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IN THE MATTER OF:	)	**AN ARBITRATION BETWEEN:**
	)	
	)	**THE WINNIPEG SCHOOL DIVISION NO. 1,**
	)	
	)	(hereinafter called the *"Division"*),
	)	
	)	**- and -**
	)	
	)	**THE WINNIPEG TEACHERS' ASSOCIATION NO. 1 OF THE MANITOBA TEACHERS' SOCIETY,**
	)	
	)	(hereinafter called the *"Association"*).

ARBITRATION AWARD

On October 25th, 1990, the Honourable Len Derkach, the Minister of Education for Manitoba, appointed an Arbitration Board to make an award in all matters in dispute between the Division and the Association relating to a Collective Agreement as the previous agreement had a termination date of December 31, 1989. Mr. David Shrom, Barrister, of Winnipeg, was the nominee of the Association and Mr. R. McNicol, Q.C., of Winnipeg, was the nominee of the Division. Jack M. Chapman, Q.C., was appointed as Chairperson.

The members of the Arbitration Board completed and filed their oaths of office.

The arbitration hearings took place in Winnipeg on February 13th, 18th and 19th and March 13 and 14th, 1991.

The Division was represented by Mr. Ray Whiteway and Mr. Joseph Trubyk of the Manitoba Association of School Trustees and also by Mr. Eugene Gerbasi, Ms. Karen Tyler, Mr. Al Krahn, Ms. Karen Collin, and

Mr. R.M. Mutchmor. The latter named five individuals are management employees of the Division.

The Association was represented by Mr. Tom Ulrich and Mr. Tom Paci. Ms. Louise Kernatz, Ms. Erna Braun, Ms. Barbara Gray and Mr. Warren Bend attended in their capacity as members of the Negotiating Committee. Ms. Debbie Stoneham and Ms. Ardyth McMaster appeared as witnesses on behalf of the Association.

We note that from time to time other representatives of the Division and/or the Association were in attendance at the hearings.

At the commencement of the hearings the parties confirmed that the Arbitration Board was properly constituted and had jurisdiction to deal with the matters in dispute. The Division however pointed out that we had to consider our jurisdiction under The Public Schools Act with respect to not infringing on the powers of the Division with respect to certain items. We will comment on those further in this Award.

When the matter was first referred to arbitration there were in excess of 30 items in dispute. At the commencement of the hearings, the parties advised that a number of items had been resolved and were withdrawn from the arbitration. Additionally during the course of the arbitration hearings certain further matters were resolved.

This Board is required to finalize the following outstanding issues:

1. Article 3 - Duration of Agreement

2. Article 9.01 - Basic Salary Schedule

3. Article 9.05 - Method of Determining Basic Salary Entitlement

4. Article 9.07 - Direct Deposit of Salaries

5. Article 11 - Salary Schedules for Certain Designated Positions

6. Article 13 - Laboratory Assistants

7. Article 14 - Interest on Retroactive Salary

8. Article 16 - Salary Rates for Auxiliary Personnel

9. Article 19 - Teacher surplus

10. Article 20.01 (a) - Cumulative Sick Leave

11. Article 20.03 - Leave for Professional Business

12. Articles 20.05, 20.06, 20.08 and Code of Rules, Chapter 5

13. Proposal #9 - Early Retirement Plan

14. Proposal #10 - Sub Plan

15. Proposal #13 - Workload, Class Size, Noon-Hour Supervision and Working Environment

16. Proposal - Teacher's Complaints

We previously noted that the arbitration hearings took place over 5 days. The Arbitration Board has subsequently met to review the evidence and submissions and to come to its conclusion. Very comprehensive briefs were received from both the Division and the Association and some 44 exhibits were filed. Viva voce evidence was received from certain individuals. We do not propose to quote from the briefs or the

arguments extensively, but will comment on some of the more salient points under the various issues considered.

General Comments

The most significant portions of the hearings were devoted to the salaries to be paid to teachers and to working conditions. We do not propose to write a treatise on the criteria which are usually applicable in interest arbitrations in the public sector and, more specifically, in public school arbitrations. It may suffice to say that boards of arbitration in Manitoba have generally considered the collective agreements for teachers based on a comparison of wages and conditions of employment for teachers in similar divisions. Such views have been expressed by members of this Arbitration Board as well as by members of other boards and need not be repeated here. Additionally, we have carefully considered the opinions of such respected arbitrators as Mr. Justice Dubin, Mr. Owen Shime Q.C., Mr. Justice Emmett Hall and others.

In coming to our decision we have had to consider the difficult economic times faced by the Division, by the Province, by the public at large and, of course, by the teachers. It is common ground that funding to the Division has been very substantially reduced this year and that budget constraints are real and pressing. We need not repeat the position taken by the Province of Manitoba with respect to funding to this Division.

It may suffice to say that the Arbitration Board has considered all of the submissions of the parties, other arbitration awards, the usual economic indicators and numerous other collective agreements.

We will deal with each of the outstanding items separately.

1. Article 3 - Duration of Agreement

The last agreement between the parties covered the period from January 1st, 1988 to December 31st, 1989 and was deemed to continue in force from year to year unless cancelled. The Association requested an award which would terminate on the 31st day of December, 1990. The Division has requested an award which would terminate on December 31st, 1991. We appreciate the comments of the Association that the parties should be encouraged to continue the dialogue of negotiation as frequently as possible. However, it seems to us that a two-year agreement would be more practicable. By the time this Award is published, approximately one and one-half years will have expired since its commencement and it will soon be time for the parties to again bargain for the 1992 agreement. We accordingly hold that the new Collective Agreement be for a period of two years commencing as of the first day of January 1990 and expiring on the 31st day of December, 1991.

2. Article 9.01 - Basic Salary Schedule

We have previously noted the criteria we have examined in coming to our decision. Reference was made to the existing salary schedule and comparisons were made with other metropolitan area school divisions. There was considerable dialogue as to the value of the Dental Plan payments and as to whether the value of those payments should be included in calculating salary schedules. We are of the view that, in calculating the salaries paid to members of the Association, it is appropriate that the value of the Dental Plan be considered as a component.

