IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD
- The Employer

-and-

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO
- The Union

AND IN THE MATTER OF a group grievance regarding the payment of supplementary employment insurance benefits to teachers on pregnancy leave during the Christmas and March breaks

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Leonard P. Kavanaugh, Q.C. - Counsel
and others

On behalf of the Union:

Cynthia Petersen - Counsel
and others

Hearing held April 21, 2009, and January 8, 2010, in Windsor, Ontario.

AWARD

INTRODUCTION

This collective agreement has a supplementary employment insurance benefit plan which provides money for teachers who are on a pregnancy leave. The money is integrated with the federal Employment Insurance benefit and is in the form of "top-up" pay. The parties differed as to the details of that top-up pay and, in particular, they differed as to whether the Employer was required to pay this top-up during the Christmas and March breaks.

FACTS

The parties to this collective agreement are the Greater Essex County District School Board (the Employer or the Board) which operates this public school system and the Elementary Teachers' Federation of Ontario (the Union or ETFO) representing teachers in the Employer's elementary schools.

In January 2008 the Union grieved that the Employer was required to provide teachers on pregnancy leave top-up pay for up to six weeks under their supplementary employment insurance benefit plan. In particular, the Union grieved that the top-up was payable during the Christmas and March breaks.

The parties provided a Statement of Agreed Facts, below.

STATEMENT OF AGREED FACTS

1. Article 10.01 (n) of ETFO's collective agreement with the Board (hereafter

referred to as the "contract language") was negotiated by the parties in the spring of 2003.

2 Identical contract language was negotiated by OSSTF [The OSSTF is the Ontario Secondary School Teachers' Federation which represents teachers in the Employer's secondary schools.] and the Board that same spring.

3. The contract language was proposed by the Board first to OSSTF and then to ETFO, during successive collective bargaining sessions that occurred in the spring of 2003.

4. OSSTF negotiations started prior to ETFO negotiations that year and the OSSTF negotiations were concluded before the ETFO negotiations were concluded.

5. When the Board presented the contract language to OSSTF, Board negotiators stated that "this is coverage for 194 days" (referring to the statutorily mandated 194 days of instruction between September and June, excluding Christmas Break and March Break).

6. OSSTF accepted the Board's proposed contract language. It became article 16.01 (1) of the OSSTF collective agreement, which was ratified on April 16, 2003.

7. ETFO collective bargaining negotiations began on April 3, 2003. The Board tabled the contract language as part of its overall proposal that day. There was no discussion about interpretation or implementation of the contract language that day or at any time during ETFO negotiations.

8. The Board negotiators' understanding was that the 6 weeks of SEB top-up would not be payable during non-teaching periods (i.e., summer months, Christmas Break and March Break).

9. The ETFO negotiators understood that the 6 weeks of SEB top-up would be payable during non-teaching periods. The ETFO negotiators' understanding was based primarily on the difference between the existing language of article 10.01 (g) of the collective agreement and the contract language negotiated in article 10.01 (n).

10. The Board and ETFO representatives never communicated their respective (and divergent) interpretations of the contract language to each other prior to ratification of the ETFO collective agreement, which occurred in late May 2003.

11. After OSSTF ratified its collective agreement with the Board in mid April 2003, Brad Bennett (President of OSSTF) had telephone discussions with Michelle Bonnici (Manager of Human Resources for the Board) about the implementation of the contract language. These discussions led to an exchange of email messages between Mr. Bennett and Ms. Bonnici in mid May 2003, in which Mr. Bennett confirmed OSSTF's understanding "that only school days are eligible for top up, not summer, Christmas Holidays or March Break." (A copy of that exchange of email messages will be admitted into evidence in this proceeding.)

12. Ms. Bonnici consulted with the Board's negotiators regarding her discussions with Mr. Bennett and copied them on her email correspondence.

13. ETFO representatives were not party to the discussions between Mr. Bennett and Ms Bonnici, were not provided with copies of their email correspondence, and were not aware that their discussions were taking place.

14. In June 2003, after ETFO ratified its collective agreement, some elementary teachers gave birth and commenced pregnancy leaves. They applied for SEB benefits. The Board paid them top up pay during their two week waiting period, pursuant to Articles 10.01 (g) and 10.01 (n)(ii) of the collective agreement. The Board refused to pay them the additional 6 weeks of SEB top-up because the 6 weeks fell during the summer (non-teaching) months of July and August. Teachers who gave birth during the month of July were similarly denied SEB top up payments by the Board. ETFO filed a group grievance on their behalf on October 15, 2003. That grievance was ultimately adjudicated by arbitrator Dissanayake.

