KELLY REED

ENGLISH TEACHER

BCEA PRESIDENT

BOONE COUNTY

BOARD OF EDUCATION

MATTHEW L. TURNER

SUPERINTENTDENT

 **DECISION OF THE ARBITRATION**

 **AS TO A GRIEVEANCE FILED**

This matter came before the arbitrator for a hearing on June 29,2022. Present were Olivia F. Amlung, Attorney for the Boone County School Board (the Board), Scott Lecates attorney for the Boone County

Education Association (The Association), Kim Delaney, a member of the association, Kelly Reed, President of the Association and Matthew L. Turner, Boone County Schools Superintendent. The hearing was not recorded.

 Prior to the start of the hearing, Ms Amlung requested that there be no testimony taken as the issue before the Arbitrator was one based solely on legal issues and therefore testimony was not necessary. Mr

Lecates objected and stated that he had 2 witnesses he wished to have testify. The arbitrator determined that testimony would be allowed so that he would have a better understanding of what had occurred leading to the filing of the grievance.

 Both parties made opening remarks. Mr. Lecates for the association referenced the Agreed Statement of Hearing Issues submitted to the

Arbitrator, and stated the Board violated the contractual agreement between BCEA and the Board. He stated the Board specifically violated Article III (Employment Conditions), section 3.1 (Work Environment) and Section 3.2 (School Calendar). He stated that members of the association had suffered a loss due to the Contractual violation and the association was entitled to relief. Mr. Lecates stated that the Board clearly violated the contract when it made a change in the school calendar (February 14,2022) and did not then renegotiate the school

calendar but arbitrarily added the March 18,2022 date as the make-up day. He added that the case of City of Louisa v Newland 705SW2d 916(Ky1986) cited by the Superintendent in his Grievance Decision of

March 15,2022 actually supported the Association’s position. Finally, he stated that the outcome of this grievance has future consequences as to how the Board and the Association need to proceed when other

emergencies occur.

 Ms. Amlung on behalf of the Board agreed this case is about more than this one day. She contended that the Board had authority under the Contract and Kentucky Revised Statues (KRS) to close on February 11,2022 due to an emergency and then change March 18,2022 from a flex day to a make-up school day. She stated that the law governs the outcome of this grievance not the facts. She referenced KRS 158.070 as giving the Board the authority to call emergencies and then take necessary steps to remedy the emergency. She added that the school year contract requires 187 days and if school is closed due to an emergency, that day must be made-up. By law the Board can not permit less school days or compensate certain employees more or give a specific group of employees a benefit (such as additional personal day, reinstate sick day, etc) without giving the same benefit to all covered employees. To do so would be in violation of the contract, KRS and would be financially devastating to the school district. Finally, she stated that to renegotiate the school calendar following an emergency during the school year is impractical if not impossible.

 The arbitrator heard testimony from three witnesses. The first was Ms. Kim Delaney, a member of the Association. She testified to the fact

that she had made plans to use the March 18,2022 flex day to travel

to Florida to pick up and bring her elderly mother back home. Due to the change in the calendar made by the Board she had to alter her plans. Although she worked on March 18, the delay in bringing her mother home as planned resulted in her mother suffering medical and

emotional injury. She states that many teachers made plans based upon the school calendar and any change is difficult for employees and parents. She stated she was surprised other options had not been pursued. She acknowledged that the teachers must work 187 days per school year.

 The next witness was Mr. Kelly Read. Mr. Read is the President of the Association and the individual who filed the grievance. Prior to the Board meeting, Superintendent Turner mentioned to him that there was concern as to the number of school employees (specifically bus drivers and teachers) who had already requested the day following the

Superbowl (February 14,2022) off. He stated he was in attendance at the Board meeting when the change was made, but did not address the Board as to the issue. He discussed how the Board and Association has dealt with snow days in the past by using NCI days. He indicated there was another Board Meeting prior to March 18,2022, but he did not attend that meeting. He stated that based upon the contract, specifically

Sections 3.1 and 3.2, any change in the school calendar must be renegotiated between the Board and the Association. When questioned by Ms. Amlung, he stated that there are at least 11 members on the school calendar committee and he has only one vote.