In our view, the most appropriate comparison for members of the Association is with the salaries paid to other teachers within the metropolitan area. We do not have available to us the value of each and every benefit which may be granted in

those specific divisions, however by far the most significant component of compensation is the salary schedule. It would appear that the following increases were granted to teachers within the metropolitan area:

St. James-Assiniboia No. 2 - 1990: 4.8% Jan. 1, .3% Sept. 1, (non-compounded); 1991: CPI plus a one time only "signing bonus of $175.00 paid out as follows: 1991: $100.00 Jan. 1, $75.00 Sept. 1

Assiniboine-South No. 3 - 1990: $100 at maximum plus 4.8% Jan. 1, 0.3% Sept 1 (non-compounded); 1991: CPI plus $50 at maximum

St. Boniface No. 4 - 1990: $100 at max; 4.8% on scale Jan. 1, .3% (non-compounded) Sept. 1; 1991: 4.6% plus $50.00 at max. Jan. 1

Fort Garry No. 5 - 1990: 4.8% Jan. 1, 0.3% Sept. 1; 1991: CPI

St. Vital No. 6 - 1990: 4.8% Jan. 1, 0.3% Sept. 1; 1991: CPI

Norwood No. 8 - 1990: 4.8% Jan. 1, 0.3% Sept. 1 (non-compounded), increment equalization Classes 4-7; 1991: Jan. 1, CPI Sept. 1 Classes 1-3: $150 at maxima, Classes 4-7: $225 at maxima equalized on increments through grid

Seven Oaks - 1990: 4.8% Jan. 1, .3% (non-compounded) Sept. 1; Jan. 1, 1991 4.6%; Sept. 1, 1991 .35%

Transcona-Springfield - Jan. 1, 1990 4.8%; Sept. 1, 1990 .3%; Jan. 1, 1991 4.6%

River East - Jan. 1, 1990 4.8%; Sept. 1, 1990 .3% (non-compounded); Jan. 1, 1991 - CPI

We can find no reason which would disentitle the members of the Association from receiving approximately the same increases as their colleagues in other metropolitan divisions. The Association initially proposed an increase of 14.9% effective January 1, 1990 for a one year contract. The Division proposed that the 1989 basic salary schedule be adjusted by 4.7% effective January 1, 1990 plus a further .4% non-compounded effective September 1, 1990. It submitted that in 1991 the result of 1990 salary be increased by the sum of $891.00 at all steps of the scale. This would equate to an average equivalent increase of 2%.

The Association argued that the workload of the teachers and their responsibilities had increased and that they were entitled to a general increase and that members of the Association were behind other metropolitan divisions. We have examined the material submitted (including the value of the Dental Plan) and find that, as with most divisions, the members of the Association are well within the average range of metropolitan divisions. Considering the economic conditions of the times, which we have previously alluded to, we do not feel that this a year in which a "catch up" should be made. It is our responsibility to come to a determination which will be just and equitable, both to the Division and the Association. Bearing in mind, as we have previously noted, that the Dental Plan factor must be considered in determining the true salary schedule of the members of the Association, we have concluded that the salary scale of members of the Association be increased as follows:

> January 1, 1990 - 4.8%; Sept. 1, 1990 .3% (non-compounded); Jan. 1, 1991 an increase equivalent to the increase in the Consumer Price Index for 1990 based on Winnipeg.

3. Article 9.05(b) (c)- Method of Determining Basic Salary Entitlement

Both the Division and the Association have made proposals with respect to Article 9.05(b) and the Division has made a proposal with respect to Article 9.05(c). Article 9.05(b) determines when a teacher shall receive an increment after completing a designated period of service. In essence, the Association has requested that the increase be on the first of the month following the completion of each year of employment. The Division has requested that it be granted less frequently. We have concluded that no changes should be made to Article 9.05(b).

The Division has also requested an amendment to Article 9.05(c) respecting reclassification on the salary scale due to a teacher requiring additional qualifications. We do not grant this request of the Division. We do not feel it necessary to repeat the comments of the Chairman made in the Award respecting the Red River School Division.

4. Article 9.07 - Direct Deposit of Salaries

The Association has requested that the salaries of its members shall be deposited directly into a financial institution designated by its members. The Division has rejected this stating that it would face an additional cost by reason of lost interest, and that there might be an additional cost for the administrative time in reconciling errors which may arise. The majority of metropolitan school divisions do not have this type of system. We believe that the request of the Association is reasonable and accordingly grant it on certain conditions. These are as follows:

1. the Division shall only be required to deposit the funds to one designated financial institution per teacher. For purposes of clarity, a teacher will not be

allowed to designate a certain portion of their funds be paid to one financial institution and the balance to another;

2. the Division will obviously require a reasonable period of time for such a system to be implemented and we are suggesting that an appropriate time would be October 1, 1991 or, the closest pay period to that date;

3. any administrative costs in future changes to a designated financial institution shall be borne by the member of the Association who requests such a change;

4. individual members shall not have the right to request exemptions from having their salaries so deposited.

5. Article 11 - Salary Schedules for Certain Designated Positions

The Association has requested that an article, 11.02(d), be added to provide that a teacher appointed to function as a "resource, facilitator or support to teachers" in a specific program area, shall receive an allowance equal to the minimum allowance for a consultant. This request of the Association is not granted. However the salary increases we have specified shall be applicable to the other salaries specified in Article 11.

6. Article 13 - Laboratory Assistants

The Association has made several proposals with respect to the position of Laboratory Assistant. It has, *inter alia*, requested an increase in salary equivalent to the same paid to all of the teachers, i.e. initially 14.9% and has requested certain fundamental changes with respect to the hiring practices, the number of positions, substitutes and the establishment of certain positions. The Division has requested that all salaries be maintained at the 1989 level. We are of the view that the Laboratory

Assistants, being covered by the Collective Agreement, are entitled to receive the same salary increases as other members of the Association and we accordingly order same. We do not grant the Association's other proposals nor do we grant the proposal of the Division.

