IN THE MATTER OF AN ARBITRATION BETWEEN
THE TRANSCONA-SPRINGFIELD SCHOOL DIVISION NO. 12
AND
THE TRANSCONA-SPRINGFIELD TEACHERS' ASSOCIATION NO. 12
OF THE MANITOBA TEACHERS' SOCIETY

December 13, 1989

Members of the Board:

Martin H. Freedman, Q.C., Chairman
Harold G. Piercy, nominee of the Division
David M. Shrom, nominee of the Association

ARBITRATION AWARD

This Board is constituted and makes its Award pursuant to the provisions of The Public Schools Act of Manitoba. The Transcona-Springfield School Division No. 12 (the "Division") and The Transcona-Springfield Teachers' Association No. 12 of The Manitoba Teachers' Society (the "Association") jointly requested the establishment of a board of arbitration as contemplated by The Public Schools Act because they were unable to settle the terms of their collective agreement ("Agreement") following the expiry of their 1986-1987 agreement. This Board having been duly constituted conducted hearings on March 20, March 21, March 22, March 28, May 18, June 14 and June 23, 1989.

The parties submitted very extensive briefs and in the seven days of hearings, and in subsequent communications, provided us with very considerable material and evidence to assist us in rendering our decision. We express our appreciation to the parties and their representatives for the extremely thorough and comprehensive manner in which they presented their respective positions to us.

There were certain arguments which the parties made on jurisdiction and we will deal with these during the course of our Award. Subject thereto, the parties had agreed that we were duly constituted and could hear and determine all the matters in dispute.

By our count there are 31 items in dispute. Some may be disposed of in a relatively straightforward manner and others are, by their very nature, more complex and require more detailed commentary by us. In dealing with each of these items we shall follow the order in which they were presented to us by the Association, which gave us its submission first.

PURPOSE

The current Agreement contains a "Purpose" clause. Apart from the obvious requirement to change the date referred to in the Purpose clause, which date should relate to the date of actual completion of the Agreement, the Association proposed no change in the Purpose clause. The Division, on the other hand;

suggested a change in the Purpose clause which would among other matters refer to the establishment of "a mutually acceptable salary schedule at an affordable cost to the community".

In our judgment there is no reason to change the Purpose clause, other than the date change mentioned. We do not see any reason to focus in this clause only on one aspect of the overall relationship between the parties. The current emphasis which relates to the provision of services to the taxpayers and the children, to improving working relations and to the establishment of an acceptable salary schedule seems to us to capture adequately the general framework of the contract. Accordingly, we make no change (other than as mentioned) in the Purpose clause.

TERM OF AGREEMENT

By mutual concurrence the Agreement which we are now completing will cover the period of time from January 1, 1988, through and including December 31, 1989. We note that the provisions for reopening the Agreement would typically refer to a notice, date of October 31, 1989. Since our Award is being issued after that date, such a provision would be sterile in the particular year, but we expect that these experienced parties will have taken this into account.

WAGES

We will not embark in this Award on a lengthy dissertation about the wage structure in force in this Division, or about the general wage arrangement in the School Division /Teachers' Association relationships in this Province. In other Awards the members of this Board have expressed their individual views regarding this subject. The issues relating to wages, the factors influencing awards in relation to wages and all other relevant factors were very well canvassed in the submissions presented to us.

Metro Winnipeg School Divisions have all settled their 1988 and 1989 wage arrangements. Some were settled post-conciliation, some at conciliation and some at negotiation. In each and every case, without exception, the 1988 settlement was an across the board increase of 3.25% and the 1989 settlement was an across the board increase of 3.45%. These applied to all other rates of pay as well including, generally, allowances of various kinds, although there may have been some minor variations.

We do not think it necessary in this Award to review the submissions of each of the parties in respect of wages. We are satisfied that there is every reason to award, in this Division, the identical percentage increase, on an across the board basis, as in the other Metro divisions, for each of the two years in question.

In June of this year, recognizing that there would be a wage increase granted, we awarded certain sums on an interim basis. Those sums are naturally to be taken into account in the calculations of amounts payable in connection with the Award we now make, which is, for the 1988 year, a 3.25% across the

board increase and for the 1989 year, a 3.45% across the board increase.

SUBSTITUTE TEACHERS

Substitute teachers have been the subject of considerable discussion in this and other divisions, and arbitration awards relating to substitutes have been issued in the past. There are a number of proposals relating to substitutes. The current agreement provides a payment schedule for substitutes and also contains a provision relating to payment for substitutes who teach for five or more consecutive days in replacement of the same teacher. The Association proposed a salary increase; the Board proposed a freeze on rates. The Board also proposed a change in connection with the payment scale for teachers who on a substitute basis teach for five or more consecutive days and also proposed an express provision disentitling teachers to any wages or benefits other than those expressly provided in the Agreement. After considering the matter, we award as follows:

a. The percentage increase that we have given on the pay scale to the teachers in the Division is awarded, on the same percentage basis, to substitutes. We see no reason to deviate from the approach we have earlier adopted.

b. The current Agreement provides that a teacher who teaches on a substitute basis for five or more consecutive days replacing the same teacher is classified for salary purposes according to the general wage scale and is paid a salary based on the wage scale commencing on the first day of such consecutive employment. The Division requested a change so that in those circumstances the daily salary would be according to the scale, but subject to a maximum salary of 1/200ths of the minimum salary for a Class IV teacher. The Division also proposed that in this and in all other pay provisions relating to substitutes the new rates, if there be new rates, not have retroactive effect to January 1, 1988, but commence on the first day of the month following the completion of the current Agreement.

c. We think that substitutes should have the benefit of realistic wage rates when they teach, notwithstanding that it has taken the parties some very considerable time to resolve their differences for 1988 and 1989. Substitutes have agreed to teach in the Division in those years knowing that the subject of wage rates was on the table for negotiation and ultimately arbitration between the parties. There is no reason why the retroactive result applicable to teachers on contract should not also be applicable to teachers who are on a substitute basis and we do not accept the Division's proposal in that particular respect. We also do not see any justification in placing a cap on a substitute's salary once the substitute is being paid on the grid basis. Indeed, such a cap would run counter to the general structure and scheme of the widely accepted pay scale basis.

d. The Division proposed a clause that would expressly stipulate that substitutes are not entitled to wages and/or benefits except as is specifically provided in the Agreement. We decline to award this provision but note that substitutes who are not on a contractual basis with the Division are likely, based at least on the state of current arbitral jurisprudence (which seems to be accepted in this Province), to be denied benefits other than those expressly stipulated in the Agreement. Substitutes who embark upon some form of long term relationship with the Division should be put on a contractual arrangement which should stipulate with some degree of clarity the nature of benefits, if any, accruing to that substitute.

