

IN THE MATTER OF: AN INTEREST ARBITRATION

BETWEEN:

THE RIVER EAST TEACHERS' ASSOCIATION NO. 9

(hereinafter referred to as "the Teachers")

- and -

THE RIVER EAST SCHOOL DIVISION NO. 9

(hereinafter referred to as "the Division")

BOARD MEMBERS:

JOHN M. SCURFIELD, Chair

GERALD D. PARKINSON

DAVID SHROM

A W A R D

The matters between the parties can be divided into two categories, compensation and working conditions.

1. COMPENSATION

In this arbitration, unlike many other interest arbitrations, compensation in direct terms is not the main issue. This arbitration is restricted to imposing a Collective Agreement for the 1995 calendar year.

Both parties acknowledged at the outset that numerous school divisions in Manitoba, including five major urban divisions, have entered into voluntary Collective Agreements with respect to salaries and benefits for the 1995 year. All of those Collective Agreements are strikingly similar. In essence, wages and monetary benefits have been frozen. There has been a 0% increase, which is, I note, an interesting, but descriptive, contradiction in terms. Our job is clear. We are to impose a Collective Agreement which is fair and reasonable. In doing so, we should pay appropriate attention to similar agreements entered into by similar parties in a similar sector of the economy. There is no better comparison than an adjacent school division. When five adjacent school divisions and, indeed, all of the school divisions that have settled in the province prior to the date of this arbitration, have agreed to freeze salaries and monetary benefits, the persuasive burden clearly shifts to any party who opposes an award at that level.

At this arbitration the Division took the position until final argument that it could not accept a similar proposal by the Teachers. Instead, they sought a roll back of wages and benefits by 2%. In my respectful opinion, the evidence which an arbitration Board must consider did not support a roll back. A comparison of salaries and benefits in the Division demonstrates that the Teachers do not enjoy a compensation level which exceeds the average of other urban school divisions. In fact, as it currently stands, those teachers who are at the maximum level within their class rank last among the urban school divisions in terms of their pay schedules. Those teachers who are at the minimum levels prescribed by the class are third last in terms of comparison to other urban school divisions. Overall, River East ranks as the second lowest pay schedule in greater Winnipeg. Thus, no argument exists to support a roll back in wages based on a comparison to other appropriate school divisions.

We were left then with an argument that school boards are faced with declining revenue. This may be true but in our opinion, that argument could not prevail in and of itself without examining the other factors which are appropriate to an interest arbitration award. Our goal is to arrive at a fair and reasonable award. Some would say it is to replicate what reasonable parties should have agreed to voluntarily. Based on the evidence before us, it is difficult to conceive of how the offer by the Teachers to accept 0% could be

portrayed as unreasonable. While there may be taxpayers who do not wish to pay any more taxes, an arbitration board cannot embrace the ideological proposition that a tax increase must be rejected. A decision which is supported solely by the object of avoiding a tax increase is inherently a political decision. It is driven by ideology and not by the pursuit of a fair and reasonable compensation package. Clearly the tax burden upon taxpayers in the Division must be a factor in any responsible decision. On the other hand, taxpayers, not teachers, must be prepared to shoulder the burden of educating young people in our community.

The Division ultimately agreed, after all the evidence had been called, to accept the Teachers' proposal as to wages. As this agreement is likely to attract some public scrutiny, and as the evidence was thoroughly reviewed by this Board, I feel it is appropriate to endorse this decision and to provide our reasons for so doing.

The Division has made an admirable attempt to maintain class sizes at a level where students do not get lost and where they can expect a reasonable level of personal attention from their teacher. In so doing, however, particularly at the high school level, they have required their high school teachers to teach an extra "section" of their subjects. In plain terms, most high school teachers are now required to teach seven classes instead of six. In fairness to the Division, this course load appears to be similar to the load that most other Divisions in Winnipeg are requiring from their teachers.

