

IN THE MATTER OF:) **AN ARBITRATION BETWEEN:**
)
) **PRAIRIE ROSE SCHOOL DIVISION**
)
) **(hereinafter called the "Division")**
)
) **-and**
)
) **PRAIRIE ROSE TEACHERS' ASSOCIATION**
) **OF THE MANITOBA TEACHERS' SOCIETY**
)
) **(hereinafter called the "Teachers")**

ARBITRATION AWARD

The Arbitration Board was appointed to settle the terms of a first contract between the Division and the teachers. The Board was composed of Mr. G.D. Parkinson, the nominee of the Division, Mr. John Collins, the nominee of the Association and Jack M. Chapman, Q.C. acted as Chairperson. By agreement with the parties the hearings were held in Carman, Manitoba on February 3rd, 4th and 10th, 2005. The Board has met subsequently and has also received communications from the parties.

By way of introduction and without fully reviewing the formation of the Division, it may suffice to say that the Division is composed of two previous Divisions, namely, the Midland School Division and the White Horse Plains School Division. The legislature of the Province of Manitoba enacted Bill 14 more formally known as *The Public Schools Modernization Act (Public Schools Act)* amended. As a result of that legislation a number of School Divisions in Manitoba were amalgamated. One of those is the Division. It is not appropriate for this Board to comment on that legislation although the parties were not hesitant to do so.

Another provision of the legislation provided that the teachers were subject to the provisions of the *Labour Relations Act of Manitoba*. On December 15th, 2003 the Manitoba Labour Board issued Certificate No. MLB-6125 which certified the teachers as the bargaining agent for all teachers employed by the Prairie Rose School Division. Previously the teachers of the Midland School Division Association had been certified under certificate No. E-59-59 and the teachers of the White Horse Plains Division had been certified under certificate No. E57-59. It is perhaps unnecessary to note that the amalgamation of the School Divisions was not greeted with the unanimous consent of the Divisions and of some of the teachers. However the amalgamation became effective as of the 1st day of July, 2002 and no new collective agreement had been entered into between the parties.

At the commencement of the hearings the members of the Arbitration Board each completed an Oath of Office. The Division was represented by Mr. Craig Wallis of the Manitoba Association of School Trustees. As well Ms. Agnes Gauthier the Secretary Treasurer of the Division was in attendance as was Mr. Fred Colvin the Superintendent of the Division. Various Trustees attended from time to time. Certain other members of the staff of the Manitoba Association of School Trustees periodically attended and these were Mr. George Coupland, Ms. Marcy MacDonald, and Mr. Justin Remple. Mr. Tom Paci of the staff of the Manitoba Teachers Society appeared on behalf of the Association as did Mr. Mike Bell of that staff. Other members of the staff and of the bargaining unit were also in attendance. As well, certain members of the staff of the Manitoba Teachers Society periodically attended the hearing.

At the commencement of the hearings the parties confirmed the jurisdiction of the Arbitration Board to resolve the matters in dispute. There were initially a substantial number of issues in dispute but to the credit of the parties a number of the issues were resolved. With respect to the resolved issues the parties have exchanged wording and with certain minor exceptions have agreed on that wording. We do not feel that it is necessary for us to recite the agreed upon clauses but if any dispute should arise then we will stay seized of jurisdiction to solve that matter.

We believe the following items have been resolved:

- Purpose
- Manitoba Education, Citizenship and Youth
- Effective Period
- Classification and Experience
- Salary Confirmation
- Payment of Salaries
- Tenure
- Allowances for Professional Non-Credit Courses
- Substitute Teachers
- Sick Leave for Pregnant Teachers
- Bereavement Leave
- Maternity, Adoptive, Parental Leave
- Major Religious Holy Days
- Credit Court Examination Leave
- Jury/Witness Duty
- Fee Deduction
- Extra Curricular

Benefit Plans
Transfer
Layoff
Teachers on Form 2A Contracts
Complaints Against Teachers
Provision for Settlement of Dispute
Discipline Clause
Workplace Harassment

We also believe that the following items, in full or in part, are in dispute:

1. Salary Scale
2. Placement on Salary Schedule (effective date only)
3. No Reduction
4. Salary Adjustments
5. Interest on Back Pay (Wording agreed. Method outstanding)
6. Special Allowances (deals with multi-grade; wording agreed; dollar amounts and effective date outstanding)
7. Principals Allowance
8. Vice-Principal's Allowance (effective date only)
9. Acting Principal
10. Student Services Coordinator
11. Sick Leave (outstanding: A: definition, H: compassionate medical leave, I: medical leave)
12. Sabbatical Leave
13. Leave of Absence Without Pay
14. Executive Leave
15. Personal Leave
16. Special Leave
17. Part-time Teachers (only D outstanding: interview for vacant position)
18. Hours of Work/Preparation Time
19. Meal Period
20. Posting of Positions
21. Professional Development
22. Inclement Weather
23. Long Term Leave of Absence

The Division and the Association both made very extensive submissions with respect to the issues in dispute. We do not propose to review the voluminous amount of material which was filed but the Board can assure the parties that all of it was considered and appreciated. The material filed presents a very comprehensive history of the bargaining between various Divisions and their teachers and reference is made to a substantial number of arbitral decisions, many of which involved some of the members of this Arbitration Board.