15. The Board did not pay any SEB top-up benefits to teachers in the OSSTF

bargaining unit during the summer months (July and August) of 2003. OSSTF did not file any grievances with respect to this issue.

16. The Board is not specifically funded to pay any top-up benefits outside of the school year of 194 instructional days. If such payments are to be made, they must be taken out of existing funding envelopes such as, for example, library.

17 This Statement of Agreed Facts is without prejudice to the parties' respective positions in any other matters. The facts contained herein are agreed to by the parties for the sole purpose of adjudicating (and expediting the hearing of) the within grievance, dated January 24, 2008. No facts contained in this Statement can be referred to by the parties or relied upon in any other matter or proceeding, unless established by independent evidence in such a proceeding, or by express written agreement of the parties.

After providing the above Statement of Agreed Facts, the parties made submissions on the question of whether teachers on pregnancy leave were entitled to top-up pay during the Christmas and March breaks. They agreed to temporarily set aside the other issues raised by the grievance.

COLLECTIVE AGREEMENT

The key provisions of the parties' 2004-2008 collective agreement are as follows:

ARTICLE X - LEAVES OF ABSENCE

Pregnancy/Adoption/Parental Leave

10.01 (a) The Board will grant pregnancy/adoption/parental leaves according to the requirements of the Employment Standards Act.

. . .

(c) A pregnancy leave may begin no earlier than seventeen (17) weeks before the expected

birth date. . . .

(d) (i) The maximum length of a pregnancy/adoption/parental leave shall not exceed two (2) years . . .

. . .

(g) The Board shall provide for teachers on pregnancy/adoption/parental leave a supplementary employment insurance benefits plan approved by the Canada Employment and Immigration Commission. For each week of the two week mandatory waiting period, the plan will pay a sum equal to 95% of the teacher's salary. Any waiting period that falls within the Christmas holiday, March break, or summer holiday will not be paid.

. . .

(n) (i) For pregnancy leaves only, the Board will pay a top-up amount for a maximum eight (8) week period immediately following the birth of a child.

(ii) The top-up pay will be 95% of the regular wage for the two week waiting period and the difference between what an employee receives from the Employment Insurance (EI) and her regular wage for the remaining six (6) weeks.

(iii) To receive pay, the employee must forward to the Human Resources Department, proof of receipt of pay from EI. An application for pregnancy leave as well as a medical certificate identifying the expected date of birth is required prior to the employee taking their leave.

(iv) The pay will not exceed the amounts specified in (ii) above.

(v) The eight (8) week period will include the two (2) week waiting period and furthermore is not in addition to the seventeen (17) week pregnancy leave maximum and thirty-five (35) week parental leave maximum.

(vi) If not eligible for EI, the employee will be entitled to regular compensation from the employee's accrued sick leave bank for a maximum of six (6) weeks or the days accrued in their sick leave bank.

. . .

UNION POSITION

The Union's extensive submissions are summarized below.

The Union submitted that the issue of top-up payment for Christmas and March breaks involved a simple matter of the interpretation of the collective agreement. The provisions were clear and unambiguous and no extrinsic evidence was necessary.

Article 10 contained two supplementary employment benefits for teachers on pregnancy leaves.

The first benefit was found in article 10.01 (g) and it covered the two week waiting period before Employment Insurance (EI) benefits began. Under article 10.01 (g) a teacher normally received 95% of salary during that two week period, but the parties had specifically agreed that nothing was paid for the Christmas or March breaks, or for summer holidays.

The second benefit was contained in article 10.01 (n). This benefit provided a teacher on pregnancy leave with an additional six weeks of top-up payment. The Union noted that a teacher on pregnancy leave can collect EI during the Christmas and March breaks. Article 10.01 (n)(i) is the basic entitlement provision providing a maximum eight week benefit. But article 10.01 (n)(v) clarifies that the eight weeks includes the two week waiting period already addressed in article 10.01 (g). Article 10.01 (n)(ii) is the calculation provision, not an entitlement provision. Although a teacher needs to be on EI to collect the six weeks top-up, there is no language restricting the payment of the top-up amount described in article 10.01 (n)(ii) during the Christmas and March breaks.