Overall, the number of teachers has been reduced within recent years for budget reasons. Thus, within the Division, high school teachers have already assumed additional teaching burdens. Time within the school day which would otherwise be made available for preparation or extra-curricular activities has been reduced. The alternative was to increase class sizes. To be sure, the teacher can add back some time because their marking requirements would arguably be not that different if the Division had moved to larger classes. No matter how you look at it, many Teachers are already contributing an extra effort in order

to assist the Division in these very bleak financial circumstances with the shared goal of delivering an excellent education to our children.

It is inappropriate to shift the financial burden for educating our children entirely upon the Teachers. There is no evidence that teachers are overpaid. Since 1983 their real income has dropped by 17%. Yet, I venture to say that since 1991 many teachers within the Division have had to work longer hours. During those hours many of them face an increasing social burden. For some children the school is all too often becoming their only safe haven. For others, it is a place to act out their personal problems.

The evidence submitted to us leads to only one conclusion. Many teachers have been become front line social workers, as well as educators. In a society where social values are crumbling, it is often the teacher who represents society in the struggle to preserve or shape a child into a productive citizen. In a society where two parents are frequently working and the single parent family is becoming all too common, children's personal and social problems are consuming an ever increasing portion of the teacher's work day. The challenge which teachers face is enhanced by the off-loading of reduced social service resources on the school systems. I doubt that teaching was ever an easy profession, but I am convinced that the challenges which face modern teachers are much more difficult than those of their predecessors. To the extent that what passes for common wisdom in our society, embraces the myth that teaching is an easy profession, I reject that myth. Frankly, it should not matter whether a particular taxpayer is directly enjoying the benefits of the school system. Every member of the community has a heavy investment in ensuring that the public school system functions at a high level, since students are the human infra-structure which will support our economy in the future. We cannot as citizens possessing integrity, decry the increase in problems with our youth and simultaneously reduce the funding to those who shape our children in a substantive way.

After several rounds of reductions in the Division, there is little or no "fat" left to trim from the

teachers' professional diet. Their real pay package has declined and their responsibilities have increased. As a society, we have a responsibility to provide a high quality of education for our young people. This is not a commitment to luxury. Rather, it is an investment in our future.

From the divisions' perspective, they have been faced with significant reductions in funding. They are certainly not the "bad guys" in this bleak educational perspective. Every level of government has off-loaded their budget problems down the line. Unfortunately, school divisions have no where to go but to the property taxpayer. This is, no doubt, a political reality which has not escaped the more senior levels of government who have off loaded the problem. Frankly, it does not seem fair to fund the education system in a manner which is weighted so heavily as to property taxes. One would think that the burden would be more equitably distributed if the source of funding was derived from a broader base. The Division has in good faith implemented numerous budget reductions, which are designed to preserve the quality of the education process without having a serious impact on the taxpayer. Presiding over cuts year after year can only be euphemistically described as a challenge. The role of a Board member or superintendent is made more difficult by the perspective of those citizens who are not possessed of the true facts and who believe that the system is rife with waste. We have nothing but sympathy for the honest attempts of a school board to maintain quality and balance a budget which is by now devoid of obvious waste.

A reasonable citizen of the River East School Division would understand that there is no free lunch. There is inevitably a point where further reductions will have an impact on the quality of the educational experience which is being delivered by public schools. The evidence has led us to conclude that in schools where the greatest social problems exist, the quality of the educational product has already been negatively impacted by the reduction in outside social services who have previously supported the educational effort. We are attempting to do both the Division and the Teachers a favour by pointing out the obvious. Reductions have gone about as far as they can go without having a serious impact on the quality of education.

It is clearly a false economy to withdraw support from a sector which nurtures and shapes the future of our society. In saying that taxpayers must be prepared to devote a fair and reasonable level of financial support to the educational process, we are not saying in this award that this goal is achieved by giving significant increases to teachers. Rather, we conclude that Divisions must be given sufficient funding to provide an adequate number of teachers, para-professionals and resource professionals to deal with the ever increasing educational and social problems which are often confronted in the school. In difficult economic times it is not unreasonable to anticipate that teachers will receive very modest or no increases in their compensation. Many employees have had their wages frozen during the recent recession. Teachers cannot escape fiscal realities, but they should not be asked to shoulder the entire burden of decisions to reduce funding by senior governments.