As mentioned each of the predecessor School Divisions had a collective agreement with their teachers. What makes the determination of a collective agreement more difficult is the fact that the previous contracts were substantially different. The salary scales were different and some of the differences applied to many of the other working conditions. These discrepancies have caused considerable difficulties in resolving the issues.

It is a generally accepted principle of industrial relations that workers doing the same work in the same workplace for the same employer and with the same qualifications should receive the same salary and other benefits. The Association in extremely simplistic terms has suggested that as of the date of amalgamation this Board should review the two collective agreements, choose the most favorable portions of each and implement a collective agreement based on those most favorable terms and make it effective on the commencement date of the amalgamated Division, i.e. July 13, 2002. The Association then suggests that salary increases be granted on that new scale. Similarly the Association suggests that the same principle apply with respect to working conditions and that the new working conditions requested be granted as of the same date.

In very simple terms the Division says that the previously existing salary scales for each Division should be maintained for the duration of this contract and that a single harmonized scale be brought into effect on the expiry date which would be June 30, 2004.

We appreciate that the above is an extremely simplistic view of the positions of the parties but in our opinion those brief statements reflect the essence of the proposals submitted.

We do not feel it necessary to repeat the often quoted statements of arbitrators in this jurisdiction and elsewhere, with respect to the role of arbitrators in an interest arbitration. Of course, in addition to considering and determining the entitlement of the teachers, it is incumbent on the Board to also consider the effect on the Division and the taxpayers they represent.

The Board realizes that to grant the Association's request would, to some extent still result in an inequity, although the teachers of the previous White Horse Plains Division may be willing to accept such a result. It is important to note that the teachers in White Horse Plains generally had a higher scale than the teachers in the Midland Plains Division. If the two scales were harmonized at the commencement date and increases were granted, the teachers previously in the Midland School Division would receive a larger increase than those in the White Horse Plains Division. The fact that the teachers in the White Horse Plains Division are willing to accept that discrepancy does not lessen the effect.

This Board does not dispute that "comparability" is a most important consideration in interest arbitrations. However it is important to note that the two predecessor salary schedules were not equal and that there were significant differences in other terms and conditions. All of those differences and distinctions had to be weighed and considered in arriving at a fair, reasonable and equitable new collective agreement.. The Board was of the view, and as will be apparent from our award, that complete parity was to be achieved over a reasonable term and not necessarily on the date of the formal amalgamation.

We also bear in mind that the collective agreement which we will impose will, for all practical purposes be over at the expiry date of June 30th, 2004. The new agreement will be, and the parties have so agreed, from July 1st, 2002 to June 30, 2004. Obviously the first year of the collective agreement therefore will be from July 1", 2002 to June 30th, 2003 and the second year will be from July 1st, 2003 to June 30th, 2004.

1. Salary Scale

After reviewing all of the criteria we have concluded for the year July 1st, 2002 to June 30, 2003 the salary scales for the two predecessor Divisions should be maintained excepting that each will receive an increase at all steps of 3% on the scale. As of July 1st, 2003 the scales shall be harmonized i.e. there shall be one scale based on the highest salary provided on each step in the adjusted 2002 scales, and that harmonized scale shall also include any reduced increments. That scale shall then be adjusted by a further 1.5% on July 1, 2003 and a further compounded 1.5% at each step on the 1st day of January, 2004. We are not setting out the salary scales in specific numbers and if the parties cannot resolve the arithmetic then the Board will stay seized of jurisdiction to settle the scale.

2. Placement on Salary Schedule Effective Date Only

The placement on the salary schedule shall be effective as of June 30, 2004.

3. No Reduction

The request of the Association is denied.

4. Salary Adjustments

The request of the Association to have all of the adjustments made within 20 days is denied. The Board is not aware of the abilities of the School Division to process the necessary adjustments within the period requested by the Association. However the Board strongly recommends and urges that all adjustments be made as expeditiously as possible.

5. Interest on Back Pay

The parties have agreed on the wording and the suggestion is that the method of payment is outstanding. We are of the view that the wording agreed to by the parties is clear and comprehensive and requires no further clarification. The agreed on wording shows the effective dates, the amount that interest is computed on, the rate it is computed and provides that interest will accrue until paid. If there is still some dispute it may be referred back to this Board.