The Union noted the explicit language in article 10.01 (g) stating that the two week waiting period benefit was not paid during the Christmas and March breaks. The Union submitted that teachers on pregnancy leave would be entitled to payment of the six week top-up during the Christmas and March breaks if that explicit language in article 10.01 (g) preventing the payment of the two week waiting period benefit had been absent from the agreement entirely. However, the requirement to pay the six week benefit was more obvious because the parties had specifically addressed the issue of payment of the two week waiting period benefit during the Christmas and March breaks but they had then said nothing about the payment of the other six weeks of top-up pay during those same two breaks.

The Union referred to the various awards set out below. The Union noted that the

parties had already arbitrated the issue of whether the six weeks of top-up pay was payable during the summer holidays and that Arbitrator Dissanayake had concluded that it was payable. There was nothing in the language of this collective agreement to suggest that there was to be any difference in outcome between the summer holidays and the Christmas and March breaks. The Union asked me to adopt and apply the reasoning of Arbitrator Dissanayake.

The Union reviewed several awards addressing the use of extrinsic evidence. The Union submitted that the extrinsic evidence about the shared understanding between this Employer and the Ontario Secondary School Teachers' Federation regarding the meaning of the identical language in their collective agreement was not helpful. It did not suggest that these two parties shared a common understanding of the meaning.

In reviewing several awards under other board/teacher collective agreements which had addressed issues similar to those raised by this grievance, the Union drew my attention to the principles expressed in the *Hastings* award, below, and said that I should apply those principles - that the top-up is based on the receipt of EI, not of salary, that this is a benefit rather than an income replacement scheme, that to deny the benefit would require clear language, and that the benefit should be administered as equitably as possible.

As for remedy, the Union asked that I interpret the collective agreement on this issue. Acknowledging that the parties disagreed about the period of time which should be covered by my award and noting that they had agreed to deal with that issue later, the Union asked that I nevertheless order compliance with my interpretation as of January 24, 2008, the date of the grievance. Finally, the Union asked that I retain jurisdiction.

The Union relied upon the following: Excerpts from the *Employment Insurance Act* and

from Regulation SOR/96-332; *Greater Essex County District School Board and Elementary Teachers' Federation of Ontario* 83 C.L.A.S. 326, 2005 CLB 10297 (Dissanayake); *Greater Essex County District School Board v. Elementary Teachers' Federation of Ontario (Greater Essex County Local)* [2006] O.J. No. 2604, 149 A.C.W.S. (3d) 1024 (OSCJ); *Re Ontario Jockey Club and Mutuel Employees' Association, Service Employees' International Union, Local 528* (1980), 28 L.A.C. (2d) 14 (Carter); *Re Hallmark Containers Ltd. and Canadian Paperworkers Union, Local 303* (1983), 8 L.A.C. (3d) 117 (Burkett); *Re Forsyth and United Steelworkers, Local 2655* (1984), 17 L.A.C. (3d) 257 (Hope); *Re North Cariboo Forest Labour Relations Association and International Woodworkers of America, Local 1-424* (1985), 19 L.A.C. (3d) 115 (Hope); *The Brant Haldimand-Norfolk Catholic District School Board and The Ontario English Catholic Teachers' Association* (2001), 63 C.L.A.S. 263, 2001 CLB 11999 (Devlin); *Re Avon-Maitland District School Board and E.T.F.O.* [2004] O.L.A.A. No. 965, 134 L.A.C. (4th) 23 (P.C. Picher); *Rainy River District School Board v. Elementary Teachers' Federation of Ontario (Rainy River District)* [2005] O.L.A.A. No. 129, LAX/2005-263 (Albertyn); *Re Hastings and Prince Edward District School Board and Elementary Teachers' Federation of Ontario* (2006), 152 L.A.C. (4th) 343 (Davie); *Greater Essex County District School Board v. Ontario Secondary School Teachers' Federation, District 9, Educational Support Staff* [2007] O.L.A.A. No. 145, 89 C.L.A.S. 26 (Levinson); *Greater Essex County District School Board v. Ontario Secondary School Teachers' Federation, District 9* [2008] O.J. No. 2663, 238 O.A.C. 157 (OSCJ, Div. Ct); and *Greater Essex County District School Board v. OSSTF, District 9* [2009] O.J. 2537, 25 O.A.C. 98 (CA).

EMPLOYER POSITION

The Employer also made extensive submissions which are summarized below.

The Employer submitted that although there had been considerable litigation on this issue, there were no awards binding upon me.

The Employer submitted that the collective agreement was clear and unambiguous.

The Employer reviewed the wording of the collective agreement and noted that I had to find an entitlement to the benefit, not assume that a teacher was entitled to the benefit and then look to see whether that entitlement for the Christmas and March breaks had been removed by other language.