ALLOWANCE FOR DESIGNATED TEACHER
ALLOWANCE FOR DEPARTMENT HEADS
ALLOWANCE FOR TEACHERS IN ONE ROOM SCHOOLS
ALLOWANCE FOR CONSULTANTS AND COORDINATORS
PRINCIPALS' ADMINISTRATIVE ALLOWANCES

We are dealing with these five items together because there is no reason, on principle, to treat one item differently from the others.

Each of these items relates to wages by way of allowances for persons in stipulated categories. The current Agreement in each case provides for a pay scale. The Association proposed a percentage increase in each case and the Division essentially proposed a pay freeze

We think that the relationships among these various categories and the teachers who are covered by the grid should not be altered by this arbitration Award. The fairest result is to apply the same percentage increase to each of these categories as we have awarded in respect of the normal pay scale, for each of the years in question, and we so aware.

In respect of the allowance for Department Heads, the parties agreed to some wording changes which we hereby award.

With respect to the teachers in one room schools, the percentage increase commencing as of January 1, 1988, is on the allowance of $560.19, which is the currently agreed allowance.

RECLASSIFICATION

The current Agreement contains a clause (Article 3.06) which applies when a teacher obtains a higher classification from the Department of Education. The Agreement provides that the teacher is moved into the higher classification for the purposes of the Agreement effective on the first day of the month during which receipt of notice of reclassification is filed with the Division. There is a safety valve in the Agreement which provides that if extenuating circumstances beyond the teacher's control have caused a delay in receipt of evidence of reclassification, then reclassification may be made retroactive to certain stipulated times.

The Association proposed a revision to this arrangement such that when notice of reclassification is filed, it is automatically retroactive to certain stipulated dates. The purpose of this proposal was to match the effective date more closely to the date of the actual acquisition of the higher classification. The Division agreed that the provisions relating to extenuating circumstances beyond the teacher's control could be removed from the Agreement but still wished to maintain the more rigorous provision relating to effectiveness.

Reclassification logically should be effective at about the point in time when the higher classification itself becomes effective. In an ideal world that would occur, without any delays occasioned by paperwork or otherwise. When the teacher is granted higher classification by the Department of Education, that should automatically result in a corresponding move in the teacher's status within the Division.

We have considered the arguments of both parties and have also reviewed the provisions in other Metropolitan Winnipeg collective agreements on this same subject. We believe the teacher should carry the responsibility of ensuring that evidence of higher classification is submitted to the Division, as this is essentially a matter totally outside the control of the Division and largely within the control of the teacher,

subject to the vagaries of the Department of Education, which, obviously, the teacher can little influence. Nevertheless, the burden of responsibility should properly fall with the teacher rather than the Division, as this is a matter beyond the scope of the Division's control. We believe that provisions such as those found in St. James-Assiniboia and River East are sensible and should be adopted here. The burden of providing evidence rests with the teacher, and the increased classification should be effective for the purposes of the Division and the teacher one month following receipt by the Division of evidence of the higher classification. River East has an exception for evidence of higher classification submitted in September or October, in which case the effect is retroactive to September 1st, which we think is a sensible exception. We award as follows:

> An allowance for additional qualifications shall be paid to a teacher provided that evidence of such additional qualifications is filed with the Secretary-Treasurer of the Division. This allowance shall take effect for the purposes of the Division and the teacher one month following receipt of evidence from the teacher of successful completion of requirements for a higher classification, even though confirmation thereof has not yet been received by the Division from the Administration and Teacher Certification Branch of the Manitoba Department of Education; provided that in the case of evidence submitted in September or October the salary allowance shall be paid retroactive to September 1st

INTEREST

The question of interest on retroactive pay seems to come up frequently in school arbitrations. Interest is properly construed neither as a penalty to the Division nor as a windfall to the teacher. It should be seen as a reflection of the reality that services have been provided without corresponding full compensation. There was no real challenge by the Division to the principle of payment of interest; the dispute relates to the technical provisions of how and when and as of what time interest is payable.

We do not think that interest should be deferred and only commence to run from the time -a Chairman is appointed to a board of arbitration. Services have been provided by teachers and the payment of interest simply reflects an acknowledgment of the time value of money that was not paid at the time. We could tinker with the wording of the June 2, 1987 Memorandum of Agreement between the parties on this issue, to suit our own view of what would be the ultimate in drafting precision. In the end, we think we should leave the current arrangement untouched, but we do award that it form part of the Agreement for 1989 (the parties had agreed it would be part of the 1988 Agreement).

DIRECTOR OF CONTINUING EDUCATION

The parties spent a considerable amount of time on this particular issue. The Director of Continuing Education fulfills an important role in the work of the Division. At present, the Agreement does not include the role of Director of Continuing Education. The Association proposed that provisions should be made in the Agreement for an allowance for the Director; his salary would be paid under the normal pay scale and then there would be a separate allowance for him as Director. The Division proposed that the Director continue to be paid outside of the Agreement.

The parties have reached an accommodation regarding the incumbent in the position. The question before us relates to the position as such, without regard to the individual currently in the role.

The Director plans, organizes, implements and supervises the evening school program which includes both credit courses and non-credit courses. These programs and courses are seen as an extension of the public school program. They are both academically and skills building oriented. The Director has a set of duties, which were provided to us, which are very comprehensive indeed.

The position as such does not require the Director to be a teacher. The Division asserted that it needed flexibility in hiring the best person for the job without restricting the applicants to candidates with a teaching degree.

Considerable information was given to us regarding the nature of the courses offered. They include courses which provide for credits being granted, to non-credit courses relating to knitting, flower arranging,

guitar, "jive dance., Swedish massage and other courses.

This position is an administrative position which in our view is not necessary to be filled by a teacher. We do not think that we should impose upon the parties the requirement that this position be dealt with in the context of the Agreement. The duties and the scope of the job are not such as to bring it within the normal range of a teacher's functions, and we decline to award as requested by the Association.

DETERMINATION OF ADMINISTRATORS' ALLOWANCES

Schools in this Division, as with the others in the Province, are categorized in a particular manner to determine Administrative allowances. Each of the parties proposed some changes in the categorization of certain schools. The enrollment in schools is, of course, changing from time to time and in some of these schools the enrollment has changed substantially over the years. This is a function of a variety of factors, but obviously shifting location of population is a principal reason.

We believe that there should be two changes, over and above those agreed to by the parties (the parties agreed relating to Regent Park School/Joseph Teres School and to the new Regent Park French Immersion middle school). We believe that Dugald should move from the C category to the B category and Wayoata should move from the B category to the C category. The enrollment information given to us (see page 110 of the Division's submission) supports this decision, and we award accordingly. We do not find justification for other moves.

