**IN THE MATTER OF:** ) **AN ARBITRATION BETWEEN:**

**THE KELSEY SCHOOL DIVISION NO. 45**

(hereinafter called the *"Division"*)

- and -

**THE KELSEY TEACHERS' ASSOCIATION NO. 45 OF THE MANITOBA TEACHERS' SOCIETY**

(hereinafter called the *"Association"*)

## ARBITRATION AWARD

The arbitration hearing took place in Winnipeg on October 6, 1992. Mr. G. D. Parkinson was the nominee on behalf of the Division and Mr. A. R. McGregor, Q.C. was the nominee on behalf of the Association. Jack M. Chapman, Q.C. was appointed to act as Chairperson.

Mr. R. Simpson appeared as counsel on behalf of the Division and Mr. M. Myers, Q.C. appeared on behalf of the Association.

Counsel confirmed that the Arbitration Board was properly constituted and had jurisdiction to deal with the matter in issue. There were no preliminary objections and there were no other individuals who required notice of the hearing.

There was no viva voce evidence but there were certain Exhibits filed. We will note the more salient points.

Counsel agreed that if the Board determined that compensation was payable to any of the Grievors, the amount of such compensation would be determined by the parties. If there was disagreement the matter would be referred back to the Board who retained jurisdiction for that purpose.

The Association filed a grievance (Exhibit 2) on January 27, 1992. The relevant portions of same read as follows:

"ASSOCIATION GRIEVANCE

THE KELSEY TEACHERS' ASSOCIATION #45 (hereinafter referred to as "the Association") submits that there is a dispute between itself and the Kelsey School Division #45 (hereinafter referred to as "the Board") in respect to the interpretation and/or application and/or violation of Article 15 of the Collective Agreement.

The Association submits that the Board has misinterpreted and/or misapplied and/or violated Article 15 of the Collective Agreement by improperly laying off from employment, the following teachers:

Alison Delf
Diane Knoll
Jerry Kozlowski

THE ASSOCIATION REQUESTS:

(a) that the Board admit that it erred in its interpretation and/or violation of Article 15; and

(b) that the Board comply with Article 15 of the Collective Agreement, rescind the above mentioned lay-offs and reinstate the above mentioned teachers in their positions without any loss of pay, loss of benefits, including seniority, from the date of lay-off until the date of reinstatement

SIGNED in the Town of The Pas, in the Province of Manitoba, this 27 day of January, 1992.

THE KELSEY TEACHERS' ASSOCIATION #45

"Marlene Wylychenko"
President"

Additionally, the three individuals referred to in the Association grievance each filed individual grievances which were attached to Exhibit 2. They were all in the same terms, except for the name of the particular Grievor, and read as follows:

"INDIVIDUAL GRIEVANCE

JERRY KOZLOWSKI submits that there is a dispute between himself and the Kelsey School Division #45 (hereinafter referred to as "the Board") in respect to the interpretation and/or application and/or violation of Article 15 of the Collective Agreement.

JERRY KOZLOWSKI submits that the Board has misinterpreted and/or misapplied and/or violated Article 15 of the Collective Agreement by improperly laying him off from employment, contrary to Article 15 of the Collective Agreement.

JERRY KOZLOWSKI REQUESTS:

(a) that the Board admit that it erred in its interpretation and/or violation of Article 15; and

(b) that the Board comply with Article 15 of the Collective Agreement, rescind the above mentioned lay-offs and reinstate him in his position without any loss of pay, loss of benefits, including seniority, from the date of lay-off until the date of reinstatement

SIGNED in the Town of The Pas, in the Province of Manitoba, this 27 day of January, 1992.

"Jerry Kozlowski"
JERRY KOZLOWSKI"

It was agreed that, where applicable, the evidence would apply mutatis mutandis to all of the grievances.

Mr. Simpson stipulated that the best opportunity for a teacher to find a position was in the spring or early summer of any school year and that most new teaching contracts start as of July 1 in any year with teaching duties to commence on or about September 1.

