IN THE MATTER OF: AN INTEREST ARBITRATION

B E T W E E N:

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:	Valerie Matthews Lemieux, Counsel Saul Leibl, Staff Representative, Manitoba Teachers' Society Marijka Spytkowsky, President David Rondeau, Negotiations Chair Amber Kjernisted, Negotiations Committee Nancy Paterson, Negotiations Committee Judy Bacabas, Staff Representative, Manitoba Teachers' Society Joan Larsen, Staff Representative, Manitoba Teachers' Society
For the Division:	Robert A. Simpson, Counsel Sue Cumming, Labour Relations Consultant, Manitoba Association of School Trustees Paul Moreau, Superintendent John McWilliams, Assistant Superintendent Laird Long, Secretary/Treasurer George Coupland, Labour Relations Consultant, Manitoba Association of School Trustees

AWARD

The Division and the Association are parties to a Collective Agreement that expired on June 30, 1998. Negotiations to renew the agreement were not successful. Pursuant Section 131.1(1) of *The Public Schools Act*, RSM 1987, c P250, as amended (herein "the *Act*") the Association requested the Minister of Education appoint a mediator/arbitrator. On April 12, 2000, I was appointed for that purpose.

As required by Section 131.1 (4) I met with the parties to endeavor to assist them to conclude a renewal of their Agreement. The Association advised that although it has no objection to the process of mediation, it would not participate in a mediation that by definition would convert to arbitration if no agreement was reached. In the result my meeting with the parties, which occurred on September 13, 2000, was very brief, although they did meet among themselves in an attempt to resolve the outstanding

issues. No agreement having been reached, however, I determined that a Collective Agreement would have to be effected by arbitration. As required by Section 131.1(6) of the *Act*, I notified the Minister and the parties of this by letter dated September 18, 2000.

The hearing took place on November 24, 25, 27, 28, 29, 2000, December 4, 5, 19 and 20, 2000. At the outset the parties advised that monetary issues had been settled at a 2% increase effective the fall of 1998, and 2% the fall of 1999. In addition, the term of the agreement was agreed to be July 1, 1998, to June 30 2000. The parties further agreed to waive the time period for delivery of the award as set out in section 129(1) of the *Act*.

The Division asserted that a number of the Association's proposals were not matters which were subject to arbitration by virtue of section 97(1) and/or section 126(2) of the *Act*. Counsel for the parties appeared for the limited purpose of making presentations on the matter of jurisdiction. It was agreed that the decision on this issue should be included as part of the award.

The articles from the existing Collective Agreement that are in dispute are as follows:

Article 3.02 Basic salary schedule
Article 3.05 Anniversary date for increments
Article 3.07 Payment for substitute teachers
Article 3:09 Part time teachers
Article 3.11 Interest on retroactive pay
Article 4.01 Allowance for designated teacher
Article 4.02 Allowance for department heads and/or team leaders
Article 5.01 Allowances for consultants and coordinators
Article 5.04 Vice-principals' administrative allowances
Article 6.01 Teacher Society dues
Article 7.01 Leave of absence for executive duties
Article 7.03 Sabbatical leave
Article 7.04 Leave of absence
Article 7.06 Jury duty service or witness duty
Article 7.07 Parenting leave
Article 7.08 Sick leave
Article 14.02 Long term disability
Article 18 Written warnings and suspensions
Article 19 Security of tenure
Article 21 Committee on adjustment
Article 22 Positions to be bulletined
Article 24 Freedom from violence
Article 25 Harassment
Article 26 Provisions for settlement of differences
Appendix "A" Guidelines for the Liaison Committee

At the hearing, the parties advised that Article 7.03, Sabbatical Leave, had been withdrawn by agreement.

In addition, the following new articles were proposed:

Evaluation
The Community Learning Centre

Personnel records
Special needs
Damage to personal property
Notice of retirement

At the hearing the Association withdrew its request to have articles on Evaluation and Personnel Records included in the Agreement, and the Division withdrew its request for an article on Notice of Retirement.

A number of presentations were made by teachers and Division administrators during the course of the hearing. While I have not referred to them at length in this award, I would like to comment on a theme which was consistent throughout their presentations. That is the enormous and obvious commitment by these individuals to what they do and the students they serve. It occurred to me on more than one occasion that it would be of great value to any (and perhaps every) member of the public, who does not have occasion to be in a public school on a regular basis, to have the benefit of these presentations to appreciate the complex and challenging environment of public schools today. Too often, I fear this is overlooked, not understood, or taken for granted.

ROLE OF AN INTEREST ARBITRATOR

The principles governing an interest arbitrator are well settled. It has often been stated that the objective is to reach the same agreement the parties would have achieved had they been able to freely conclude negotiations themselves. This is a something of a fiction, given the circumstances, and it seems to me that a more realistic statement is that by Arbitrator Steel in *Re: Kelsey* (1994) namely that "the fundamental object of [interest] arbitration is a fair and equitable outcome for both parties." What that means, as concluded by Arbitrator Scurfield in *Re: The Brandon Teachers' Association No. 40 of the Manitoba Teachers' Society* and *The Brandon School Division No. 40,* (1998) is:

> ... arbitrators have the right to impose new articles in collective agreements where the arbitrator has concluded, based on the evidence, that the reluctance of one party to agree to the article is neither logical or fair. On the other hand, arbitrators should be reluctant to unilaterally introduce entirely new articles into collective agreements which have been developed over a long history of bargaining. The exceptions to this approach should be based on evidence that the current practice is impractical, inequitable, or out of step with what is occurring in other Divisions. Minor or marginal problems will rarely be addressed through the unilateral imposition of new clauses by an arbitrator. Arbitrators must be careful not to substitute their discretion for that of a party who has a different but defensible view of the proposed article. ...

The factors to be considered by an interest arbitrator are also well settled. They were summarized by the Board in *Lord Selkirk School Division* (1993) as including comparability to other negotiated settlements, ability to pay, general economic conditions, demonstrated need due to existing circumstances, and/or the inherent logic or fairness of a particular request.

In 1996, the Province passed Bill 72, *The Public Schools Amendment Act.* This legislation came about as a result of efforts on the part of The Manitoba Association of School Trustees ("MAST") to persuade

government to narrow the scope of interest arbitration. The concern raised by MAST was that arbitration awards had, over time, limited and restricted the ability of school boards to manage its affairs, and had brought additional, perhaps unrecognized costs at a time when government funding for education was being reduced, and when school boards were under considerable pressure not to increase taxes.

The amendments came into effect on January 1, 1997, and apply to this case. Among the new provisions is section 129(3) which provides:

> Factors
> 129(3) The arbitrator shall, in respect of matters that might reasonably be expected to have a financial effect on the school division or school district, consider the following factors:
>
> (1) the school division's or school district's ability to pay, as determined by its current revenues, including the funding received from the government and the Government of Canada, and its taxation revenue;
>
> (2) the nature and type of services that the school division or school district may have to reduce in light of the decision or award, if the current revenues of the school division or school district are not increased;
>
> (3) the current economic situation in Manitoba and in the school division or school district;
>
> (4) a comparison between the terms and conditions of employment of the teachers in the school division or school district and those of comparable employees in the public and private sectors, with primary consideration given to comparable employees in the school division or school district or in the region of the province in which the school division or school district is located;
>
> (5) the need of the school division or school district to recruit and retain qualified teachers.

As noted by other Arbitrators who have decided cases which fall within the Bill 72 regime, these statutory considerations do not constitute a significant departure from the principles that have developed through arbitral jurisprudence.

