

IN THE MATTER OF: An Arbitration under Part VIII of The Public Schools Act RSM

BETWEEN:

TURTLE RIVER TEACHERS' ASSOCIATION
OF THE MANITOBA TEACHERS' SOCIETY,

(hereinafter referred to as the "Association"),

- and -

TURTLE RIVER SCHOOL DIVISION,

(hereinafter referred to as the "Division").

SUPPLEMENTARY AWARD

Arbitration Board

Blair Graham - Chairperson

John Collins - Nominee of the Association

Gerald Parkinson - Nominee of the Division

Appearances:

For the Association: Saul Leibl
 Tom Paci
 Mike Bell

For the Division: Craig Wallis

SUPPLEMENTARY AWARD

INTRODUCTION

On March 15, 2007, this Board of Arbitration (the "Board") issued an Award pursuant to Part VIII of *The Public Schools Act RSM* (the "PSA"). The Association had proposed a new Article with respect to "Hours of Work". The Award, as it related to that proposed new Article, directed the parties to meet, as soon practicable, and to make a good faith attempt to negotiate a collateral agreement or letter of understanding, pursuant to which the Division would provide to all full-time teachers employed by the Division, a guaranteed minimum number of minutes of non-contact time within the instructional day, per five day cycle. The Board urged the parties to attempt to conclude their negotiations with respect to those matters no later than May 31, 2007. The Board also indicated it would retain jurisdiction with respect to an "Hours of Work" provision, if the parties were unable to reach an agreement on that issue, and that it would also retain jurisdiction to consider whether or not to award an additional salary increase of a specified amount, at all steps in each class of the salary scale, effective June 30, 2007.

The Board was advised that the parties met on April 11, 2007, but were unable to agree upon an "Hours of Work" Article providing for a guaranteed minimum amount of non-contact time. Accordingly, the parties reconvened before the Board on Thursday, June 21, 2007, and made additional submissions with respect to an "Hours of Work" provision, and with respect to whether any additional salary increments ought to be awarded.

ANALYSIS

At the initial hearing in September 2006, the Association's submission was that all full-time teachers should be provided with a minimum of 200 minutes of non-

contact time within the instructional day per five day cycle. The Board was advised that at the April 11, 2007 meeting with the Division, the Association's proposal was that all full time teachers should be provided with a minimum of 180 minutes (exclusive of recess) of non-contact time within the instructional day per five day cycle, and that the non-contact time should be provided in blocks of not less than 15 minutes.

The Division has consistently resisted the inclusion of any guaranteed number of minutes of non-contact time within the instructional day and continues to do so. The reasons for the Division's opposition to a guaranteed number of minutes of non-contact time are summarized in the Board's Award of March 15, 2007. However, the Division emphasized, both during the September 2006 hearings, and again on June 21, 2007, that an acceptance of either of the Association's proposals, whether for 200 minutes or 180 minutes of non-contact time, would be very expensive. If no adjustments to class sizes or programming are made, providing a guaranteed minimum of 200 minutes of non-contact time will require the hiring of five additional teachers, at an approximate cost of \$275,000.00 annually. The Division says that those increased expenditures will very likely result in a tax increase to the taxpayers in the area.

At the June 21, 2007 hearing, the Division reiterated that it was steadfast in its opposition to the inclusion of a guaranteed minimum amount of non-contact time. Indeed, the Division went so far as to say that it would grudgingly accept an increase in its teachers' salary scale equal to the salary scale in the Mountain View School Division rather than include a provision in the Collective Agreement providing a minimum amount of non-contact time to teachers. The Division's primary submission was that the Board ought not to make any changes in its initial Award, either with respect to non-contact time or with respect to salary, but that if the Board was inclined to make a Supplementary Award, it should only be with respect to salary, not non-contact time.

When the Board issued its Award on March 15, 2007, it was satisfied that providing adequate non-contact time for teachers within the instructional day would generally assist in providing an environment which would allow teachers to perform their

duties more effectively, and would thereby enhance the quality of education being provided to students. The Board was also concerned about the risk of unfair and inequitable schedules (particularly relating to the provision of inadequate non-contact time) being assigned to some teachers, if those matters were left entirely to the managerial discretion of the Division.

The Board refrained from making a specific award with respect to non-contact time in its March 15, 2007 Award, because it wanted to provide the parties with another opportunity to reach a negotiated settlement on that issue.