It was also agreed that Ms. Diane Knoll was recalled to her teaching duties as at December 31, 1991, and that Ms. Delf had taken a position in another division.

On November 28, 1991, Mr. Kozlowski, Ms. Delf and Ms. Knoll each received notice from the Division that their teaching duties would either be reduced or terminated. Mr. Kozlowski was laid off from his position as a half-time Grade 6 Classroom Teacher but would retain his half-time position as a Physical Education Teacher. Ms. Delf received notice that as of January 31, 1992 she would only be retained on a half-time basis and that half of her position as Senior High Nutrition Program Teacher would be deleted. Ms. Knoll received notice that her services would no longer be required after December 31, 1991.

However, on December 16, 1991, Ms. Knoll received a full-time term position for the period January 6, 1992 to March 27, 1992. This was further amended by letter dated December 20, 1991 whereby the letter of December 16, 1991 was cancelled and Ms. Knoll was confirmed in her position as a Grade 5 Teacher for the period January 6, 1992 to June 30, 1992.

Although we have recited some of the particulars with respect to the individual Grievors, it is clear that the significant issue is whether the Division violated Article 15 of the Collective Agreement. Article 15 is a comprehensive clause dealing with procedures where teachers are to be laid off. The most relevant portions of that Article, for the purposes of this arbitration, are as follows:

> "(e) The Board shall, as soon as possible after the commencement of the spring and fall terms, prepare a seniority list...
>
> (h) Notice of lay off and a copy of this clause shall be given to the teacher by certified mail no later than the first day of May of the school year. The teacher, within ten (10) calendar days of receiving notice of lay off, shall indicate, in writing, his/her wish to be placed on re-employment list. Notwithstanding anything else in this collective agreement, failure to respond within the time limit specified in this clause shall relieve onus on the division for that teacher's placement on the re-employment list....

(j) Teachers on the re-employment list shall have the right of recall for a period of one calendar year after September 30th following the date of lay off..." (Emphasis added).

Counsel agreed that the crux of the issue for this Board to determine was whether the Division could lay off teachers as of December 31 or January 31 or whether any lay off could only become effective as of June 30. There was no dispute that the Division, so long as it proceeded in accordance with the Collective Agreement, had the right to lay off teachers. The only issue was the effective date.

Mr. Myers submitted that the most critical part of Article 15 (for our purposes) was clause (h) (supra). He pointed out that each teacher was required to enter into a specified form of employment contract, usually called a Form 2 Contract legislated under section 92(1) of The Public Schools Act. He noted that Article 1 of that Contract provided for a yearly salary also made reference to Article 6 and subparagraphs (a) and (b) thereof, which read as follows:

"6. This agreement shall be deemed to continue in force, and to be renewed from year to year, with such variations as to the time of payment and the amount of salary as may be provided by the by-laws, resolutions, or schedules of the school board from time to time in force (of which variations the teacher must be notified forthwith, and concerning which he or she shall have the right of conference with the school board, provided that no variations of salary shall take place before October 1, unless notice be given the teacher on or before June 30 of the same year) unless and until terminated by one of the following methods:

(a) By mutual consent of the teacher and the school board.

(b) By written notice given at least one month prior to December 31 or June 30, terminating the contract on December 31 or June 30, as the case may be, but the party giving notice of termination shall, on request, give to the other party the reason or reasons for terminating this agreement."

Mr. Myers noted that certain provisions of The Public Schools Act were relevant to our considerations and, in particular, those sections which dealt with termination. In particular, he referred to Sections 101(5), 41 and 48 all of which were silent on lay off. It was especially significant that the Act was silent on lay off. In his view this meant that under common law any change to the contract would be considered as constructive dismissal. The parties to the agreement had negotiated certain provisions respecting lay off and, accordingly, the Division acted improperly in laying off at an effective date other than June 30. The only way the contract could be terminated for lay off was under the specific terms of the Collective Agreement, i.e. under Article 15. If the parties had not opted to prescribe a specific procedure as outlined in the Collective Agreement then they would have had considerably more latitude. However, the parties had clearly recognized and negotiated a method of dealing with over staffing.