7. Article 14 - Interest on Retroactive Salary

We do not feel it necessary to again repeat the vast amount of arbitral jurisprudence which has been made with respect to this particular Article. The Association has requested that there be no change. The Division proposes that the Article be deleted from the Collective Agreement. The request of the Division is denied.

8. Article 16 - Salary Rates for Auxiliary Personnel

Both the Division and the Association have made requests with respect to this Article. We are not granting either of those requests and direct that the wording of the Agreement remain the same excepting that the salary rate shall be increased by the same amount as specified in our Award dealing with basic salaries.

9. Article 19 - Teacher surplus

The Association has not requested any changes to this Article and the Division has requested some fairly substantial revisions. After considering all of the Division's requests, we are of the view that the only appropriate change should be to include the definition of "ability". Reference is made in the existing wording to "ability" but there is no definition of same. We accordingly direct that Article 19.12

be amended by including clause (d) thereof which shall read as follows:

> (d) Ability of Teachers
>
> 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.

The other proposals of the Division are rejected.

10. Article 20.01 (a) - Cumulative Sick Leave

The Division requested that there be no changes and the Association has made three proposals with respect to this matter. One provides for increasing sick leave, another provides that Article (v) of the existing Agreement be deleted and the third relates to injuries on the job. We have considered the requests of the Association and compared them with the maximum accumulation allowed in other divisions, with particular emphasis on the divisions within the metropolitan area. We note that the Association has submitted data from a number of school divisions outside of the Province but we do not feel that comparison is appropriate. We also note the request of the Association to provide for full salary sick leave to accumulate 200 days, whereas the existing Collective Agreement provides that teachers shall accumulate up to 90 days at full salary and the next 110 days at half salary. It would appear that, other than the school district of Mystery Lake, members of the Association have the most generous leave accumulation policy in Manitoba. The requests of the Association are denied.

11. Article 20.03 - Leave for Professional Business

The Association does not propose any changes. The Division requested that a "cap" be placed on the maximum number of days which might be available for

the Association and the Society. There is no evidence that the Association has abused those provisions and the Division's request is denied.

12. Articles 20.05, 20.06, 20.08 and Code of Rules, Chapter 5

The Division has submitted that there be no changes from the current Agreement. The Association has made requests which, in summary, are for reasonable travel time, additional bereavement leave, up to 5 days of illness leave per household, up to five days in the case of a male teacher for the birth of his child or for adoption and an amendment which would provide that each teacher would be entitled to two days of personal leave per school year. The existing provisions of the Collective Agreement provide for leaves of absence, generally to the same extent as other school divisions in the metropolitan area. We do not feel it would be appropriate to grant the request of the Association. Although some of the requests may have merit we have not received any evidence to show that the present policy of the Division works any undue hardship on members of the Association. The request for the additional clause to provide for two days of personal leave does not appear in any other collective agreements. In certain circumstances it may be granted in the discretion of the Division. However, in view of the economic constraints we do not feel it appropriate to grant this request.

13. Proposal #9 - Early Retirement Plan

We do not grant this request of the Association.

14. Proposal #10 - Sub Plan

The Association has proposed a new Article to provide for supplementary unemployment benefits during parenting leave whereby a teacher on parenting leave would receive additional benefits so as to receive approximately 95% of

their full salary. We have been advised that such benefit is paid to a number of teachers in Quebec and to certain other non-teachers at different locations. Certain similar types of benefits are available to some employees in Manitoba, however, there is no school division with such a plan. We do not grant this request of the Association.

15. Proposal #13 - Workload, Class Size, Noon-Hour Supervision and Working Environment

As mentioned in our introductory comments, a large segment of this arbitration was devoted to the working conditions issue. We heard *viva voce* evidence from a number of witnesses representing both the Association and the Division. Additionally, we received the benefit of numerous research projects done in several jurisdictions in Canada and the United States and we have examined all the material submitted to us. There is no question that the changing mores of contemporary society have resulted in problems for those involved in education. The brunt of those problems are borne by teachers. In an effort to cope with those stressors school divisions have hired specialists and assistants in such fields as special education, working with the physically and mentally handicapped, counsellors and others with similar qualifications. There have also been additional duties cast upon teachers by virtue of certain legislative enactments.

There is no question that teaching is a stressful occupation. Undoubtedly it has always been stressful, but additional stressors exist which are caused, not only by the factors above mentioned, but more specifically by an increased breakdown of family structures, an influx of new Canadians, abuse of chemical substances, the role of television and other facets of modern life. In an effort to determine these problems the Division and the Association have worked together on staff morale problems. Filed as an exhibit was the report of the Staff Morale Committee of March 19, 1990. An

interesting summary of some of those problems is referred to in the report of the Staff Morale Committee on pages S4 and S5 as follows:

> Many of the pressures identified by our employees in the Winnipeg School Division seem generic to school organizations found in this country and elsewhere. Their work is difficult. Rewards are often few and infrequent. Pressures are great. Situations regularly occur calling for ingenuity, diligence, and even courage. Most entered their profession with visions of a supportive institution staffed with effective supervisors, cooperative parents, peers and students. They anticipated making a difference in people's lives.
>
> The tasks being required by teachers in particular have grown to be incredibly complex. The expectations of the community seem ambivalent: schools are blamed for producing a generation lacking basic or academic skills and at the same time they are asked to correct a great number of social ills. Policy-makers at all levels prescribe more for schools to do, frequently without considering whether they have the time and resource to do it. Educational objectives are often unclear and in danger of being overwhelmed by social welfare pressures on the school. The question frequently heard is..."are we educating children" or "are we rearing them". Teachers are more skilled but they cannot do the job alone and they often work in isolation from each other, from parents, from community agencies and from their school support staff.
>
> Despite the stresses, tension, and overwork it is amazing how many issues were addressed by schools in the 1980s -- New curricula in many subjects. Bilingual and heritage language programs. A heightened role for parents in schooling. Mainstreaming for special needs children. Absorption of many immigrant and native children. Affirmative action in promotion and employment. Lower priority for education expenditures at the provincial level. Employer demands for more skilled entry level employees. A less docile workplace, more prone to making demands on the system. Individual rights under the Charter.
>
> Acceleration in the external pressures to force changes in schools can be expected in the 1990s -- The impact of Free Trade on the social and economic situation in Winnipeg. An increasingly multicultural Winnipeg. More attention to research as a basis for educational programming. Greater involvement of the courts in education. The accountability movement. Teacher shortages.

