specialists re Inservice Travel and Meals
- JT - 6 Regional closeout and District wide closeout data
- JT - 7 Western School District memo dated October 8, 2010 from Jeff Thompson, Assistant Director of Education Programs to Principals and Vice Principals re professional development closeout

JT - 8 Memo dated May 4, 2010 from Jeff Thompson to School Administrators and Teachers

Nature of the Grievance

The Association grieves that the Employer's requirement that teachers travel to inservice sessions in car pools and share accommodations is a violation of the Collective Agreement.

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article 18 Leaves in General

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B. Professional Leave

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18.05 For inservice time there may be six (6) days in the aggregate in the school year available for the purposes of:

- (a) five (5) workshop days per teacher approved by the Board;
- (b) a bank of one (1) day per teacher to the Board to be assigned at the Board's discretion.

Article 25 Travel Allowances

25.01 (a) Subject to Clauses 25.01 (b)(i) and 25.04 (a) and (b), where in the course of duty, a teacher is required to travel on business for the School Board, the teacher shall be reimbursed for meals, lodging, and travel at the prevailing rate for Government employees.

- (b) (i) Subject to Clause 25.01 (b)(ii), teachers who are required to travel to attend in-service training (i.e., where training is provided outside the community where the teacher's school is located) shall be paid reasonable out-of-pocket expenses as deemed appropriate by the School Board.
- (ii) Teachers who are authorized to use their own vehicle to attend in-service training shall be reimbursed at the prevailing mileage rates for Government employees.

25.02 Teachers who are authorized to use their own vehicle while travelling on business for the School Board shall be reimbursed at the prevailing mileage rates for Government employees.

25.03 Charges for ferry tolls will be allowed.

25.04 (a) Teachers who are required to teach in more than one school shall be eligible for the mileage allowance for all miles travelled, as required in the performance of their work, that are in excess of normal travel to and from their residence to their base school.

(b) Where a teacher teaches in more than one school, the school where that teacher teaches the greater number of hours shall be considered the base school.

25.05* (a) Teachers who are required to drive 2400 kilometres or more per year on business on behalf of the Employer and who are required, as a condition of employment, to have an automobile, shall be paid in addition to the base kilometre rate application, a monthly automobile allowance of \$85.00. Effective January 1, 2009 a teacher shall be reimbursed an amount in lieu of the base kilometre rate application and the monthly automobile allowance, said amount to be calculated in accordance with the Memorandum of Agreement Re: Kilometre Rate Adjustment Formula (NLTA).

(b) On receipt of invoice, the teacher will be reimbursed for the difference between private and business insurance.

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Article 28 Length of the School Year

28.01 (a)

...

(ii) Effective September 1, 2002, for salary purposes, the length of the school year shall be 195 teaching days comprised of 187 actual teaching days, three (3) paid holidays, two (2) non-teaching days to be scheduled by the Board during the school year for administrative purposes, and three (3) professional development/in-service days to be scheduled by the Board during the school year.

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Article 31 Grievance Procedure

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31.20 Where the Employer has a grievance against the Association or the Association has a grievance against the Employer, the parties shall meet with

ten (10) calendar days of the occurrence or discovery of the matter giving rise to the grievance and attempt to settle the grievance. If the grievance is not settled as a result of this meeting, either the Employer or the Association, as the case may be, shall have the right to refer the grievance to arbitration in accordance with Article 32.

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Article 39 Management Rights

39.01 Except as specifically abridged delegated or modified by this Agreement, management functions, rights and powers now existing are recognized by the Association as being retained by the School Boards and the Government as the case may be.

...

Article 42 Definitions

42.01 In this Agreement, unless the context otherwise requires:

- (e) "Grievance" means a dispute over the interpretation, application administration, or alleged violation of this Collective Agreement.

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Article 52 Distribution of Work

52.01 This agreement recognizes the classifications which include, but shall not be limited to:

- (i) Principal
- (ii) Vice-Principal
- (iii) Program Specialist
- (iv) Department Head
- (v) Guidance Counsellor
- (vi) Other teachers allocated under the teachers' salary regulations.

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Article 57 Discrimination and Intimidation

57.01 The School Boards agree that there will be no discrimination or coercion exercised or practised by it with respect to any employee by reason of age, sex, race, colour, marital status, political or religious affiliation, physical or mental disability, sexual orientation or by reason of their membership in the Association.

Legislation

The relevant provisions of the *Privacy Act*, RSNL 1990, c. P-22 are as follows:

Violation of privacy

3. (1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of an individual.
- (2) The nature and degree of privacy to which an individual is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, regard being given to the lawful interests of others; and in determining whether the act or conduct of a person constitutes a violation of the privacy of an individual, regard shall be given to the nature, incidence, and occasion of the act or conduct and to the relationship, whether domestic or other, between the parties.

Examples

4. Proof that there has been
 - (a) surveillance, auditory or visual, whether or not accomplished by trespass, of an individual, by any means including eavesdropping, watching, spying, harassing or following;

...

without the consent, expressed or implied, of the individual or some other person who has the lawful authority to give the consent is, in the absence of evidence to the contrary, proof of a violation of the privacy of the individual first mentioned.

Evidence

The witnesses called by the Association were Don Ash, Assistant Executive Director of the Association, Arlene Clarke, Teacher, David Hynes, Teacher, Bonnie Rumbolt, Teacher, Graydon Pelley, Teacher, and Sean Weir, Teacher. The witnesses called by the Employer were Wayne Noseworthy, Director of Labour Relations for the Newfoundland and Labrador School Boards Association, Jeff Thompson, Assistant Director of Education-Programs, Western School District and Allan Skanes, Assistant Director of Education-Human Resources, Western School District.

The Association filed a policy grievance by letter dated October 27, 2008 from Don Ash of the Association to Dr. Ross Elliott, Director of Education, Western School District. The letter stated as follows:

On Thursday, October 23, 2008, NLTA became aware through reports from a member that the Western School District required teachers who attended a mandatory District close out professional development day to travel in carpools and share overnight accommodations in hotel/motel rooms. The professional development day took place on Friday, October 10 in Stephenville. Teachers living outside the area who had to travel to Stephenville after school on the evening of Thursday, October 9 were required to drive with four people to a car and two people in each hotel/motel room, although at least one room was booked for a group of three to share.

As a result, in accordance with Clause 31.20 of the Provincial Collective Agreement, the Association wishes to file a Policy Grievance against the Western School District contending that the District is violating Article 25 (Travel Allowances) of the Agreement.

The Association contends that the District practice of requiring carpools and shared accommodations not only violates the Agreement but is disrespectful of teachers as employees and professionals and shows little regard for individual dignity. The relief sought is a declaration that teachers who are required to travel to attend professional development/in-service training must be compensated at provincial government rates for travel in their own vehicle, without mandatory carpooling, and single occupancy overnight accommodations.

The Association also filed a policy grievance with the Western School District dated September 29, 2009 with respect to a District wide closeout for in-service and the requirement for car pooling and shared accommodations. In addition, individual grievances by teachers have been filed against the Western School District with respect to the requirement to car pool and share accommodation.

Western School District has a practice that for travel to in-service and professional development, where the expenses are paid by the School District, teachers are required to car pool in groups of four per car, and share hotel accommodations with two per room. The particulars of how the practice is applied in different situations, will be described in this Award by reference to the documentary evidence and the testimony of witnesses.

Western School District was formed in 2004 as one of five School Districts in the Province. At that time, the number of School Districts in the Province was reduced from eleven to five. The Western School District was formed by a merger of three former Districts, the Northern Peninsula/Labrador South (# 2), Corner Brook/Deer Lake/St. Barbe (#3) and Cormack Trail (# 4) Districts. There were eleven School Districts in the Province from 1996 to 2004. Prior to 1996, there were 26 or more School Boards in the Province, comprising Integrated, Roman Catholic, Pentecostal and Seventh Day Adventist School Boards.

The written policies on in-service travel of the Western School District and the three predecessor School Districts (1996 to 2004) were entered as exhibits, based on information available from the Western School District web site. The web site stated, under the heading “Policies”, that the three regions will be governed by policies in place at the time of the 2004 merger, and that new policies will be listed as they are developed. There was no policy on teacher travel listed on the website for the Western School District or for any of the three predecessor Districts. The Corner Brook/Deer Lake/St. Barbe (# 3) District had a policy for District Office travel, which stated that District Office personnel “are requested to share travel whenever possible”. The Cormack Trail (# 4) School District policies stated that travel claims will only be accepted from those “authorized by the Director/or designate to travel on School Board business”, and that travel claims for Board trustees and executive staff will be paid “in accordance with the government travel policy”. There was no reference to car pooling or shared accommodation in the Cormack Trail policies.

The Government of Newfoundland and Labrador travel policies were entered as exhibits. There were no statements in the Government policies with respect to car pooling or shared accommodation. The written travel policy of the Newfoundland and Labrador Teachers’ Association was entered as an exhibit. It states that, except for certain categories of persons, or exceptional circumstances with prior approval, “all other persons will be accommodated in semi-private rooms”. Don Ash, Assistant Executive Director, testified that the written policy was not followed in practice to his knowledge. He testified that for professional development activity, the Association encourages, but does not require, teachers to share accommodations. Mr. Ash referred to the example of a conference organized by the Association for beginning teachers held on February 11 and 12, 2010. In a memo to teachers attending the conference, the Association stated, in part, as follows:

The district is providing substitutes. Your travel expenses will be paid by the NLTA. You will not be required to car pool or to share accommodations; however, in the

interest of budgetary constraints and maximizing professional development opportunities as well as for environmental reasons, teachers are encouraged to share a ride. . . . Where feasible, and if you are comfortable in doing so, we would also encourage sharing of accommodations.