 Mr. Matthew L. Turner, Superintendent of Boone County School was the third witness. He stated he is member of the school calendar committee. The committee meets to discuss the school calendar and when it reaches an agreement the Association reviews it, then it is submitted to the Board for approval. He explained why he was concerned about staffing shortages on the Monday following the Superbowl. He stated his concern was there would not be enough bus drivers, teachers, and other staff members available that day due to the high request to be off that day. He indicated that the school year has been a difficult year in regards to staffing issues and this particular day had him concerned. He brought this concern to the Board and the Board added the calendar change to its February 10,2022 meeting agenda. As such the Board passed a Motion to make an

adjustment to the school calendar to change March 18,2022 Flex-Day to Monday February 14,2022. The meeting states that the change is due to the Superbowl. He did not recall any discussion at the Board Meeting as to the change or its impact on the students, parents, staff or teachers. He admitted there was no discussion as to whether this change had to be renegotiated between the Board and the Association.

 Following the testimony of the three witnesses, the Board and Association made concluding comments. The Association concluded by stating that the Calendar Committee sets the school

calendar. The contract between the Association and the Board was negotiated and agreed to and must be enforced. Based upon the contract Section 3.1 and 3.2, the Board should have discussed any Emergency Situations and calendar changes with the Association. The Board did neither and thus violated the plain language of the contract and the Association members are entitled to restitution based upon the Board’s noncompliance with the contract.

 The Board concluded by stating that the February 14,2022 closing is not the issue. The issue is the March 18,2022 date. The Board had the authority to declare an emergency based upon understaffing concerns. The question is whether or not the school calendar needed to be renegotiated. The Board stated it was not sure what renegotiation meant as it was not addressed in the contract and that it would not be practical to renegotiate when an emergency exists. Finally, The Board stated it cannot reimburse the Association as requested as it would be illegal to do so.

The hearing was concluded following these closing comments.

 Based upon the agreed material presented to the arbitrator,the testimony of the three witnesses and the comments and arguments made by the Association and the Board, the undersigned arbitrator makes the following findings. The Board and the Association entered into a contractual agreement which was valid and in force at the time the grievance was filed. The Calendar Committee submitted a 2021- 2022 a school calendar which was approved by the Board. That the approved calendar listed March 18,2022 as a flex day. That at the February 10,2022

regular meeting of the Boone County Board of Education, the Board approved a Motion to make an adjustment to the school

Calendar. That pursuant to the Motion, the Board approved the school calendar to change the March 18,2022 flex day to February 14,2022. That Kelly Read an English teacher, and Association President filed a grievance on or about March 4, 2022 alleging the Board’s action was in violation of the contract Article 3.1. Article 3.1 (A). states in the last sentence that “any calendar changes shall be renegotiated between the Board and the Association “. That there was no discussion either before or after the Board meeting between the Board and the Association as to changing the flex day from March 18,2022 to February 14,2022 or the impact and consequences such a change would have on

the Association members, the school staff, the students or the students’ parents.

 Having made these findings, the arbitrator believes the issue that needs to be addressed to reach a final decision in this matter is whether the contract is enforceable. The issue was presented by the grievance. At first blush it would appear to be a clear violation of the contract. Article 3.1 clearly states “any calendar change shall be renegotiated between the Board and the Association.” However, a closer look raises concerns as to the actual meaning of this sentence. There is nothing further in the contract as to how, when, where etc. such a renegotiation would take place. The actual process of renegotiating could present numerous additional problems. Based upon the testimony as to the process of approving the school calendar, this process could take substantial time which would cause significant confusion and delay to the school calendar and all parties involved. It should also be noted that the Board must approve the Calendar so it seems the result would/ could be the same without the additional delay and confusion.

 It is the arbitrator’s determination that the sentence in Article

3.1 stated that any calendar change shall be renegotiated between the Board and the Association is unenforceable due to it being vague and not clear as to the process to be used and due to the detrimental affect it would have on a timely resolution which would cause unnecessary chaos to the Board , the Association, the school staff, the students and the parents.

 As a final note, the arbitrator would also state that even if Article 3.1 is enforceable, there is no remedy. When questioned as to what specifically the Association was requesting the response was restitution. However, the Board made it clear that legally the Board could not provide the relief requested. The arbitrator was not given any remedy and has not found any that could legally be given the Association.

 If there is anything positive that could come from the grievance

it is clear that the Board and the Association work together for the benefit of the school district and the students. It was obvious

the Association does not file frivolous grievances, but when it must it seeks to find common ground for the benefit of its Association and the school district. Now that this issue has been raised, it can be addressed at further contract negotiations between the Board and the Association and hopefully the parties will reach an agreement as to how this issue can be more adequately address in the future.

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 DANIEL T, GUIDUGLI

 ARBITRATOR