In the final analysis, we were initially asked to resolve a conflict between an argument that the taxpayer wishes to hold the line and the clear evidence that school divisions have been cut to the bone. In our view, it would not have been appropriate for an arbitration board to make a political decision to reduce wages when the evidence dictates that the proposal to freeze the current wage level is reasonable.

For all of these reasons, we find that the Division's ultimate decision to agree to freeze wages and monetary benefits is a reasonable one. However, the Division and the Teachers remain at issue over the right of the Division to assign extra duties for the same pay. This, when analyzed, remains a compensation issue. Thus, in spite of the ultimate agreement as to wages, the foregoing analysis of the evidence remains relevant.

2. WORKING CONDITIONS

The Teachers' propose changes in their working conditions, which they suggest are consistent with the offer to freeze wages and monetary benefits. They submit that they are only seeking changes which are

designed to preserve as opposed to enhance their current environment. Several of the requests which they advance are inter-related.

(a) **Article 33 - Workload**

We approach Article 33 from the point of view that it is consistent to preserve the existing compensation package between the parties. We were not convinced that a wage roll back is appropriate. Normally when an employee in private industry is asked to work additional hours on other than a temporary basis, they can expect to receive additional compensation. Since the Teachers have offered and the Division has agreed to freeze their compensation package, it is difficult as a matter of logic to reject the Teachers' argument that the Division should not be allowed to unilaterally increase their work load. Obviously a freeze could become converted into a roll back which has neither been agreed to or arbitrated if additional duties are subsequently required without additional compensation. The Division conceded that it had no current plans to further increase the Teachers' work load. In fact, they admitted that for the most part the Teachers were working at capacity.

Most high school teachers are now teaching seven credits. It is theoretically possible to increase their class room load to eight credits. The Division is under political pressure to reduce its budget by placing an increasingly heavy load upon its teachers. However, from an educational perspective as well as a labour perspective, the evidence does not support that step. For the reasons already set out herein, it is clear to us that the Teachers are already operating at or near full capacity. By and large, there is no fat to be trimmed from a teacher's day. Non-contact time has over the past few years been reduced significantly.

Based on the evidence presented to us, there appears to be almost a one to one ratio between the

time it takes to teach a class and the time that it takes to prepare and mark a class. This will obviously vary somewhat by subject. Having said that, it is equally clear that extra curricular activities within the school setting are a very important part of the educational experience. If the Division feels pressure to add classes to a teacher's workload, and if they do not provide teachers with any time to prepare within the normal school day, it is obvious that teachers will have less time to prepare for their classes. This will increase the likelihood that the quality of education will suffer. In addition, there is a direct, almost one to one, relationship between increasing the assigned student contact time and the teachers' ability to assist with extra-curricular activities. Obviously, it is an inverse relationship. If teachers are required to teach at a level which is quantitatively beyond that which is currently in place, it is obvious that they will have less time to coach volleyball or assist with the debating team, drama or the band. No right thinking taxpayer would want to encourage this turn of events. The Division says that it has no current intention to increase the teaching load. They admit that to do so would probably reduce the quality of the education being offered. If we are convinced, as we are, that teachers by and large do not have unused capacity then the alternative of a general increase in their teaching load is unreasonable absent evidence that the taxpayer cannot afford to maintain the quality of our public school system. The Teachers offered a solution based on locking in what they refer to as "non-contact time". The Division is concerned about maintaining maximum flexibility to deal with its budgetary problems. Flexibility is desirable, but in labour relations it is rare to permit one side to unilaterally move the goal posts. This is particularly so when both sides agree that the goal posts are for the most part properly positioned. We believe that an appropriate compromise exists which would help to preserve the relationship between the parties. Article 33 should simply freeze the existing teaching load and reads as follows:

33.01 The average assigned teaching time shall not be increased beyond the current assigned teaching average for the division as a whole based on the 1994/1995 school year, while the terms and conditions of this Agreement remain in effect.

33.02 Providing that the divisional average teaching time is not increased, the teaching time assigned in any school year to a teacher in any one school during the normal school day, may be greater or lesser for that teacher than the previous school year and greater or lesser than the average.