The following factors, individually, and in combination with each other, all have a bearing on the issue of providing a guaranteed minimum amount of non-contact time within the instructional day for teachers employed by the Division:

- (i) the small size of the Division in terms of total student enrolment and the relatively small size of all of the schools in the Division;
- (ii) declining enrolments;
- (iii) the large geographic area of the Division;
- (iv) student/teacher ratios and class sizes;
- (v) the educational programs currently offered, including any special considerations relating to undertaking new programs, eliminating programs currently offered, building on program strengths which have been identified, and addressing any gaps or weaknesses in programs which may have been identified;
- (vi) the adequacy of services and facilities available for special needs students;

- (vii) the utilization of multi-grade classes;
- (viii) the utilization of itinerant teachers;
- (ix) the utilization of part-time teachers;
- (x) the number of educational assistants, and the manner in which they are utilized;
- (xi) whether there should be differences between the non-contact time provided to early years teachers relative to middle years teachers relative to senior years teachers.

Given the parties' detailed and specific knowledge of the above-noted matters, the Board was of the view, when it issued its initial Award dated March 15, 2007, that the parties ought to be encouraged to make a further attempt to negotiate an "Hours of Work" provision which would reflect the unique characteristics of Turtle River.

However, the parties have been unable to agree on any provision which would provide teachers employed by the Division with a guaranteed minimum number of minutes of non-contact time within the instructional day. The parties were also unable to agree upon, or were not interested in, an arrangement whereby an "Hours of Work" provision would be left out of the Collective Agreement, but on the basis that the Division would attempt to provide for increased amounts of non-contact time for teachers on a voluntary basis, whether for a specified trial period, or otherwise.

Accordingly, it falls to this Board to determine whether the Collective Agreement in force between July 1, 2004, and June 30, 2007, will contain a provision providing for a guaranteed minimum number of minutes of non-contact time within the instructional day.

Although the parties have been unable to agree on an "Hours of Work" provision which guarantees a minimum amount of non-contact time for teachers, notwithstanding the Board's encouragement to do so, there are three arguments supporting the Division's position that this Board ought to decline to make any award with respect to non-contact time, which warrant further comment. They are:

- (i) making such an award is inconsistent with the approach favoured by other Manitoba interest arbitrators, and would represent an unnecessarily intrusion into matters which ought to remain within the discretion of the Trustees or the senior management of the Division;
- (ii) the inclusion of a guaranteed minimum amount of non-contact time will be inordinately expensive, and will almost certainly result in a burdensome tax increase for local taxpayers;
- (iii) the Division's operating expenditures per pupil are currently well above the provincial average, demonstrating that the Division is fulfilling its obligations to its students, and that requiring the Division to do more is neither required nor reasonable.

The Board has carefully considered each of those arguments.

(i) **Prior Interest Arbitration Awards**

In interest arbitration proceedings in Manitoba, teachers' associations have frequently argued strenuously for provisions guaranteeing a minimum number of minutes of non-contact time within the instructional day. They have rarely been successful. Only five (of more than 35) collective agreements between school divisions and teachers' associations in the province, contain

guarantees of minimum amounts of non-contact time, and most of those collective agreements were freely negotiated. The Board also understands that many of those agreements likely reflect past practice, in the sense that the divisions in question had already been providing their teachers with non-contact time without a provision in the applicable collective agreement requiring them to do so. There is only one rural school division in the province which features a guaranteed minimum amount of non-contact time (Prairie Spirit).

Furthermore, aside from the specific issue of non-contact time, interest arbitrators in this province have frequently cautioned against dramatic departures from established norms and patterns. For example, John Scurfield, writing as the Chair of an interest arbitration board settling the terms of a collective agreement between the Birdtail School Division and its teachers in the mid-1990s stated:

“ . . . suffice it to say that departures from a well established body of precedents are more often characterized as ill advised rather than as bold initiatives.”

Similarly, in the context of interest arbitration proceedings involving the Brandon School Division and the Brandon Teachers' Association in 1998, Scurfield said:

“ . . . arbitrators should be reluctant to unilaterally introduce entirely new articles into collective agreements which have been developed over a longer history of bargaining.”

Other interest arbitrations have properly emphasized that it is important to carefully consider the "overall package", and that a new initiative in one area may be problematic for the parties if it is not counterbalanced by an adjustment in another area.

While such statements may reflect a thoughtful and prudent approach by interest arbitrators generally, they cannot be interpreted as meaning that no new approaches and no new initiatives should ever be undertaken by interest arbitrators. In fact, the history of interest arbitration in the public school context in Manitoba provides numerous examples of awards which included provisions representing significant departures from what had previously existed.

Indeed, Arbitrator Scurfield, in the 1998 Brandon School Division interest arbitration award specifically stated that:

"In my opinion, arbitrators have the right to impose new articles in collective agreements when the arbitrator has concluded, based on the evidence, that the reluctance of one party to agree to an article is neither logical or fair."

With respect to the practice of maintaining long existing practices, he contemplated exceptions, when he wrote:

"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."