By way of background, Transcona Springfield is a somewhat unique school division in that geographically, it is both urban and rural, (sometimes called "rurban"). Its tax base includes commercial, industrial, residential and farm property. It transports approximately one-third of its students. It competes with metro divisions as an employer, but for comparison purposes, is most similar to Brandon. It employs a total of 1,000 FTE employees, approximately 500 of whom are teachers. It is highly unionized, with only 9 excluded employees. It is named in a total of 6 bargaining certificates. The average teacher’s salary is third highest of the metro divisions and by far, the majority of its teachers are at Step 9 of Class IV or V. Its average new hire is at Step 5 of Class IV.

The Division maintains, and this was not really contested by Association, that on a comparative basis the provisions in the Collective Agreement concerning working conditions are stronger than many or most teachers' agreements in the Province. For example, since 1990/1991, it has been the only Division that has a sub-plan for parental leave which covers the waiting period for Employment Insurance benefits. The Division stressed the importance of comparability to other teachers as a factor in my consideration.

It is likely that a shortage of teachers is on the horizon. The extent to which this will be so is a matter of debate. In 1999, 317 of the Division's teachers were between 40 and 54 years of age. Only 124 were under 40 years of age. The Division indicates that it has already increased recruitment due to retirement. For example, in 1999/2000, 27 teachers retired, whereas only 10 retired in 1991/1992. It is obvious that this is a phenomena that is being experienced elsewhere in the Province and will grow.

The Division has two sources of funding - the Provincial Government and taxes. It points out that certain cost matters are beyond its control - transportation, for example, is mandated by the Province but not fully funded. Further, any increase in costs arising from benefits is the Division's sole responsibility, so will result in either an increase in taxes or reduction in programs.

The issue of the current economic situation and the Division's ability to pay, was a matter about which there was disagreement. A wide range of information was provided by the parties, some of it contradictory, or at least differing. Certainly it can be said that both across the Province and within the Division, the economic situation it is considerably better than what it has been. The Division's surplus is the largest in a number of years, and there has been a significance increase in resources. Compared to other Divisions, Transcona Springfield has fared well. The FRAME Report shows that there has been a significant increase in the tax capacity of the Division - in fact, it had the second largest increase in the Province.

To the extent that it was able to do so, the Division has estimated the costs of the various proposals that have been submitted by the parties. Needless to say, those proposals submitted by the Association present an increase in cost, and those submitted by the Division either have no cost or result in savings. The agreed upon salary increase alone will cost the Division 1.6 million dollars over the term of the contract.

In coming to the decisions that I have reached in this award, I have kept in mind the factors set out in 126(2), as well as the other arbitral principles referred to above. There were approximately 30 proposals before me, many with several components. It was my objective - and I trust that has been achieved - to be fair to the teachers without creating a hardship on the Division, the Association, and the tax payers of Transcona Springfield.

The process of negotiation is one of give and take. Any solution is a compromise. In coming to the results that I have, I have compromised some of the requests or proposals because in my view, this is what likely would have happened had the parties been able to conclude the negotiations. Put another way, I attempted to balance the overall results recognizing there are, after all, only so many eggs in the basket.

JURISDICTIONAL ISSUES

The Division asserts that a number of the Association's proposals are not subject to arbitration, as they are not working conditions as defined in section 97(1) and/or are precluded from arbitration by virtue of section 126(2).

Section 97(1) provides:

"dispute" means a controversy or difference or apprehended controversy or difference between a school board and one or more of the teachers employed by it or a bargaining agent acting on behalf of those teachers, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by the employer or by the teacher or teachers, or as to privileges, rights and duties of the school board, or the teacher or teachers that are not specifically set out in this Act of The Education Administration Act or in the regulations made under either or those Acts: but does not include a controversy or difference arising out of the termination or threatened termination of the contract of a teacher by reason of alleged conduct unbecoming a teacher on the part of a teacher.

Section 126(2) was part of the Bill 72 Amendments. It provides:

Matters not referable for arbitration
126(2) Notwithstanding any other provision of this Act, the following matters shall not be considered by the arbitrator or included in the arbitrator's award:

(1) the selection, appointment, assignment and transfer of teachers and principals;

(2) the method for evaluating the performance of teachers and principals;

(3) the size of classes in schools;

(4) the scheduling of recesses and the mid-day break.

It is important to note when considering section 126(2), the provisions of section 134(4):

131(4)

(1) A school board shall act reasonably, fairly and in good faith in administering its policies and practices related to the matters described in subsection 126(2) (matters not referable for arbitration).

(2) Any failure by a school board to comply with subsection (1) may be the subject of a grievance under the collective agreement and may be dealt with in accordance with the grievance process set out in the agreement.

The meaning and application of section 126(2) has now been considered by arbitrators in five previous awards, and by both the Court of Queen's Bench and the Court of Appeal in *The Flin Flon Teachers' Association of the Manitoba Teachers' Society v. The Flin Flon School Division No. 46.* (1998).

Recently, in *Re: The St. Vital Teachers' Association No. 6 of The Manitoba Teachers' Society* and *The St. Vital School Division No. 6,* (2001) Arbitrator Peltz summarized the general principles applicable to the issue of jurisdiction under the Bill 72 regime (at page 10):

1. A matter is arbitrable if it is a "dispute" under the Act. The definition of "dispute" is to be given a broad and liberal interpretation. A "dispute" is a matter which relates to, affects, or is incidental to terms or conditions of employment. *Flin Flon* appeal decision at para. 16-19.
2. If the Legislature has chosen to deal fully with the terms and conditions of teacher employment in a specific area, then arbitration is not available in that area. "In other words, the parties cannot dispute a matter upon which the Legislature has already spoken." *Flin Flon* appeal decision at para. 20, citing *Rolling River School Division No. 39 v. Rolling River Division Association No. 29* (1979) 3 Man. R. (2d) 7 (Q.B.) and other cases.
3. However, if general powers are given to a division, without mandatory direction or express obligations regarding terms and conditions of teacher employment, then arbitration is available. *Rolling River School Division No. 39*, cited above.
4. Arbitration is not excluded simply because the matter involves educational policy. Many issues have a variety of aspects, which may include both policy and working conditions. To be arbitrable, there must be "a significant connection or nexus between the matter and the teacher's conditions of work". The question is whether the matter "predominately involves working conditions or whether it is a matter which predominately affects educational policy". *Flin Flon* appeal decision at para. 41-42.
5. Matters listed in section 126(2) are excluded from arbitration, and the stated exclusions are to be *broadly* interpreted with a remedial purpose in mind, namely, preventing arbitrators from imposing new contract clauses in these areas with resulting cost increases to school divisions. *Flin Flon* appeal decision at para. 31.
6. However, not "every possible connotation or extension" of the words used in section 126(2) is applicable in defining arbitrability. *Flin Flon* appeal decision at para. 36. "The words chosen must be given their plain, common, simple and ordinary meaning." *Flin Flon* Award at p. 20.
7. In areas where arbitration is excluded by section 126(2), school divisions will be entitled to act unilaterally, subject to a duty to act fairly and the teachers' right of grievance under section 131.4

I would agree with this analysis and would add that in reference to items (a) to (d) of Section 126(2):

1. Not only the initial selection, appointment, assignment or transfer of teachers and principals, but any subsequent or

ongoing selection, appointment, assignment or transfer is precluded from consideration by section 126(2)(a). (Flin Flon-Morse p. 22).