Timing was particularly significant as it could operate as a permanent control of a teacher's employment. The Division acted reasonably in carrying out a student count in the spring in anticipation of the next school year commencing the following fall and by giving the notice early teachers could seek employment elsewhere or go on the re-employment list. Generally, the variation in the student count would be known in the spring.

He reviewed legislation in several other jurisdictions and stated that the Manitoba legislation was unique. If the parties had anticipated that lay offs could take place at any time other than in June they would have so specified in the Collective Agreement.

Mr. Simpson in response, not surprisingly, did not agree with Mr. Myers' comments. He noted that the position advanced by the Association did not recognize the reality of the changes which could occur during a school year. If, in

fact, school enrollment for some reason dropped very substantially at the commencement of the term, then to accept the position of the Association would mean that the redundant teachers had to kept on staff until June 30. That was not what was intended and would obviously lead to a situation where a teacher was required to be paid but on the other hand would have no duties. He noted that Mr. Myers submitted that if the parties contemplated that lay offs could be at other times they would have so specified. However, in his view if the parties had intended that lay offs could only take place at the end of June the Collective Agreement would have specified that.

He reviewed all of Article 15 in some detail. In essence, the Division had to make a determination as to its staffing requirements and he noted that certain other provisions of the agreement related specifically to "the date". Reference was also made in certain circumstances to "spring and fall". He stressed that there would be no point in preparing a student count in the fall if the only time a teacher could be laid off was at the end of June.

He reviewed the provisions of Article 15(h) and, in particular, noted that it only provided that notice be sent "no later" than the first day of May of the school year. It did not specify that any lay off was only to be effective as of June 30. He also noted the provisions of Article 15(g)(iv) which made reference simply to the "date of lay off". Article 15(j) contained similar wording, i.e. "the date of lay off". He also noted that in Article 15(e) reference was made to spring and fall terms. He stressed that there would be no value in preparing the seniority list referred to in subparagraph (e) if the only time a lay off could apply would be as of June 30.

The totality of the agreement contemplated the Division being able to lay off at any time provided that notice be given no later than the 1st day of May. The purpose of the May 1st date was basically to allow the teachers to have sufficient notice prior to the end of the school year so as to find employment for the coming year.

There was no restriction, however, as to the effective date. He noted that the Association agreed that there was no issue as to the bona fide of the actions of the Division or of the right to lay off. The Division had provided the notices in November and this was obviously earlier than May. There was no restriction on it doing so and, accordingly, there was no violation of the Collective Agreement. He noted that this Board was prohibited from amending, deleting or adding to the terms of the Collective Agreement. To specify a June 30th date would, in effect, be an addition to the Agreement.

Reference was made to a number of arbitral and judicial decisions and we have carefully considered all of them. We will only comment, briefly, on some.

Some of the cases cited were with respect to the proposition that there is an evidentiary onus on the party asserting a particular interpretation of the Collective Agreement. That particular principle is well known in arbitral jurisprudence and it is clear that the party asserting a violation of the Collective Agreement bears the onus to prove same.

Professor Gorsky, in Evidence and Procedure in Canadian Labour Arbitration (1981), on page 124-5 stated as follows:

> "When the grievance concerns the interpretation of the agreement, the grievor must show that his or her interpretation is more likely. If the two conflicting interpretations are equally plausible, that grievance must fail"

The reference to the quotation of Professor Gorsky was referred to in Re Consolidated Aviation Fueling & Services (Pacific) Ltd. and Teamsters Union, Local 213 30 L.A.C. (3d) 130. Similar comments are found in Re Canada Packers Inc. and United Food & Commercial Workers, Local 114P 18 L.A.C. (4th) 442 and Re Robson-Lang Leathers Ltd. and Canadian Food and Allied Workers, Local 250L 2 L.A.C. (2d) 400.