A teacher on pregnancy leave would not have earned any income if she had been working during the Christmas and March breaks. The Employer asked how it was possible to rationalize the payment of a benefit to someone who would not have performed any work and would not have been in receipt of a wage or salary if she had not been on a pregnancy leave.

The Employer said that the idea behind these provisions was to alleviate some of the economic impact of a pregnancy. Since teachers are paid over 194 teaching days, there is no economic impact outside the 194 days, that is no economic impact during Christmas and March breaks. As such, there is no reason for a benefit to be paid during the two breaks at issue here.

The parties had agreed in paragraph 16 of the Agreed Facts, above, that the Employer was "not specifically funded to pay any top-up benefits outside of the school year of 194 instructional days." They had also agreed that if the top-up payment is made for the Christmas and March breaks, the money will have to be taken from other "funding

envelopes". That provided additional context when interpreting this provision and suggested that the parties did not intend to pay this top-up benefit during the Christmas and March breaks.

The Employer reviewed several authorities, below, and urged me to interpret this agreement in context. In particular the Employer suggested that I follow the *Cardinal Transportation* award, below, and conclude that the benefit must be expressed in clear language.

In the alternative, the Employer said that if the collective agreement was ambiguous I had been provided with extrinsic evidence which I could use as an aid to interpretation. Moreover, the Employer said that I could use that extrinsic evidence to find that there was an ambiguity. The Employer said the extrinsic evidence was not intended to show a meeting of the minds of these parties, but rather that the original drafters of this language had an agreement as to the meaning of this language. That should assist me in finding an ambiguity in the language of this collective agreement.

The language agreed upon by this Employer and the OSSTF in the secondary schools collective agreement was identical to that in dispute here. Those two parties had a shared understanding as to the meaning of these identical provisions.

The Employer reviewed the *Leitch* and *Northern Electric* decisions, below, on the use of extrinsic evidence. The Employer submitted that if I found the language of this collective agreement to be ambiguous, I could rely upon the extrinsic evidence of the OSSTF-Employer understanding to resolve that ambiguity.

The Employer then discussed a number of the authorities relied upon by the Union. In

particular, the Employer reviewed and criticized the Dissanayake award between these two parties, above, and suggested that I should not follow the reasoning in it. Although that award was not set aside on judicial review, the Employer noted that following the *Dunsmuir* decision, below, the standard of review had changed and the Employer suggested that under the new test the result of the Dissanayake judicial review would have been different.

The Employer submitted that the Union position was simply a "cash grab" and asked me to reject the Union position.

The Employer requested that the grievance be dismissed.

The Employer relied upon the following: Education Act, R.R.O. 1990, Regulation 304; *Canadian Salt Co. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 240* [1980] O.J. No. 24 (Div.Ct.); *Molson Ontario Breweries Ltd. v. Brewery, Malt and Soft Drink Workers Union, Local 304* [1990] O.J. No. 1004, 40 O.A.C. 70 (Div.Ct.); *Re Cardinal Transportation B.C. Inc. and Canadian Union of Public Employees, Local 561* (1997), 62 L.A.C. (4th) 230 (Devine); *Leitch Gold Mines Ltd. et al. v. Texas Gulf Sulphur Co. (Incorporated) et al.* [1969] 1 O.R. 469 (H.C.J.); *Re Northern Electric Co. Ltd. and United Automobile Workers, Local 1535* (1972), 1 L.A.C. (2d) 310 (Weatherill); and *Dunsmuir v. New Brunswick* [2008] S.C.J. No. 9, 2008 SCC 9.

CONCLUSIONS

Under this collective agreement pregnancy leave is generally an unpaid leave. However, most teachers on a pregnancy leave are entitled to collect Employment Insurance (EI, previously called Unemployment Insurance) benefits from the federal government.

Since there is a two week waiting period before a teacher can collect Employment Insurance, these parties had agreed that the Employer would pay a teacher on a pregnancy leave a sum equal to 95% of the teacher's salary during the two week waiting period, unless the two week waiting period falls within the Christmas or March breaks in which case no money is paid (see article 10.01 (g) - the original provision). This provision was in effect before 2003 and remains part of the collective agreement.

In 2003 the parties added an additional six weeks of "top-up", the difference between the EI and the teacher's regular wage (see article 10.01 (n)), and they specified that all eight weeks of benefits (the original two week waiting period benefit and the additional six weeks of top-up) were to be paid in the eight weeks immediately following the birth of the child. The question of interpretation in this case is this:

> Is a teacher on a pregnancy leave entitled to the six weeks of top-up pay during any week that falls during the Christmas and March breaks?