2. 126(2)(a) includes all issues *relating* to the transfer and assignment of teachers and principals. (Flin Flon, Court of Appeal decision p. 20).
   The Division has the right to assign to teachers the type and quantity of their duties without arbitral interference as long as they do so in good faith and without contravening either any collective agreement in place or section 131.4(1). (Flin Flon - Chapman).
4. While "size of classes", as referred to in 126(2)(c), does not include the composition of classes, if composition necessarily impacts size, it too is precluded from arbitration.

DISPUTED CLAUSES

The Division asserts that I do not have jurisdiction with respect to the following proposals:

1. Article 3:02: Basic Salary Schedule

The Association seeks an amendment to the existing clause as follows:

(a) The basic salary schedule, as described above in 3.02(a), shall be an annual salary based on the number of days of employment to a maximum of 200 days.

(c) In the event that the school year, as described by the Minister of Education, exceeds 200 days, teachers shall be paid for the additional days as per Article 3.02(a) on the basis of 1/200th of the annual salary for each day worked in excess of 200 days. The teacher may choose, at his or her discretion, to take all or part of this additional salary in equivalent time off during the normal 200 day school year.

The Division points out that the school year is prescribed by regulation under the authority of the Minister of Education, and historically has varied between 196 and 200 days. Since 1995, the regulation in place has required that there be 200 days in a school year. It is open, of course, to the Minister to prescribe in excess of 200 days in any given year. The Division argues that the proposed clause would have a direct impact on the Division's ability to assign teaching staff in circumstances beyond its control.

I disagree with this view, and favour the characterization of the clause advanced by the Association - namely, that this is really a matter of compensation. On the merits, however, I do not think it is appropriate to grant the Association's proposal. While there has been some discussion of increasing the school year and, in fact, specific requests have been made by a number of School Divisions to the Minister of Education to do so, the point remains a hypothetical one at the moment. I see no need for it to be dealt with at this time. The proposal is denied.

2. Article 3:09: Part-Time Teachers

The Association requests an amendment to this article to provide as follows:

(g) A teacher who requests a teaching percentage for the next school year less than that currently contracted, shall make the request by April 30th. The Division shall not unreasonably deny such a request. The teacher shall retain the right, for a period of two (2) school years, to return to the previously contracted percentage; notice to be given on or before April 30th.

(h) Prior to any teacher's percentage being permanently reduced as per 3:09(g), the Division shall request in writing a response from the teacher regarding the teacher's future intentions.

The Division argues that this proposal falls within 126(2)(a), as it involves the selection, appointment, or assignment of teachers. The Association, on the other hand, maintains that the clause concerns the terms and conditions of employment of teachers who have already been hired, and is similar to a successive term contract provision which has been awarded by other arbitrators. I do not agree. In my view this proposal deals directly with the assignment of teachers and falls within 126(2)(a). Accordingly, I do not have jurisdiction to consider the proposal.

3. Article 4:01: Allowance for Designated Teacher During the Absence of Principal and Vice Principal

The Association has proposed the following addition to the current agreement:

(c) No teacher will be required to forfeit non contact time in order to cover classroom responsibilities.

(d) The school's month end report shall include all days on which a teacher was the Designated Teacher during the absence of a principal and vice-principal.

As a preliminary comment, the Division noted that this is not a matter which properly falls within this article, as it not only has nothing to do with allowance for a designated teacher, and does not even involve a designated teacher. This is true, and perhaps the matter ought to have been treated as a new proposal.

As to the substance of the Division's objection, it was argued that 4.01(c) falls within126(2)(a), whereas the Association's position was that it is a matter of working conditions. In my view, if the provision is broadly interpreted, and in keeping its remedial purpose in mind, this is a matter that affects, or has an impact on, the ability of the Division to assign teachers. Thus, it is precluded from arbitration.

Even on its merits, I would not be inclined to award the clause, however, as an absolute prohibition against any incursion into a teacher's non-contact time does not seem appropriate. Virtually all of the presentations I heard from the parties suggests to me that the only way a school can function is with give and take on the part of all those who work there. There is protection to teachers in that if any administrator unfairly, disproportionally or unreasonably called on a teacher to give up contact time for this reason, the situation could be remedial through a grievance pursuant to Section 131(4).

As to (d), there was no evidence that there was a problem that needed to be addressed. I think this is better left to the parties to negotiate. The proposal is denied.

4. Article 4:02: Allowance of Department Heads and/or Team Leaders

The Association proposes the following amendment to Article 4.02:

(c) Each Department Head and Team Leader shall be provided with a minimum of 30 minutes per day of administrative time. This administrative time shall be time free of contact with students. The contact time for the Department Head and the Team Leader shall be reduced by 30 minutes per day and the resulting reduction shall be independent of Article 11, and shall not be used in the computation of divisional average contact time.

(d) When a Department Head or Team Leader is absent from the school for five (5) or more consecutive days, another member from that department or team shall be appointed as a Department Head or Team Leader on an interim basis, and shall be paid the Department Head/Team Leader allowance on a per diem basis, commencing on the sixth and subsequent days.

The Division argues that establishing a period of time to be set aside for a teacher to carry out a particular function, or to establish a period of time during which a teacher is not obliged to carry out a particular function represent encroachments upon the authority of the Division to assign and appoint teaching staff. Specifically Clause (c) interferes on the very significant latitude that has been given to the Division to determine who will be assigned to what duties and where and how the assignment will be carried out; Clause (d) purports to require the Division to make an appointment whether or not it determines such an appointment is required.

The position of the Association is that the thrust of this proposal is "contact time" which has at least been considered in previous arbitrations on its merits, and in one instance awarded as an issue of working conditions.

I find I agree with the Division. While the proposal addresses the issue of contact time, it presents an infringement on the Division's protected right to appoint and assign duties, and is therefore precluded from my consideration.

5. Article 7:03: Sabbatical Leave. WITHDRAWN

6. New Article: Community Learning Centres

The Association proposes the following:

(a) All teachers who are assigned to a Community Learning Centre:

(i) shall be entitled to a working day which does not exceed five and one half (5½) hours;
(ii) shall receive an uninterrupted meal period of sixty (60) minutes between the first quarter and last quarter of each working day;
(iii) shall have the same contractual contact time as a Senior Years teacher as provided for in Article 11: Contact Time of this Collective Agreement;
(iv) shall receive a day's leave with pay in the week prior to each reporting period. The choice of such day shall belong to the teacher;
(v) shall have the right to form their own working conditions committee as per Article 27: Working Conditions;
(vi) shall attend the same common in-service and professional development days; (1) as defined by the Division and (2) as do all other teachers in a Community Learning Centre's originating parent school.

(b) Any director, supervisor or other person administering a Community Learning Centre shall be a qualified teacher as defined by Manitoba Education and shall be placed under the terms of this Collective Agreement.

There are two aspects of the proposal, that in my view, are beyond my jurisdiction. a (ii), violates 126.(2)(c) - (scheduling the midday break) to the extent that determines when the meal period occurs. a (iv) also interferes with the Division's ability to assign teachers.

While the balance of the proposed clause does not offend any jurisdictional restrictions, and quite apart from the fact of jurisdictional impediments, I am not (or would not be) inclined to award any wording on this matter. As the Association stated in its presentation, Community Learning Centres are a novel and evolving concept. Transcona's Community Learning Centres have only been in existence since September 1998. The Association acknowledged that even the clause proposed would not address all of the issues, and in fact, between the time the materials for the arbitration were prepared and the date of the hearing, other issues had arisen.