Reference was also made to a number of decisions that a Collective Agreement must be read as a whole. This principle is well known and we need not cite the jurisprudence.

Similarly, there is no question that any arbitration board must consider the "climate" in which contracts are negotiated. These comments were made by Arbitrator Weiler in Re British Columbia Housing Management Commission and Service Employees' International Union, Local 224 15 L.A.C. (2d) 121 and by Arbitrator McPhillips in Re British Columbia Rapid Transit Co. and Office & Technical Employees Union, Local 378 1 L.A.C. (4th) 328. Reference was also made to a decision of the Manitoba Court of Appeal in Re Kopchuk v. St. Boniface School Division No. 4 and The Court of Queen's Bench in Kowalchuk v. Rolling River School Division No. 39. It may suffice to say that in both Manitoba cases the Courts did not accept the interpretation of the Association limiting the Division's right to terminate employment in the event of declining enrollment. Possibly to address the wide power deemed in the hands of Divisions as a result of those cases, the parties entered into negotiating the lay off clause. A number of collective agreements have such clauses and Article 15 of the Agreement before us is a representative type of such clause. It has also been judicially determined that clauses dealing with lay offs are within the competence of the parties to negotiate and are not restricted by the terms of The Public Schools Act.

Reference was made to an arbitration between the Kingston Board of Education and the Federation of Women Teachers of Ontario (Unreported)(Carter) May 26th, 1980. The wording of the clause in that agreement was different than in the instant agreement. Article 13.04 of that agreement provided that:

> "in April, the staff will be advised by the Board of any impending redundancy for the next school year (emphasis added)"

The Agreement in the case before us simply provides that notice would be given "... no later than ...".

The wording is different, as is the statutory agreement form in Ontario. However, the reasoning of that arbitration board is worthy of consideration.

> "Our reading of article 13 of the collective agreement is that it does not conflict with section 6 of the prescribed contract. What article 13 does is to provide a procedure, preliminary to the normal termination procedures, to apply in the case of redundancies. The parties in their collective agreement have expressly agreed that this redundancy procedure shall be followed before teacher contracts are terminated. Once this procedure has been followed, however, it follows that terminations may be effected under section 6 of the contract - either by giving notice on May 31st for an August 31st termination or by giving notice on November 30th for a December 31st termination. In our view, there is no direct conflict between the collective agreement and the prescribed contract, either as a matter of form or substance.
>
> Our conclusion that the redundancy procedures apply to both August and December terminations requires some amplification. From the wording of article XIII it appears clear that these procedures must be initiated in April. By operation of article 13.04, the employer is required at that time to advise the teaching staff of any impending redundancies for the next school year. It must then under article 13.05 solicit a voluntary response, and after doing so, it may then release teachers - probationary teachers first and then in inverse order of seniority. The actual release of teachers, however, is not tied to a particular date and may take place at either the end of August or the end of December, depending on when notice is given under section 6 of the prescribed contract. It is possible, therefore, for the employer to terminate teachers in November by reason of redundancy, but only if the procedures governing redundancy have been initiated in the preceding April."
>
> (Emphasis added)

We parenthetically note that the arbitration board, in that division, recognized the significance of the collective agreement. In the last sentence quoted above it confirmed that the procedures had to be initiated in the preceding April as

specified in the Collective Agreement. There is no such restriction in the Agreement before us.

Mr. Myers, in response, noted that there was a reference to lay offs in The Public Schools Act and referred to Section 136(2). He did not dispute that the Employer had the right to lay off redundant teachers but stated that such action must be done within the provisions of the Collective Agreement and that the reference to May 1 must have some relevance. He referred to a number of the cases cited and distinguished them. He stressed that the Division had not complied with Article 15.