Don Ash testified that the Association had no difficulty with a School District practice that encouraged teachers to share accommodations or to voluntarily form car pools. However, the Association would not accept a practice that required shared accommodations or car pools.

Mr. Ash testified that the Eastern, Nova Central and Labrador School Districts do not require teachers to car pool or share accommodation. He said that the Nova Central School District suspended its policy of mandatory car pooling and shared accommodation, commencing in the Spring of 2008, after the Association contacted the District about the policy.

The practice of the Western School District was set out in various memos from the District or its predecessor Districts. By memo dated October 16, 2002, from David Quick, Assistant Director of Programs of the former School District # 3, to Principals and Program Specialists, the following reference to car pooling is made:

When two or more teachers from a school or adjacent schools are attending the same inservice, we will pay the milage for the car pool driver. If people agree not to car pool, we would be happy to share the claim between the two or three if requested.

In reference to a conference scheduled by the Western School District in April, 2005, for 70 teachers to attend from all parts of the District, Jeff Thompson, Assistant Director of Education-Programs, stated in a memo to Principals and participants, dated April 6, 2005, as follows:

Travel Policy Information
Car Pooling:

- The Western School District Policy regarding travel requires that participants fully utilize car pooling arrangements to minimize the number of vehicles travelling to the planned event. In this regard, we ask that you use the list of participants below to finalize travel arrangements on the basis of four people per vehicle. One way of doing this is to have the person who is furthest away to arrange to link up with other people along the route. Once that vehicle arrangement is fully utilized, another person can coordinate efforts to link up

with others along the way. This kind of planning will minimize the number of vehicles from the various regions.

- Please remember that we will not be able to reimburse claims for vehicles that are not part of a car pooling arrangement.
- You can choose to travel alone if you do not intend to submit a mileage claim.

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Accommodations

- The Western School District Policy regarding accommodations requires that those teachers needing overnight accommodations are expected to share. Teachers who decide to have their own room, will be responsible for half the cost.
- A block of rooms have been reserved at the Holiday Inn. When booking, please advise the staff of who you intend to share with. Otherwise, you will be paired up by the hotel staff as per our directions to them.

In reference to a school close out in October, 2007, a memo from George Keeping, Education Officer-Central to School Administrators, Western School District-Central zone, stated, in part, as follows:

CAR POOLING: Please remind staff about the need to connect with teachers in their area (not just school) to arrange shared travel (that is, four per vehicle).

ACCOMMODATIONS: All staff members who need overnight accommodations **MUST** complete one of the attached forms and send by email or fax to Allison Hewitt as she will be assisting with the arrangements. Please have staff complete by Tuesday, October 23/07.

- Rooms have been reserved at the Greenwood Inn. To determine exact needs and room assignments, information gathered from the attached form is very important. Please return this form as soon as possible and no later than Tuesday, 23, 2007.
- Rooms will be shared, with two people per room. Those wishing to choose single accommodations may do so by paying one-half of the room cost to the hotel. Please indicate on attached form.

The form attached to the October, 2007 memo asked participants to indicate whether they required a room, the name of their roommate preference, and whether the room type preference was non-smoking or smoking.

A similar memo and form was sent to school administrators for the October, 2008 closeout. For the September, 2009 closeout, a memo from Michael Luedee, Education Officer, stated, in part, as follows:

ACCOMMODATIONS

- Accommodations will be provided on the nights of October 21st, 22nd (and 23rd, if necessary,) for participants.
- . . .
- As per standard practice, car pooling will be expected for all participants, outside the city of Corner Brook, who are driving to and from the conference.
- Rooms have been reserved at all the hotels throughout the City and into the Steady Brook area. To determine exact needs and room assignments, information gathered from the attached form is very important. Please return this form as soon as possible and no later than September 15, 2009.
- Rooms will be shared, with two people per room. Unfortunately there will be no option for single accommodations, except where scheduled, due to the number of rooms needed to accommodate all participants.

By memorandum dated May 4, 2010 to School Administrators and teachers from Jeff Thompson, in reference to the planning stages for the upcoming conference in October, 2010, and the requirement for car pooling and room sharing, teachers were asked to complete a form indicating their intention to participate. By memorandum dated October 8, 2010 from Jeff Thompson to Principals and Vice Principals, reference was made to the October, 2010 professional development closeout. The memo stated, in part, as follows:

Accommodations:

People requiring accommodations have been placed in hotels located within Corner Brook. Staffs, for the most part, have been placed in the same hotel. Administrators have received a list indicating the hotel that staff members have been placed in and who they will be sharing a room with.

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Car Pools

Principals are asked to designate car pool drivers in advance of the conference based on four staff members per vehicle. Claims for mileage will only be accepted from those drivers designated in this manner. Principals are requested to forward to their respective Education Officer their list of designated drivers. This will assist in the claims process once the conference is over.

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Mileage (Private vehicle - no receipt required)

Claim 34.29 cents per kilometer - Designated car pool drivers must place on back of the yellow copy of the travel claim in the designated space those teachers who drove with him/her in the vehicle.

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Hotel Expenses (based on double occupancy)

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Participants whose accommodations were made by the Western School District will have their room costs charged back to the district. Any other charges to the room will be the guest's responsibility.

In most of the memos submitted at the hearing, car pooling and shared accommodation was stated to be mandatory or expected. In some of the memos different language was used. For example, a memo dated October 20, 2004 from Pat Whelan, Program Specialist, Western School District, stated "car pooling is encouraged" in reference to a grade five mathematics in-service in Stephenville on October 28, 2004.

Don Ash testified that the Association had received numerous complaints about the Western School District's requirement for mandatory car pooling and shared accommodation. The concerns expressed by drivers in car pools included the need to have three other teachers accompany them in order to be paid full mileage, the inconvenience of having to pick up other teachers, concern about legal liability to passengers and the possible need to obtain business car insurance. Concerns expressed by passengers in car pools included poor drivers, poor vehicle condition, smoking in the vehicle, sexual orientation of other passengers, small vehicle size, conflict between two passengers who both need to sit in the front seat to avoid motion sickness, and the necessity for some teachers to leave their own vehicle on the side of the highway at a car pool pickup location. Mr. Ash noted that there was no requirement in the Collective Agreement that a teacher provide a taxi service for the School District. He said one of the concerns expressed about shared accommodation was the fact

that a teacher could be sharing a hotel room with a stranger if they had not arranged in advance to share the room with someone they knew.

Mr. Ash noted that the concerns raised by teachers were in connection with mandatory in-service sessions organized by the School District, and were not directed at voluntary professional development. Teachers attending a voluntary in service session might receive a contribution from the School District towards their travel expenses, but did not submit a travel claim for payment. Mr. Ash said that in recent years there were changes to the Collective Agreement that affected delivery of in-service training. Under Article 28.01 (a) (ii) of the Collective Agreement, effective September 1, 2002, the length of the school year was increased to 195 teaching days, which included three professional development/in-service days to be scheduled by the School District. After 2002, mandatory in-service sessions were mostly those required by Article 28. There was also provision for in-service days to be made available under Article 18.05. Mr. Ash also noted that, upon the reduction of the total number of School Districts and the corresponding increase in the geographic size of the Districts, teachers were required to travel over longer distances to attend in-service training. The Western School District recently organized school closeouts in which all schools in a region or in the entire District were closed at the same time. In October, 2008, there were regional school closeouts, at which time teachers attended in-service training at regional locations in Stephenville, Corner Brook, Plum Point and Forteau. In October, 2009, there was a District wide school closeout at which all teachers in the District attended in-service training in Corner Brook.

Several teachers testified about their experience with car pooling and shared accommodations. Arlene Clarke, a teacher in Port Aux Basques, attended an in-service session in Stephenville in 2008. She drove from Port Aux Basques to Stephenville with three passengers, including a teacher intern. Accommodation was arranged by the District at the Stephenville Hotel. It was expected that they would have a room with two double beds and a cot, to accommodate Ms. Clarke, a passenger in the vehicle and the intern. When they arrived at the hotel the available room had one bed. Ms. Clarke spoke with the Education Officer. Initially they were offered alternate accommodation in a place outside Stephenville that provided only Summer seasonal accommodation. This was not acceptable to Ms. Clarke. Eventually, the Education Officer arrived at the hotel with an air mattress and a bottle of wine for Ms. Clarke. The intern was accommodated in another room. Ms. Clarke testified that the person with whom she shared the room wanted to watch television, and this interfered with her wish to go to sleep. She complained the next day about the accommodation. Ms. Clarke testified

that she attended an in-service session in 2009 in Corner Brook with the same roommate, and the same issues about the inconvenience of shared accommodation arose.

