

IN THE MATTER OF: AN INTEREST ARBITRATION

BETWEEN:

**TRANSCONA-SPRINGFIELD TEACHERS' ASSOCIATION NO. 12
OF THE MANITOBA TEACHERS' SOCIETY
(hereinafter referred to as "the Association"),**

- and -

**THE TRANSCONA-SPRINGFIELD SCHOOL DIVISION NO. 12
(hereinafter referred as "the Division")**

Arbitrator: P.C. Suche, Q.C.

Appearances:

For the Association: Saul Leibl, Staff Representative, Manitoba Teachers' Society

For the Division: Sue Cumming, Labour Relations Consultant, Manitoba
Association of School Trustees

FURTHER SUPPLEMENTARY AWARD

I issued an Arbitration Award between the parties on May 14, 2001. Thereafter, both the Division and the Association requested that I reconsider, clarify or amplify my Award. Following submissions by the parties, I issued a Supplementary Award on July 11, 2001. Subsequent to that date, a number of questions arose regarding the interpretation of the Supplementary Award. On inquiring of the representatives for both the Division and the Association, I determined that it was best that an informal meeting be called to determine exactly what was in issue. I met with Ms Cumming and Mr. Leibl on August 30, 2001, for this purpose. Having done so, it is my view that it is in the interests of the parties that I provide specific wording for certain of the articles of the Collective Agreement I ordered.

Article 7.07 – Parental Leave:

Commencing June 30, 2000

a) **PARENTAL LEAVE**

Every teacher who becomes the mother of a child, the father of a child, or the adoptive parent of a child shall be entitled to up to seventeen (17) weeks of parental leave.

b) **MATERNITY LEAVE**

i) Every female teacher shall be entitled to maternity leave.

- ii) An employee shall provide a certificate from a duly qualified medical practitioner certifying that she is pregnant and specifying the estimated date of delivery.
- iii) An employee shall submit an application in writing for leave under this subsection at least four (4) weeks before the day specified in the application as the day on which she intends to commence such leave.
- iv) The Division shall grant a pregnant teacher maternity leave of at least seventeen (17) weeks. A request for leave of more or less than seventeen (17) weeks may be granted by the Division.
- v) A maternity leave shall commence no earlier than eleven (11) weeks preceding the date specified in the certificate mentioned in 7:07 (b)(ii) above and shall terminate no later than seventeen (17) weeks following the actual date of delivery.

(c) **ADOPTIVE LEAVE**

- i) Every teacher shall be entitled to adoptive leave.
- ii) Wherever possibly, an employee shall submit an application in writing for leave under this subsection at least two (2) weeks before the day specified by her/him in the application as the day on which s/he intends to commence such leave.
- iii) The Division shall grant an adoptive parent an adoptive leave of at least seventeen (17) weeks. A request for the leave of more or less than seventeen (17) weeks may be granted by the Division.

(d) **SUPPLEMENTARY EMPLOYMENT BENEFITS PLAN**

- i) In respect of the period of maternity leave, the teacher shall:
 - (a) receive ninety percent (90%) of her salary and benefits during the two (2) week waiting period for Employment Insurance; and
 - (b) receive up to fifteen (15) additional weeks payment equivalent to the difference between the Employment Insurance benefits that the employee is eligible to receive and ninety percent (90%) of her

gross salary.

- ii) In respect of the period of parental leave, the teacher shall receive up to ten (10) weeks payment equivalent to the difference between the Employment Insurance benefit that the employee is eligible to receive and ninety percent (90%) of his/her gross salary. In the case of a male teacher, the ten (10) weeks includes any waiting period for Employment Insurance.
 - iii) In respect of the period of adoptive leave, the teacher shall:
 - (a) receive ninety percent (90%) of his/her salary and benefits during the two (2) week waiting period for Employment Insurance; and
 - (b) receive up to fifteen (15) additional weeks payment equivalent to the difference between Employment Insurance benefits that the employee is eligible to receive and ninety percent (90%) of his/her gross salary.
- (e) **RETURN TO WORK**
- i) Maternity, parental or adoptive leave shall not constitute a break in employment.
 - ii) At the termination of the maternity, parental or adoptive leave, the teacher will be reinstated in the position occupied by him or her at the time such leave commenced or in a comparable position and at a salary not less than the same salary and benefits received prior to the commencement of such leave.
 - iii) If the termination of the maternity, parental or adoptive leave is within the same school year as the commencement of the leave, the teacher will be reinstated in the same school and in the same position at a salary not less than the same salary and benefits prior to the commencement of such leave.

(f) **EMPLOYMENT STANDARDS ACT**

Nothing in this Article shall reduce a teacher's rights to maternity, parental or adoptive leave as provided for in The Employment Standards Act.

(g) **PATERNITY LEAVE**

The Division shall grant three (3) days paternity leave without loss of pay or benefits to a teacher upon the birth or adoption of a child.