> All these and more, will impact on schools and on their ability to fulfill their mission of educating young people to their fullest potential.

We have considered all of the above factors in dealing with the requests of the Association and we have also considered the response of the Division.

The issue of jurisdiction of an Arbitration Board to deal with some of the requests has not been formally raised. Although no formal objection was made, the position of the Division is that we must consider the powers of school boards as set forth in the legislation and in particular Section 48(1) of the Public Schools Act and in Regulation 488/70. It is not necessary for us to recite that legislation, however the position of the Division is that it is charged with the day-to-day functioning of the school division and that the matters raised by the Association are more properly within the jurisdiction of the school boards. We do not propose to review the question of jurisdiction as we are of the view that the matters raised by the Association are arbitrable. We quote from the decision of Arbitrator Freedman in his Award of December 1989 respecting the Transcona-Springfield School Division No. 12 and the Transcona-Springfield Teachers Association No. 12 of the Manitoba Teachers Society at page 42:

> "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."

We are reciting the proposals of the Association in full. They are as follows:

1. Workload

A teacher not in receipt of any administrative allowance will not be assigned duties in excess of 30 hours per week, averaged over the school year. A maximum of 22 hours* averaged over the school year, of the above mentioned 30 hours will be devoted to the instruction of students. The remainder of the assignable hours shall be devoted to non-instructional duties, including such functions as marking, lesson preparation, student interviews, supervisions, and other related professional duties as the principal may deem necessary for the proper and orderly functioning of the school. Teachers may be granted additional non-instructional time in accordance with Board policy related to compensation for exceptional workload.

*Note - This was amended by the Association to 22 hours at the Arbitration Hearings. It originally specified 20 hours.

2. Class Size

Maximum class size shall be as follows:

Nursery	15 students
Kindergarten - Grade 3	20 students
Grades 4 - 12	25 students

Practical Arts and Visual Arts, Vocational E.S.L., immersion and bilingual classes shall not exceed 20 students.

Each student defined by Manitoba Education as a special education student, shall be counted for purposes of maximum class size as three (3) students.

Schools identified as Inner City Schools shall have class size maximum equal to 75% of the class size maximums of other schools.

3. Noon Hour

Each teacher will be provided with an uninterrupted lunch period of sixty minutes between 11:00 AM and 2:00 P.M. The period of one hour may be reduced to not less than 30 minutes by the decision of the majority of teachers in a school.

4. Temperature

Temperature shall be at a reasonable level in classrooms. When temperatures fall below 18°C or rise above 28°C on two consecutive days the Division shall arrange alternative placement of students.

We will consider each of those proposals separately.

1. Workload

The Association has related, in some detail, the additional workload and stressors which affect teachers in today's society. The Association's submission was that teachers are entitled to have specific knowledge of their time commitment to their position. They have argued that the teacher's day involves a considerable portion of time spent outside of the school hours and that they are involved in their work at home and on holidays in preparing lessons, marking assignments and keeping up with advances in education. That time is "non-accountable" and no compensation is being sought for same. The request of the Association is for a definitive statement of the time they must be at the school (assignable time). Obviously, from the Association's proposal this, in turn, is broken down into two components. One deals with the hours to be devoted to the instruction of students (instructional time) and the remainder is to be devoted to non-instructional duties including "such functions as marking, lesson preparation, student interviews, parent interviews, student supervision and other related professional duties as the Principal may deem necessary". The Association has recognized that circumstances may arise where the hours might have to be varied and accordingly it has not taken an unduly formalistic approach as its proposal is that the

hours be averaged over the school year. The proposal does not specify what is to happen if the average is exceeded.

The Association submits, most emphatically, that the purpose of any Collective Agreement is to specify the terms and conditions of employment. One of the most essential and significant terms is the hours of work. In the view of the Association it was unrealistic that the Collective Agreement did not specify those hours.

The Association referred to provisions of two Collective Agreements, one in Alberta and one in Quebec where such matters were specified. The only agreement in Manitoba with any provision relating to the issue of "workload" is the one which appears in the Transcona-Springfield Award as determined by Arbitrator Freedman in 1989. The clause that he instructed to be added reads 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."

It is perhaps an understatement to note that the Division was unalterably opposed to the request of the Association. It noted the provisions of Section 48(1) of the Public Schools Act which vested considerable powers in the Division Board and also referred to the regulations under the Act and in particular to Regulation No. 470/88R. Under that Regulation, Section 1.1 provides that unless the Minister otherwise approved, the instructional day was to be not less than 5 1/2 hours including recesses but excluding the mid-day intermission. Section 2 provides that subject to subsection 1 any school board may, by resolution, determine the hours of opening of the schools.

The spokesman for the Division noted the present practice of the Division, depending on which cycle a school followed, whereby teachers had total assignable time of no more than 28 3/4 hours per week including roll calls, and instructional time of approximately 22 to 23 1/2 hours per week including the roll call. The evidence with respect to the specific hours of instructional time was not conclusive. Although the teachers had amended their proposal with respect to increasing the number of teaching hours from 20 to 22, there would still be a requirement to provide additional staff. The Division noted that during the past years there had been a decline in the number of hours in which teachers were required to spend in instructional time and, there had been a general reduction in a number of total hours that a teacher was required to attend at school. Mr. Whiteway stressed that there was absolutely no indication that the Division had imposed, or planned to impose, any unreasonable requirement on the Association. He submitted that the Division required some latitude in formulating, and from time to time adjusting and finalizing, its method of complying with its statutory duty to provide instructions to students in the most productive and efficient manner. In his view, the Association's proposal would impose an unreasonable restriction on the Division.