We would, however, make no change regarding Dugald and Wayoata for the 1988 portion of the Agreement under consideration, and would confine this part of our Award to take effect for 1989 only. We also award that persons who would be adversely affected in compensation by this award for 1989 shall not be so affected.

PART-TIME TEACHERS

The utilization of part-time teachers is a strikingly increasing phenomenon. In the Province the number of part-time teachers has increased from 1971, when they represented 2.7% of the total number of teachers in the Province, to 1987 when they represented 11.5% of the total number of teachers in the Province. This is accounted for by many factors including the increasing interest in and focus upon specialization and unique skills. In the Division the number of part-time teachers has more than doubled in eight years (from 24 in 1979 to 52 in 1987) and in 1987 the number of part-time teachers in the Division constituted about 11% of the full-time equivalent complement.

Part-time teachers are those who are hired for a full school year but who are assigned to teach on less than a full-time basis. These are teachers who sign a contract with the Division. The contract is either in Form 2 or in Form 2A (under The Public Schools Act). The Agreement contains no provisions for part-time teachers and the Division wants that position to be maintained. The Association, on the other hand, put forward seven proposals for inclusion in the Agreement relating to part-time teachers.

We all agree that the Agreement should reflect this change in pattern. The Division has policies relating to part-time teachers and we think that the position of part-time teachers should now be reflected in the Agreement. The policy requires part-time teachers to know the contents of the Agreement and, as teachers signed to a contract, they ought to have the benefit of the Agreement as well.

We do not want to discourage the utilization of part-time teachers, and their exclusion from the Agreement may well serve as a dampener on their use. That is not to say that the use of part-time teachers should be encouraged to the detriment of full-time teachers; on the contrary. But we must take into account what is happening, and based on trends, what is likely to happen, and, therefore, we have decided to include provision in the Agreement relating to part-time teachers. We deal with each of the seven proposals as follows:

1. We award that teachers employed under contract on a part-time basis shall be paid a pro rated salary of a full-time teacher who has the same qualifications and experience, on a proportional basis, having regard to the amount of time worked

2. Part-time teachers will move to the next step of the salary schedule after service in the part-time position equivalent to a full year's teaching experience. By way of illustration assume the salary for a Class IV teacher at step 2 is $30,000 in year 1, and that the salary increases by $1,000 in each of year 2 and year 3, and that the salary for the same teacher at step 3 is $1,400 higher each year, as follows:

   Class IV

Step	Year 1	Year 2	Year 3
2	$30,000	$31,000	$32,000
3	$31,400	$32,400	$33,400

   A part-time teacher working exactly half-time would receive:

   $$\frac{\$30{,}000}{2} = \$15{,}000 \text{ in year 1}$$
   $$\frac{\$31{,}000}{2} = \$15{,}500 \text{ in year 2;}$$
   $$\frac{\$33{,}400}{2} = \$16{,}700 \text{ in year 3.}$$

3. Part-time teachers will be afforded preference over new hires when full-time positions become available. Assuming a level of skill, ability and competence sufficient, the Division's discretion, for the purposes, seniority among such part-time teachers will prevail.
4. Part-time teachers will be eligible to participate in applicable employee benefit plans.
5. Part-time teachers who are required to attend administration days, parent teacher conferences, pupil evaluation days and professional development days outside of the time normally scheduled for work shall be compensated on a pro rata wage basis.
6. Accumulation of sick leave entitlement by part-time teachers will be, in effect, pro rated.
7. We make no award in respect of contact/non-contact time of part-time

teachers.

TERM CONTRACTS

The current Agreement is silent on the subject of teachers who are hired on term contracts and the Division proposes no change in that situation. The Association proposed two matters relating to teachers employed on term contracts. The first would see teachers who are so employed for two successive school years of full-time teaching subsequently be offered a regular Form 2 contract retroactive to the date of first commencement of duties under the term arrangement. This would see them have some retroactive credits in respect of matters such as sick leave, lay off protection, and so on. The second matter relates to the engagement of a replacement teacher for 10 or more continuous school days and the Association's request that such a teacher be engaged for the full period of employment under a Form 2A contract.

Form 2A contracts are relatively new but are now in place and in use. These contracts set forth the essential terms and conditions of the relationship between the teacher and the employer for the term thereof (apart, of course, from the governing provisions of the Agreement, The Public Schools Act and other applicable instruments). The teacher and the Division have agreed that for the term of the particular Form 2A contract the provisions thereof will govern. We agree that after a certain period of time, and two successive school years seems a reasonable standard, a Form 2A teacher should be offered a Form 2 contract. We do not agree that the Form 2 contract should then be retroactive.

It would be fairest to the replacement teacher who is engaged for a continuous period of time that the engagement be expressed in a Form 2A contract. Whether ten or more continuous school days is reasonable is a matter of judgment. It is our view that the period of time proposed by the Association should be acceptable and we award accordingly.

LEAVE OF ABSENCE FOR EXECUTIVE DUTIES

The Agreement contains provisions permitting teachers who are in certain executive positions certain leaves. These leaves are limited to five teaching days in any school year, provided that a satisfactory substitute is obtained and the cost of the substitute is assumed by the Teachers' Society or the Association. The Division proposed changes in these rules which would see the Division deducting daily salary from the absent teacher with a maximum aggregate of 20 days in total being taken during any school year by members of the Association and with notice being given prior to the taking of any leave.

We do not think teachers should be discouraged from participation in Association activities. Such participation may occur outside normal school hours. To the extent that it occurs during school hours, obviously there is some "cost" to the Division and its students, in that the normal teaching process is somewhat disrupted by the introduction of a substitute.

We agree that the substitute who is hired must be a substitute who is satisfactory to the Division. The present wording leaves that question somewhat open but we are satisfied that the Division's position on this issue is correct. We do not think that the present reimbursement arrangement is fair enough, in light of the views we have expressed above. We also do not favour a deduction from the teacher's salary, which could adversely affect certain of the teacher's benefit entitlements. We think the Teachers' Society or Association, as applicable, should reimburse the Division for something more than the bare cost of the substitute and something less than the daily salary of the teacher. We think that a fair balance, not enough to discourage participation but enough to take into account the hidden "cost" to the Division, is that the reimbursement should be the substitute's salary plus 50% of the difference between such salary and 1/200ths of the teacher's salary.

We do not think that there is any need to put a cap by way of a maximum aggregate of 20 days for leaves.

There is no indication that this situation has been abused in the past, and, as we have said, participation at the executive level in the Association or the Teachers' Society should not be discouraged.

As a general rule it should not be a burden to have the teacher give notice to the Division in advance of taking leave for executive duties. We think that five teaching days' notice should be given but in the event less notice is given because it was not reasonably possible to give such notice, the Division, while it may withhold its consent for the leave, should not unreasonably do so. We award accordingly.