We have only briefly referred to the very comprehensive arguments made by both counsel. As stated earlier, it has been well established that school authorities and teachers' associations are empowered to enter into arrangements relating to lay offs. It has been judicially determined that without such specific restrictions the division authorities would have wide powers to lay off. Accordingly, the parties negotiated the restrictions.

It is a canon of interpretation that the words in the Collective Agreement be given their plain and simple meaning. The parties in the instant case have negotiated the entire Collective Agreement which includes Article 15(h). The only restriction in that particular article is that the notice be given no later than the 1st day of May of a school year. We can find nothing which prohibits earlier notice being given and there is no specific date on which lay offs are to become effective. We do not find any conflict between the provisions of Article 15 and the statutory form of contract. Section 6(b) of the statutory form provides that the termination dates, where applicable, are to be December 31 or June 30, as the case may be. We note the decision of Arbitrator Carter in the Kingston case upholding the provisions of that agreement which required notice being given only in the month of April. No such

restriction appears in the Collective Agreement before us, other than the date by which notice must be given.

We do not have the authority to amend or vary the Collective Agreement. To accede to the request of the Association would mean that we would have to deem that the Collective Agreement provided that lay offs could only take place as of June 30 in any particular school year. We find no such provision to be in effect under the Collective Agreement, The Public Schools Act or the statutory contract. The grievances are accordingly disallowed.

We wish to thank Mr. Myers and Mr. Simpson who, as usual, presented full and comprehensive arguments which were of considerable assistance to us.

In accordance with the terms of the Collective Agreement and the legislation, each of the parties will be responsible for the costs of their nominee and the parties will jointly share the costs of the Chairperson.

DATED at Winnipeg, Manitoba this 7th day of January, 1993.

JACK M. CHAPMAN, Q.C.

I do/~~do not~~ concur in the above Award and ~~am~~/am not attaching my reasons.

DATED at Winnipeg, Manitoba this 11 day of January, 1993.

Mr. G. D. Parkinson
Nominee of the Division

I do not fully concur in the above Award and am attaching my reasons

DATED at Winnipeg, Manitoba, this 15th day of January, A.D. 1993

Mr. A.R. McGregor, Q.C.
Nominee of the Association

COMMENTS OF A.R. McGregor, Q.C.

I have read the Award of the Chairperson and have considered the contents of same. I feel compelled to add certain remarks basically because of knowledge possessed by myself due to my involvement in numerous interest arbitrations involving teachers in Manitoba. Specifically, I have had involvement in various Divisions where the issues of lay-offs arose. Arguments were presented by both the teachers and the Divisions involved and ultimately a lay-off clause would be developed.

The Chairman was involved in the development of various lay-off clauses a decade or more ago. Examples of his Awards implementing lay-off clauses were presented to us through the Swan Valley interest arbitration award of 1980 and the Saint Boniface interest arbitration award of 1980. The requirement of lay-off clauses was recognized and developed in no small measure by the Chairperson. I have noted that the interest arbitration awards of the Chairperson specifically recognized the inherent rights of the school board while at the same time acknowledging the seniority of the teachers. That seemed to be the foundation for the development of the articles dealing with lay-offs.

Specifically in this matter we have already addressed the existence of a lay-off clause in Article 15 of the Collective Agreement between the Kelsey School Division No. 45 and the Kelsey Teachers' Association No. 45. I do not know the genesis of such a clause but my previous involvement in interest arbitrations compels me to deal with matters that I brought forward during meetings of the Board of Arbitration in this matter. The bulk of this information, on review of my notes, might well have been presented to this Board by the counsel for the Teachers' Association. In simple terms interest arbitrations dealt specifically with the issue of lay-offs and what ought to be contained in a particular lay-off clause. Generally the situation of lay-offs and/or terminations has taken place at what is generally recognized as the end of the school year, specifically, June 30th in a given calendar year. The Manitoba Teachers' Society has consistently, on behalf of its member associations, presented a position whereby they sought the earliest possible date for notice to be given to the employed teachers. This was done on the basis that the earlier the date