David Hynes is a teacher who had a teaching position in McKays in the 2005-2006 school year. During that year he lived in Stephenville, a one hour drive away. He travelled to the school in a car pool with four teachers. He participated in the car pool to save money and save wear on his vehicle. During that year he drove by himself to attend an in-service session in Corner Brook, and did not submit a mileage claim. He then had a teaching position in the school in Trout River for the two school years 2006-2007 and 2007-2008. During those two years he lived in Deer Lake and travelled in a car pool from Deer Lake to the school in Trout River. There were at least four persons in the car. In the second year there were five persons in the car every second day. He said that on two occasions the car went out of control on the highway when someone else was driving. He then had a teaching position at a school in Deer Lake commencing with the 2008-2009 school year. In October, 2008 he attended a school closeout in-service session in Corner Brook. He said that about one half of the teachers from his area travelled in a car pool to the in-service. He drove on his own and was paid for one half of the mileage. He attended a mandatory in-service in Corner Brook in October, 2009. He had an email from the Principal saying that he was expected to participate in a car pool. He drove by himself, and was paid one quarter of the mileage that he claimed. He filed a grievance. He said that he did not want to travel in a car pool to the in-service sessions for reasons of safety and convenience. He did not feel safe with other drivers, and did not want to wait for passengers if he was driving. On another occasion he travelled to Grand Falls-Windsor for a Provincial mathematics in-service. He drove by himself and did not car pool. His full mileage and single hotel room accommodation was paid by the Provincial Department of Education.

Bonnie Rumbolt is a primary and literacy/numeracy support teacher in Mary's Harbour, Labrador. In the Spring of 2009, she attended an in-service in Corner Brook for literacy/numeracy support teachers in the District. She received a memo from the Primary Program Specialist saying that teachers were expected to make the arrangements to travel by car pool. Teachers from four communities in Labrador formed a car pool. The person furthest away from Corner Brook was expected to drive and pick up the others along the way. The person furthest away lived in Port Hope Simpson. However, that person was not the driver. The driver, who lived in St. Lewis, had to drive an extra distance to pick up the teacher furthest away. Ms. Rumbolt said that she had not driven with that driver before, but she was comfortable with her driving. Ms. Rumbolt said there was a directive that shared accommodation was expected. She did not know any of the other teachers attending the

in-service well enough to ask them to be a roommate. She put two other names on the accommodation form. However, one of those persons had a medical condition and had her own room, and the other person had asked to share a room with another teacher that she knew. When she arrived at the hotel in Corner Brook she was given the name of her roommate, a person she did not know. The room offered to her had a double bed and a pull out couch. She had expected two double beds. She spoke to the Program Specialist and was switched to another room with one of the teachers in the car pool, whose expected roommate was sick. There were two double beds in that room. The next day she observed that the teacher booked as her roommate in the first room had a masculine appearance, and she felt uncomfortable at the thought of having to share a room with the person. Ms. Rumbolt testified that her objection to shared accommodations included lack of privacy to make a telephone call, late telephone calls to the roommate, concerns about a roommate who might go to hotel bars and return to the room late at night disturbing her sleep, lack of privacy to change her clothes, and concerns about the fact she is known to talk in her sleep. Ms. Rumbolt said that she has irritable bowel syndrome and needs to be in close proximity to the washroom. She said she would rather “put up” with her condition for a couple of nights than ask for a private room. She said it was uncomfortable for teachers to have to request private rooms, because there might be speculation by other teachers about why someone had their own room. She was aware that anyone could ask for a private room without stating a reason and receive reimbursement for one half the accommodation cost. Ms. Rumbolt also had concerns about sharing a ride with someone who might drive too fast, especially on gravel roads. Ms. Rumbolt testified that she attended the Fall 2009 District wide closeout in Corner Brook. She said that the School District had considered the option of flying teachers from Labrador, but the District decided to arrange travel by car pool. She said that some teachers in her school took their own vehicles and did not car pool. Ms. Rumbolt participated in a car pool with another teacher driving. She had concerns about how fast the teacher was driving. There was a new teacher in her school who did not know anyone well enough to designate them as a roommate. The new teacher felt uncomfortable sharing a room with someone she did not know. Ms. Rumbolt offered to change rooms to share with her, but the teacher declined, saying she did not want to be “singled out”. Ms. Rumbolt said that on another occasion she attended a mathematics in-service, and the Department of Education paid for single room accommodation.

Graydon Pelley is currently a teacher at Curling Elementary. He taught at the school in Trout River for three years, from 2006 to 2009. He lived in Trout River for the first two years and then moved to Deer Lake. When he lived in Trout River he attended an in-service session in Corner Brook. He drove from Trout River to Wiltondale, where he left his vehicle, and then travelled the rest of the

way to Corner Brook in a car pool. He said that as a result of his car pool experience he was nervous driving in Winter with someone he did not know. Other persons drove faster than he would drive. He later decided to take his own vehicle to in-service sessions and not submit a claim. At the start of the 2008-2009 school year, he drove in a car pool from his home in Deer Lake to the school in Trout River. He later decided to drive alone. Mr. Pelley attended an in-service session at Cow Head, organized by schools in the area. He shared accommodation with a person he had not met before. The other person was snoring loudly and then stopped breathing. Mr. Pelley shook the other person to wake him up. He was later informed that the person had sleep apnea. After that experience he decided he would no longer share accommodation. He understood that if he did not share accommodation he would have to pay one half of the hotel room charge. Mr. Pelley is a member of the Association Executive. At the time of his testimony, he was a candidate for the position of Vice President in the next Association election. The Association objected to the line of questioning regarding Mr. Pelley's Association executive membership and candidacy. The Board allowed the questions, advising that it would rule on the relevance of the questions in the Award.

Sean Weir is a teacher in Port Hope Simpson. He testified that for him to travel to an in-service session in Corner Brook by road, he has to drive 235 kilometers to the ferry in Blanc Sablon, then take a 1.5 hour ferry crossing to St. Barbe, and then drive 344 kilometers to Corner Brook. He is now paid for overnight accommodation along the route if necessary. Prior to that arrangement, he would need to leave Port Hope Simpson at 4:00 a.m. in order to arrive at Blanc Sablon for the ferry departure at 8:00 a.m. He described his experience travelling to an in-service session in Corner Brook in 2006 or 2007. The Principal asked for volunteers to drive their own vehicles. Teachers then arranged to car pool with those who were driving. On another occasion, when he attended a French in-service, the Program Specialist asked teachers in his area to arrange a car pool. When he had to pick up a teacher in Charlottetown, which was 50 kilometers out of his way, he was paid for the extra mileage. He has also picked up teachers at the St. Lewis access road junction and the Mary's Harbour access road junction. He said that if he drove alone and did not car pool, it would be at his own expense. He was not comfortable as a passenger with some drivers. He said that teachers were not comfortable sharing accommodations with someone they did not know. He is a Branch President of the Association and hears complaints from teachers about shared accommodations. He said that a teacher could have single room accommodation but would only be reimbursed for one half of the cost. Some teachers take their children with them when travelling to in-service sessions. Those teachers are paid a percentage of their mileage and expenses.

Jeff Thompson, Assistant Director of Education-Programs, testified that one of the duties of his position is to ensure the District provides a quality in-service program. He said that the terms “professional development” and “in-service” are used interchangeably. Each School District develops its own professional development programs. He prepares the District program having regard to the budget and the availability of substitute teacher days or school closures. Schools can arrange professional development for their own school or in cooperation with a cluster of schools in the local area. Mr. Thompson said that since Article 28.01 of the Collective Agreement was amended to add three professional development days in 2002, he has been responsible for planning those days. He said that 2007-2008 was the first school year that the professional development plans required the transportation of most teachers on close-out days in the District. In that year, teachers converged on central locations in each of four regions on school closeout days. The District also planned in-service for specific subject areas, where subject teachers would meet in a central location, such as Corner Brook. Teachers could also apply for a grant to attend a Department of Education or Association professional development session. In the Fall of 2009 there was a two day district wide closeout for in-service training in Corner Brook. A District wide closeout occurred again in the Fall of 2010. Mr. Thompson testified about the number of hotel rooms available in various locations. Most of the school closeout in-service training was arranged on the basis of teachers sharing accommodation. He said there were not enough hotel rooms available to have District wide closeout sessions or closeout sessions in certain regions without shared accommodation.

Mr. Thompson testified that teachers were expected to car pool with four per car and to share accommodations with two per room, according to the District policy for in-service travel. He said this was a longstanding practice. Mr. Thompson was the Director of Education of the Labrador School District before moving to his current position with the Western School District in 2004. He said the Labrador School District followed the same policy as the Western School District. He said that exemptions could be allowed to the shared accommodation policy for medical reasons or for other extenuating personal circumstances. A reason would have to be disclosed to apply for an exemption. Once an exemption was established, then it would continue in effect at future in-service sessions. When a request is made by a teacher to a Principal and then communicated to him, Mr. Thompson will usually discuss the reason for the request with the Principal. Occasionally a teacher will call him directly to make the request. Acceptable reasons for an exemption included smoking addiction, excessive weight and severe allergy to scent. He granted an exemption to the requirement for car pooling to a teacher with a young family who needed to bring the teacher’s children in the vehicle to stay with relatives when the teacher was attending the in-service. Upon confirming with

the Principal that a teacher had anxiety about driving after dark, Mr. Thompson allowed the teacher to leave an in-service early and stay at a hotel on the way home to avoid driving after dark. He granted an exemption to the requirement of four per vehicle in the case of small vehicles that could not hold more than two persons. He said he did not refuse any request for an exemption. He said that the School District does not require any particular amount of insurance to be carried by drivers in car pools.