The many challenges facing teachers involved in the Community Learning Centres was quite clearly brought home by a presentation made by the Association. However, there was no suggestion that the Division is not attempting to address these issues, as the Learning Centres are evolving. I think this area is a matter better left to the parties to negotiate. As a result, the Association's proposal is denied.

7. <u>New Article: Special Needs</u>

The Association requests a new article on "Special Needs". The Division takes the position that an arbitrator has no jurisdiction to grant such a request, both because the proposed clause does not deal with working conditions, and also that it falls within assignment of teachers" The proposed clause reads as follows:

(1) Teachers shall be provided with the necessary resources to meet the needs of special needs children. The resources required shall include, but not be limited to, the following:
(1) additional classroom teacher non-contact time for

purposes such as program preparation, case analysis and consultation with other professionals;

(2) adequate release time for professional development and in-servicing;

(3) paraprofessional services;

(4) other professional services;

(5) appropriate specialized equipment where necessary;

(6) adequate budget support to the program.

The Annual Division Action Plan Committee mandated by the Manitoba Government Green Paper (1989), shall include two (2) representatives of the divisional teachers' association.

This issue has been considered in most of the other Bill 72 arbitrations. In each instance, the wording of the Association's proposals was somewhat different. Arbitrator Scurfield declined to order a clause in *Brandon* on the basis that the proposed clause entered into the arena of educational policy, and he did not feel it was the role of the arbitrator to shape educational policy. Arbitrator Chapman in *Flin Flon* concluded much the same, but also found that the proposal before him did not fall within the meaning of "dispute" in section 97 of the *Act*. Arbitrator Fox-Decent was "doubtful" of his jurisdiction as, in his view, the issue of class size and composition (the latter apparently being part of the proposal) were too closely intertwined. Lastly, Arbitrator Peltz in *St. Vital* concluded that the proposal before him was considerably different than the proposals in other cases. He found that one of the requested clauses only addressed the issues of process and "tools". As a result, he ordered a somewhat modified clause from that which was sought that gives teachers the right to information and consultation, to professional development, materials and resources.

When the successive proposals from the various Associations are viewed together, it is clear that the focus has narrowed with each arbitration. What is before me is more narrow than the proposal in *St. Vital*, as it does not seek to define an "exceptional" or "special needs" student. Having said that, the proposal before me is still, in my view, predominately an issue of educational policy. The question that arises from the clause proposed is what are "the necessary resources to meet the needs of special needs children"? Clearly, in any dispute that might arise regarding the clause, this is the question the Arbitration Board would have to answer. This is a question that is to be answered by the Division, pursuant to its obligations under the *Act*. I note the comments of Arbitrator Chapman at page 21 of the *Flin Flon* decision:

> The Association argues that 'mainstreaming' falls within the umbrella of 'working conditions' and that the teachers should have the opportunity to express their concerns. As mentioned, that aspect of the issue might be desirable and I would hope the teachers would be given the opportunity to have input into many aspects of the integration of special needs students. However, one cannot disregard part III of the Act which mandates certain duties on Boards and, in particular, sections 41(1)(a) and 41(4). In essence these two sections require the Board to provide adequate school accommodation from grades 1 to 12 for all persons entitled to education as defined in section 259 which mandates that every person who has attained the age of 6 years has the right to attend to school.
>
> I am of the opinion that such policy and the implementation of it, clearly rests within the jurisdiction of the Board. I agree with Arbitrator Scurfield who said, at page 12 of the Brandon award, that "he did not believe it was the role of the Arbitrator to shape the educational policy of the Division through an arbitration

award...

I think the same can be said of the current proposal, and for this reason it is not appropriate to awarding any wording. In addition, however, it is very clear from the evidence before me, as well as from the previous decisions, that special needs students occupy considerable financial, administrative, policy and professional resources of teachers, and administrative staff of school divisions in this Province as well as the Department of Education. In the case of Transcona Springfield, I note that costs associated with special needs programs have increased 72% since 1990; the number of paraprofessionals has almost doubled, and there are many programs in place and under development to address special needs of students.

Given the nature of the issue, it is trite to say that teachers should be involved, consulted and supported in working with students. Nancy Paterson, who has worked in the Division for 23 years, made a presentation that demonstrated some of the significant challenges faced by teachers who work with special needs children. However, having heard and reviewed all of the presentations and material concerning this subject, I cannot conclude that the Division is not addressing, or attempting to address, as many of the issues as it can. Clearly there are many students with highly complex, multi-faceted problems that go far beyond the capacity of teachers or schools, or perhaps anyone, to adequately address. It is my sense that reasonable attempts are being made by the Division to work with teachers in a co-operative fashion. I do not think, to the extent the positions of the proposal do not fall within the realm of education policy, that there is a demonstrated need for a provision in the Collective Agreement. Accordingly, the Association's proposal is denied.

NON-JURISDICTIONAL ISSUES

1. Article 3:05: Anniversary Date for Increment

The Division has proposed to amend the current agreement by adding the following:

> The Division may, with reasonable cause, and on the basis of a written performance appraisal, and being placed on intensive supervision by the Superintendent and school Principal, withhold an annual increment of a teacher. A teacher at the maximum salary step shall have his/her salary reduced by one full step on the salary schedule. Any further increment adjustment shall be at the discretion of the Division.

The Division acknowledges that such a clause would be unique in collective agreements with teachers in this Province. The clause is found in other collective agreements, however, including two within the Division. It has a legitimate basis, namely that an employee should not receive an increase when his/her performance is not satisfactory. The situations which would come within the clause would be rare and would be subject to scrutiny by an arbitrator, says the Division.

In response, the Association argues that there "may" be a jurisdictional impediment by virtue of 126(2)(b) - the method of evaluation and the performance of teachers - but in any event, it opposes the clause as it is contrary to the Division's policy on supervision, known as Supervision for Growth. This policy, from which the concept of "intensive supervision" comes, was developed collaboratively between representatives of the Association and the Division. It is a positive model for dealing with teachers and, says the Association, would be undermined by a provision which is punitive in nature.

I do not see any jurisdictional impediment. However, given the existence of the Supervision For Growth policy and its history, and the absence of any evidence to suggest that there is a problem of some significance, I am not prepared to grant the Division's proposal.

2. Article 3:07: Payment for Substitute Teachers

The parties agreed to a 2% increase commencing the beginning of the school year for each of 1998 and 1999. In addition, the Association seeks two amendments. The first, to provide that substitute teachers be paid commencing September 15th rather than October 15th, which is the current arrangement; and secondly, if a substitute teacher is not required on any day because the school has been declared closed by the Division, or there is a Divisional or school activity, the same will not be considered a break in consecutive days.

In response to the first issue, the Division indicated that substitute teachers are casual employees and the procedure for processing their pay cheques requires that the principal submit information regarding hours worked to the Division's office. Employees of the Division are paid by direct deposit and the payroll service provider requires that information be in its possession seven days prior to the day it is to be deposited in the employee's account. In the result, if the date of first payment is changed to September 15th, only time worked before September 8th would be included.

While all teachers are paid only once per month, waiting as long as six weeks to be paid does seem to be an inordinate period of time. Since there are only a few teaching days before September 8th, the change requested will not have a substantial effect, but nonetheless, the request is not unreasonable. Accordingly, the Association's proposal is awarded.

In terms of the second aspect of the Association's proposal, the Division offered a counter proposal whereby it would agree to the requested change that eliminates the retroactive payment, so the substitute teacher is paid pursuant to 3.04 on the sixth day. The Division points out that of 49 divisions, 21 pay retroactive to first day and 29 do not. Only 5 of the collective agreements have a no break in service provision such as has been proposed.