As usual, in interpreting a collective agreement I begin with the words of that agreement.

Any provision in a collective agreement must be interpreted within the context of that collective agreement. It is often said that the collective agreement should be interpreted as a whole, which in this instance means that I should interpret the pregnancy leave provisions and the entire supplementary employment insurance benefit plan, not simply parts of it. In doing so, I endeavour to give meaning to all the provisions. Accepting that these parties had different interpretations of the language, I nevertheless begin with the premise that they intended the normal meaning of the words upon which they agreed.

Before 2003, the original two week waiting period benefit covered "the two week mandatory waiting period" before the federal employment insurance benefits began and

this benefit was payable for any of the pregnancy, adoption and parental leaves provided in article 10.01. Clearly the parties considered the issue of payment during the Christmas and March breaks as they specifically provided that they would not require payment for any part of the two week waiting period which occurred during either the Christmas or March breaks (see the express language at the end of article 10.01 (g)).

When the parties later agreed to the additional provision which provides new supplementary employment insurance benefits, they specified that those new benefits were available only to teachers taking a pregnancy leave (see article 10.01 (n)). There were no new benefits included for teachers taking an adoption leave or a parental leave.

What new benefits were provided?

For pregnancy leaves only, the Employer is to "top-up" the Employment Insurance benefit for a maximum of eight weeks immediately following the birth of a child (see article 10.01 (n)(i)). But the eight weeks includes "the two (2) week waiting period" benefit (see article 10.01 (n)(v)), referring back to the original two week waiting period benefit which had been, and still is, in place (see article 10.01 (g)). This reference in the additional provision to the original two week waiting period benefit strongly supports the need to interpret these two provisions of the collective agreement - that is, article 10.01 (g) and article 10.01 (n) - together.

Moreover, the eight week period of benefits after the birth of the child is not in addition to the seventeen week pregnancy leave maximum or the thirty-five week parental leave maximum (see article 10.01 (n)(v)). In other words, for a teacher taking a pregnancy leave, the parties added six additional weeks of top-up payment to the benefit already required to be paid for the two week waiting period for Employment Insurance, but they did not change the duration of the leave itself.

Further clarification about how a teacher demonstrates her entitlement to this top-up money is provided. In addition to being on a pregnancy leave, the teacher must provide proof of receipt of pay from EI and must provide a medical certificate identifying the expected date of birth of the child (see article 10.01 (n)(iii)).

To this point there is no disagreement. The crux of the parties' disagreement over whether the six weeks top-up benefit is paid for a pregnancy leave occurring during the Christmas and March breaks arises from article 10.01 (n)(ii), as follows:

> (ii) The top-up pay will be 95% of the regular wage for the two week waiting period and the difference between what an employee receives from the Employment Insurance (EI) and her regular wage for the remaining six (6) weeks. (my emphasis)

Both parties submitted that the words "regular wage" must have the same meaning in both places that it is used in the newer provision (article 10.01 (n)(ii)). I agree.

The original benefit in article 10.01 (g) follows. Note that the original two week waiting period benefit is expressly not paid during Christmas and March breaks.

> (g) The Board shall provide for teachers on pregnancy/adoption/parental leave a supplementary employment insurance benefits plan approved by the Canada Employment and Immigration Commission. For each week of the two week mandatory waiting period, the plan will pay a sum equal to 95% of the teacher's salary. Any waiting period that falls within the Christmas holiday, March break, or summer holiday will not be paid. (my emphasis)

In the original provision, (g), the two week waiting period benefit is tied to "teacher's salary" and in the additional provision, (n (ii)), the two week waiting period benefit is tied to "regular wage". When parties to a collective agreement intend the same thing in two or more places in a collective agreement they usually use the same words and when the

parties intend different things they usually use different words. Having used different words in these two provisions the normal assumption is the parties intended to refer to different concepts.

Are “teacher’s salary” and “regular wage” different concepts?

There was no suggestion from either party that the additional provision, by using “regular wage”, was designed to change in any way the amount of the benefit which had for some time been provided by the original provision which uses “teacher’s salary”. I see no reason why the parties would have intended to provide two differing and conflicting provisions as to the dollar amount of the two week waiting period benefit. Instead, I conclude that “95% of the teacher’s salary” and “95% of the regular wage” have the same meaning, and it follows that “regular wage” means the same thing as “teacher’s salary”.