Teaching time means assigned instructional time exclusive of extra-curricular activity. It is our intention by imposing this article to maintain a more genuine freeze of the compensation between the parties. At the same time, the Division maintains flexibility in scheduling teaching time and non-contact time. Indirectly, this article will provide support for the preparation time, or at least non-teaching time, which teachers require. We expect that many teachers will continue to use their noon hours and non-contact time to assist with student activities on a voluntary basis. We suspect that all contact time is not as stressful as the demands of teaching a class. For the reasons indicated, we believe that this compromise will advance the interests of the students and will promote volunteering amongst teachers when it comes to extra-curricular activities. We think this is a small price to pay for merely maintaining the status quo. It has been said that an article of this type may lead to a decision to increase class sizes as the only way to avoid a tax increase. Suffice it to say that such a decision is inherently a political decision over which we have no control. However, the taxpayer should understand if that decision is made that they are trading tax dollars for quality of education. It may be that, at present, there is a greater tendency for the taxpayer to assume incorrectly that there is no consequence to adding an extra burden on the Teachers.

(b) Article 34 - Extra-Curricular Activities

The Teachers initially requested a new article which defines and limits their obligations with respect to extra-curricular activities. Prior to this arbitration, they had submitted that all extra-curricular activities should be declared to be voluntary. This position was arbitrated and a decision was delivered on April 22nd in a decision of a panel chaired by David I. Marr.

The majority of that panel determined that, absent contrary language in the Collective Agreement, the Division had the right to direct Teachers to perform extra-curricular activity. Most teachers volunteer regularly and often for extra-curricular activities. Having said that, as with any business, there will always be teachers who do not pull their share of the load. The arbitration board chaired by David Marr concluded that the Division had the right to direct Teachers to perform some extra-curricular activities. In a carefully worded decision following a lengthy arbitration devoted solely to this issue, he adopted the words of Laskin, C.J.C. in the Winnipeg School Division decision where he said:

"Contract relations of the kind in existence here must surely be governed by standards of reasonableness in assessing the degree to which an employer or a supervisor may call for the performance of duties which are not expressly spelled out. They must be related to the enterprises and must be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed".

Mr. Marr went on to conclude that:

"Teachers do have, if not expressed, then implied contractual duties to perform work assigned to them outside of the School Day. However, any such assignments must be fair and reasonable, and relate to the enterprise or function of education. In determining what assignments qualify in the circumstances, as O'Sullivan, J.A., stated in Snow Lake, such matters as the history of teaching in this province and the practices that have grown up, not only in the schools in these three Divisions, but also elsewhere in the province, should be considered."

The Teachers withdrew their request for a limitation on extra-curricular activity on the last day of the arbitration. In our view, this concession had some influence on the award with respect to work load. The

Division cannot expect to assign increasingly heavy teaching loads without having a negative impact on the ability and willingness of a teacher to perform extra-curricular activities. On the other hand, teachers should not lose sight of the fact that historically their profession has always been required to perform extra-curricular activities even in days when there were no para-professionals and there was little if any non-contact time. No teacher who enters the profession can ignore this reality. Extra-curricular activity comes with the territory.

The decision to freeze the teaching load is partly motivated by the desire to promote extra curricular activity amongst the teachers. Both parties have only recently received the arbitration board decision. We hope that the parties, after having an opportunity to digest that decision and ours, can work out an amicable solution without the need for us to impose a solution. For our part, suffice it to say that it would have been very difficult to impose a numerical limit upon the number of hours which would be construed as the reasonable provision of extra-curricular support. Obviously, that will tend to vary from teacher to teacher in accordance with their workload, their job description, and sometimes in accordance with the demands the extra-curricular activities place upon the teacher. A physical education teacher who was unwilling to coach a school team might be judged differently than an English teacher faced with the same request. It can certainly be argued that it is part of the former's job, whereas it is clearly an extra-curricular activity for the other teacher, who may also possess a heavier marking load. As indicated by David Marr in the recent award:

"What would be fair and reasonable will be determined by many factors, some of which, for example, are teaching loads, size of student enrollments, size of teaching faculty, participation in administrative or non-teaching functions, particular skill and expertise, and, as well, the overall number of hours the teacher can reasonably be expected to devote to school matters, whether within or outside the normal school day, week, month or school term."