All in all, I agree that the Division's proposal is a reasonable compromise and it is so ordered.

3. Article 3:11: Interest on Retroactive Pay

The Association requests two changes to this article. The first is simply to reflect the new name of Employment Insurance. This is agreed to by the Association.

The substantive change concerns the timing of when interest on retroactive pay begins to run. The Association would like it to be changed to July 1st - the effective date of the Agreement, from the existing date of January 1st. This is because there has been a change in the contract year. In response, the Division argues that if any change is made, it should be to August 28th, to reflect the beginning of the school year.

The Division also seeks an amendment to change the rate of interest. Currently it is the lesser of 8%, or the Division's borrowing rate. The Division makes the point that this is more than what an employee could earn on the money, so the result is something of a windfall for the teacher. The current wording contemplates that the Division would have borrowed the money in question from its financial institution

and thus, by having the funds it has been relieved of that liability. This appears not always to be the situation. The current is also more than what the Division earns on its cash on hand.

The point of paying interest on retroactive payments is to ensure that employees are compensated for not having use of monies they were entitled to and also, to eliminate any advantage to the employer in delaying conclusion of the contract. The rate paid should also not create a windfall, (or perhaps better put, an advantage) to the employee if there is a delay in concluding an agreement.

Information was provided by the Association that a higher return could be earned by the teacher than what has been proposed. It was pointed out that although many Divisions do not pay interest on retroactive pay at all, over half require payment at the Division's borrowing rate. On the last point, I suspect these differences may reflect the circumstances of the particular divisions.

In the end, there are various approaches to the issues, but I am persuaded that the changes both parties request are logical and fair. Accordingly, both the Division's and Association's requests are awarded, with the modification that the date on which interest begins to accrue is August 28th.

4. Article 5:01: Allowances for Consultants and Co-ordinators

The Division employs various consultants and co-ordinators at different schools. Several work less than full time. The parties have agreed on the allowance to be paid to the employees who fall in this category. At issue is the basis for payment. The Division wants a pro-rata calculation based on the percentage of full time that the individual works. The Association's position is that the allowance should be paid in full to each consultant/co-ordinator as the position and responsibilities are of considerable significance. Usually, those employees who have less than full time appointments also teach. Often there is work related to their duties as consultant or co-ordinator which must be done outside the time they are actually performing their duties.

The Division argues that it is neither reasonable nor fair to pay an employee who only works part time the same allowance as one who is full time. It estimates the cost of the Association's proposal to be approximately $21,000.00. It argues that consultants and co-ordinators in Transcona Springfield School Division are paid very well compared to other divisions throughout the Province. There is one employee who will be negatively affected and the Division proposes a Memorandum of Understanding that essentially red circles this employee.

The Division's proposal seems reasonable and fair, in all of the circumstances, and I am prepared to award it.

5. Article 5:04: Vice-Principal's Administrative Allowance

The Association seeks an amendment to this article which eliminates the preamble, and would pay a teaching vice-principal the same allowance as a full time supervising vice-principal. The Association argues that given the nature of the duties, the vice-principal's responsibilities do not leave the teaching vice-principal when s/he enters a classroom.

Archie Tordiff made a presentation regarding his considerable experience as both a supervising and teaching vice-principal. He emphasized that it is very difficult to balance the role of teacher and vice-principal and thus, the teaching vice-principal position is in many ways more difficult. The duties of a

vice-principal are ones which cannot be so easily scheduled or set aside to a specific time, and many are more in the nature of a responsibility which, of course, remains with the individual regardless of what tasks s/he is performing at any given time.

In response, the Division says it is unaware of any concerns regarding the burden, so to speak, on a principal carrying out two roles. The Division estimates the cost of this proposal at $26,659.00. It argues that in determining what is fair and reasonable, it is important to remember that these two positions have existed for some time, and in the previous Agreement, the parties decided the distinction between supervising and teaching vice-principals was fair. Nothing has changed, it says.

I think any changes are better left to negotiations. There is nothing obviously inequitable or out of step with the current situation. The Association's proposal is denied.

6. Article 6:01: Teachers' Society Dues

The Association seeks a revision to article 6.01(f), specifically to add the words "for the purposes of this article, the ....". The change is very minor, and to my thinking, probably makes no difference. The Division is not in agreement with the proposal, however, and indicates that this article will have to be examined in light of the changes to *The Labour Relations Act*, which makes collective agreements between teachers and school divisions subject to that legislation.

Minor amendments without any clear purpose, if not agreed to between the parties, are best left to subsequent negotiations. The request is therefore denied.

7. Article 7:01: Leave of Absence for Executive Duties

The current agreement allows members of the Association's Executive Committee 5 days leave per year. This is subject to the Division being able to secure a satisfactory substitute to replace the teacher. The Association must reimburse the Division for the cost of the substitute, plus 50% of the difference between that cost and 1/200th of the teacher's salary. This clause has been in place since the 1989 interest arbitration between the parties.

Both the Association and the Division seek changes to this article. The Association wants to increase the number of days available to 10, and to delete the requirement to pay 50% of the difference between the costs of the substitute and the 1/200th of the teacher's salary; it also wants no deduction from these 10 days for attendance at certain specified functions, including arbitrations and negotiations. The Division, on the other hand, seeks to limit the total number of days to be taken by the Association's representatives to 60 days per year.

The Association argues that as time has gone on, the demands on the Association have increased, and the 5 day limit simply is not realistic given the real needs of the Association. Most of the work falls to members of the Executive. There is a safeguard for the Division, says the Association, in that there must always be an acceptable substitute available to replace the teacher. As to the funding formula, it argues that considerable work is done by the teacher to prepare for the substitute and the Division benefits from this.

A presentation was made by Dave Rondeau, who has been involved with the Association for the last six years. Currently, he is the Chair of the Bargaining Committee and the AEFM representative for the

Division. He described the various Association meetings, joint meetings and committee meetings that occur during a typical year, as well as the preparation he is required to do in order to have a substitute fill in for him and the work involved in catching up on his return. Typically, there are 10 to 15 meetings a year, aside from mediation and arbitrations, which he is required to attend. Last year, in addition to the five days allowed in the agreement, he took 10½ days off for Association business. These were granted as a leave of absence. He has never had any difficulty in obtaining additional days.

The Division relies on the finding of the Board in the 1988/1989 arbitration, namely that aside from the monetary cost of paying for the substitute, the Division incurs hidden costs. This was the basis for awarding the current wording. The Division estimates the cost of the change requested would have been $3,957.00 for the 51.6 days taken by the Association members in the 1999/2000 school year. This would increase if the Association's proposal is granted. The Association disputes the Division's figures.

The Division also points out that there are only 500 teachers in total in its employment, so the total number of days being requested presents a significant disruption. It points to the fact that a significant number of divisions have a cap on the total days available to the Association, although the cap varies from 15 to 75 days. It acknowledges, however, that there has not been a problem with the Association's representatives taking an excessive number of days.

The proposals on this issue are truly oppositional. The Association wants to increase what is available to it, and the Division wants to cut back. In the end, I do not see that this is a situation that needs to be addressed. The Division has granted leaves when requested, the Association has not asked for an excessive number of leaves; and the funding formula appears to be reasonable. As a result, I am not inclined to order any change. Both proposals are denied.