LEAVE FOR PRESIDENT
POSITION WITH M.T.S.

The president of the local Association has certain leave privileges under the Agreement. The Association proposed changes which it said would provide more flexibility without any additional burden to the Division.

After reviewing the Association's proposal, we think that changes ought to be made in the present Agreement. At the present time a leave over and above the half time provisions is fully discretionary on the part of the Division. We would award that the Division should not unreasonably withhold its consent when additional leave is sought.

The Association proposed that the Agreement stipulate that persons in certain executive positions with the Manitoba Teachers' Society be granted leave for the term of office and be reinstated upon returning to teaching in the same or in a "no less favorable" position than the one vacated. We believe, as we said in connection with item 16, that teachers should not be discouraged from this kind of executive activity. We agree with the Association's revised proposal but would not require the Division to reinstate the teacher "in the position" formerly occupied. The reinstatement would be in a position "no less favorable" than the one formerly held. We would make the same award regarding the president of the local Association.

We observe that the use of the phrase "no less favorable" may lead to some uncertainty. We think that the decision as to whether a position is or is not less favorable ultimately must be made by the Division, which is to exercise its judgment on that matter in a reasonable fashion, having regard to all relevant factors including educational needs and the interests of the teacher, and we award accordingly.

PROFESSIONAL DEVELOPMENT FUND

There is now a professional development fund into which about $60,000 annually is paid by the Division for the purposes of professional development of its teachers. The Superintendent administers the Fund. The amount allocated to this Fund is quite low in relation to other Winnipeg Divisions on a per teacher basis. The Association requested an increase which would amount to about $100,000. The Association also requested joint administration by itself and the Superintendent.
We award:

(a) That the Professional Development Fund be dealt with in a separate article;

(b) That the Division annually provide for the Fund two times the average teacher's salary;

(c) That the Fund be administered by the Superintendent with participation in the administration by representatives of the Association selected by it.

If the (c) part above requires clarification, we mean that the ultimate responsibility and decision-making authority for the administration of the fund rests with the Superintendent, but that persons selected for that purpose by the Association will participate in and offer advice on the decisions as to utilization of the Fund.

ENTITLEMENT TO LEAVE OF ABSENCE

There is a leave which the Division in its discretion may grant for any purpose. The Association proposed changes to the provisions of Article 7.04(a), which covers this situation. The proposal effectively was that a teacher with ten years' service be entitled to a one year leave of absence. It was suggested that there was no cost involved in this proposal since the leave would be without pay and that it would be very good for morale. Not many teachers would be able to avail themselves of this opportunity but desirable for those few who would, this would be a provision to put into the Agreement.

The provisions requested generally seem reasonable and should not constitute any administrative burden on the Division. We would, however, add a rider to the Association's proposal to the effect that not more than 2% of the teaching staff in any year (based on the prior year's full-time equivalent complement as a measurement) are entitled to this new leave as of right. In the event that more than that number request leave, then seniority shall prevail. The Division shall construct procedures (which shall be reasonable) in terms of advance notice of request of leave and other administrative aspects of this provision.

MEDICAL LEAVE

The Association proposed that a change be made in the medical leave provisions. These are leaves without pay and the Association proposed that the two year maximum currently in the Agreement be removed.

We are not disposed to agree to the Association's request. There has been no case of any kind made out for this provision to be changed and while there may be no cost to the Division in agreeing to it, we would expect the Division to exercise its judgment in these matters in a reasonable way. We would suggest that the Division give serious consideration in cases of long term illness to extending the leave, but we think in all the circumstances that should be a matter for the discretion of the Division, which should be exercised in favour of the teacher who is ill, wherever reasonably possible. We would not, however, award any change in the wording of the Agreement.

RELIGIOUS HOLIDAYS

The Division proposed that the current provision allowing teachers three religious holidays without loss of pay be reduced to two religious holidays with salary deducted. We think that the three days, which have been in the Agreement since (apparently) 1976, should not be changed. Why the days are given without loss of pay is not clear to us. Christmas Day and Good Friday are statutory holidays. Other major religious or high holy days normally observed are personal to the teacher. It is certainly arguable to put forward the proposition that some salary should be deducted in respect of this leave, whether that is 1/200ths of salary as proposed by the Division, or the cost of the replacement substitute teacher, or something in between.

We are reluctant to order this change and in the end decline to do so, largely because we do not think this should become an issue between the parties (more than it is), and there was no strong argument advanced that this is a major cost item. Winnipeg School Division does not deduct pay although St. James-Assiniboia, River East and (on a formula) Seven Oaks do. We leave the provisions as they stand, although we acknowledge that if evidence were presented to us to demonstrate that the cost of these personal religious observances was significant, we would probably order that the teacher taking the holiday make reimbursement to the Division on some basis. But based on what we have heard, we award no change.

SICK LEAVE

The Association proposed some changes in connection with the sick leave provisions. It proposed an accumulation of sick leave, going beyond the fourth year to the fifth and subsequent years, of 100 teaching days, and some other items, one of which related to teachers on term contracts with which we have dealt before. The Division also proposed some changes to this provision.

We have considered both submissions and have decided that neither is sufficiently persuasive to warrant any change in the sick leave clause.

SICK LEAVE FOR TEACHERS ON TERM CONTRACTS OR REPLACEMENT TEACHERS

We have effectively dealt with this under No. 15 above and it is not necessary to deal further with it here.

LIMITATION ON BENEFITS TO REPLACEMENT (SUBSTITUTE) TEACHERS

As with the previous item we have dealt with this matter above and will not deal with it here.

TRANSFERS

The current Agreement contains no provisions relating to transfers of teachers from one school to another. The Association proposed that teachers who are to be transferred must be given written notice and the rationale for the transfer. As a matter of Division policy this now appears to be its practice. The Association also proposed that the Division's right to initiate transfers must be exercised fairly and reasonably.

The assignment and reassignment of staff is obviously a critical aspect of the administrative processes of the Division and everything we have seen and heard indicates that this Division pays very close attention to this particular matter. The Division states that it gives high priority to matching the needs of the Division and the schools with the expertise and overall suitability of the teacher. Moreover, where these conditions are met and wherever possible, the Division states that the teacher's own preferences are also considered.

Nevertheless, it appears (based on one anonymous survey that was provided to us) that teachers in the Division have sometimes expressed very great degrees of dissatisfaction with the transferring process. We are reluctant to place too much emphasis on these results, coming as they do from an anonymous survey. However, we do note that many divisions in Manitoba have clauses providing for transfers within the division and we see merit in putting in the Agreement a clause sensitive to the needs of both parties.