involved the greater chance the teacher had to obtain other employment in the teaching field. As a general rule of thumb, teachers who were laid off or terminated, had to, if they were going to remain in the teaching field, obtain employment with another Division to enable them to commence employment with the start of the school year in September of any given year. At the same time it was made clear that the Divisions traditionally "opened up" for applications for employment after determining their requirements for the coming school year and this was traditionally done in the last couple of months of a given school year - just by way of example the months of May and June. Obviously it became necessary for an affected teacher to get the earliest possible date of notice of lay-off so that they could properly address their employment requirements for the future.

I am aware, as are the other members of this Board, that in various interest arbitrations the issue of moving the date of notice of lay-off to an earlier date was dealt with. The parties involved on behalf of the respective Associations and Divisions are very sophisticated in the collective bargaining process. Everyone understood seemingly that in simple terms the earlier the date of notice of lay-off the greater length of time and chance for the affected teacher to obtain new employment. Significantly the parties affected were dealing with the traditional lay-offs to take place at the end of a school year. That is, of course, not what has taken place in this particular arbitration. The significance of the arbitration heard by us from an employment status point of view is, in simple terms, the fact that matters involving the enrolment of pupils and the requirement of teachers has changed so that the traditional scenario of lay-offs at the end of the school year while still the general rule, is not now the only time when lay-offs might be effected.

In general terms then Divisions and Associations entered into agreements expecting lay-offs to take place effective the end of a given school year. That is the writer's experience but I am not in a position to state unequivocally that that was the case in regard to the situation in Kelsey. I suspect that I am correct but there is no way of confirming same at this time. As is obviously apparent knowledgeable parties entered into an agreement which lacked an obvious requirement - the clear statement that in addition

to a notice date an effective date or time for the projected lay-off was required. The concept of the jurisdiction of an arbitration board such as this then comes into play. Can we, as an arbitration board, infer that an effective date of any lay-off under Article 15 of this Collective Agreement would be June 30th?

**What was made abundantly clear to this Arbitrator during the course of the hearing was the fact that the sole issue was whether the effective date of the lay-off of a teacher can pre-date June 30th, 1992? The answer given on behalf of the Division is that the effective date can be any time while in contradiction the position of the Association is that notice given prior to May 1st, 1992 must be addressed to the effective date of June 30th, 1992.**

Arguments were addressed by both counsel for the Association and the Division on various matters. Generally The Public Schools Act of this province seems to be silent on the question of lay-offs and argument is mounted that a lay-off at common law amounts to a termination of employment under the Form 2 contract of employment which is entered into by each of the affected teachers. One has to look at the intent of Article 15 while accepting the understated proposition that there is no right of lay-off except as under the contract of employment. It is clear to the writer that Article 15 of the Collective Agreement becomes ineffective in reality if there exists no stated effective date of lay-off or term during which such a notice of lay-off could become effective.

It is not my intention to review each and every aspect of this case as the Chairperson has obviously covered same. Article 15 of the Collective Agreement provides simply a effective date of notice of lay-off being May 1st. In my mind obviously the lay-off provisions to be meaningful must have anticipated the addition of an effective date of such lay-offs otherwise one enters into the ludicrous situation whereby if the school year ends on June 30th every date between then and May 1st in the next year is a date before May 1st and sets out a 10 month period during which notice of lay-off could be given. Clues as to the intention of the parties are to be found in Article 15. For example, under

Article 15(e) the Board shall "... as soon as possible after the commencement of the spring and fall terms, prepare a seniority list ..." Subparagraph (h) is the effective section and it reads as follows:

> "Notice of lay-off and a copy of this clause shall be given to the teacher by certified mail no later than the first day of March of the school year. The teacher, within ten (10) calendar days of receiving notice of lay-off, shall indicate, in writing, his/her wish to be placed on the re-employment list. Notwithstanding anything else in this collective agreement, failure to respond within the time limit specified in this clause shall relieve the onus on the division for that teacher's placement on the re-employment list."