There are obviously a core group of extra-curricular activities which need to be performed in order to insure that the student receives a well rounded education. It is to be hoped that the historical pattern of teachers fulfilling this function, together with the assistance of parents and volunteers, is still workable. We believe that recognition of the Teachers' efforts and publication of those efforts is necessary in order to promote ongoing teacher involvement. Obviously, ordering the performance of an extra-curricular activity is not very satisfactory. On the other hand, absent exceptional circumstances, it is probably fair to say that a teacher who is not prepared to support any of the school's extra-curricular activities has a rather narrow and self-serving view of what their profession is about. In the result, we would not impose any new language with respect to extra-curricular activities.

(c) Article 30 - Transfer

We do not believe that the parties are far from an agreement with respect to the issue of transfer. The Division has committed to a policy of utilizing voluntary transfers where possible. The Division accepts the need to consult with individuals who are to be involuntarily transferred. Fortunately, the number of involuntary transfers on an annual basis is small. Unfortunately, unless the process of reductions stops, the Division forecasts a greater number of involuntary transfers in the future.

We believe that the Division must retain the discretion to initiate and complete transfers in a manner which is consistent with the educational needs of the students, the administrative demands of the Division and yet be as sensitive as possible to the affected teacher. Considering the impact of an involuntary transfer on an individual teacher, it is mandatory that that teacher should be consulted before the transfer process is completed. It may be that the teacher can provide the Division with information which would alter the Division's view of what is in the best interests of the student or the division. More likely, they will be able to bring to the Division's attention any personal problems which should be considered in the balance. Normally what is perceived as hardship will, when analyzed, be inconvenience common to whichever

teacher is ultimately required to transfer against their wishes. Inconvenience or preference should not be sufficient grounds to grieve a decision to transfer which has been made in good faith. This is particularly so within an urban division where the distances between schools are not great. Having said that, keeping in mind the short time frame within which transfers have to be identified and completed, it is inappropriate to devise a system which is productive of grievances. Recognizing that any article which we impose will have its greatest impact on involuntary transfers, we must also accept the reality that these individuals are very likely to grieve. In these circumstances, it is desirable that any language which is included in the Collective Agreement is particularly clear. To the extent that we fail in making that language clear, we trust that these words, which express our general intentions, will assist in interpretation of the language.

- .01 The Association recognizes the right of the Division to transfer teachers employed by the Division to schools under the jurisdiction of the Division;

- .02 The Division shall exercise its discretion to transfer in a manner which is fair and reasonable. The Division shall, wherever possible, consult with Teachers who are being involuntarily transferred prior to making a final decision;

- .03 In making transfer decisions the Division shall consider the educational needs of the students, the administrative needs of the Division and those concerns raised by the teacher prior to making a decision. However, in the absence of exceptional circumstances, the Division shall be guided by the educational needs of the students and the administrative needs of the Division;

- .04 In the case of any teacher who has given notice of transfer following May 31st and wishes to resign before June 30th of that year, the Division agrees to accept the resignation provided it is offered in writing within 7 days of the notice of transfer.

In addition, there were a number of more minor matters which were put at issue. We would resolve them as follows:

(d) **Article 18 - Leave of Absence**

(1) **Executive Duties**

All requests for executive leave shall wherever possible be made in writing to the Superintendent at least 10 days in advance of the intended leave.

(4) **Religious Days**

It is our understanding that language similar to that contained in the current Collective Agreement is presently before the Courts in order to determine the application of the recent Supreme Court of Canada decision in **Syndicat de l'Enseignement de Champlain v. Commission Scolaire Regionale de Chambly** (June 23rd, 1994). We see no reason to disturb current language at the present time.

(e) **Article 27 - Interest on Retroactive Pay**

The parties have almost reached an agreement on an amendment to this clause. It is our intention

to finalize the wording as follows:

- .01 The Division will pay interest at its average cost of money or 8%, whichever is less, for the period beginning January 1st of the contract year up to the date of payment of the amount of the retroactive pay increase awarded for that contract year.