We believe that it is reasonable that a teacher who is to be transferred within the Division be given written notice of the proposed transfer. The amount of notice should be reasonable notice, having regard to all the circumstances. The reasons for the transfer are to be included in the notice. The Division has the right to initiate transfers but that right should be exercised fair and reasonable manner having regard to circumstances including the needs of the Division. interests of the teacher are a factor to be taken into account but paramountcy must be given to the educational requirements of the Division. Teachers do not "own" a job at a particular school and if the Division in its fair and reasonable judgment determines that the educational needs of the Division can better be met by transferring a teacher, then it must have the right to do so. It should also, but as a subsidiary consideration, take into account the interests in a all The and concerns of the teacher and, wherever reasonably possible, try to accommodate them. We award as follows:

> The Association recognizes the right of the Division to assign teachers employed by the Division to schools and classes under the jurisdiction of the Division.
>
> A teacher who is to be transferred within the Division shall be given reasonable written notice of the proposed transfer.
>
> The reasons for the transfer shall be included in the written notices of the transfer.
>
> The Division's right to initiate transfers shall always be exercised fairly and reasonably having regard to all the circumstances including, in particular, the educational needs of the Division which shall be the paramount consideration, and as a secondary consideration the interests of the teacher involved.

LAYOFF

The Association has proposed that the Agreement include a provision governing the layoff of teachers. The current agreement is silent on the subject, and the Division proposes no change.

Ten years ago it seems to have been the case that most, if not all, collective agreements between teachers and divisions within the Province did not contain clauses on layoff. In the context of those circumstances a view expressed by arbitrators was that the decision as to teacher layoff should remain with the employing authority and be exercised by it in its unfettered discretion. This was so largely because rules relating to

seniority and educational qualifications were not considered appropriate as "exclusive determinants of which teachers should be laid off and that the teachers who should be retained might be those with the least seniority, rather than the most" (see 1979 Winnipeg School Division No. 1 arbitration award, quoted at pages 189-191 of the Division's submission).

But times have changed, and the great majority of agreements for school divisions in this Province now have layoff clauses. The notion that seniority and qualifications are not appropriate as "exclusive" determinants of who should be laid off has been eroded somewhat by agreement between teachers and school divisions. Today it appears that a number of factors relating to layoffs seem to be generally acceptable for agreements in other divisions. Extensive details of these were provided to us. It is enough for us to state that Metro school divisions in Winnipeg, comprising Winnipeg, St. James-Assiniboia, St. Boniface, Fort Garry, St. Vital, Norwood, River East and Seven Oaks appear to contain quite extensive provisions, and there are provisions in rural division agreements as well. Within this context we do not think there can be any point of principle which should prevent layoff clauses from appearing in collective agreements in this Province.

A great body of material was submitted to us on this subject and it is obviously quite controversial within the Division. We do not propose to recite the arguments of both parties but think we can best serve the interests of the parties by giving our views concisely.

The majority of layoff articles submitted to us appear to stipulate that layoffs will be based upon seniority, provided that the teacher who relies on seniority to avoid being laid off, has the necessary training, academic qualifications and experience required. Wording to this effect is found in Winnipeg, St. Boniface and other Metro divisions.

To take Winnipeg as an illustration, training is defined to mean instruction received as preparation for the profession of teaching leading to the development of a particular skill regarding a particular subject; academic qualifications refer to the teacher's classification and experience has reference to the practical application of the training over time with regard to a particular subject.

Other forms of layoff clauses refer to ability or suitability, and apply the notion that the person who is not laid off is the one who is best able or suited to the position which needs to be filled. In other words, notwithstanding seniority, or training, experience or academic qualifications, some considerable discretion would be vested under this approach in the hands of the Division, such that it could exercise its judgment regarding who is best suited for the position in question.

For example, in the Fort Garry School Division, it appears that the Board can disregard seniority in regard to any particular teacher in the event of a layoff if the teacher does not have the necessary training, academic qualifications, experience "and ability for a specific assignment. Ability is defined to mean a

teacher's "demonstrated skill and competence to perform a particular teaching assignment satisfactorily and proficiently after having acquired the necessary training, academic qualifications and experience". Reference could also be made to the requirement for an employer to have regard to special program and administrative needs of the Division.

We are all in agreement that a layoff clause should be awarded. After considerable reflection, we are of the view that the Division, ultimately having the responsibility for the delivery of teaching services to its student population, must be able to exercise judgment as to a teacher's ability, which is probably the single most important factor in the overall analysis of a teacher's performance. We favour the approach in the Fort Garry School Division, and would apply it here. Regardless of other factors, we think that it is not in the interests of the students that ability not be among the relevant criteria when layoffs have to occur. Indeed, we doubt that teachers would argue that ability is irrelevant.

Both the Division and the Association put forward proposals, although the Division's proposal was advanced considerably after the arbitration commenced.
We award as follows:

(a) Where it is determined by the Division that a layoff is necessary and where natural attrition, transfers, sabbaticals and leaves of absence do not effect the necessary reduction in staff, the Division shall give first consideration to retaining teachers having the greatest length of service with the Division.

(b) Notwithstanding the foregoing, the Division shall have the right to disregard the length of service of any teacher in the event of a layoff, if such teacher does not have the necessary training, academic qualifications and experience and ability for a specific teaching assignment within the Division. When exercising its discretion herein the Division shall act fairly and reasonably, bona fide, and in a non-discriminatory manner.

(c) Definitions:

i) Training - instruction received as preparation for the profession of teaching, which instruction leads to the development of a particular skill or proficiency with respect to a particular subject or subject;

ii) Academic Qualifications - refers to the classification in which a teacher is placed by the appropriate section of Manitoba Education;

iii) Experience - the practical application of training over a period of time with respect to the particular subject or subjects;

iv) Ability - a teacher’s demonstrated skill and competence to perform a particular teaching assignment satisfactorily and proficiently after having acquired the necessary training, academic qualifications and experience;

v) Length of teaching service - the teacher’s length of continuous employment with the Division commencing with the first teaching day after his most recent day of hiring with the Division. Approved leaves of absence shall not constitute a breach in continuity of service.

(d) Where teachers have the same length of teaching experience within the Division, the order of the seniority list shall be determined on the basis of the length of teaching experience with the Division, from the date last hired.

(e) Where teachers have the same seniority as determined above, the order shall be determined on the basis of the total of verified teaching experience by the appropriate section of Manitoba education.

(f) If after the application of (d) and (e) above the length of teaching experience as determined above is still equal, the teacher to be declared surplus shall be determined by the Division, upon consultation with the Association.

(g) A teacher will retain and accrue seniority if absent from work because of illness or accident (to a maximum of 100 teaching days) or for leaves permitted pursuant to the Agreement.

(h) A teacher shall retain, but not accrue, seniority if the teacher is on leave of absence, absent because of illness or accident for more than 100 days, on sabbatical and/or retraining leave, on parenting leave or on secondment.