We have some sympathy for the position of the Association, in that it is not unreasonable to specify hours of work. The vast majority of collective agreements in the industrial areas specify hours of work as well as other working conditions. It must be borne in mind that this is an arbitration under the Public Schools Act. As mentioned, there is no indication or evidence that members of the Association have been subjected to such variations or changes in their working conditions.

We generally agree with the comments of Arbitrator Freedman, who in the Transcona-Springfield award, said at page 44:

> "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."

Arbitrator Freedman, in that Award, ultimately determined that a clause be inserted whereby the student contact time assigned to any teacher, whether such time be in a teaching, consultative or supervisory role, should not be increased by more than 5% over the previous school year. He understood clearly that there might be circumstances that would arise which would not be resolved by the application of the clause he ordered and that issues might proceed to arbitration.

We appreciate the Association's concern with the unilateral and unrestricted rights of the Division. Bearing in mind that there must be some flexibility on the part of the Association, and that there must be recourse if the Division should act unilaterally and in an unreasonable manner, we propose to include a clause on workload.

The provisions awarded by Arbitrator Freedman could, on a technical basis, lead to a compounding of additional requirements by the Division. We believe that the Article we have drawn will eliminate this possibility.

We hasten to add that there is no evidence that the Division has imposed unreasonable workload requirements nor is there any evidence that teachers have shirked their responsibilities. The Association has expressed concern that the long established work loads of teachers could be increased by factors not strictly within the ambit of pedagogical concerns. The Division, on the other hand, is concerned with the

Association seeking to establish rigid hours of work such as in an industrial plant, which would unduly restrict its efficient operations of the school and might require it to increase staff for minimal requirements. The Association must accept that, within the present educational system, it cannot mandate rigid strictly limited hours. The Division must concurrently accept that it cannot mandate unreasonable work loads. Accordingly, and to recognize the concerns expressed, we direct that a new Article be included in the Collective Agreement, as follows:

> -.01 In this Article, *"school year"* shall mean the period of time from the commencement of the school term on or about September 1st of any year until the end of the end of the school term on about the end of June in the following year.
>
> -.02 This Article shall come into force and effect as of the commencement of the school term on or about September 1st, 1991.
>
> -.03 Instructional time shall mean the time assigned by the administration responsible for the school to a full-time teacher for teaching and instruction of students, and for greater clarity, means the time that a full-time teacher is assigned contact with students to teach or instruct as opposed to the time that a full-time teacher may be assigned to other duties or responsibilities.
>
> -.04 Assignable time shall mean the time that the administration responsible for the school requires that a full-time teacher be in attendance at the school and be subject to assignment by the administration.
>
> -.05 Effective with the school year commencing on or about September 1, 1991, the total instructional time assigned to any full-time teacher and/or the total assignable time assigned to any full-time teacher over the period of a school year shall not exceed the average total assignable time assigned to full-time teachers and/or the average total instructional time assigned to full-time teachers, respectively, during the school term commencing on or about September 1, 1990 and continuing to on or about June 30, 1991 (hereinafter called the *"Base School Year"*); provided however, that the Division may, in each school year and for that school year, increase such assigned instructional time and/or assignable time to any full-time teacher to no more than five percent (5%) above the average total assignable time and/or the average instructional time, respectively, assigned to full-time

> teachers during the "Base School Year". For greater certainty and clarity, the absolute limit on a teacher's total assignable and/or total instructional time during any school year is a maximum of five percent (5%) above the average total assignable time, and/or the average total instructional time, which was assigned to full-time teachers during the "Base School Year".

From the evidence adduced at the hearings, the above new article should not create any additional cost to the Division, nor should it impede reasonable scheduling requirements. Concurrently, it places an absolute limit on the amount of assignable and/or instructional time which can be assigned to any full-time teacher. It affords members of the Association considerable protection against the concern expressed that the Division, having the unilateral and unrestricted right to increase demands on the workload of teachers, might act unreasonably and unfairly.

2. Class Size

The Association filed a number of very comprehensive studies relating to this issue i.e. the correlation between class size and effective teaching or learning. The Division filed similar material expressing a contrary view. There does not appear to us, to be any definitive answer as to the correlation between the number of students in a given class and the rate at which they learn.

Of equal significance to the Association is the workload and responsibility placed on teachers by large numbers of students in any given classroom. We are cognizant of, and appreciate, the additional burdens placed on teachers by the changes in today's society. We equally acknowledge that the Division has recognized some of these problems and has hired a large number of individuals, in various disciplines, to help alleviate some of the problems which arise. However, there is no evidence before us that the Division has, or is, embarking on a program which would create unduly large classroom enrollments.

We accordingly disallow the request of the Association.

3. Noon Hour

The Association has requested that its members have an uninterrupted lunch period of 60 minutes between 11:00 a.m. and 2:00 p.m., but that lunch period may be reduced to not less than 30 minutes by decision of the majority of the teachers in the school. We need not, again, repeat the decision of the various courts who dealt with such issues as in the Snow Lake matter and the Winnipeg Teachers case. Those issues have been clearly set forth in the court judgments and in the comments of Arbitrator Freedman in the Transcona-Springfield Award at pages 49 to 52 inclusive.

As in the Transcona-Springfield Award, the issue before us is not whether teachers may be obliged to provide noon hour supervision, but whether it is reasonable that they receive an uninterrupted meal break. It is common ground that teachers do receive an approximate one hour lunch break and that noon hour supervisory duties are rotated. O'Sullivan J.A. in the Snow Lake case commented at page 9 of the Judgment of the Court of Appeal:

> "One test as to whether an arrangement is reasonable or not is to see if the parties have agreed upon it, for what is agreed would usually be accepted as reasonable. However, if agreement is not possible, then the school division has the right to impose by assignment the duty of supervision during the noon intermission provided that it does so in a reasonable way." (Emphasis added)

The regulations also provide that teachers are required to be in school five minutes before the reconvening of the afternoon session. Accordingly this might necessitate that there only be a meal break of 55 minutes.