- .02 Such interest will be paid on the gross amount of retroactive pay due, less the amount of statutory deductions (Canada Pension Plan, Unemployment Insurance, Income Tax and Teachers' Retirement Allowance Fund).

- .03 If the Division has not borrowed funds during the preceding 12 month period, the interest rate shall be computed at the lesser of 8% or the rate equal to that paid by the non-chequing savings account of the Division's financial institution.

SICK BENEFITS

The following clause should be added:

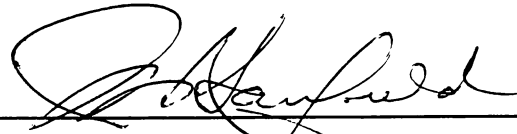
Where a teacher is absent from school because of sickness, the Division may require the teacher to submit to the Division a medical certificate from a duly qualified medical practitioner, certifying that the teacher was sick during the period of absence.

To the extent that either party may have requested other changes to the Collective Agreement, we

are not prepared to alter the existing language within the Collective Agreement.

We wish to take this opportunity to thank both parties for their excellent presentations with respect to these very difficult matters.


June 24th, 1996



JOHN M. SCURFIELD, Chairman



**I AGREE,
DAVID SHROM**



**I DISSENT FOR THE REASONS PROVIDED SEPARATELY,
GERALD PARKINSON**

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GERALD D. PARKINSON

DAVID SHROM

DISSENTING REASONS

I have had the advantage of reading the Chairman's Award in this matter and shall restrict my dissent to brief comments on those reasons.

I would like to thank both parties for their excellent presentations which were of assistance to the Board.

In the course of the hearing the parties modified their positions on several occasions to the extent that they were not truly far apart by the time the hearing concluded. A major move by the School Division was to accept the total compensation package as proposed by the Teachers'

Association.

Keeping in mind that the task of the Board was to impose an agreement for the 1995 calendar year and that the parties are well into the subsequent year, I could see no reason to order any non-consensual changes to the Collective Bargaining Agreement.

It has often been stated that the function of the Arbitration Board in cases such as this is to replicate as much as possible what would be the results of free collective bargaining.

Given that the evidence on assigned contact time is clear, there was no reason to make the Award in this case. The evidence is that restrictions on assigned contact time have not been achieved throughout the province by free collective bargaining and seem to be achieved only through arbitration. Particularly in this case where the Division made a major move to accept the Association's compensation package, one would not expect the Division to have also agreed to restrict its rights with respect to contact time while at the same time achieving a Collective Agreement which did not make any material gains in respect of the proposals from the Division.

Having said that, I am pleased that this panel has recognized that the rationale for restricting contact time is not an intent to restrict management's discretion in this area. The obvious rationale, as reflected in the wording of the Article, is that for the period during which the teachers have agreed to accept a set compensation package, there should be a known quantum of work to be performed. I am pleased that this panel has accepted that, obviously, in advance of a new Collective Agreement,

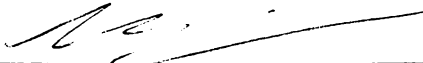
management should have the right of notifying the teachers that it intends to vary contact time and that therefore negotiations for a compensation package will be based on knowledge of the amount of work to be performed.

I repeat my comments as to contact time when it comes to the rationale for restricting, somewhat, the Division's right to transfer teachers. The obvious conclusion of the panel that the educational needs of the students and the Division are to be paramount is one with which I agree. However, I repeat, that in the circumstances of the resolution of this Collective Agreement and particularly the timing of same, I saw no need to deal with the issue at all. I agree with the additions made to the Sick Benefits clause and the Leave of Absence clause. However, if I was prepared to deal with transfers and contact time, I would have felt constrained to grant to the Division its full proposal on each of these topics.

The logic of restricting the ability of the teachers to self assign themselves a raise by obtaining increased qualifications which are not desired by the Division, is inescapable. I would have granted the Division's proposal on this topic.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Winnipeg, in the Province of Manitoba, this 25 day of June, 1996.



G. D. PARKINSON, Division Nominee