8. Article 7:04: Leaves of Absences

The Collective Agreement currently allows for a teacher who has worked for 10 years to apply for and be granted a leave of absence without pay for up to one year, provided that not more than 2% of the teaching staff will be granted such leaves in any year.

The Association seeks to lower the threshold to 5 years, and to add a clause which entitles the teacher to receive a salary equal to the gross difference between the teacher's salary and the minimum salary for his/her class. The Association argues that generally speaking, this is a cost neutral proposal, as the teacher going on leave is likely to be at the top of the salary range, and the replacement is likely to be at the bottom of the salary range. Thus, the amount to be paid to the teacher on leave is essentially the savings experienced by the Division.

The Division opposes the clause. It disputes that it is cost neutral and calculates the annual cost of the proposal at $136,172.00. It uses a blended salary average to arrive at this figure. Use of this figure was challenged by the Association on the basis that it does not reflect the likelihood of the lower cost of the replacement teacher. In response, the Division indicates that this is the number used for the Division's budgets when seeking funding from the Province, and for essentially all other matters. It justifies the number in this instance on the basis that currently the average new hire is a Step 5 Class IV.

One cannot dispute the value of the opportunity for leaves of absences, not only to the teacher who takes the leave, but also to the Division and the students. I do have the feeling that this proposal ought to be described as asking for asking's sake. No specific reason for the request, or need was demonstrated, except notionally. I think this is a matter best left to the parties to negotiate. I also I have some lingering

concern regarding jurisdiction. I think a clause that entitles a teacher to a leave of absence as a right may interfere with the Division's ability to assign teachers.

As to the matter of compensation, I am not at all persuaded that this is a cost neutral provision. While the Division's cost estimate might be high, based on the information available, it is impossible for me say what is a more realistic estimate. In the circumstances then, I am not prepared to award any of the changes requested to this article.

9. Article 7:06: Jury Duty Service or Witness Duty

The current agreement provides that a teacher who is called upon to serve on a jury or as a witness will be paid his/her regular salary. The Division seeks a clarification, or perhaps an amendment, to exclude "private affairs" of the teacher, such as a private business or marital matter. This is the same language as exists in the Division's current agreement with CUPE and MGEU. The Association opposes the amendment, both on the basis that the proposed wording is somewhat ambiguous, and perhaps value laden, but also that there is no demonstrated problem that needs to be addressed.

I am not certain that the article requires an amendment. As I read it, the intent is to protect a teacher from losing salary if s/he is directed by a court order - either in the form of a subpoena or jury duty notice - to attend court. This is a different situation than where one is a party to an action, be it in a family or civil matter. However, it is clear that the parties do not agree on the meaning of the current wording, and in the absence of an arbitrable interpretation of the article, it is perhaps best to have it clarified before it becomes a dispute. Accordingly, the proposal is granted.

10. Article 7:07: Parenting Leave

The current agreement provides for maternity, adoptive and paternity leaves. Employees are entitled to what is essentially a leave of absence without pay. Employment Insurance benefits are also available but, of course, this is separate from the Collective Agreement, and are funded by the Federal Government. In addition, and in this the Division is unique in the Province, the Collective Agreement provides salary continuance for the two week waiting period for Employment Insurance benefits. This has been in place since 1990/1991.

The Association has proposed that the article be amended in several aspects. The first is inclusion of supplementary Unemployment Benefits Plan, whereby a teacher on maternity leave would receive up to 15 weeks of additional pay equivalent to the difference between Employment Insurance benefits, and 95% of her gross salary; a teacher on parental leave would receive the same benefits for 10 weeks; and a teacher on adoptive leave would receive up to 15 weeks of such benefits. In addition, the Association seeks to increase the number of days of paternity leave from 1 to 3 days.

Employment Insurance "top up" has been a matter that has been raised in many teacher arbitrations over the last six to eight years. While the concept has been endorsed with great enthusiasm, until the *Fort Garry* award in June 2000, and the *St. Vital* award in February of this year, no arbitrator or Board of Arbitration ever made such an award. Except for the provision in this Collective Agreement referred to above, none have been negotiated in any collective agreement between a school division and it teachers in this Province. In this respect, teachers are out of step with many public servants. MGEU, with whom the Division has a Collective Agreement, provides a 93% top up; the University of Manitoba's collective agreement with its Faculty Association, provides a 95% top up.

One of the reasons given for not awarding benefits in this area is that arbitrators and Boards of Arbitration have felt that the matter is more of a public or societal issue that should be addressed through legislation. Clearly, the fact of the cost of the scheme has also been a significant factor, particularly in years previous when the economic conditions throughout the Province have not been as favourable as they are today.

All this changed with the *Fort Garry* award. Although he did not say why, Arbitrator Fox-Decent concluded that it was a "suitable moment in time" to award this benefit. In *St. Vital*, Arbitrator Peltz concluded that he also felt this was so. He states:

> In my view, as held by the arbitration board in *Intermountain School Division* (1994), "the costs of childbearing must now be recognized as a public, as well as a private, obligation." In a recent business journal discussing the respective roles of governmental and other actors in supporting children, economist Judith Maxwell attributes to employers the obligation to provide flexible work time options, to supplement parental leave benefits, to provide support for child care and to develop other family responsibility support mechanisms. Governments and the voluntary section also have roles to play. See "Investing in Children Should be Our Next Priority", *Canadian Business Economics*, February 2000, p. 15-17. As these kinds of opinions gain broader acceptance, it becomes less tenable to dismiss proposals for paid maternity leave on the basis that these are "societal matters", as held in *Turtle Mountain School Division* (2000). In any event, recruitment and retention of teachers is specifically enumerated in the Act as a factor for arbitral consideration. Paid maternity leave should become an attractive feature of employment in the Division, given the preponderance of female teachers in Manitoba.
>
> I agree with Arbitrator Teskey's comments in *Lord Selkirk School Division* (1994) that "this is an issue of resources combined with equity". It is a matter of judgement as to when a public school system employer can reasonably afford the introduction of this new benefit. In *Fort Garry School Division* (2000), Arbitrator Fox-Decent said that this is "a suitable moment in time" to expand the maternity leave provision.

The same article by Judith Maxwell was part of the Association's presentation at the hearing before me. In that article Maxwell observes:

> Now... there is more discussion about the risks of developmental delays and about fostering parents' labour force attachment. These topics have arisen because we know more about how critical child development is to human social and economic development. Further, our research identified strong connections between the outcomes Canadians desire for children and employability skills employers are seeking when they hire new people.
>
> (p.15 -16 Canadian Business Economics. Feb. 2000)

Maxwell goes on to note that supporting parenting through improved paid/unpaid leaves, flexible employment hours and schedules is a critical action that fosters effective parenting, one of the three enabling conditions to ensure the well-being and healthy development of children. This view has taken

root in many areas of both the public and private sectors. Although the phrase has become a cliché, supporting children and their parents is now recognized by all levels of government as an investment in our future.

The costs of this proposal, of course, are substantial. The Division estimates the cost at $340,710.00 based on the average salary of $52,000.00, assuming 15 leaves per year. Thus, is higher than the 3 year average of 10. The Association arrived at a cost of approximately $11,000.00 less. It argues that using its calculations, the entire proposal will only cost the average taxpayer a total of $18.12 per year. This was an affordable cost, it argues. The Association points out that Transcona Springfield has one of the lowest mill rates in the City. In addition, the City has announced that it will be implementing tax reductions in some amount. All in all, says the Association, this is an affordable benefit.