Mr. Thompson reviews the evaluation forms completed by teachers following the in-service sessions. He said there was a minimal amount of feedback on the forms with respect to car pooling and accommodations. Most comments in that regard were about the quality of the hotel rooms or the food, and not about shared accommodation. He had not heard complaints from car pool drivers about taking passengers. He said that District office staff use car pools and shared accommodations when travelling to in-service sessions. Mr. Thompson said that when he was employed as a teacher by the Burin Integrated School Board and the Bonavista Trinity Placentia Integrated School Board in the 1980's and 1990's, the policy was to car pool and share accommodations for travel to in-service training. He said that, with respect to the in-service at Cow Head described in Mr. Pelley's testimony, the District provided lunch and made a cash donation to cover the cost of the speaker. He said this session was organized by schools in the area and was not a mandatory in-service session provided by the School District. Most schools use a total of four or five in-service days per year, including three days that the District arranges. Mr. Thompson said that the wording on the various memos sent to school Principals or teachers about in-service could vary slightly, but all memos had the same effect. Mr. Thompson acknowledged that the memos did not refer to the availability of exemptions. For example, the October, 2010 memo said the District would "only" pay compensation when there are four per vehicle. He referred to a list of hotel room assignments of teachers which identified the medical problems of teachers assigned a single room. He said the list was not widely circulated and was retained in the School District files.

Allan Skanes, Assistant Director of Education-Human Resources, testified that the policy of car pooling and shared accommodation for travel to in-service training has been in effect Province wide since he commenced his teaching career about 35 years ago. He said that exemptions have been granted to the District travel policy. The Principal is usually the first person to deal with any request for an exemption. The request for exemption would go to him if Mr. Thompson was not available to respond. Drivers in some locations are not required to wait for other passengers. For example, two teachers in Burgeo are permitted to form a car pool and are not required to wait for teachers to

arrive by ferry from Ramea. He has granted exemptions to the shared accommodation policy. He tells the teacher requesting an exemption that he does not require any detailed information or medical documentation. He accepts the reason for the request “at face value”. He said the policy was followed consistently, although it was not written down. He would allow an exemption requested for personal reasons without further information. He would allow an exemption so long as it was not based on an objection to the travel policy. He agreed that a person should not be required to share a hotel room with a homosexual. There is no requirement to disclose sexual orientation to the District. He said the policy does not have any discriminatory effect. He acknowledged that some teachers stay in a single room, do not request an exemption, and are reimbursed for one half the accommodation cost. He believed that teachers in that situation knew they could claim an exemption and be paid the full cost of accommodation. He said that teachers are not required to have a vehicle. There has never been an occasion when a teacher did not have a ride to an in-service session. He said that he has never dealt with an issue of obesity in relation to car pooling. Principals were entrusted to know the car pool arrangements and to advise an Education Officer if it was necessary to have an additional vehicle. He said that memos about car pooling and shared accommodation are sent to Principals, who then inform teachers. He said this is a more efficient way to distribute information than to send it to the 1,200 teachers in the District.

Mr. Skanes testified that the hotel room accommodation offered to Arlene Clarke at Hotel Stephenville was not acceptable, and the School District no longer used that hotel. Mr. Skanes said that Ms. Clarke continued to complain about the accommodation on the day of the in-service session in a manner that was not professional or courteous. Ms. Clarke was issued a letter of discipline. However, Mr. Skanes acknowledged that he had not spoken to Ms. Clarke about the incident before the letter was issued and the letter was withdrawn.

Wayne Noseworthy is currently the Director of Labour Relations for the Newfoundland and Labrador School Boards Association. He started to work as a teacher in 1970 and held executive positions with the Association from 1976 to 1983, including the position of President. He was employed as a staff member by the Association from 1983 to 2001, and held the position of Executive Director from 1997 to 2001. During the period he was employed as a staff member, he was chief negotiator or committee member for all rounds of collective bargaining. During that period he received occasional questions from teachers about the interpretation of Article 25. He received few inquiries with respect to car pooling. The practice followed by School Boards was that a designated car pool driver would be reimbursed for mileage. Anyone driving to an in-service and

not participating in a car pool would not be reimbursed. Teachers would be paid travel expenses only if the School Board required them to travel to an in-service. When he was an Association staff person, he would advise a teacher that if he or she was not authorized by the School Board to use their vehicle, then mileage would not be paid. He did not recall ever giving advice to a teacher with respect to shared accommodation, or the need to travel in a car pool when a teacher objected to the way a person drove.

Mr. Noseworthy referred to the wording of Article 25 in prior Collective Agreements (exhibit WN-3). The language of Article 25 in the 1976-1978 Collective Agreement stated as follows:

Article 25 - Travel Allowances

- 25.01 Where in the course of his duty, a teacher is required to travel on business for the School Board, he shall be paid reasonable out-of-pocket expenses as deemed appropriate by the School Board.
- 25.02 Teachers who are authorized to use their own car while travelling on business for the School Board shall be reimbursed at the prevailing mileage rate for government employees.
- 25.03 Charges for ferry tolls shall be allowed.

In the 1978-1980 Collective Agreement, the language of Article 25 did not change. In the 1980-1982 Collective Agreement, the word “he” was changed to “teacher” in Article 25.01. In the 1982-1984 Collective Agreement, Article 25 was amended to state as follows:

Article 25 - Travel Allowance

- 25.01 (a) Subject to 25.01 (b)(i) and 25.04 (a) and (b), where in the course of duty, a teacher is required to travel on business for the School Board, the teacher shall be reimbursed for meals, lodging and travel at the prevailing rate for Government employees.
- (b) (i) Subject to 25.01 (b)(ii), teachers who are required to travel to attend in-service training (i.e. where training is provided outside the community where the teacher’s school is located) shall be paid reasonable out-of-pocket expenses as deemed appropriate by the School Board.

- (ii) Teachers who are authorized to use their own car to attend in-service training shall be reimbursed at the prevailing mileage rates for Government employees.

25.02 Teachers who are authorized to use their own car while travelling on business for the School Board shall be reimbursed at the prevailing mileage rate for government employees.

25.03 Charges for ferry tolls shall be allowed.

25.04 (a) Effective September 1, 1982, teachers who are required to teach in more than one school shall be eligible for the mileage allowance for all miles travelled, as required in the performance of their work, that are in excess of normal travel to and from their residence to their base school.

- (b) Where a teacher teaches in more than one school, the school where that teacher teaches the greater number of hours shall be considered the base school.

In the 1984-1985 Collective Agreement, the language of Article 25 did not change. In the 1988-1990 Collective Agreement, the date of "September 1, 1982" was deleted from Article 25.04 (a) and a new Article 25.05 was added as follows:

25.05 (a) Teachers who are required to drive 2400 kilometers or more per year on business on behalf of the Employer and who are required, as a condition of employment, to have an automobile, shall be paid in addition to the regular kilometer rate application, a monthly allowance as follows: Effective 1989/04/01 - \$50.00; Effective 1989/09/01 - \$80.00

- (b) On receipt of invoice, the teacher will be reimbursed for the difference between private and business insurance.

The language of Article 25 did not change in the 1990-1993, 1994-1995, or 1996-2001 Collective Agreements. In the 2001-2004 Collective Agreement, the word "car" was changed to "vehicle". For the period 2004-2008, the language of Article 25 did not change. The 2001-2004 Collective Agreement was continued in effect, by a Memorandum of Agreement amending certain Articles.

In the 2008-2012 Collective Agreement, the language of Article 25 did not change, except that an amendment was made to the monthly allowance in Article 25.05, effective January 1, 2009.

Mr. Noseworthy also testified with respect to the description of the positions in the bargaining unit in prior Collective Agreements. The extracts from the relevant Collective Agreements with respect to the bargaining unit state as follows:

1976-1978

Positions (Schedule “B”) - Supervising Principals, Supervisors, Other Principals, Vice-Principals, Other Vice-Principals and Guidance Counsellors, Teachers

1978-1980

Positions (Schedule “B”) - Supervising Principals, Supervisors, Other Principals, Vice-Principals, Other Vice-Principals and Guidance Counsellors, Teachers, Specialist Teachers, Department Heads

1980-1982

Positions (Schedule “B”) - Program Co-ordinators, Principals, Vice-Principals, Guidance Counsellors, Teachers, Specialist Teachers, Department Heads

1982-1984 no change

1984-1988

Positions (Article 52 and Schedule “C”) - Program Co-ordinators, Principals, Vice-Principals, Guidance Counsellors, Sole Charge (Teachers), Specialist Teachers, Department Heads, Other teachers allocated under the Teachers’ Salary Regulations

1988-1990 no change

1990-1993 no change

1994-1995 no change

1996-2001

Positions (Article 52 and Schedule “C”) - Program Specialists, Principals, Vice-Principals, Guidance Counsellors, Teachers, Specialist Teachers, Department Heads,

Other Teachers allocated under the Teachers' Salary Regulations.

2001-2004	no change
2004-2008	no change
2008-2012	no change

Wayne Noseworthy testified that there were several positions in the bargaining unit where a vehicle would be required as a condition of employment for travel on a regular basis. This category included the former positions of Supervising Principal and Program Co-ordinators, and the current positions of Program Specialists, Guidance Counsellors and Specialist Teachers. Travel as part of regular duties could include attendance at District committee meetings. Also, a teacher could be appointed to more than one school and be required to travel from one school to another.

Jeff Thompson testified that in the Western School District there are seven Education Officers, who are included within management and 11 Program Specialists who are in the bargaining unit. There are 37 itinerant teachers in the District, whose areas of specialty include speech language pathology, educational psychology, deaf and hard of hearing, visually impaired, technical education, enrichment, numeracy support, literacy support, fine arts and math/science. For most of these positions, it is a condition of employment to have a vehicle and to travel on the business of the District. Mr. Thompson testified that when a Program Specialist travelled to in-service sessions, he or she travels on the business of the Board. Program Specialists are required to car pool and share accommodations when travelling to in-service sessions.