Turning to the situation as it currently exists in Turtle River, the Board received evidence and information during both the September 2006 hearings and in June 2007 with respect to the

amount of non-contact time being provided to teachers in Turtle River. The evidence included the actual teaching timetables of most, but not all, of the teachers in the Division for several of the school years leading up to and including 2006/2007. The Board also received general information in various forms with respect to the non-contact time available to a significant percentage of teachers in Manitoba teaching in other divisions, and specific information as to the amount of non-contact time enjoyed by teachers employed by three neighbouring school divisions, namely the Mountain View, Beautiful Plains, and Pine Creek divisions.

A comparison of the actual non-contact time available to Turtle River teachers, with the non-contact time available to teachers employed elsewhere, satisfies the Board that teachers in Turtle River have less non-contact time within their schedules than teachers employed in many other divisions. Several divisions, including the Mountain View, Beautiful Plains, and Pine Creek divisions, do not have guaranteed minimum amounts of non-contact time in their collective agreements, but nonetheless provide meaningful amounts of non-contact time to their teachers. Therefore, the situation relating to non-contact time in Turtle River is out of step with what is occurring in many other divisions, including neighbouring divisions.

Moreover, the Board remains concerned that in the absence of a specific article relating to hours of work/non-contact time, the risk of unfair and inequitable schedules being assigned to teachers in Turtle River will persist.

In the result, the Board has concluded that some arbitral initiative is warranted in this area, subject to a consideration of some of the financial implications discussed below.

(ii) **Ability to Pay/Taxation**

The Board received a great deal of financial information during the September 2006 hearings, which was commented upon in our Award dated March 15, 2007. At the June 21, 2007 hearing, additional materials were introduced which included information relating to:

- (a) the Division's budget for the fiscal year ending June 30, 2008;
- (b) current issues relating to public education funding in Manitoba;
- (c) analyses of the Division's operating revenues based on the 2006/2007 budget; and
- (d) property taxes in the Turtle River area, including a specific property tax bill.

The parties also made thorough submissions to the Board, both in September 2006 and in June 2007, on a variety of financial issues including, but not limited to:

- (a) the general economic conditions in the Turtle River area, characterized by low average incomes and a lack of any significant industrial or commercial tax base;

- (b) provincial government contributions to the funding of public education in Manitoba generally, and in Turtle River specifically;
- (c) mill rates;
- (d) the cost of hiring sufficient additional teachers to provide for 180 or 200 minutes of non-contact time in each five day cycle, and the financial ability of the Division to do so;
- (e) the operation of the Manitoba Education Property Tax Credit system.

Distilling all of that information to one very basic and important point, the Division argued that any Award of this Board which includes a guarantee of a significant minimum amount of non-contact time will inevitably result in a direct and burdensome tax increase on local taxpayers because of the necessity of hiring additional teachers. It is the Board's understanding that such an increase will be borne directly by local taxpayers i.e. no portion of any tax increase will be paid by the provincial government.

The Association's position in relation to the prospect of a tax increase is that:

- (a) the Division has made a conscious decision to keep taxes low in the last several years and there is room for a tax increase which will not be overly burdensome on local taxpayers;
- (b) given the way the Manitoba Education Property Tax Credit system is now operating, even if taxes are increased to the extent necessary to hire four or five additional teachers, most taxpayers in

the area will be paying less tax in 2007 and 2008 than they did in 2005 and 2006.

Furthermore, the Board has concluded that it is not a certainty that an award providing for some non-contact time will require the hiring of four or five additional teachers and a consequent tax increase. There are ways for the Division to provide non-contact time for teachers within the instructional day, without hiring additional teachers, or without hiring as many as four or five additional teachers.

The document produced by the Division entitled "Turtle River School Division Non-Contact Time" (which was included by both the Division and the Association in their respective materials for the June 21, 2007 hearing) outlined the effect on class sizes at each school within the Division, if 200 minutes of non-contact time were provided to teachers, but no new teachers were hired. The document demonstrates that up to 200 minutes of non-contact time can be provided to teachers, with no new teachers being hired. However, the document also indicates that there may be adverse consequences in doing so. Specifically, the document identifies the possibility of various negative consequences for various programs, such as junior and senior band, home economics, practical arts, and arts, and potentially even to math and science programs. Moreover, the quality of education offered to special needs students may also be reduced.

The document produced by the Division underscores the difficult choices the Division must make when dealing with the issue of non-contact time. However, this Board is satisfied that the Division does have the resources to provide a guaranteed minimum amount of

non-contact time within the instructional day for teachers, either by a tax increase or by the exercise of flexibility in other areas, without compromising its educational programming.

