

School Board Update

Arbitrator Rules That Virtual Class Prep Time Arrangement Violates Collective Agreement

Date: March 22, 2021

On March 5, 2021, Arbitrator Susan Stewart [released an award](#) (Award) between the Hamilton Wentworth District School Board (Board) and ETFO dealing with preparation time (prep time) for remote learning elementary teachers in its virtual classes during the current 2020-21 school year.

The grievance alleged that the Board had failed to provide prep time in accordance with the collective agreement, specifically the failure to hire teachers to provide prep time coverage for homeroom teachers in virtual classrooms in Kindergarten and Grades 1-3. ETFO alleged that although undisturbed time was being granted to such homeroom teachers, no replacement teacher was assigned to plan, instruct, assess or report on curriculum expectations during part or all of the homeroom teacher's absence. ETFO also alleged that the Board's failure to provide an appropriate prep time model for virtual classrooms was resulting in increased workloads for homeroom teachers because they were responsible for more planning, more assessment and more reporting than was being assigned to homeroom teachers in bricks and mortar schools.

For Kindergarten to Grade 3 remote learning homeroom teachers, the Board had allocated 50 minutes of prep time at the end of each day. In Kindergarten classes, the homeroom teacher would be "absent" for this last portion of the day, but the regularly assigned DECE would remain on line and would continue to fulfill their responsibilities in relation to the class. For homeroom teachers in Grades 1-3, there was simply no replacement during these last 50 minutes. In both cases, students were expected to engage in independent study. According to the Award, the homeroom teachers were assigned no responsibility for the particular structure or content of that independent study.

Arbitrator Stewart allowed the grievance, agreeing with ETFO that the Board had violated the collective agreement language that required it to ensure that each teacher's prep time would be "scheduled within the instructional day." She found that because no teacher had been assigned responsibility for instruction to the homeroom teacher's students during the last 50 minutes of the day, that time could not be considered "instructional" or part of the "instructional day." Consequently, although the homeroom teachers in question were being granted undisturbed time away from teaching, that time did not satisfy the contractual requirement of being "scheduled within the instructional day." The issue of remedy was remitted to the parties for further discussion.

It must be emphasized that this Award does not concern centrally negotiated language, and is therefore only binding on the Hamilton-Wentworth District School Board. Arbitrator Stewart's

decision was heavily dependent on the language of this particular collective agreement and the detailed evidence before her regarding how the Board structured its virtual classes, how it directed teachers and students, and its communications to teachers, students, parents and ETFO. Different language and different facts may, of course, arise across the province, and different arbitrators may see things differently, particularly as this is the first such award of its kind. Moreover, it remains unclear what remedy may result from the Arbitrator's finding.

We at Hicks Morley are studying this decision very carefully in the context of a variety of similar situations. If your Board is facing a similar grievance, you are most welcome to contact [your regular Hicks Morley lawyer](#) or any member of our [School Board Practice Group](#) to discuss it.