Article 7.08 – Sick Leave

- (a) Sick leave shall be granted to provide lost income when a teacher is unable to be at work and perform regular duties due to illness or injury.
- (b) Except as hereinafter provided, a teacher shall be entitled to sick leave, not exceeding twenty (20) teaching days in any school year. Where the employment of a teacher is continued for more than one (1) year, the unused portion of the sick leave in any year (s) shall be carried forward and accumulated from year to year to a maximum of:
 - 40 teaching days in the second year
 - 60 teaching days in the third year
 - 80 teaching days in the fourth year
 - 100 teaching days in the fifth and subsequent years.
- (c) Unused sick leave shall accumulate to a maximum of 100 days. In each year of employment (i.e. school year) the number of sick days used shall be deducted from the total accumulation.
- (d) There shall be no accumulation of sick leave credited for period of leave of absence and/or sabbatical leave.
- (e) Consistent with Article 3.08 and 3.09, teachers employed on a fixed-term contract or on a part-time basis shall be entitled to earn sick leave on a pro-rata basis.
- (f) When a teacher suffers an on-the-job injury and is absent from work as a result of this injury, the Division shall continue to pay the salary of that teacher during such absence, limited to the extent of the accumulated sick leave balance at the time of suffering the on-the-job injury. The period of absence from work as a consequence of the on-the-job injury shall not be charged against the accumulated sick leave balance. On-the-job injuries shall be defined as a disability resulting from an accident/incident occurring on Division premises or in the course of performing duties arising out of employment under the contract with the Division.
- (g) Sick leave is not payable to a teacher who, in respect of an illness or injury resulting from a motor vehicle accident, is receiving wage loss replacement benefits from the Manitoba Public Insurance Corporation to the extent that such benefits and paid sick leave exceed the

teacher's normal salary. In such cases, the teacher shall reimburse the Division the amount of benefit received from MPI, and the equivalent number of such leave days will be reinstated in the employee's sick leave bank.

In the Award of May 14, 2001, I ordered that Article 21 – Committee on Adjustment be removed and new Article 26 be included in the Collective Agreement. I left it to the parties to determine the exact wording. This could not be achieved. I, therefore, order the following:

Article 21 – deleted.

Article 26 – Provision for Settlement for Differences:

Where a violation of this Agreement is alleged or should a difference arise between the parties to or persons bound by the Agreement or on whose behalf it was entered into, regarding the interpretation, meaning, operation or application of this Agreement, including a difference as to whether or not a matter is arbitrable, either party, without stoppage of work and after exhausting the grievance procedure herein, may notify the other party in accordance with this Article that it refers the matter to arbitration.

The teacher and the principal or immediate supervisor of the teacher, in consultation with the Superintendent, where necessary, shall make an earnest effort to resolve any difference prior to commencement of the formal grievance process. Any discussions at this stage shall be without prejudice to the formal grievance process. The teacher shall be entitled to be represented by the Association in respect to all matters pursuant to this Article.

Step 1 The grievance shall be submitted in writing to the Superintendent or designate within thirty-five (35) teaching days of the incident, citing the alleged difference, the articles violated and the solution sought. In the event of a grievance originating while an employee is on an approved leave of absence, the grievance shall be submitted within thirty-five (35) teaching days of the employee's return to work. The Superintendent shall render a decision in within fifteen (15) teaching days after receipt of the grievance.

Step 2 Failing settlement at Step 1, the grievance shall be submitted to the Board of Trustees with ten (10) teaching days after receipt of the Superintendents decision. A time for presentation of the grievance to the Board shall be scheduled within the next two (2) regular scheduled Board meetings. The Board of Trustees shall render its decision in writing within ten (10) teaching days following the meeting.

Step 3

Failing a satisfactory settlement being reached at Step 2, either party may refer the dispute to arbitration by giving the other party written notice within ten (10) teaching days of receiving the Board's response in Step 2. The written notice shall include the name and address of the party's nominee to the Arbitration Board.

Arbitration

Within five (5) teaching days after receipt of the notice referring the matter to arbitration, the party receiving notice shall provide the party which submitted the matter to arbitration, with the name and address of that party's nominee to the Arbitration Board.

Within five (5) days of the nomination of the second member of the arbitration board, the nominees shall agree on a chairperson for the Arbitration Board, failing which either party may apply to the Manitoba Labour Board to appoint a chairperson.

The Arbitration Board shall, in respect of any matter submitted to arbitration, have regard to the real substance of the matter in dispute between the parties and to all of the provisions of the Collective Agreement applicable to the matter, and the Arbitration Board is not bound by strict legal interpretation of the matter in dispute, but the Arbitration Board shall not change, add to, vary or disregard any provision of this Agreement.

The Arbitration Board shall determine its own procedure, but shall give full opportunity to the parties to present evidence and make representations. The decision of a majority of the Arbitration Board is the decision of the Arbitration Board unless the votes are equal, in which case, the chairperson shall decide. The decision of the arbitration board shall be final and binding upon the parties.

The Association and the Division agree to each be responsible for one-half (1/2) the total cost of the chairperson of the Arbitration Board. Each party will be responsible for the cost of that party's own nominee to the Arbitration Board.

Nothing in this Article shall prohibit the parties from agreeing on a single arbitrator. If the parties so agree, the provisions of this Article relating to the Board of Arbitration shall apply with necessary changes in the points of detail, to the single arbitrator.

Nothing in this Agreement shall preclude settlement of a dispute by mutual agreement in any manner whatsoever or voluntary extension of the time limits set out in this Article.

Part VII of The Labour Relations Act shall apply to the Arbitration of disputes pursuant to this Article.

I trust this addresses and settles all outstanding issues. I will retain jurisdiction concerning the implementation, interpretation or application of any matters referred herein.

DATED at the City of Winnipeg, in Manitoba, this 4th day of September 2001.

P. Colleen Sushe, Q.C.
Arbitrator

To [Interest Arbitration Award](#)

To [Supplementary Award](#)