COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

TEACHER X AND MIDLAND DIVISION ASSOCIATION NO. 25 OF THE MANITOBA TEACHERS' SOCIETY,	)	**For the Applicants:**
	)	**Mr. R.C. Roy**
	)	
Applicants	)	
-and-	)	
MIDLAND SCHOOL DIVISION NO. 25,	)	**For the Respondent:**
Respondent	)	**Mr. R.A. Simpson**
	)	**May 11, 1999**

MYKLE, J.

The applicants apply under s. 17(9) of *The Arbitration Act*, S.M. 1997, c. *4 ("the Act") for* a review of an arbitration board's ruling with respect to its jurisdiction.

The *Act* provides as follows:

> s 17 (1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.
>
> (2) The arbitral tribunal may determine any question of law that arises during the arbitration.
>
> (8) The arbitral tribunal may rule on an objection when it is raised or may deal with it in art award.
>
> (9) If the arbitral tribunal rules on an objection where it is raised, a party may, within 30 days after receiving notice of the ruling, make an application to the court to decide the matter.

The Applicant Teacher X was a teacher in the first year of employment, employed by the Respondent Division pursuant to a Form 2 teaching agreement which provided that the employment was to commence on August 27, 1997 at Miami Collegiate in Miami, Manitoba.

As a result of an investigation launched by the Division in December, 1997 respecting obscene telephone calls allegedly received by a student and a teacher assistant at Miami Collegiate, three teachers, Teacher X, another male teacher and a female teacher were relieved of their duties with pay on December 19, 1997 until further notice.

The Superintendent of Schools for the Division, in a report dated January 21, 1998, recommended to the Division's Board of Trustees that the Form 2 contracts of Teacher X and the other male teacher be revoked immediately with the provision of one month's pay in lieu of notice.

Teacher X and a representative of the Manitoba Teachers' Society appeared at a meeting of the Board of Trustees on January 27, 1998 in this connection. By registered letter dated January 29, 1998, the Division advised Teacher X that the Board of Trustees passed a motion to immediately terminate the employment contract with one month's salary in lieu of notice.

Subsequently, both Teacher X and the applicant, Midland Division Association No. 25 ("MDA") filed grievances concerning the suspension and termination. Pursuant to the Collective Agreement between the MDA and the Division, an Arbitration Board was selected in the usual way, and an initial hearing date was set to deal with the preliminary objections of the Division and to determine whether the Arbitration Board had jurisdiction to hear all or any of the various claims relating to the grievances.

In the suspension grievance, the Division was requested to acknowledge its violation of the Collective Agreement, reinstate Teacher X with pay, and remove any reference to the suspension from its files. The Division's response is that Teacher X had not been suspended but had been relieved of duties pending an investigation, that Teacher X was paid during this period, and that there was no reference to any suspension in the Division's files.

The termination grievance alleged that Teacher X`s employment was terminated in breach of and contrary to the Collective Agreement, the Form 2 contract and *The Public Schools Act* R.S.M. 1987 c. P250 and requested that the Division acknowledge its violation, reinstate Teacher X with pay, confirm that the statutory Form 2 contract continues, acknowledge that the termination was improper and acknowledge that the Division acted improperly. The Division's response is an assertion that, as the Collective Agreement does not (and cannot, by virtue of the *Public Schools Act)* deal with the issue of termination, there is no jurisdiction to grieve.

Subsequent to the appointment of the Arbitration Board, the applicants wrote to the Division claiming damages for alleged defamation and injury to reputation. The Division took the position that these additional claims were not included in the grievances as filed and referred to arbitration, but in any event did not arise out of the Collective Agreement between the MDA and the Division and, therefore, were not subject to grievance and arbitration.

The Board heard submissions on the preliminary objections, and made a determination on what issues raised were arbitrable and within the jurisdiction of the Arbitration Board under the Collective Agreement.

With respect to the suspension grievance, the Board decided:

> We do believe that we would have jurisdiction, if the Union and the Grievor so choose, to hear and to consider the suspension issue (if the evidence ultimately established that it was disciplinary in nature) as it is clearly referred to in Article XVI of the Collective Agreement and which refers to suspensions with or without pay. With respect to that issue, our jurisdiction according to the agreement between the parties is to uphold, rescind or vary or modify the discipline and to potentially order payment for loss of pay and/or benefits'. That jurisdiction in our view does not extend to claims for damages for defamation and/ or injury to career or reputation. In our respectful view, such a remedy would only be available in a Court of competent jurisdiction."

The Board considered its jurisdiction respecting the termination grievance as follows:

> "We are also of the view that we would potentially have jurisdiction to consider the process (in terms of whether it not the requirements of Section 92) adopted by the Board of Trustees in terms of adequacy of opportunist for the grievor to respond to the allegations as well as to review whether an 'emergency' (pursuant to the provisions of *The Public Schools Act*) did exist. In that regard, our jurisdiction would be limited to an examination of whether or not *Teacher X* should have been paid (and receive benefits) until the end of June, 1998 or, possibly, for one month further pursuant to Section 92(7) of the *Act.* However, again, we do not feel that we have jurisdiction to consider claims for damages for defamation or impact career. We do not believe that Weber casts that broad a net."

> "We also are of the view that Section 92(4) of the *Act* is explicit in its terms in that the arbitration process pursuant to the legislation is only available to teachers who have been employed for 'more than one full school year' and Teacher X does not fall within that definition. It is true that there is no reference to probation specifically but the legislation clearly does contemplate the one year of entitlement to the arbitrable process albeit we could consider suspension and compensation until the end of June, 1998. Accordingly, we would have no jurisdiction to order continuation of the contract. Rather, as indicated previously, we would only be considering the issue of loss of compensation or benefits to the extent indicated above."

And in clarifying reasons by one board member, Gerald Parkinson, he added:

> "I concur in the Award in this matter. In order to clarify matters, I want to make it clear that I have not yet agreed that there is in fact jurisdiction to consider the process in terms of Section 92 of *The Public Schools Act*. That issue has not been argued before us."

Although correctness may not be the standard in a review of this nature, it is my view that the Arbitration Board was indeed correct in determining its jurisdiction regarding these grievances. The Board was alive, not only to the provisions of the Collective Agreement under which it must operate, but also to the arbitration provisions contained in s. 92(4) of the *Public Schools* Act, and decided these issues in an appropriate fashion.