(i) A teacher shall lose seniority for any of the following reasons:

a) Resignation;

b) If the teacher is employed by another school division as a full time teacher on a Form 2 or equivalent full time contract approved by the Minister except those teachers who are employed full time on such a contract for a limited term not to exceed one year;

c) The teacher fails to return after the termination of any leave granted by the Division;

d) The teacher's contract is terminated for cause;

e) Any teacher on the re-employment list as hereinafter described refuses to accept a position for which the teacher has the necessary training, academic qualifications, experience and ability to perform the work in the position offered.

(j) The Division shall meet with the executive of the Association to discuss the layoff and shall provide the Association with a list of teachers to be laid off and with a copy of the seniority list by April 15.

(k) Notice of any layoff shall be given to the teachers no later than the 1st day of May.

(l) If after layoffs have occurred positions become available within two years following the date of layoff, teachers who have been laid off and have given written notice that they wish to be recalled shall be offered the available positions first, provided such teachers have the necessary training, academic qualifications and experience and ability for the positions available. Length of service with the Division will be used to determine the order in which laid off teachers are offered the available positions, provided that they meet the other qualifications aforesaid.

(m) Recall notices will be delivered by Registered Mail to the last reported address of the teacher and a teacher who receives such notice shall be required to indicate within 14 working days of receipt of such notice, his intention to return to work and will be required to return to work on the date set out in the notice,

which date shall be not less than 31 calendar days following such notification or such other time as the parties may mutually agree.

(n) A teacher's accumulated sick leave credits will not be affected if the teacher is recalled as provided above.

(o) Seniority gained prior to layoff will not be affected; additional seniority shall not be accrued during layoff.

CONTACT TIME

The Association proposed that the Agreement contain provisions regulating strictly the contact time assigned to any teacher. While the proposal was, according to the Association, essentially no different than the current practice in the Division, the Association thought that it was desirable to enshrine the practice in the Agreement. The proposal essentially would see the contact time assigned to any teacher not exceeding on average a total of 260 to 280 minutes per day, depending upon the school level. The proposal would also see teachers receiving non-contact time (for the purposes of class changes, recesses, marking and/or lesson preparation) a minimum of between 50 to 70 minutes per day, again depending upon the school level. The Division did not wish to see any provision in the Agreement on this matter.

The Division objected to the inclusion of any clause along these lines on jurisdictional grounds, as well as on grounds of principle. We will not canvass in any detail the jurisdictional argument, because we all agree the matter of contact time is properly arbitrable. This issue has been canvassed at length in other awards and in certain court proceedings, many of which were referred to during this arbitration. We are satisfied on the basis of the authorities that the question of contact time is negotiable and therefore arbitrable. We are satisfied that the question of contact time relates to a term or condition of employment and at the same time is a matter not specifically set out in The Public Schools Act or regulations, or other statutory instruments, in such a manner as to deprive us of jurisdiction. We refer to the award in the matter of The Assiniboine South School Division No. 3 and The Assiniboine South Teachers' Association No. 3 of The Manitoba Teachers' Society (May 24, 1985) in which all three members of this current board were also members of that board (a copy of the award is found at page 557 of the Association's submission) and in which these matters were canvassed quite thoroughly. We thought then, and reconfirm our view, that issues such as contact time are negotiable and are therefore arbitrable.

The Association argued that its members were entitled to have articulated in the Agreement provisions which would define a realistic aggregate workload. This request relates not only to the question of contact time but also to the three other remaining issues, namely, extracurricular activities, meal period and class size. The Association submitted that its members are employees of the Division working under a professional contract which permits the Division to call for services in accordance with the contract. It submitted that the teacher's work day was misunderstood and that teachers spend a very considerable amount of time not only in the classroom in contact with students but also in preparation and performing other tasks. Once the Agreement is settled, there are no restrictions on the Division in increasing its

demand for services. It was the Association's view that the Division should be required to act reasonably and fairly in calling for services and the only way of ensuring this would be to provide accordingly in the Agreement. There are essentially no controls now, said the Association, and the teacher is quite substantially under the control of the Division. It was argued that a provision in the Agreement was needed to protect the teachers from being unfairly burdened.

The Association submitted to us examples of clauses in collective agreements in Saskatchewan and New Brunswick and also a summary of British Columbia provisions, in support of its argument. Other British Columbia extracts were also provided. It also submitted a long list of functions which teachers perform in addition to actual instructional activities.

The Division resisted this encroachment and argued that no case had been made out for including any provisions in the Agreement on contact time. It also argued that the Association was inconsistent in presenting arguments which on the one hand portrayed teachers as pure employees and, therefore, entitled to strict regulations as to what could be demanded of them, and on the other hand, attempted to preserve vestiges of professionalism in some of the other provisions that the teachers wished to retain or include in the Agreement.

There has been no evidence submitted to us of any excessive requirements on the part of the Division from its teachers in respect of the matters which are the subject of this proposal. Nevertheless, one can appreciate the argument that for the Division to have the unilateral and unrestricted right to increase the demands on teachers once a collective agreement is signed, without recourse by the teachers, has elements in it of at least potential unfairness. In our view, there should be some contractual recognition that no material alterations should be made in any school year in the instructional demands made on a teacher from the situation that existed immediately before the Agreement came into force. This should not interfere with the Division's ability to manage its work force and to alter assignments and, indeed, to increase demands within some tolerable level. We think that there should be recognition of the fact that the increases, if there are to be any, cannot be of a magnitude that in any substantial or material way alters the context in which the Agreement was negotiated. We reiterate (see page 33 of the Assiniboine South Award) that the Division should have some degree of flexibility in structuring and arranging its school programs, and one must always remember that it is the Division which has the statutory responsibility to deliver teaching services.

It was suggested that the Association's proposal as presented would be an unreasonable restriction on the ability of the Division to perform its duties. We do not, however, think a provision of the kind we have described is similarly unacceptable.

Any contractual provision that seeks to preserve some level of flexibility will inevitably leave some questions open for debate or disagreement. We understand that there are many circumstances that will

arise that will not be resolved by the strict application of the clause we propose. Either the parties will resolve the issues in a reasonable manner, or arbitration will result. Ultimately the Agreement may have a much more detailed provision on contact time; we do not think we should impose such a detailed provision now. We certainly expect that this issue will be the subject of negotiations between the parties for their 1990 agreement.

We have framed our award to apply for the 1988-1989 school year. Because of the timing of this Award we declare that the following provision not have any retroactive effect. We award as follows:

> The student contact time assigned in the 1988-1989 school year to any teacher during the normal school day, whether such time is in a teaching, consultation or supervisory role, shall not be more than 5% greater than the student contact time which had been assigned to such teacher during the normal school day in the previous school year.