Approximately 65% of teachers in the Division are women. The percentage of female new hires is similar. Given the significant number of teachers who are over the age of 50, there is already, will continue to be, significant recruitment of new teachers. New hires are, for the most part, younger teachers more likely to use parental leave. Potentially the usage of this benefit will increase. In addition, one cannot ignore the fact that both the provincially mandated leaves and the period during which Employment Insurance benefits is paid have been extended to one year. Although this does not have a direct impact on this award, clearly, there will be pressure in the future to extend benefits for this period.

I share the view that this is an appropriate time to award this benefit. The fact that two Divisions with whom Transcona Springfield competes for new recruits is in itself a factor, given the increase in recruiting that will occur. It is also an important equity issue that is long overdue.

I am very conscious of the cost implications. I can say that granting this request has affected my conclusion on a number of other matters, (appearing both before and after this section of the Award) on the only so many eggs in a basket principle. I also think that there are a number of modifications to the Association's proposal that are a reasonable compromise:

- **ä** the total percentage of salary referred to in (d)(i)(b), (d)(ii) and (d)(iii)(b)will be 90% instead of 95%. This is consistent with St. Vital and Fort Garry.
- **ä** the salary replacement for the two week Employment Insurance waiting period referred to in (d)(ii)(a) will be reduced to 90%.
- **ä** the effective date of this provision shall be June 20th, 2000.

11. Article 7:08: Sick Leave

Both parties have proposed substantial amendments to the existing provision. Paraphrased, the Association seeks to increase the maximum number of sick days from 100 to 110 after the 6th year of teaching; eliminate the definition of "on the job injury", (now defined as disability resulting from an accident/incident occurring on Division premises or in the course of performing duties arising from employment) and extend coverage to illness or disease that arises from the workplace; add a new provision to reimburse a teacher for expenses relating to an injury incurred, including legal fees; and lastly, add a new provision that allows a teacher to use up to 5 days of sick leave to attend the illness or injury of the teacher's family. All of this represents a considerable enlargement in scope from the current situation.

The Division proposes a restructured clause that essentially changes the method by which sick leave credits are accumulated from 20 days per year to 2 days per month, provided that a month has 10 teaching days; provides that credits not accumulate during periods of paid sick leave, Workers Compensation, as well as the circumstances defined in the current Agreement; adds a new provision which prevents a teacher from receiving sick leave if s/he is receiving wage loss replacement from Manitoba Public Insurance ("MPI").

The Association points to the fact that all metro divisions, as well as AEFM, which has a rural component, have a maximum of 110 sick days. The removal of the definition of injury is intended to extend to the circumstances to include illness or any situation that would not have occurred but for being in the workplace. As to payment of expenses, it argues that there are many costs which arise from an injury, not all of which are covered or totally covered by extended health, including costs of taking action against a party to recover damages.

As to family leave, the Association says that this proposal merely recognizes the reality of family life. And while there are provisions for personal leave which a teacher may be able to utilize this is discretionary leave, subject to strict guidelines, and is granted on a school by school basis. Compassionate leave is available only in the instance of death or serious illness of a member of the teacher's immediate family. The Association also points to a number of agreements within the Province that contain such provisions. In this regard, it appears that three days is the standard, although the wording on the scope varies, both in terms of who is included as a family member and the purpose for which the leave can be taken. Of the Metro divisions, only Fort Garry, Seven Oaks and St. Vital have such a provision. In each case, it is limited to emergency illness/injury of a spouse or preschool or school age children.

For its part, the Division maintains that its proposal provides a definition which is currently lacking, and by accruing sick leave on a monthly basis, it brings consistency with the Division's other collective agreements. The Division is also of the view that there is a problem in that it believes there are teachers who report to work at the outset of the school year and then go on sick leave. The Association indicated that it did not take issue with the Division's position per se, although it pointed out that no evidence had been led concerning the matter. The Division also points to several other divisions in the Province who use this similar method of calculating sick leave entitlement.

As to the issue regarding MPI wage replacement benefits, this situation arose due to the no-fault scheme that was introduced by the Provincial Government in 1995/1996. MPI pays income replacement even if sick leave is paid to the claimant. The Division points out that a similar provision was negotiated in both its Collective Agreements with MGEU and CUPE. In addition, four other school divisions now have similar provisions.

The Division estimates the costs of the Association's proposals at almost $750,000.00. In addition, no meaningful estimate for the proposal regarding payment of expenses relating to injuries could even be calculated. As can be expected in this type of exercise, the Association does not agree with the Division's calculations, but by any estimate these proposals represent very substantial costs to the Division.

I am not prepared to award an increase in accumulated sick leave. I do not see that there is a pressing need to do so, and it represents a very significant cost to the Division. In light of the other proposals awarded, it would be an unreasonable additional cost. I also decline to award the amendments proposed to (d) and (f) by the Association. Both represent a considerable enlargement in the scope of coverage, and are not consistent with most other divisions in the Province.

Family leave is another item that I am not prepared to award, simply out of cost consideration. It is an item that comes with a significant cost. Although it is an important benefit, takes into account the realities of the lives of teachers and their families, and it is not unique, it strikes me that when added to the cost of this award, it is simply too rich.

I am also not prepared to include the Division's proposal changing the formula for accumulating sick leave. I accept that there is a concern that needs to be addressed regarding instances where teachers have, if not abused their sick leave, accessed it in a manner not contemplated by the Agreement. The Association did not take issue with the Division's assertion that this was so. However, without some better understanding of the situation, it does not appear that the problem is widespread, and changing the terms under which approximately 507 teachers work as a result of a few who may be creating a problem, does not appear to be a reasonable approach. It also appears that even those divisions that use the formula proposed (which is simply taken from section 9 of the *Act)* provide for some cushion by crediting some, if not all, teachers with 20 days at the beginning of the school year.

The result, then, is that the Division's proposal is allowed, except that (b) and (c) will not form part of the article, and some version of the previous wording should remain in place.

12. Article 14:02: Long Term Disability

The Division seeks to add a statement to the effect that it agrees to administer the Employee-Paid Short Term Disability Plan at no cost to the Division. The Association finds the words "at no cost to the Division" troublesome. It argues that there would obviously be some cost to the Division in providing this service, and is worried that the Division might seek to charge an administrative fee, or refuse to carry out the program. In response, the Division indicated that its intention was not to charge back anything to the teachers, but rather to make it clear that while it would administer the Plan, it was not funding the Plan. It would seem, therefore, that the following wording should be acceptable to both parties, and I order it accordingly:

> "The Division agrees to administer the Employee-Paid Short Term Disability Plan on behalf of the participating teachers, at no cost to them."

13. Article 18: Written Warnings and Suspensions

The Association proposes several changes to this article, which deals with substantive rights and process regarding issuance of written warnings and suspensions. The Division maintains that the current wording has not been a problem and points out that teachers are now governed by the *Labour Relations Act*, so the provisions of that *Act* will have to be observed.

In my view, this is an issue better left to the parties to negotiate, in light of the changes to the *Labour Relations Act.* The proposal is denied.

14. Article 19: Security of Tenure

This article provides that a teacher can only be dismissed during the school year if a joint committee of the Executive Committee of the Association and the Division is satisfied that it will be in the best interests of the community and the school children for the teacher's contract to be terminated.

The Division says that it seems that this Committee has never met. No other agreements in the Province have a similar provision. The Division also argues that it would be virtually impossible for members of the Association to fulfill their role as bargaining agent and also participate in an article 19 committee.