There is no evidence before us to suggest that one teacher or group of teachers is continuously assigned to noon hour supervision. We are of the view that

teachers are entitled to a lunch period of at least 55 minutes between the hours of 11:00 a.m. and 2:00 p.m. Obviously, this may create some difficulty when a teacher is charged with noon hour supervision. We are of the view that the request of the Association is reasonable and direct that a clause be inserted in the Collective Agreement to that effect. We do not accept the proposal of the Association that there should be "local option" in each school by the teachers only, as to whether the lunch break should be 30 minutes or approximately 1 hour. Such clause would abrogate completely the rights of the Division and/or the school to have any input into scheduling.

We have previously referred to the decision in the Transcona-Springfield School Division award. We note that Mr. Harold Piercy, in dissent, also considered the matter. We have some sympathy with his comments that the decision of the majority in that case was expressed in language which was of an imperative nature and was too inflexible in an educational setting. We have further modified his language and we order that a clause be inserted in the Collective Agreement as follows:

> "Except in cases of emergency, or unforeseen similar circumstances, every full-time teacher shall be entitled to an uninterrupted meal period, of 55 minutes duration, between 11:00 a.m. and 2:00 p.m. daily, unless the majority of the teachers in a particular school and the administration responsible for that school agree to a different arrangement respecting lunch periods."

4. Temperature

The Association has advised that in certain schools, especially the older ones without air-conditioning, temperatures can become most uncomfortable. Similarly, due to failures of heating systems, temperatures can become uncomfortably cold. The Association has requested that, if those conditions continue for 2 days, the Division arrange alternative placement of students. Although we have some

considerable sympathy for members of the Association, and for the students, we do not think that the proposal of the Association is realistic. We believe that uncomfortable circumstances occur as a result of unforeseen contingencies. The relocation of students and their supervision would create practically insurmountable problems, especially on what might prove to be a very short term basis. Neither The Public Schools Act nor the Regulations permit closing of schools on such occasions. We are of course cognizant that schools may close because of inclement weather. However, there is no authorization for the matters raised in this request and we disallow same. There are provisions of The Workplace Safety and Health Act which may be applicable but we do not have jurisdiction with respect to those matters.

7. Article 16 - Proposal - Teacher's Complaints

The Association initially proposed that when a serious complaint was received against a member of the Association, the Division should communicate the substance of each complaint to the member concerned. The member was to have the right to appear in answer to the complaint either personally or by representative. The Association's proposal went on to provide that if it was a serious complaint the Division should suspend the member, with pay, until all court proceedings had been concluded. Some portions of the Association's request have merit, and some, in our view are inappropriate. We note that the Public Schools Act, under S.92(3) provides that a teacher's contract cannot be terminated until the teacher has had the opportunity to answer the complaint before the Division board. This section however does not, in our view, afford the teacher any protection other than in cases of termination.

In our opinion "natural justice" dictates that a teacher should at least know, and have the opportunity, to answer complaints which are made against him/her.

We do not agree, however, that any suspension should be with pay until all criminal proceedings before the courts have concluded.

In view of the above we direct that a clause be inserted in the Collective Agreement as follows:

> Should the Division receive a serious complaint, in writing, regarding a member of the Association, the Division shall communicate, in writing, the complaint received to the member concerned. Prior to making any judgment regarding the complaint, the Division shall afford the member an opportunity to appear and answer to that complaint, either personally or by representative.

We have attempted to deal with each of the issues before us in a realistic manner considering the prevailing economic conditions. Although many of the requests of the Association and of the Division were reasonable, we do not feel that wide-sweeping changes to a Collective Agreement should be made in such times. We have tried to concentrate on awarding the teachers a financial package which is fair and reasonable. In addition to the very comprehensive briefs we have also carefully reviewed the relevant portions of The Public Schools Act, the Regulations thereunder and the Code of Rules and Regulations. The Collective Agreement (Article 4) specifically makes the Collective Agreement subject to all of the latter mentioned enactments.

The Arbitration Board appreciates that this Award is being published shortly before the new school year commences. Obviously, there may be some difficulty in the administration of the schools implementing the new provisions respecting workload and noon hours prior to school opening. Any reorganization or rescheduling should be completed as soon as possible. However, we recognize that there may be some time constraints and scheduling readjustments. Accordingly we hold that the Division should have until on or about the 1st day of November, 1991, to

complete any rescheduling or reorganization required to implement the new provisions relating to workload and/or noon hours.

We wish to thank the representatives of each of the parties for their very thorough and comprehensive briefs which were of considerable assistance to us. We also wish to thank the witnesses who gave their evidence in a clear and concise manner.

The Chairman wishes to thank his colleagues on the Arbitration Board who were of considerable assistance in reviewing the very complex issues.

The Board will stay seized of jurisdiction for the purpose of implementing its Award and in clarifying same. The provisions of the Collective Agreement agreed to by the parties will, of course, form part of the new Agreement.

DATED at the City of Winnipeg, this 16th day of August, 1991.

JACK M. CHAPMAN, Q.C. - Chairperson

I do/~~do not~~ concur in part in the above Award and am/~~am not~~ attaching my reasons.

DATED at Winnipeg, this 27 day of Aug., 1991.

R. McNicol, Q.C.
Nominee of the Division

I do/~~do not~~ concur in part in the above Award and am/~~am not~~ attaching my additional reasons.

DATED at Winnipeg, this 26th day of August, 1991.

David Shrom
Nominee of the Association

IN THE MATTER OF AN ARBITRATION
UNDER THE PROVISIONS OF THE PUBLIC SCHOOLS ACT

BETWEEN:

THE WINNIPEG TEACHERS' ASSOCIATION NO. 1
OF THE MANITOBA TEACHERS' SOCIETY

- and -

THE WINNIPEG SCHOOL DIVISION NO. 1

AWARD OF DAVID M. SHROM

I have read the Award of the Chairman of the Board of Arbitration and I concur[1] with the Award except in regard to the following matters:

Article 3 - Duration of Agreement;

Article 9.05 - Method of Determining Basic Salary Entitlement - Part Time Teachers' Increments;

Proposal #13 - Class Size.

[1]It should be noted, that while I have agreed with the ultimate decision of the Chairman in regard to a number of items in dispute, I do not necessarily adopt his reasoning and comment. On some matters, I have concurred to ensure that other more pressing issues were dealt with; and on other matters I concurred specifically to ensure a majority Award on the issue.