(iii) **Operating Expenditures Per Pupil**

The Division pointed out that, based on figures for 2006/2007, its operating fund expenditure per pupil was \$9,581.00, which was significantly above the provincial average of \$8,898.00. The Division's operating fund expenditure per pupil was also higher than the operating fund expenditure per pupil in the Beautiful Plains, Mountain View, and Pine Creek divisions.

The Division properly emphasized the significance of that figure and argued that the generous expenditure per pupil demonstrates that it is spending more than a reasonable amount to provide the best possible educational experience for its students.

The Board acknowledges the significance of the figure, but makes three observations:

(a) many rural school divisions have operating expenditures per pupil which are higher than the provincial average. Some rural school divisions (e.g. Prairie Spirit, and Swan Valley) had higher operating expenditures per pupil than Turtle River in the 2006/2007 year;

(b) relative comparisons between various divisions can change from year to year, particularly among the smaller divisions. This may be because in the smaller divisions, a small increase or

decrease in enrolment will significantly impact the amount of average expenditure per pupil;

(c) if this Award results in an increase in operating expenditures per pupil, the amount of that increase (even if four or five additional teachers are hired) will not produce a figure that is disproportionately high compared to some other small rural divisions.

Accordingly, the majority of the Board has concluded that the fact that the Division's operating fund expenditure per pupil is significantly higher than the provincial average, is an insufficient reason to decline to include a clause in the Collective Agreement providing for a guaranteed minimum amount of non-contact time within the instructional day.

It is therefore the decision of this Board that the Collective Agreement shall contain a provision guaranteeing full time teachers 150 minutes of non-contact time within the instructional day per five day cycle. The amount of 150 minutes has been chosen because it equates to an average of 30 minutes per day, and is the minimum amount which will provide a meaningful support to teachers and will contribute to an environment which will allow teachers to perform their duties more effectively and to generally improve the quality of education offered to the students of Turtle River.

Notwithstanding the guarantee of 150 minutes of non-contact time for full time teachers, the teachers of Turtle River will be required and expected to spend a significant amount of additional time outside the limits of the instructional day, preparing for their classes and properly fulfilling all of their duties and responsibilities as teachers within the public school system.

In terms of the potential financial implications of the Supplementary Award, the Board is aware that boards of trustees of school divisions face the thankless and daunting task of providing the best possible educational experience for all of the students in their divisions, within the limits of available resources, while at the same time managing those resources with efficiency and frugality. Significant segments of society demand tax relief, and governments at all levels frequently attempt to oblige. On the basis of the submissions and materials presented to the Board, it appears the Division in recent years has done a commendable job of protecting the taxpayers of the Division from unwanted tax increases, while at the same time fulfilling the Division's obligations to the students, teachers, and other employees in Turtle River.

However, as a result of this Award, the Division will now have the challenge of making a series of decisions and choices relating to issues such as scheduling, class sizes, student teacher ratios, and potentially the hiring of additional teachers in order to provide a guaranteed minimum amount of non-contact time for its full-time teachers. Other aspects of this Supplementary Award are intended to provide the Division with sufficient flexibility and choice to provide the 150 minutes of non-contact time without compromising the finances of the Division, or undermining the quality of educational programming available to students.

The Board is aware that in March 2007, the Division passed its budget, as it was required to do, for the fiscal year ending June 30, 2008. That budget did not provide for the hiring of additional teachers, or for any other measures associated with providing a guaranteed minimum amount of non-contact time for teachers within the instructional day.

The Board also recognizes that this Supplementary Award will be issued late in August 2007, immediately prior to the commencement of the 2007/2008 school year, and at a time when most of the staffing, programming and timetabling decisions for the first term of the upcoming school year have already been made.

The Board has also attempted to take those practical considerations into account in this Supplementary Award.

DECISION

There will be an Article included in the Collective Agreement in force between July 1, 2004, and June 30, 2007, which will be as follows:

"Hours of Work

Effective June 30, 2007, and thereafter, within the instructional day the Division shall provide a minimum of one hundred fifty (150) minutes of non-contact time for each full-time teacher per five (5) day cycle. Preparation time shall be scheduled in blocks of not less than fifteen (15) minutes, and shall be exclusive of recess."

In view of the fact that this Supplementary Award is being issued immediately prior to the commencement of the 2007/2008 school year, the operation of this Article shall be suspended until the first day of the 2008/2009 school year. The intention of this Board in suspending the operation of this new "Hours of Work" article is to provide the Division with a period of not less than 12 months to properly plan for the implementation of the above-noted "Hours of Work" article, and an opportunity to fully consider all of the programming, timetabling, class size, and staffing options, which may be available when implementing the "Hours of Work" provision.

In view of this decision with respect to an "Hours of Work" provision, the Board declines to award any further salary increase in addition to that which was ordered in our Award of March 15, 2007.

The Board reserves jurisdiction to determine any issues which may arise with respect to the implementation of this Award.