While it could be said that this matter should be left to the parties to negotiate changes, along with those needed in article 19, this provision is at odds with the manner in which discipline is approached, and apparently is a relic of an earlier time. I am of the view that it serves no logical purpose, and is out of step with the collective agreement, the *Labour Relations Act* and situations in other Divisions. I am prepared to award Division's proposal.

15. Article 21: Committee on Adjustment
15. Article 26: Provisions for Settlement of Differences

These articles provide procedures where there is a dispute regarding the terms, conditions, interpretation, etc., of the Collective Agreement. Article 21 provides that such a dispute can be referred to a committee consisting of a representative of the Association and a representative of the Division. The proceedings are without prejudice to action taken under Article 26. The Division proposes that this article be deleted. Again, although the article has been in place for many years, the Division indicates the committee appears to never have met.

Article 26 deals with settlement of grievances and disputes. The Division proposes a new article which is a three step grievance process consistent with what is found in most collective Agreements. It includes the Principal as part of the process. The proposal, says the Division, is a sensible, sequential way to deal with grievances.

The Association is opposed to the changes in part because the proposal only refers to differences involving teachers and makes no mention of "the parties" or the Association, in part because changes to the *Labour Relations Act* may make parts of the proposal irrelevant; and in part, because the proposed process uses up "a whole lot of time". It also maintains that the committee on adjustments clearly serves a purpose, which is why it was inserted in the first place.

I see no principled objection to the Division's proposal. Clearly articulated, sequential procedures for grievances surely is in the interest of all parties. I do agree, however, that article 26 should refer to the Association as well as to employees, (and, in fact, this was stated to be the intention of the Division). In addition, certain, very minor changes are necessary to comply with the *Labour Relations Act*. Rather than attempt to specifically identify these - since I was not given a complete list - I am going to order the Division's proposal, subject to these two modifications. If the parties are unable to agree on appropriate wording, I will retain jurisdiction to deal with any issues in this regard.

16. Article 22: Positions to be Bulletined

The Association proposes that the current provision be amended to require that a copy of all bulletins for administrative, supervisory and teaching positions be sent to the President of the Association. No evidence was provided to indicate that there is a problem with the existing arrangement, and I think this is better left for negotiation.

17. Article 24: Freedom from Violence

The Association proposes to add a requirement that the Division pay all legal costs incurred by teachers who either seek to pursue legal remedies for violent acts towards them, or who have legal proceedings brought against them on these grounds.

The issue of violence and protecting staff and students from same is obviously of great concern to the Division. Numerous policies are in place which address the subject. Paul Moreau, the Superintendent of the Division, made a presentation on the various resources and supports that are available to a teacher, including the assistance of the Division's legal counsel in appropriate circumstances. No information was presented by the Association as to the estimated cost of such a provision, nor would it appear to be possible to estimate. Clearly, there is potential, if not the likelihood, of significant costs to the Division.

I think the current arrangements demonstrate that the Division is taking reasonable steps to protect and assist teachers. Absent information regarding cost, I am not inclined to grant the proposal. The Association's proposal is rejected.

18. Article 25: Harassment

The current wording consists of a mere statement that teachers are entitled to a working environment free from harassment as defined in *The Human Rights Code*. The Association has proposed a comprehensive article which extends both the definition and procedure; imposes a responsibility on the Division to pay for any legal or other professional assistance in the administration of the article, and provides that the policy shall be reviewed within six months of signing the agreement by a joint Association/Division committee. Unless the committee approves the policy, the same will no longer be operative.

In addition to the Collective Agreement, the Division has a comprehensive workplace harassment policy and procedure in place that applies to all employees and other members of the "divisional community". The policy is the product of an ad hoc committee consisting of several teachers/guidance counselors, Archie Tordiff, a vice-principal and the Division's Superintendent. The Division indicates that the policy was first implemented in January 1998, and revised in October 1999, by a committee consisting of most of the same individuals. In addition, when the policy was created it was provided to all unions in the Division with a request for input.

The Division also employs a harassment officer on contract who provides educational sessions, advice and consultation, and conducts formal investigations. As the Division points out, any action taken by the Division (or for that matter not taken, if it should have been) is subject to a grievance by a teacher affected.

In my view, the Division has a more than adequate and fair policy in place and has devoted considerable attention and resources to this issue. It is a legitimate concern of all employers who have several bargaining units and other groups within its community to have a consistent policy throughout the workplace. The involvement of members of the Association, both by the committee charged with the responsibility of drafting the policy, and in a more formal manner, by inviting input was reasonable. I see no reason to order any change. Accordingly, the Association's proposal is rejected.

19. New Article: Damage to Personal Property

The Association requested a clause be inserted which would require the Division to reimburse teachers for any property that is lost, destroyed or damaged in a work related incident. The cost implications of such a proposal were not addressed by the Association, but obviously could be considerable.

The Division maintains insurance that extends to teachers' property. This is a reasonable and fair way of providing protection for teachers. The proposal is therefore declined.

20. Notice of Retirement or Resignation: WITHDRAWN

21. Appendix A - Guidelines for the Liaison Committee

The Division requests a change in section 3(b) to reduce the number of meetings from eight to one meeting at least once every two months, or at the request of the parties. The Division indicated that this committee has not met more than six times per year for the last three years. The Association opposes the request.

This is a minor and non-urgent issue which, in my view, is better left to the parties to negotiate.

CONCLUSION

I want to thank Ms Cumming and Mr. Leibl and the other representatives of the parties for their articulate, focused, and effective presentations. They were of enormous benefit to me, and I am most appreciative.

I will retain jurisdiction with respect to any clarification or interpretation of this award, or to provide specific wording, if required.

All of what was said and presented during the hearing of this matter, as well as events elsewhere in the country, leave one with an increased appreciation of the importance of a public education system that is adequately funded and supported by the community within which it exists, as well as great respect for the very important work done by teachers, administrators, Division staff and elected representatives. In concluding this award, I can do no better than to quote Arbitrator Scurfield in *Birdtail River Arbitration* (1993):

> Teaching is one of the most important professions in our society. More than any other profession, teachers have the ability to shape the future. As society has changed and traditional values and families have been eroded or altered, teachers have taken up a social burden which is often in conflict with their academic duties. Their workload is no longer defined by the curriculum. Stress is manifestly a problem. Burnout is a reality confirmed by the early retirement figures. As such, teachers deserve recognition for their efforts. Too often, those teachers who devote countless hours of personal time to extra-curricular activities are

left with the impression that their sacrifices go unrecognized. While not all teachers' contributions are equal it is safe to conclude that most teachers devote far more time to the process of educating students than can be discerned by a simple analysis of their teaching load. Too often they are injured by casual criticism and the popular myth that theirs is a life filled with unearned and unnecessary holidays.

The members of the School Board represent the public interest. They sacrifice their personal time for little or no remuneration to promote and encourage the local education system. In recent decades during more prosperous times, most School Divisions have improved the quality of the services available to students in the Division and provided teachers with a significant reduction in the teacher pupil ratio. However, they must act in a fiscally responsible manner. While there is of necessity a dynamic conflict with teachers in areas of policy and compensation, teachers should not lose sight of the fact that they share the most common goal, namely, enriching the lives of the children they serve. Disagreements over salary and benefits are natural and predictable. They should not be allowed by either party to destroy the strength of a relationship based on common goals. The purpose of an arbitration should be to maintain, promote and repair the negotiation process.

DATED at the City of Winnipeg, in Manitoba this 14th day of May 2001.

P. Colleen Suche, Q.C.
Arbitrator

To Supplementary Award

To Further Supplementary Award