Dissenting Comments

Article 3 - Duration of Agreement

In a superficial sense, the dispute between the parties on this issue related to whether the collective agreement would be in force for one year or two. The Chairman has determined that a two year agreement would be "more practicable".

The dispute, however, involved a much more fundamental issue - the right to negotiate.

The parties acknowledged before the Board that a collective agreement had never been imposed contrary to the will of either party on the issue of the term of the agreement. Essentially, an agreement had never been imposed such that a party would be denied an opportunity to negotiate important issues.

A number of working condition issues were raised in this Arbitration. Unfortunately, however, some of these matters have not been dealt with sufficiently, or at all. Imposing a two year agreement now delays the Association's opportunity to address these critically important matters.

Mere delays in negotiating and arbitrating an agreement should not cause a Board of Arbitration to award a longer term contract on the basis of practicality. Such a rationale invites delays by one side in collective bargaining.

A compelling argument in favour of a one year agreement was in fact raised by the Division. Negotiations between the parties took place, for the most part in 1990, before funding announcements for the Division were made by the Province in the month of January, 1991. The Division argued before the Board of Arbitration that "our world changed" as a result of these announcements. If in fact one were to accept this assertion, it would only make sense to award a one year collective agreement so as to allow the parties an opportunity on a more timely basis to negotiate important issues in light of "changed events".

For the reasons set out herein, and since important working condition issues were not fully and properly dealt with, I would have awarded a one year collective agreement.

Article 9.05 - Method of Determining Basic Salary Entitlement - Part Time Teacher Increments.

The essence of the Association's proposal was to change the method by which part time teachers received increments. The Association asserted that the current method was inequitable since it was based on a part time teacher obtaining the equivalent of a full time teacher's full year of experience. The Association noted that even then (having obtained such equivalent experience), the part time teacher would only receive the applicable fraction of the increment.

I agree with the Association's position. It is inappropriate to require a part time teacher to obtain the equivalent of a full time teacher's full year of experience before receiving an increment. Part time teachers should receive increments based on a period of

employment. The preparation scale in the collective agreement recognizes and pays teachers according to their qualifications and experience. A part time teacher does have experience after a year of employment, but by definition does not have the equivalent of a full year of experience for a full time teacher.

The whole framework for obtaining increments was set up when part time teachers were essentially non-existent. Now, when there are an ever increasing number of part time teachers (primarily female), the method of obtaining increments as it is being applied to part time teachers is improper and almost discriminatory.

It is time for changes to be made in the method by which part time teachers receive increments. Applying a method of payment of increments created in contemplation of full time teachers is inequitable and inappropriate.

Proposal Number 13 - Class Size

The Chairman deferred dealing with this issue on the basis of "economic restraint". The Association proposed that the collective agreement contain a provision specifying maximum class sizes at different school levels. Although I acknowledge the evidence relating to the cost impact of the proposal, the proposal could have been modified so as to ensure the mere incorporation of the status quo thereby limiting the economic impact of the proposal.

Much of the evidence in support of the Association's proposal dealt with studies correlating the factor of class size with effective teaching/improved educational opportunities for students. Although it may well be a difficult matter to specifically measure or quantify, it appears reasonably clear from a common sense point of view that restrictions on class size will result in improved educational opportunities for students.

Of equal importance as a rationale for provisions in the agreement restricting class size, is the teacher's perspective of workload. There is no question that a restriction on class size would have a favourable impact on a teacher's workload. As noted in the *Kratzmann Report*, "teacher satisfaction is a justifiable end in itself that school jurisdictions should pursue". Teachers' Associations have been somewhat altruistic in focusing their arguments in support of class size proposals on the extent of the improved educational opportunities for students. While this is one basis for supporting the issue, the perspective of the teacher's workload is equally valid.

Additional Comments

Workload

Although I have concurred with the Chairman's Award on this issue, I wish to make some additional comments.

This issue was surprisingly controversial. It is strange that it would be so controversial in the sense that setting out the extent of the requirement to attend work and perform certain services is a standard clause in most collective agreements. Teachers are covered by a collective agreement and it is only reasonable that the extent of their assignable time and instructional time be set out in the agreement.

There was specific evidence before this Board of Arbitration as to the increasingly difficult and challenging demands on teachers, especially in Winnipeg School Division No. 1. We heard of the constant struggle to juggle and priorize the various demands on a teacher's time. Individual teachers gave evidence relating to the morale of teachers in this Division, all of which was verified by references to the Morale Committee Report (Exhibit Number 18). This report made various recommendations, including a recommendation "to ensure that clear and reasonable job expectations are in place for all employees". The Association's proposal is part of an attempt to address the morale issue. It is important to teachers to have certain working conditions dealt with in the collective agreement and to know the expectations upon them relating to their assignable time and instructional load.

Although the term *workload* is used as the title of this clause, it is a misnomer. Setting out the parameters of teachers' assignable time and instructional load does not, in any way, define the teachers' workload. It is common ground that teachers work well beyond the assignable time and their instructional load. This is recognized in the Chairman's Award.

Without a provision in the collective agreement setting out the extent of a teacher's assignable time and instructional load, there is no protection for teachers against a demand for an increase in services by the Division. In the past, even though the Association might have agreed to rates of pay based on a certain expectation as to the assignable time and instructional load, the Division could unilaterally increase the demand for services. The teachers would have no recourse. The Chairman has recognized, like the Board in *Transcona-Springfield*, that it is appropriate that there be a clause in the agreement to protect teachers from such a unilateral and perhaps unreasonable increase in demand for services.

The Association's original proposal called for the maximum assignable hours in a week (averaged over the school year)[2] to be thirty (30); with a maximum of twenty (20) hours (averaged over the school year) devoted to the instruction of students. Responsibly, and in recognition of the initial cost of implementing this proposal, the Association modified its position and requested that the clause incorporate essentially the existing status quo as far as the instructional load.

[2]Some administrative flexibility was thereby provided.