Don Ash testified that there is an enhanced travel benefit for teachers required to have an automobile as a condition of employment. A monthly allowance is paid under Article 25.05. He testified that the Association's interpretation was that Article 25.01 (a) applies to all teachers and not just itinerant teachers or Program Specialists, and applies to teachers travelling to attend in-service sessions. He testified that the reference to "expenses" in Article 25.01 (b)(i) could include other travel expenses such as taxi fares. The provisions in Article 25.01 (b) did not take away any rights under Article 25.01 (a). An itinerant teacher may claim out of pocket expenses under Article 25.01 (b) only when travelling to an in-service session.

Mr. Ash was asked about the Association's bargaining proposals for the 2001, 2004 and 2008 rounds of collective bargaining. The proposals included adding language to the Collective Agreement to state that teachers were not required to car pool or share accommodations. The Association objected to these questions. The Board allowed the questions and the reasons for the ruling will be stated in the Award. Don Ash testified that at the time of its proposal in the 2008 round of bargaining, the Association was aware of the practice in the Western School District for school closeout in-service sessions. The Association considered that the Collective Agreement already prohibited car pooling and shared accommodations, but that the proposed amendment would help avoid any misinterpretation. There was pressure to settle the Collective Agreement and the Association decided to pursue the issue through the grievance and arbitration process.

Association Submission

The Association submitted that the conditions imposed by the School District with respect to car pooling and shared accommodation violated Article 25 of the Collective Agreement. The reduction in the number of School Districts in the Province created larger Districts, with the effect that travel by teachers was required over longer distances. There has been a requirement in Article 28 for mandatory professional development since September 1, 2002. Article 25.01 (a) and 25.02 apply to travel by teachers to in-service or professional development, where the travel is mandated by the School District. The reference in Article 25.01 (a) to "the course of duty" applies to any person travelling on the business of the Board. Travel to attend mandatory professional development days is travel on the business of the School District. The business of the School District is the education of students. Professional development is integral to the education of students. Article 25.01 (a) applies to lodging and travel by means other than private vehicle. Article 25.01 (a) is the general provision that applies in all situations. Article 25.01 (a) is subordinate to the specific circumstances in Articles 25.01 (b)(i), 25.04(a) and 25.04 (b). Article 25.01 (b) applies to travel to in-service training. Article 25.04 applies to teachers who are required to teach in more than one school. The reference to "out of pocket expenses" in Article 25.01 (b)(i) refers to a teacher spending from his or her own resources and claiming reimbursement from the School District. Out of pocket expenses covers items in addition to "meals, lodging and travel" under Article 25.01 (a). Article 25.01 (b)(ii), applies to the situation where the use of a vehicle is authorized, and then the payment is based on mileage, and not out of pocket expenses. Article 25.05 applies to teachers required to have a vehicle as a condition of employment. The history of the Collective Agreement language supported the Association's interpretation. The Association's proposal to amend Article 25 in the most recent

round of bargaining was withdrawn in circumstances where the current grievance had been filed to address the issue. There was nothing in Article 25 that required teachers to share a vehicle or to share accommodation. Program Specialists who travel to deliver professional development are travelling on the business of the School District, and there is no authority to require Program Specialists to car pool or share accommodation. The standard of what is reasonable in these circumstances has changed over the years. Mr. Ash testified that the written Association travel policy is not applied in practice. In any event, participation by teachers in travel with the Association is voluntary, unlike travel to mandatory in-service provided by the School District. The Department of Education pays for travel expenses by teachers in accordance with the Government travel policy, which was based on single room occupancy. The Provincial Government was also a party to the Collective Agreement, and Government policy was a guide to what was reasonable. The School District did not have a written policy on travel posted on the School district web site. There was no proof of a longstanding policy. Memos about car pooling and shared accommodations were sent to Principals and Vice Principals and not sent to teachers. The memos did not mention exemptions. The availability of exemptions from the policy was secret and not in writing. The Assistant Directors, Mr. Thompson and Mr. Skanes, followed different practices when approving exemptions to the policy. Mr. Thompson asked for the reason for the exemption. Mr. Skanes said that he did not want any disclosure of the reason for the exemption. Teachers objected to car pooling based on reasonable grounds, such as potential liability to the driver, questions about whether the amount of car insurance was sufficient, inconvenience caused to the driver to pick up other teachers, the need to leave a vehicle on the highway at the meeting location for the car pool, concerns about poor drivers or poor vehicles, conditions in the vehicle such as smoke or body odour, small vehicle size for a driver and three passengers, inadequate space for an obese passenger, concerns about whether a passenger could decide if it was safe to drive at night, and the time of departure being subject to the schedule of the driver. Reasonable objections by teachers to shared accommodations were based on invasion of the privacy of a person's bedroom, the possibility of sharing a room with an unknown person, the unknown sexual orientation of an unknown roommate, the conflicting desires of roommates to socialize, embarrassing medical conditions, and concern about being identified as different by requesting a medical exemption. The requirement to disclose the reason for an exemption was not reasonable. For example, a person should not have to disclose his or her sexual orientation. Teachers did not know how the policy was applied in various situations. Mr. Hynes was paid for only one quarter of his mileage when he travelled in a two person vehicle, even though the District could not require four persons to travel in such a vehicle. Graydon Pelley understood that if he did not car pool, then he would not be paid any percentage of his mileage. The policy had to

be reasonable based on the test set out in *KVP Co. Ltd.* (1965) 16 L.A.C. 73 (Robinson) (“KVP”). The KVP principles apply to a rule that is unreasonable because it is inconsistent with a provision in a collective agreement (*Central Park Lodge and SEIU, Local 268* (2000) 91 L.A.C. (4th) 403 (Ellis)). There was an expectation of privacy under Sections 3 (2) and 4 (a) of the *Privacy Act*, RSNL c. P-22. There is a reasonable expectation of privacy in a hotel room, and use of a hidden camera may amount to an unreasonable search and seizure, contrary to s. 8 of the *Charter of Rights* (*R. v. Wong* [1990] 3 S.C.R. 36). Similarly, there is a reasonable expectation of privacy in a motor vehicle (*R. v. Bulmer*, 2005 SKCA 90). The obligation to share accommodations or share a vehicle was a violation of privacy. The Association referred to arbitral authorities with respect to protection of privacy. These cases addressed the issues of finger scans (*IKO Industries Ltd. v. USWA, Local 8580* (2005) 140 L.A.C. (4th) 393 (Tims)), disclosing detailed spousal information for employees who did not require access to protected areas (*Ontario Power Generation Inc. v. Society of Energy Professionals* (2004) 128 L.A.C. (4th) 265 (Herman)), disclosing criminal history of employees (*Ottawa v. Ottawa Professional Firefighters Assn.* (2007) 169 L.A.C. (4th) 84 (M.G. Picher)), obtaining medical information as part of an attendance management policy (*CEP, Local 33-X v. Hydro Agri Canada* (2001) 95 L.A.C. (4th) 99 (Whitaker)), and disclosing driver abstracts (*I.A.M.A.W., Local 99 v. Finning International Inc.* (2005) 135 L.A.C. (4th) 335 (Smith)). The case authorities indicated that an invasion of privacy would not be allowed where the Employer’s legitimate employment interests do not outweigh the employee’s right to privacy. The Employer must show that there is no less intrusive way to deliver professional development than by requiring car pools and shared accommodations. There was no obligation to disclose a reason to claim a right to privacy, as there would be when claiming the right to accommodation under human rights legislation. The case was not about the reasonableness of a management decision, but was about the employee’s right to privacy and a safe workplace. The grievance was not about teachers wanting to take their own vehicles, but was about the District not being permitted to impose a duty on teachers to provide a vehicle to transport other teachers, or to impose an obligation to share a hotel room. The Association requested that the grievance be allowed.

Employer Submission

The Employer submitted that Article 25 of the Collective Agreement distinguished two groups of teachers. The first group, under Article 25.01 (a), were those teachers who, in the course of duty, were required to travel on business for the School District. The second group were those teachers covered by Article 25.01 (b) who were required to travel to attend in-service training. If travel to

in-service training was covered by Article 25.01 (a), then Article 25.01 (b)(i) would be redundant. If Article 25.02 applied to in-service training, then Article 25.01 (b)(ii) would be redundant. According to principles of interpretation every article should be give meaning and there should be no redundancy. Article 25.01 (a) applied to travel by program specialists and itinerant teachers but did not apply to travel to attend in-service training. The Collective Agreement stated that Article 25.01 (b) was subject to Article 25.01 (a). It would be inconsistent to have Article 25.01 (a) apply to in-service training. Having different provisions apply to program specialists and to classroom teachers did not amount to discrimination contrary to Article 57. Different allowances applied in various circumstances. For example, an allowance was paid under Article 25.05 (a) to teachers who were required to drive 2,400 kilometres or more per year on business on behalf of the Employer. Mandatory professional development had started prior to September 1, 2002, the effective date of the amendment to Article 28. There had always been a requirement for travel over long distances in some School Districts. The Association was seeking something at arbitration that it was unable to gain at the bargaining table, having regard to the proposals made by the Association in the last three rounds of bargaining. Bargaining history could be considered when there was an ambiguity in the language of the Collective Agreement. The Association would not have proposed an amendment of Article 25 if Article 25.01 (a) already applied to in-service travel. The Collective Agreement did not address the issue of car pools or shared accommodations. The Employer's practice was an exercise of management rights that was not restricted by the Collective Agreement. The District's program continued to be organized in the same manner. The number of professional development days per year had increased. When there was a school closeout then the location of the teachers' work changed to the location of the in-service. The Association's travel policy had required participation in a car pool to be paid the full amount of mileage. The Association had a role in providing professional development sessions. Car pooling had been the standard mode of transportation to professional development for many years. The District's policy had consistently required car pooling and shared accommodations. Mr. Skanes testified that a medical exemption did not require a medical certificate. He did not need to know the details of the reason for the requested exemption. Mr. Thompson stated that he would grant an exemption based on trust. Once authorized, subsequent requests were not required. The policy was reasonable. There were not enough hotel rooms available to conduct a District wide closeout, or regional closeouts in certain regions, based on single room occupancy. A district wide or regional closeout made it easier to obtain speakers and to deliver a consistent message to teachers. The memos sent by the School District to schools articulated the substance of the policy. The availability of exemptions was known by teachers and did not need to be stated in the memos. Teachers who had an aversion to driving