MAXIMUM INSTRUCTIONAL GROUP SIZE

The Association ultimately presented to us (after its initial proposal was withdrawn) quite a comprehensive proposal for addressing class size issues. These are found at pages 336 and following of the Association's submission. Essentially the proposal would see consultations between the principal and the teachers in each school on the subject of actual instructional class size, and in the event of unforeseen problems the matter would be taken up at higher levels. Ultimately the matter would be grievable and arbitrable.

The Division resisted this proposal on grounds of both jurisdiction and principle. As to jurisdiction, our comments above relating to contact time apply equally here and we are all of the view that there is no doubt we have jurisdiction to deal with this matter. We also find we can deal with the amended proposal of the Association.

In support of its submission the Association agreed that there was no suggestion that the Division was deliberately creating unsafe or inefficient class sizes. There was a perception, however, that could exist of unsafe situations being created. Examples from other provinces were provided to us, although no Manitoba provisions existed. It was submitted that it was time that class size be included in the Agreement, and be limited as proposed.

The Division, in addition to its jurisdictional argument, submitted information dealing with class size. At page 193 of the Division's submission and following there will be found considerable information relating to instructional group size.

We are impressed with the comments of Dr. Benjamin Levin, writing a few years ago when he was the Director of the Planning and Research Branch of the Department of Education (see page 195 of the Division's submission) that the weight of evidence in research is overwhelmingly against a strong relationship between class size and achievement. We agree with his view that the burden of argument for a change in class size rules should lie on those proposing the change. We have not seen any evidence whatsoever justifying fear, concern or apprehension that the Division is or might be likely to abuse the discretion which is given to it in this entire area.

In our judgment this proposal falls largely within the proper domain of the employer. We understand that at present there is considerable consultation, and that is no surprise, as we would think that responsible employers would involve staff members in situations of this kind relating to class size. The Division has a responsibility to discharge to ensure that education of the highest possible quality is provided, and we do not think there should be contractually imposed restrictions on the Division in the area of maximum instructional group size. We decline to award as requested by the Association.

MEAL PERIOD

The Association requested that we award that every teacher receive an uninterrupted meal period of a minimum of one hour between 11:00 and 2:00 p.m. daily. This request was resisted by the Division which proposed no alternative for our consideration.

As with some of the previous proposals of the Association, this related to a "realistic aggregate workload".

We have no doubt that jurisdiction rests with this Board to award in respect of meal periods, if circumstances are appropriate. As with the other matters dealt with in this Award, the question of meal periods relates to terms and conditions of employment, has not been dealt with to the extent, if at all, that would be required in regulations or statutes to deprive us of jurisdiction, and is negotiable and arbitrable.

The Association suggested that we might resolve this matter simply by awarding that noon hour activities are voluntary. Alternatively, it was suggested that if the Division does have the right to require duties to be performed during noon hours, then we could define the maximum scope of such duties and leave it to the teacher to decide whether he or she would do any more. Nevertheless, said the Association, we still were free to award a minimum period of duty free lunch.

Reference was made by the Association to the judgment of the Manitoba Court of Appeal in the Snow Lake case, (1987) 2 W.W.R. 348, in which the Court of Appeal was asked to determine the duty of teachers when supervising during noon hour. At page 9 of the judgment the Court referred to the fact that a teacher is normally to have a proper lunch break.

The Association conducted a survey of its members to obtain information as to the kinds of activities in which the teachers are involved by way of supervision or assistance during noon hours. A great variety of activities were listed (these are found in the Association's submission).

In the Snow Lake trial judgment, the learned judge quoted from the judgment of Laskin C.J.C., in the Winnipeg Teachers' case (1976), where the Chief Justice said that it was consistent with the duties of teachers that they should carry out reasonable directions of principals to provide on a rotation basis noon hour supervision of students who stay on the school premises during the noon hour, under certain conditions. The Chief Justice recognized that teachers would be inconvenienced thereby, and thought that it would not be unreasonable that some consideration be shown to them by way of compensating time off. But that matter was not before the court in the Winnipeg Teachers' case. Although the Chief Justice dissented in the result, the Court did not part company with him on these observations.

In Snow Lake the court at first instance (and the Court of Appeal affirming) quashed the award of an arbitration board which determined that the only functions which teachers were obliged to perform were "functions directly relating to their teaching capacity". The court at first instance determined that this was an incorrect premise and that the school division did have the right to require its teachers to provide supervision during noon hour.

In the Court of Appeal in Snow Lake it was held that the issue to be decided was whether the duties sought to be assigned were reasonable incidents of the employer/employee relationship. The Court found that noon hour supervision was related to the enterprise of education and that it may be fair to require teachers on a rotational basis to supervise during the noon hour "provided each teacher has adequate time off for lunch" (page 6). The Court also found that it was important that each teacher have an appropriate break during the day for lunch and relaxation (page 7). The Court referred to the possibility that the parties might think it reasonable that an extra stipend or other quid pro quo be given for supervision.

The issue before us is not whether teachers may be obliged to provide noon hour supervision; that seems to be determined and not disputed; the question is whether it is reasonable that teachers receive an uninterrupted meal period.

It is certainly a matter of general employment law (see, for example, The Employment Standards Act) that employees not be obliged to work long periods of times without breaks. We believe that it would not be reasonable, nor do we have any evidence before us that the Division has ever acted in this way, that teachers be obliged to work (including noon hour supervision) consistently for six or seven hours, without breaks. Nevertheless, we see considerable merit in the Association's proposal and think that to grant it, especially in the way in which it is framed, still leaves the Division considerable flexibility as to how to construct noon hour supervision activities.

The Association seeks a one hour uninterrupted meal period at any time between 11:00 and 2:00. Typically most students will have their noon hour breaks all at the same time and it should be well within the ability of the Division to arrange both noon hour supervision of students and teaching schedules so as to permit teachers this one hour requested break. The request of the Association is reasonable and we so award.

EXTRA-CURRICULAR ACTIVITIES

The Association proposed a new article on extracurricular activities. These would be defined to include programs and activities beyond the prescribed curricula and outside the regular hours of instruction. The new article would stipulate that such activities are voluntary and participation in them would not form part of the job evaluation of any teacher.

The current Agreement is silent on the subject and the Division resisted the Association's proposal.

There is a very considerable amount of background to this question of teacher's participation in extracurricular activities. This has been an issue in this particular division for a number of years and appears to have been quite a controversial subject. Grievances have been filed relating to it. The Division's policy, which among other matters indicates that teachers are expected to supervise extracurricular activities, is considered offensive by the Association. The disagreement as to the involvement of teachers

in extracurricular activities is not confined to this school division. Arbitration's have dealt with this in other divisions including a recent arbitration award relating to the Churchill School District (July, 1988). So far as we can determine no Manitoba school division collective agreement has provisions in it such as those which are being proposed by the Association, although that, of course, does not by itself mean that the Association's proposal should not be granted.