In this particular case the Division passed a motion at a board meeting on November 25, 1991, to reduce staff. Lay-off notices went forward in regard to Mr. Kozlowski on November 28, 1991, with the effective date of lay-off specified as being December 31, 1991. With regard to Ms. Alison Delf the date of the notice was November 28, 1991, with the effective date being January 31, 1992. The third teacher Diane Knoll had a lay-off notice dated November 28, 1991, effective December 31, 1991.

Some argument evolved around the Form 2 contract entered into between the Division and each and every teacher. That contract is a contract which commences on a specific date and runs on a year-to-year basis. It can, however, be terminated by giving written notice "at least one month prior to December 31 or June 30, terminating the contract on December 31 or June 30 as the case may be ..." That Form 2 contract deals only with terminations of employment status and not lay-offs which are dealt with in the Collective Agreement.

There is no doubt that the onus in a case such as this lies upon the Association. The remarks contained in Re United Steelworkers, Local 5046 & Construction Aggregates Corp. (1958) 9 L.A.C. 187 at p. 190:

> "It is elementary that all of the terms of the agreement must be read together and that any board of arbitration would be highly sceptical of an interpretation of one article which would nullify or render absurd the effect of another article."

We have here a situation that from a teacher's point of view leads to an absurdity.

Again, in Re Sealy (Western) Ltd. and Upholsterers International Union, Local 34 (1985) 20 L.A.C. (3d) 45 at p. 47 are the following words:

> "To resolve this issue recourse must be had to a number of sources. A decision-maker must read the entire document. It could well be that other provisions will indicate what the most desirable solution is. Lord Ellenborough has stated that 'It is a true rule of construction that the sense and meaning of the parties in any particular part of an instrument may be collected ex antecedentibus et consequentibus: every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that may be done': Burton v. Fitzgerald (1812), 15 East 530 at p. 541, 104 E.R. 944 (K.B.)"

One can review all of the law that was presented to this Board of Arbitration and while I am absolutely sure in my mind that an effective date should be included in the lay-off clause and was in all likelihood an unstated intention of the parties no such date exists. It leads to an absurdity which must be rectified by the parties but jurisdictionally does not allow me to do more than express my strong opinions. I have searched through the materials presented before us and can only conclude that the absurdity created in this situation can only be rectified properly by the parties agreeing to the specific June 30th date as being the operative stipulated lay-off date in the May to June period. The parties in similar situations have argued in the course of interest arbitrations directly only the issue of the date of notice of lay-off - they have "accepted" the effective date of the lay-off being the end of the school year or for practical purposes June 30th of each year. That gives the teacher involved a 2 month period during the school year to attempt to make alternate arrangements about employment. Determining enrolments seemingly could properly be

addressed by the Division over the whole year but solidifying the projected numbers of enrolees during the months of May and June of the school year. Both parties would have adequate protection in that regard. That is especially so with the existence of the added protection for Divisions under the Form 2 contract whereby they can give notice of termination one month prior to December 31st or June 30th in any year terminating the total contract of the teacher. One can only speculate that the wording of the Form 2 contract may well have led to the notice going forward on November 28th, 1991 so that there would be compliance with the Form 2 contract. The Division has its rights and protections and the individual teachers ought to have countervailing rights and protections. That can only come about if the aspect of lay-off under Article 15 of the Collective Agreement is properly completed by fixing June 30th as the operative date of lay-off. This case would lead most arbitrators to request that the Division rectify an unnecessary and harmful situation by "completing" Article 15 of the Collective Agreement.

I have taken this approach as it was apparent to my confreres on the Board that they did not have the power, jurisdiction or authority to specifically add on operative date to Article 15.

SIGNED at the City of Winnipeg, in the Province of Manitoba, this 15 dav of January, 1993

A.R. McGregor, Q.C.