at night were allowed to leave early or stay overnight in a hotel on their way home. The District applied the policy having regard to privacy rights and human rights. The disclosure of a medical condition was not an unusual requirement. The duty to accommodate was triggered by making known the reasons for the accommodation. There had been no outcry of complaints about car pooling to the Association. The grievance form stated that the Association became aware of the issue in 2008. If the policy was as unreasonable as alleged, then the Association would have been expected to have heard complaints about the policy before 2008. Some teachers decided not to car pool and other teachers preferred to car pool. Mr. Weir testified there was never a situation where there was no driver available for a car pool. A management decision could be reviewed for arbitrariness or bad faith but not on the grounds of reasonableness (*NAPE v. Western Avalon Roman Catholic School Board* (2000) N.F.C.A. 39 (NLCA)). The arbitration board did not have authority to substitute its opinion for that of the School District as to the content of the policy. The principles of the *KVP* case were not applicable. A rule can only be reviewed if there is a basis to do so in the Collective Agreement, such as an inconsistency with a provision of the Collective Agreement (*Central Park Lodge and SEIU, Local 268* (2000) 91 L.A.C. (4th) 403 (Ellis)). The School District did not introduce a new policy and continued to apply its longstanding policy. The cases on privacy rights submitted by the Association were distinguishable. This was not a case of surveillance, drug testing or any other intrusive measures. The Employer requested that the grievance be denied.

Considerations

The issue before the Arbitration Board is whether the Employer's requirement of car pooling and shared accommodations, for teachers travelling to in-service training sessions, violates Article 25 of the Collective Agreement.

In this Award, the Arbitration Board will first describe the practices followed by the Western School District with respect to travel allowances, then interpret how Article 25 applies to travel to in-service sessions, and finally determine whether or not there was a violation of Article 25.

The District does not have a written policy on car pooling and shared accommodation. The practice followed by the District in this regard may be determined from the testimony of the witnesses and the exhibits entered at the hearing. The exhibits include the memos sent from the District to Principals and others with respect to car pooling and shared accommodation. The Arbitration Board has considered the evidence with respect to the practice followed by the Western School District

since its formation in 2004, as well as evidence with respect to the former school districts that were its predecessors. Most of the memos state that car pooling and shared accommodation is “required” or “expected”. Some of the memos ask Principals to arrange for car pool drivers and passengers based on four teachers per vehicle. Some memos state that car pooling is “encouraged”. However, consideration of all the evidence indicates that the District practice is that car pooling and shared accommodation is a requirement for payment of travel allowance under Article 25 to teachers travelling to in-service sessions.

The effect of mandatory car pooling for travel to in-service sessions is that a teacher who drives alone to an in-service session is not paid the full mileage claim. In order to be paid a full mileage claim, a teacher driving to an in-service session is required to transport three teachers as passengers. There was testimony that a teacher driving alone to an in-service session could be paid one half or one quarter of the full mileage claim that would be paid to a car pool driver. However, the practice was not clear with respect to the option of travelling alone and claiming partial mileage. Teacher David Hynes testified that he drove alone to an in-service session in Corner Brook, in October, 2009, and was paid one quarter of the mileage he claimed. Teacher Graydon Pelley testified that he drove alone to in-service sessions and did not submit any claim for mileage. Teacher Sean Weir testified that some teachers drove with their families to in-service sessions and were paid a percentage of the total mileage. The option to drive alone and submit a claim for a percentage of the mileage was not clearly communicated in the memos sent to teachers by the District. The District would sometimes accept a variance of the requirement of four teachers per car. Assistant Director Allan Skanes testified that he allowed the full mileage claim when two teachers travelled together from Burgeo to an in-service session, so that those teachers would not have to wait for other teachers to arrive on the ferry from Ramea. Mr. Skanes also testified that, when requested, a travel allowance was paid to a teacher who left early and stopped along the route on the way home, so that the teacher was not required to drive after dark. However, the availability of an exemption from the car pooling requirement was not clearly communicated in the memos sent to teachers by the District.

With respect to shared accommodation, the practice of the District was to require shared accommodation with two teachers per room. Most of the memos from the District to Principals requested that teachers make arrangements among themselves for roommates for the purpose of shared hotel accommodations. The memos also stated that a teacher could have single room accommodation and pay one half of the room cost. In other words, the District would pay one half the cost of single room accommodation. Some of the memos stated there was no single room

accommodation option. For example, a memo for the school close-out in September, 2009 stated “there will be no option for single accommodation”. The District allowed exemptions to the shared accommodation practice in various circumstances. When an exemption was allowed, the District paid for single hotel room accommodation. Assistant Directors Jeff Thompson and Allan Skanes testified with respect to their practice of allowing exemptions to the shared accommodation requirement. Mr. Thompson testified that he allowed exemptions for medical reasons or for other extenuating personal circumstances. He said that the reason would have to be disclosed when applying for an exemption. A request for exemption could be made to the teacher’s Principal. Mr. Thompson would then discuss the reason for the request with the Principal. Mr. Thompson said that he had granted exemptions, and allowed single room accommodation, for reasons that included smoking addiction, excessive weight and severe allergy to scent. He said he had not refused any request for an exemption. He acknowledged that the memos did not state that teachers could request an exemption from the shared accommodation requirement. Allan Skanes testified that he responded to a request for an exemption if Mr. Thompson was not available. His practice varied from that of Mr. Thompson. He said that he did not require the teacher to state any reason for the request for exemption, although most teachers did state a reason. He would allow any request, so long as it was not based solely on the teacher’s objection to the District’s shared accommodation policy. He believed that teachers knew they could request an exemption. He was aware that some teachers stayed in a single room, paid one half the accommodation costs, and did not request an exemption.

The Arbitration Board has determined from the evidence that the practice followed by the Western School District is as follows: Car pooling with four teachers per vehicle is mandatory. The principal and/or the teachers travelling to an in-service session are required to arrange for car pooling. The teacher residing the furthest away from the destination is usually the driver. A travel claim for full mileage will not be paid unless the teacher making the claim also transports three other teachers. An exemption from the four teacher per car requirement may be allowed by the District for various reasons such as small size of vehicle, fewer than four teachers available, and the need of a teacher to bring children to the location of the in-service for the purpose of child care arrangements. Where no exemption is granted, a teacher may travel alone to an in-service session and be paid a percentage of the mileage claim.

With respect to shared accommodation, the District practice for travel to in-service sessions is that shared hotel accommodation is required. Principals and teachers are required to make arrangements for hotel roommates. Roommates will be assigned by the District to teachers who have not made

a prior arrangement. A teacher may be required to share a room with someone he or she does not know. A teacher staying in single room accommodation will pay one half the cost of the accommodation. The District will pay the full cost of a single room, when an exemption is granted to the requirement of shared accommodation. An exemption may be granted for medical reasons or for other extenuating circumstances. Assistant Director Allan Skanes will grant an exemption for any reason other than an objection to the policy. The acceptable grounds for an exemption vary depending on who is granting the exemption.

Teacher Graydon Pelley testified with respect to his experience with car pooling and shared accommodation. In cross examination by the District, Mr. Pelley was asked about his positions with the Association and his candidacy for executive position in the current election. Mr. Pelley's credibility was not at issue. The relevance of the questions was not established by the District. Therefore, the Board will disregard that part of Mr. Pelley's testimony.

The Association grieves that the Employer's requirement for car pooling and shared accommodation violates Article 25 of the Collective Agreement. The Arbitration Board will consider the interpretation of Article 25. The parties dispute which parts of Articles 25.01 and 25.02 apply when teachers travel to in-service sessions. Article 25.01 (b)(i), applies to "teachers who are required to travel to attend in-service training" and states that such teachers "shall be paid reasonable out-of-pocket expenses as deemed appropriate by the School Board." Article 25.01 (b) (ii) states that "teachers who are authorized to use their vehicle to attend in-service training, shall be reimbursed at the prevailing mileage rates for Government employees." Articles 25.01 (a) and 25.02 refer to teachers who travel "on business for the School Board". The parties dispute whether or not a teacher who travels to attend an in-service session is travelling "on business" for the District. There is a distinction in the language used in Articles 25.01 (a) and 25.01 (b)(i). Article 25.01 (a) states that a teacher "shall be reimbursed for meals, lodging and travel at the prevailing rate for Government employees". Article 25.01 (b)(i) states that a teacher "shall be paid reasonable out-of-pocket expenses as deemed appropriate by the School Board".