Having determined that “teacher’s salary” in the original provision and “regular wage” in the two places that term is used in the additional provision all have the same meaning, it is now necessary to determine what that meaning is. If the meaning can be determined in one place, then the meaning will be known in all three places.

The use of “the regular wage for the remaining six weeks” in the newer provision could mean the amount of money that the teacher on leave would have earned for those weeks if that teacher had been at work. Since teachers do not work during those breaks and earn no income during those breaks, is the amount of the salary and wage zero ($0) for those two breaks? The Employer urged this conclusion.

I find it helpful to focus on the two week waiting period. There is language in both article 10.01 (g) and article 10.01 (n)(ii) addressing the two week waiting period.

In my view, the parties did not intend that "teacher's salary" in the original provision would mean the income that the teacher would have earned had she been at work rather than on a pregnancy leave for the two weeks of the waiting period. If the parties had meant the amount earned if the teacher had been at work, there would have been no need to have included the additional sentence in the original provision specifying that the waiting period benefit "will not be paid" for any waiting period that falls during the Christmas or March breaks (see article 10.01(g)). If "the teacher's salary" for either of the two weeks of the waiting period would be zero ($0), then 95% of that is also zero ($0), so that nothing would have to be paid in any event, and the final sentence would add nothing to the meaning of the provision.

I believe the parties intended the last sentence of article 10.01 (g) to mean something. I believe the parties intended that the final sentence would add to the provision and change the result which would have occurred had that sentence not been included. In other words, the fact that the parties added this specific exclusion of payment for any of the two week waiting period which falls during these two breaks indicates to me that they understood that a teacher's salary during those two breaks is not a reference to the amount of income that the teacher would have earned had she been at work. I find that a teacher's salary during those two breaks is not zero ($0).

The parties' difference has to do with the new six week top-up benefit, not the two week waiting period benefit. Having concluded that teacher's salary and regular wage have the same meaning, and having concluded that a teacher's salary is not a reference to the amount of income that the teacher would have earned had she been at work, that is a teacher's salary is not zero ($0) during these two breaks, I also conclude that the regular wage for the six weeks is not a reference to the amount of income that the teacher would

have earned had she been at work, that is the regular wage is not zero ($0). Since the EI is to be "topped-up" to the regular wage, I find that the regular wage is an amount greater than the amount of the EI.

I conclude from an examination of the wording of this collective agreement that a teacher on a pregnancy leave is entitled to a top-up in the amount of the difference between the EI and the regular wage when any of the six weeks fall during the Christmas or March breaks. However, as the parties agreed that I would not at this stage of the arbitration do any salary, wage, or top-up calculations, I make no finding as to what the precise amount of a teacher's salary or regular wage is, or how it is calculated.

The above conclusion is consistent with the fact that the parties included language in article 10.01 (g) specifying that the waiting period benefit would not be paid for Christmas and March breaks, but included no similar language in article 10.01 (n)(ii) regarding non-payment of the other top-up benefit during those same breaks.

Before closing I will add two points.

First, the Union submitted that I should apply the reasoning in several other arbitration awards on this topic. While I have read all those awards, in interpreting a collective agreement I focus on the particular language of the collective agreement in dispute. Having done so in this instance, I found the meaning of this language to be clear. There is no need to refer to those awards which interpret similar language between other parties.

Secondly, the Employer urged me to use the extrinsic evidence, that is the evidence that the Ontario Secondary School Teachers' Federation and the Employer had a shared understanding as to the meaning of the identical provision in the secondary collective

agreement, to either find an ambiguity in this language or to resolve an ambiguity in this language.

Having examined the language of this collective agreement carefully, I did not find an obvious ambiguity. Moreover, knowing that this Employer and the OSSTF have a shared view as to the meaning of this language, a view which is different from my interpretation, did not persuade me that this language contains a hidden ambiguity.

Summary

In summary, I conclude that the six weeks of top-up pay is payable when the six week period includes the Christmas and March breaks. Pending the resolution of the issue of the period of time covered by this grievance, I declare that the Employer is required to pay the top-up beginning with the 2008 March break, the first such break following this January 2008 grievance. Having been requested not to address the calculation of the amount of the top-up, I make no order now for payment.

I will remain seised to deal with the outstanding issues raised by the grievance and any issues which may arise in the implementation of this award.

Dated at London, Ontario this 4th day of February, 2010.

Howard Snow, Arbitrator