According to the evidence, the existing school day is comprised of 5.5 hours. By regulation, teachers are required to be on duty ten minutes before the morning start and five minutes before the afternoon start. As such, teachers are required to be at school 28.75 hours per week. The Association proposal, which called for thirty (30) hours assignable time, provided an additional 1.25 hours per week of flexibility. This amounts to fifty (50) hours over the school year of assignable time beyond the school day.

The evidence regarding the current extent of the instructional load of teachers indicated that, for the most part, teachers are required to instruct students no more than 22.5 hours per week. At the elementary level, all teachers instruct students 22.5 hours per week. At the secondary level, although there was some variation depending on whether the school operated on a seven or eight period cycle, the Association asserted that teachers instructed students for approximately 22 hours per week. Exhibit #29, a document presented to the Board on behalf of the Division, supported the Association's contention.

Although in my view it would have been more appropriate for the workload clause to specifically set out the extent of assignable time and instructional load as proposed by the Association, the clause included in the Chairman's Award is a step in the right direction. The clause limits the Employer's unilateral right to demand an increase in service, and it provides teachers with some realistic expectations regarding the extent of their contractual obligations.

The clause ultimately awarded by the Chairman is designed to define, to a certain extent, a teacher's total assignable time and total instructional time, and provide flexibility purportedly to accommodate legitimate administrative needs in scheduling. If such is the case, i.e., that there are legitimate administrative needs to effect changes, then it is only

reasonable that there be conditions attached to the Division's right to increase teachers' assigned or instructional time. Accordingly, I would have preferred a clause that restricted teachers' assigned and instructional time and only allowed increases subject to specific conditions. Increases would have to be based on reasonable and legitimate reasons and these would have to be disclosed to the Association and to the affected teacher prior to implementing the increase.

As noted earlier, the inclusion of an article respecting workload in the collective agreement is an important and positive step. Teachers will have greater certainty regarding the extent of their contractual obligations and the subject matter will, as it should, become part of regular collective bargaining.

Noon Hour:

I have concurred with the Chairman's award on this issue to ensure that the collective agreement contains a provision respecting noon/meal breaks.

I agree with the Chairman's findings that "teachers are entitled to a lunch period of at least 55 minutes between the hours of 11:00 a.m. and 2:00 p.m." and "that the request of the Association is reasonable".

Although it was not necessary in my view expressly to except "cases of emergency or unforeseen similar circumstances", such a narrow and specific exception does not detract from the intent of the Award - to provide a basic and clear entitlement to an uninterrupted and reasonable meal break.

DATED this 26th day of August 1991, at Winnipeg Manitoba.

D. M. Shrom

David M. Shrom

IN THE MATTER OF:	)	AN ARBITRATION BETWEEN:
	)	
	)	THE WINNIPEG SCHOOL DIVISION NO. 1
	)	
	)	(hereinafter called the "Division")
	)	
	)	- and -
	)	
	)	THE WINNIPEG TEACHERS' ASSOCIATION NO. 1 OF THE MANITOBA TEACHERS' SOCIETY,
	)	
	)	(hereainfter called the "Association").

DISSENT OF R. B. McNICOL, Q.C.

I have reviewed the Chairman's Award in this matter, and, while I am prepared to concur with the majority of it, I am obliged to dissent in respect to two specific aspects of it, namely the issues of workload and noon hour supervision.

JURISDICTION

With respect to both of these issues, I am of the opinion that this Board does not have the jurisdiction to deal with either of them, as workload and noon hour supervision are completely subsumed within the jurisdiction and powers granted to the School Board pursuant to Section 48(1) of The Public Schools Act, R.S.M. 1987, c. P250 and the regulations passed thereunder, specifically Regulation 488/70 and therefore

neither of them is a matter which can be dealt with by collective bargaining, unless the School Board agrees to do so and in this case it has not.

While I am aware that at least one other Arbitration Board has concluded that there is jurisdiction to deal with these matters, it is a matter that has not been adjudicated upon by the Courts of this Province and, in my opinion, ought to be as I fear that Arbitration Boards are assuming and exercising a jurisdiction when none exists.

WORKLOAD CLAUSE

a) This Board does not have any idea of the potential impact of this clause on the parties in terms of its application and as neither of the parties proposed this particular clause to us and we therefore have no analysis of its application or impact, we ought not to unilaterally impose such a provision upon the parties.

b) We do not know what workload changes have occurred between the end of the last school term and the present and accordingly, we do not know the potential effect this clause might have on those changes.

c) We do not know what effect this clause will have on staffing and time-tabling already in place or whether it will require changes, variations or additions to those arrangements.

d) The wording of the clause proposed by the Chairman is, with respect, fraught with uncertainty, ambiguity and difficulty of interpretation.

e) The net effect of the proposed clause is to impose a permanent cap on the assignable time of every teacher in the Division, notwithstanding that we all know that many teachers, from time to time, change schools and assignments within the Division. This clause permits little or no flexibility for changes in school or assignment by teachers, without great difficulty and uncertainty.

f) As it was not suggested that any problem whatsoever existed at present with respect to teacher workloads, this Board is really creating a problem, when in fact, none presently exists.

NOON HOUR SUPERVISION

a) Given the economic realities of the present budget

of the Winnipeg School Division No. 1, it is irresponsible to ignore the significant cost impact of this clause.

b) The Association has not suggested there is any existing problem or present unfairness in respect to noon hour supervision by rote and we therefore appear to be attempting to fix a wagon that is not broken.

c) The Association advanced no specific or compelling reasons for this clause. Surely, the onus ought to be on the Association to satisfy us that there is, in fact, a sound and compelling reason for such a clause before we visit a substantial cost upon the Division.

Accordingly, I have concluded on the basis of the evidence and submissions before us that there is no need (and no jurisdiction) for this Board to deal with the issues of workload and noon hour supervision. If there is not a problem at present (and there is not) and no problem is anticipated by the parties, it is mischievous for a Board to deal with the matters and impose unnecessary contractual obligations between the parties in that regard.

DATED at Winnipeg, this 27 day of August, 1991.

R. B. McNICOL, Q.C.,
Nominee of the Division.