The Arbitration Board will have regard to the principles of interpretation of collective agreements when interpreting Article 25. These principles, as stated in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, include that the object of construction is to determine the intention of the parties from the express provisions of the collective agreement (paragraph 4:2100), that the language should be viewed in its normal or ordinary sense (paragraph 4:2110), that it should be presumed that

all the words used were intended to have some meaning (paragraph 4:2120), that a specific provision will prevail over a general provision (4:2120), that preceding collective agreements may be used as an aid to determine the intention of the parties with respect to any changes made (4:2240), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150) and the industrial relations practices of the parties (paragraph 4:2300).

In *Brown & Beatty, Canadian Labour Arbitration*, 4th edition, at paragraph 4:2100, the authors refer to the importance of determining the intention of the parties from the language used. The text states as follows:

It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it. As one arbitrator, quoting from *Halsbury's Laws of England*, stated in an early award:

The object of all interpretation of a written instrument is to discover the intention of the author, the written declaration of whose mind it is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as is possible, and as the law will permit.

And further:

But the intention must be gathered from the written instrument. The function of the Court is to ascertain what the parties meant by the words they have used; to declare the meaning of what is written in the instrument, not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent to the intention.

Accordingly, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions.

One of the important principles of interpretation is the contextual approach, meaning that the language will be considered in the context of the collective agreement as a whole and the labour relations of the parties. The Board has considered the interpretation of Article 25 in the context of other Articles of the Collective Agreement, in particular, Articles 18 and 28. Article 18.05 states that there may be six in-service days in the aggregate in the school year available for the purposes

of five workshop days per teacher and one banked day per teacher to be assigned at the Board's discretion. Article 28, headed "Length of the School Year", also addresses in-service days. Article 28.01 (a) (ii) states that, effective September 1, 2002, the length of the school year shall be 195 teaching days which includes three professional development/in-service days to be scheduled by the Board during the school year. The provision in Article 28.01 (a)(ii) for three in-service days was added to the Collective Agreement at the same time as the length of the school year was increased by five days to 195 days, comprised of 187 actual teaching days and other specified days. The practice of the Western School District is to plan four or five in-service days per year, which includes the three days required under Article 28. The District started to schedule District wide closeout in-service days in the Fall of 2007. In that year, teachers converged on central locations in each of the four regions of the District. In the Fall of 2009 there was a two day District wide closeout session for in-service training for all teachers in the District, held in Corner Brook.

Evidence was presented with respect to the history of the Collective Agreement language. This evidence may be considered with respect to any changes made to the language, and as part of the labour relations context of the language. In the 1976-1978 Collective Agreement, Article 25 referred to "out of pocket" expenses and payment of "prevailing mileage rates" for a teacher "required to travel on business for the School Board". The first time that Article 25 referred to teachers being required to travel from their school to attend in-service training was in the 1982-1984 Collective Agreement. At that time, the language was similar to the current Collective Agreement. The language of Articles 25.01 and 25.02 have not had any substantial change since then. When the language was added to the 1982-1984 Collective Agreement, the parties may be presumed to have intended a purpose for the additional language. Having regard to the history of the Collective Agreement language, the Arbitration Board observes that, if "travel on business" for the District applied to teachers travelling from their school to attend an in-service session, then there would have been no need to amend the Collective Agreement to make specific reference to travel to attend in-service sessions. Also, the Board has had regard to the principle of interpretation that collective agreement language should not be redundant. If travel "on business" applied to travel by teachers from their school to attend in-service sessions, then the additional language would be redundant. The Association submits that there is no redundancy because different language applies to each situation. Teachers who are required to travel to in-service are paid "reasonable out of pocket expenses" and teachers who are required to travel "on business" are paid "meals, lodging and travel at the prevailing rate for Government employees". Prior to the 1982-1984 Collective Agreement, the language of Article 25 provided only for reasonable out of pocket expenses and did not refer to

the prevailing Government rate. However, the distinction suggested by the Association does not avoid a redundancy. Reasonable out of pocket expenses may include meals, lodging and travel at the Government rate, in addition to any other item that is a reasonable out of pocket expense. The Arbitration Board has also considered the principle of interpretation that a specific provision overrides a general provision in the Collective Agreement. Therefore, for teachers travelling from their school to in-service sessions, the specific provisions of Article 25.01 (b) apply.

The bargaining unit includes positions such as program specialists and itinerant teachers, who are not assigned to a school. Article 25.01 (b)(i) does not apply to teachers in such positions because the reference to “the community where the teacher’s school is located” would have no meaning for teachers who are not assigned to a school. Teachers in those bargaining unit positions would not be teachers travelling to an in-service session under Article 25.01 (b)(i). Are those teachers travelling “on business for the School Board” within the meaning of Article 25.01 (a) and Article 25.02? The Arbitration Board finds that attendance at in-service sessions is necessarily incidental to the delivery by teachers of classroom instruction, having regard to the Collective Agreement references to in-service sessions, and the testimony of witnesses about the importance of in-service sessions. In-service sessions are part of the “business” of the District. Therefore, Article 25.01 (a) and Article 25.02 apply to program specialists and itinerant teachers travelling to in-service sessions. However, for teachers travelling from their school to in-service sessions, Article 25.01 (b) applies, for the reason it is a specific provision that takes priority over the general provisions in Article 25.01 (a) and Article 25.02.

With respect to the issue of car pools, the effect of the District’s practice is that teachers who travel alone to in-service sessions and do not car pool are not “authorized” to use their vehicle to attend under Article 25.01 (b)(ii) and are not paid the prevailing mileage rate. Unless an exemption is granted, as discussed above, the District will only “authorize” a teacher to use a vehicle when that teacher transports three other teachers in a car pool arrangement. The District is exercising its discretion under Article 25.01 (b)(ii) when it decides whether or not to “authorize” a teacher to use the teacher’s vehicle to attend in-service training. However, the practice of allowing one half or one quarter of the mileage rate for teachers who travel alone, is not referred to in Article 25.01(b) (ii). Under the Collective Agreement, teachers are either authorized or not authorized to use their own vehicle. When authorized, the prevailing rate applies. There is no reference in Article 25 to teachers

being required to transport other teachers, or to payment of a percentage of the mileage when teachers travel alone and do not transport other teachers. These requirements are part of the practice followed by the District when it exercises its discretion to “authorize” a teacher to use a vehicle.

With respect to shared accommodation, unless an exemption is granted, the effect of the District’s practice is that the cost of single room accommodation is not a “reasonable out of pocket expense” under Article 25.01 (b)(i). The District is exercising its discretion under Article 25.01 (b)(i) when it determines that single room accommodation is not “deemed appropriate” and that it is not a “reasonable” expense. In the event that a teacher claims the cost of single room accommodation, the District decides that half the cost is appropriate. In effect the District decides that one half the cost is a reasonable expense. The District exercises its discretion on the basis of its practice that shared accommodation is mandatory.

The District submits that mandatory car pooling and shared accommodation is necessary to reduce and control the cost of in-service training. The District considers in-service training to be important. The District prefers to have District wide closeouts for all teachers to attend in a central location, such as Corner Brook, as this makes it easier to obtain speakers. The District submits that if shared accommodation was not mandatory, then it would have to reorganize how it presents in-service training, because there are not sufficient hotel rooms available in some locations for single accommodation. For example, the District submits that a District wide closeout, and an in-service session for all teachers in the District to attend in Corner Brook, would not be possible in the absence of mandatory shared accommodation.

The District submits that the Arbitration Board ought to consider proposals made by the Association in recent rounds of collective bargaining as an aid to the interpretation of the Collective Agreement. Those proposals included an amendment to the language of Article 25 to specify that the Employer could not mandate car pooling and shared accommodation. However, the evidence presented of proposals made in rounds of collective bargaining subsequent to the round when the language was settled, does not establish the intent of the parties at the time the language was agreed. Proposals made in subsequent rounds of bargaining are not persuasive, in themselves, with respect to the intent of the parties in the earlier round of bargaining when the language was settled. Therefore the Arbitration Board will disregard the evidence of the proposals made by the Association in recent rounds of collective bargaining.

The Board will consider the extent to which it may review the Employer's practice on the grounds of reasonableness. The Association submits that the practice is unreasonable and that it violates Article 25. The Association refers to *KVP Co. Ltd.* (1965) 16 L.A.C. 73 (Robinson) ("KVP"), which sets out guidelines for an arbitrator to apply when determining whether or not a rule is reasonable. The Association submits that the District's policy is unreasonable because it violates an individual's expectation of privacy under the *Privacy Act*, RSNL, c. P-22 and the *Canadian Charter of Rights*. The *KVP* case sets out guidelines for determining when a rule is reasonable and the circumstances when an employer may rely upon a rule when imposing discipline. Arbitrators may consider the reasonableness of a rule prior to a breach of the rule by an employee leading to the imposition of discipline. However, the *KVP* case is usually applied in situations where breach of a rule would result in discipline. In Mitchnick and Etherington, *Labour Arbitration in Canada*, 2006, the authors state at page 250 as follows:

Most arbitrators take the view that they have jurisdiction to review a unilaterally-imposed rule in accordance with the *KVP* criteria, as long as the evidence suggests that breach of the rule would probably result in discipline.

The evidence does not indicate that breach of the District's practice of car pooling and shared accommodation would result in discipline of a teacher. The practice is a guideline for the payment to teachers of the travel allowance in Article 25. Failure to comply with the practice of the District may result in denial of a travel allowance claim, but would not likely result in discipline. There is no issue of discipline in this case. Therefore, the *KVP* case does not apply.