The Association submitted that a considerable part of the extracurricular activities imposed on teachers could not possibly be described as educational or instructional. Some activities might be, but work such as crowd control and supervision of buildings could not be. It was suggested that instructional matters ended at a particular point and that we should draw the line. The Association was quite dissatisfied with the award in Churchill (found in its submission at page 380) as being inconsistent with the dictum of the Court of Appeal in Snow Lake, and essentially unacceptable to either party. It was suggested that the proper approach would be to say that to the extent that extracurricular activities do not relate to instructional matters, they should be declared to be voluntary and the teacher would then decide the level, if any, of his participation in such activities. To the extent that they are instructional matters, then it seems to be the Association's position that they could properly be required of the teacher (but, perhaps, might relate then to the contact time issue).

The Association submitted examples from agreements in other provincial jurisdictions which it commended to us.

The Division in its submission on this issue referred to the complexity and difficulty in the management of the school division's affairs. Too much rigidity in the Agreement would create considerable difficulty. It asserted that the onus was on the Association to demonstrate the need for a provision and no need had been so demonstrated. While the absence of any provision in the Agreement arguably left the matter totally open ended, no evidence of abuse had been presented, in the Division's submission.

We believe that it is very important for the proper discharge by the Division of its duties, that it be able within reasonable limits and subject to reasonable safeguards to call upon teachers to participate in and supervise extracurricular activities. We believe it is necessary to define those reasonable limits and we think the most effective measure is quantitative rather than qualitative. What may appear at one place and point in time to be non-instructional may elsewhere and in other circumstances have significant elements of instructional quality to it. We are not in a position to stipulate those extracurricular activities in which participation is most important. That is for others to determine. We do think that there should be a quantitative cap on mandatory participation, so the limits are maintained at a reasonable level. We fully expect many teachers to continue their involvement, over and above that which may be required of them, on a voluntary basis.

One must recognize the "commercial" realities of the situation. The teachers are employed under contract

and the open ended character of the arrangement, while it may not foster abuse, certainly facilitates the possibility that grievances will arise, as indeed has happened here.

We think that the best balance, between the legitimate needs of the Division and the students, and a recognition that supervision and participation in extracurricular activities beyond a certain point is an unwarranted interference with the teacher's time, will be struck by drawing a line, after which such supervision and participation must be recognized as voluntary. Up to that line, the teacher's involvement in extracurricular activities has to be seen as being reasonably incidental to the fulfillment of his instructional duties and as required of him by virtue of his contract; beyond the line, it should be deemed not incidental thereto. Participation beyond the line is voluntary (of course, the parties may agree on some compensation for such activities, if they wish).

With respect, we share the view expressed in other contexts by O'Sullivan, J.A., in the Court of Appeal in Snow Lake, who adopted the dictum of Laskin, C.J.C., in W.T.A. v W.S.D.:

Laskin: "They (duties which are not expressly spelled out) must be related to the enterprise and be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed".

O'Sullivan "……what must be decided is whether the duties sought to be assigned by an employer are reasonable incidents of the employer/employee relationship in all the circumstances of the case…..noon-hour supervision is related to the enterprise of education…….the supervision of children during the noon-hour is in furtherance of the duty of education to which the teacher is expressly committed…….Education is much more than merely instructing; it is a process of formation…….".

The Association agreed that certain activities by teachers, which would not normally be thought of as "extracurricular", may be required of them, as part of their contractual duties, even if fulfilled beyond normal working hours. These would include remedial work, dealing with disciplinary situations, meetings with students, parents and administrators on academic matters, and so on. Teachers in the Division spend a considerable amount of time on such activities, as well as on other work related to teaching, such as preparation and marking. Extracurricular activities are more properly refer to student-related athletic activities, social activities and recreational/cultural activities.

We think that some participation by teachers in extracurricular activities (which phrase does not include academically related involvement outside normal school hours, whether alone or with students, parents or the administration) is central to the formative process of education referred to by O'Sullivan, J.A., and that such may be required of teachers as part of their contractual duties, up to a point. That point is necessarily somewhat arbitrary, but based on all the material we have been given, in our judgment that point is fairly reflected in our award, which is:

1. "Extracurricular activities" means student-related athletic, social, recreational and cultural activities, occurring outside the normal school day, but does not include activities related to academic or instructional matters outside the normal school day, whether such occur alone or with students, parents or administrative staff, such as (without limitation) staff meetings, parent/teacher meetings, committee work and in-service sessions.
2. The parties acknowledge the importance of extracurricular activities as an integral part of each student's education experience.
3. A teacher may be assigned duties in connection with extracurricular activities, but shall not be assigned duties in connection with extracurricular activities in excess of 30 hours per school year
4. The Division recognizes that participation by teachers in extracurricular activities, beyond the 30 hours per school year maximum assignment provided for in 3. is voluntary.

Because of the timing of this Award, we declare that the foregoing provision not have any retroactive effect.

This Award is longer than most similar awards, and yet we have not dealt with many of the issues nearly as extensively as the importance of them might warrant. Many were novel, and we received a very considerable amount of information. We believe the parties are well familiar with the material submitted and that it would provide no significant advantage to them or to future readers of this Award were we to delve in more detail into background, arguments or rationale. We think it is probably no longer necessary to refer, for example, to the various dicta that form the context of salary awards in public interest arbitrations, at least in Manitoba, in school divisions where all participants seem fully familiar with the appropriate indicators and measurements.

The fact that we are able to deal with the many issues before us in an Award which is, from the other perspective, as abbreviated as this one, is a tribute to the parties, both of which provided us with ample information and advice in their documents and oral submissions. We thank them, and the members who participated on behalf of the Division and the Association in this process, for their guidance and advice.

It will be observed that all three members of this Board have concurred in almost all aspects of this award. We have thought it particularly desirable to achieve, wherever possible, unanimity in our award. Having done so, we wish to note that each respective nominee of the parties has in certain instances agreed with the other two members, notwithstanding that such nominee may have some private reservations on the outcome of particular issues. We have done this because we all think it more important to achieve a workable and unanimous consensus on certain of the fundamental matters dealt with herein, than to have a nominee record his particular view (which in any case would not deviate greatly from the view of the other members) in the form of a separate award.

Any proposals by either party not specifically dealt with in this award are rejected by the Board. We retain jurisdiction for 90 days from this date, should the parties or either of them request our assistance in drafting clauses, or request clarification.

DATED at Winnipeg, this 13 day of December, 1989.

Martin H. Freedman, Q.C.
Chairman