The Arbitration Board has considered whether or not the District has a duty to act reasonably. Arbitrators may apply a duty to act reasonably, where the exercise of an employer discretion is linked to a provision of the Collective Agreement. In Mitchnick and Etherington, *Labour Arbitration in Canada*, 2006, the authors state, commencing at page 280 as follows:

The question of whether, in the absence of express language in the collective agreement, employers are required to act fairly and reasonably in exercising their managerial authority has been addressed by the courts on several occasions.

...

Arbitrator Bendel summarized these judicial decisions in his frequently-cited award in *Blue Line Taxi and R.W.D.S.U., Local 1688* (1992), 28 L.A.C. (4th) 280. He noted, first, that if a provision of the collective agreement expressly confers a discretion on

the employer, it can be presumed that the parties understood that it would be exercised fairly and reasonably. Second, even in the absence of explicit restrictions in the collective agreement, the employer is not entitled to exercise its management rights unreasonably if to do so would negate or undermine some other provision of the agreement.

Conversely, it is an error for an arbitrator to impose on the employer a general requirement to exercise its management rights reasonably, without linking that requirement to an express or implied term in the collective agreement: *Toronto Transit Commission v. A.T.U., Local 113* (2005), 194 O.A.C. 322 (Div. Ct.).

...

The recognition of an implied duty to exercise a discretion fairly, it may be added, is consistent with what the courts are doing in the commercial field. In *Marshall v. Bernard Place Corp.* (2002), 58 O.R. (3d) 97 (C.A.), for example, an agreement for the purchase of a residential property provided that the purchase was conditional upon receipt of an inspection report satisfactory to the purchaser “in his sole and absolute discretion”. The Court affirmed that even clauses such as this are subject to an implied requirement to act honestly and in good faith.

Arbitral review of a management decision on the grounds of reasonableness is discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, at paragraph 4:2326, as follows:

Where the action by management is the promulgation of a rule or policy, such a rule will generally be subject to arbitral review for its reasonableness whether or not there is an express proviso in the agreement requiring that management make only reasonable rules. As well, even in the absence of an express requirement of reasonableness, if the decision is made pursuant to an express discretionary power, usually that decision will be subject to some level of arbitral review. Indeed, whenever management makes a decision or takes an action in connection with directing its workforce or having an impact on working conditions, it is quite likely that an arbitrator will conclude that a collective agreement provision is affected, and he or she will review that decision for reasonableness, or on the basis that it not be “discriminatory, arbitrary, or in bad faith”, or that it further a “legitimate business interest”.

Whether or not an employer decision may be reviewed by an arbitrator on the grounds of reasonableness was considered by the Newfoundland Court of Appeal in *Newfoundland Association of Public Employees v. Western Avalon Roman Catholic School Board*, 2000 NFCA 39 (CanLII) (“*Western Avalon*”). The Court stated, commencing at paragraph 38, as follows:

- [38] As is evident, there continues to be a difference of opinion as to the application of a general duty of reasonableness in the exercise of discretionary rights by management. It should be noted that there are those, like Justice Austin, who would characterize the matter of whether there is a requirement for reasonableness in the exercise of residual management rights as a question of jurisdiction thereby attracting the standard of correctness on judicial review. It is really to this that the chambers judge was alluding when he said that the arbitrator was amending the contract by imposing the requirement of reasonable exercise of management rights. However, this Court has not been referred to any case which would require management to meet a standard of correctness in the exercise of a discretion. Indeed, it is hard to conceive of circumstances where the exercise of discretion would be required to be correct in the result. So then, when the arbitrator stated that management's exercise of its rights must not be inconsistent with the "principles and tests of correctness and reasonableness," that was a patently unreasonable interpretation of the law. Even if one accepted that it was not patently unreasonable to require reasonableness of the employer, the question before the arbitrator would not have been whether the School Board made the best management decision. The question would have been whether the Board had made a reasonable decision. The arbitrator was not, under either of the approaches discussed above, free to substitute her view of what was the best way for the Board to implement the 10 hour reduction in work at the school unless the Board's decision was unreasonable on the doctrine of fairness or lacked the requirements of good faith and non-discriminatory manner on the traditional view.
- [39] The task of an arbitrator when examining an exercise of a discretionary right is different than when interpreting a collective agreement. When interpreting an agreement, the object of the exercise is a declaration of the intention of the parties as expressed in the words used in the collective agreement. The arbitrator decides what interpretation the parties must live with. In contrast, when examining the exercise of discretion by management, the object is not to have the arbitrator decide how the discretion should have been exercised but to determine whether management's exercise of its discretion is within the range of reasonable responses to the circumstances, if one accepts the reasonableness test, or simply whether the decision was made bona fide and without discrimination, if one follows the traditional test. Here, the arbitrator applied the correctness test. She substituted her view of what was the best decision for that of management. There was no evidence to support a finding that management lacked bona fides or acted in a discriminatory fashion.

In the *Western Avalon* case, the Court of Appeal found that the arbitrator erred by stating in the Award that management's decision must be "correct and reasonable" when it exercised a discretion. The Award was set aside because the arbitrator applied a "correctness" test and substituted her opinion for the opinion of management. The Court did not expressly disapprove the application by an arbitrator of a standard of reasonableness when reviewing a management exercise of a discretion.

The Arbitration Board finds that it may review the reasonableness of the Employer's practice of mandatory car pooling and shared accommodation provided that there is a link to a provision of the Collective Agreement. In this case, there is a link to Article 25. Based on arbitral and judicial authorities, the Employer is required to act reasonably in its exercise of discretion under Article 25. In particular, the Employer is required to act reasonably when it decides whether or not to allow a claim under Article 25 for mileage or accommodation expenses.

The Arbitration Board has considered the right to privacy as set out in arbitral authorities and in the *Privacy Act*, RSNL 1990 c. P-22. For the reasons that follow, the Board finds it unnecessary to decide whether or not the Employer's practice amounts to a violation of privacy rights.

The Arbitration Board has considered various factors to determine whether the District's practice of mandatory car pooling and shared accommodations for teachers travelling from their school to in-service sessions, is a reasonable exercise of its discretion under Articles 25.01 (b)(i) and 25.01 (b)(ii). As noted above, Articles 25.01 (a) and 25.02, and not Article 25.01 (b), apply to program specialists and itinerant teachers travelling to in-service sessions. For teachers in those positions, the Board will consider the reasonableness of the District's practice under those Articles.

Under Article 25.01 (b)(ii) teachers "authorized" to use their vehicle to attend in-service training are reimbursed at the prevailing Government mileage rates. The Employer is required to act reasonably when it exercises its discretion to "authorize" use of a vehicle. The Board finds that it is not reasonable to require a teacher to transport other teachers in a car pool, as a condition of reimbursement, when there is no language in the Article to support such a condition. The practice is also unreasonable for the following reasons: it requires teachers to bear the risk of potential legal liability to passengers; some vehicles may be unsuitable to safely transport four persons together with baggage over the distance required; there is evidence that some other employers who administer the same Collective Agreement do not follow the same practice; there is no written policy stating the practice; and the availability of an exemption is not communicated to teachers in writing, with the

effect that the practice of granting exemptions may not be known to all teachers. The Association also raises the concerns of passengers who travel in car pools. However, those concerns are not relevant to claims to be reimbursed mileage because passengers do not submit claims for mileage under Article 25.

Under Article 25.01 (b)(i) teachers shall be paid “reasonable out-of-pocket expenses as deemed appropriate by the School Board”. The Employer is required to act reasonably when it exercises its discretion to find that an expense is “reasonable” and to deem that an expense is “appropriate”. The Board finds that it is not reasonable to require a teacher to share accommodation, as a condition of payment of the travel allowance, when there is no language in Article 25 to support such a condition. The practice is also unreasonable for the following reasons: there is evidence that some other employers who administer the same Collective Agreement do not require shared accommodation; there is no written policy stating the practice; the availability of an exemption is not communicated to teachers in writing, with the effect that the practice of granting exemptions may not be known to all teachers; and there is an inconsistent application of the grounds for exemptions, depending on who is responding to the request for an exemption.

The same considerations apply to program specialists and itinerant teachers, whose travel to in-service sessions is governed by Article 25.01 (a) and Article 25.02. For mandatory car pooling, the language of Article 25.01 (b)(ii) is the same as the language of Article 25.02. For shared accommodation, the Employer is required to act reasonably when it exercises its discretion to reimburse a teacher for “meals, lodging and travel at the prevailing rate for Government employees”. The same considerations with respect to reasonableness that apply under Article 25.01 (b)(i) apply under Article 25.01 (a).

The Arbitration Board finds that the District’s practice of mandatory car pooling and shared accommodation is not a reasonable exercise of its discretion under Article 25 of the Collective Agreement, and therefore violates Article 25.

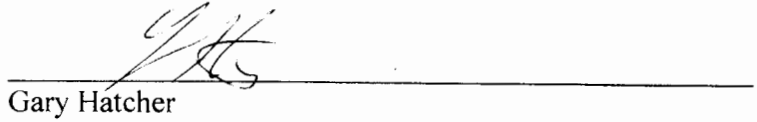
Decision

The grievance is allowed. The District's practice of mandatory car pooling and shared accommodation for teachers attending in-service sessions violates Article 25 of the Collective Agreement.

DATED this **22nd** day of July, 2011.


James C. Oakley, Chairperson


Ray Goulding


Gary Hatcher