6. Special Allowances (Multi-Grade Allowances)

It must be borne in mind that the criteria in the previous Midland agreement were based on "two or more grades", an "Approved Special Education Class" and a "one-teacher school." The criteria under the new agreement are for "Up to 3 classes", "Up to 6 classes" and "More than 6 classes". We have concluded that for the year commencing on July 1st, 2002 the allowances shall be \$461.00, \$719.00 and \$977.00. As of July 1st, 2003 they shall be increased by 3% each and accordingly shall be \$489.00, \$763.00 and \$1,037.07.

Principals Allowance

There have been a substantial number of proposals respecting both the method of computing and the amount of allowance to be paid to principals. We are of the view that the most equitable method of computing such allowance, and the simplest, is in accordance with the previous White Horse Plains agreement, Article 5.01. We have concluded that the schedule from that agreement as of January 1st, 2002 be applied to the new collective agreement effective the 1st day of July, 2002 and that the allowances shown in that schedule for the first year of the new collective agreement be increased by 2%. On July 1st, 2003 they should be increased by a further 2%.

8. Vice-Principal's Allowance

The parties have agreed on the method of computing the Vice-Principal's allowance. We are of the view that it should be effective the same dates that the Principals allowance are effective.

9. Acting Principals

The Arbitration Board substantially accepts the Division's proposal and direct that, effective July 1st, 2002, the following Article be in the collective agreement:

When the Principal and Vice-Principal, where applicable or absent from school, an Acting Principal shall be appointed. An allowance will be paid for the Acting Principal if the period of absence is for one-half day or more. The allowance will be paid in half-day for full-day increments and will be calculated as 50% of the Principal's allowance for the day.

10. Student Services Coordinator

The Board has concluded that the allowance to be paid to the Student Services Coordinator effective the 1st day of July, 2002 shall be as follows:

Start	\$3,119.00
On completion of year one	\$3,213.00
On completion of two years	\$3,854.00
On completion of three years	\$4,497.00
On completion of four years	\$5,141.00

On the 1st day of July, 2003 the allowances shall be:

Start	\$3,213.00
On completion of one year	\$3,310.00
On completion of two years	\$4,634.00
On completion of three years	\$5,296.00

Part-time Coordinators to be paid on a pro rata basis.

11. Sick Leave

The parties have substantially agreed on the appropriate clause respecting sick leave entitlement. The parties have also agreed that their wording shall be effective as of June 30th, 2004.

The Arbitration Board has determined that the parties have agreed to paragraphs B and G of that agreement, the only matter remaining for this Board to determine is what may be termed as proposed Articles A, H and I.

Accordingly the Board has determined that Article A shall read as follows:

It is agreed by the parties that sick leave entitlement shall only be granted by the Division where an employee is unable to be at work and perform regular duties as a result of illness or injury or medical leave as set out in Articles H and I hereof.

Article H shall read as follows:

A teacher shall be granted up to 4 days of compassionate medical leave to attend to each case of a life threatening illness or injury in the immediate family of the teacher. Immediate family shall include spouse, parents, sons, daughters, brothers and sisters and wards. This leave shall count against the teacher's accumulated sick leave. Leave in excess of the above may be granted at the discretion of the Board in extenuating circumstances which are substantiated to the satisfaction of the Board with salary deduction as determined by the Board.

Article I shall read as follows:

The Division recognizes the necessity for staff to attend medical appointments. Staff shall make every effort to schedule medical appointments outside of school hours. Where medical appointments can only be taken during school hours medical leave shall be granted by the Division. Such leave shall be counted against the teacher's accumulated sick leave.

12. Sabbatical Leave

The request of the Association is not granted. This is a first collective agreement for the amalgamated Division and we are of the view that a satisfactory Article would be that which is found in the previous Midland agreement. We accordingly direct that the following clause form part of the agreement:

Sabbatical leave may be granted to a teacher or teachers at the discretion of the Board. Terms of such leave shall be negotiated between the applicant and the Board at the time of the application. Such application is to be submitted to the Board no later than January 31st of the year sabbatical leave is to commence.

13. Leave of Absence Without Pay

The request of the Association is denied. As stated previously this is a first collective agreement which will have expired by the time of the publication of this Award. This clause would be best negotiated by the parties when dealing with a new agreement.

14. Executive Leave

It is extremely important that teachers be in a position to accept the responsibility of being involved with their professional association. Accordingly the Association proposal is granted effective June 30th, 2004 and the clause shall read as follows:

A teacher, being a member of The Manitoba Teachers' Society Executive Committee, or of the Executive Committee of any branch thereof, or of any special committee of the Society, or being appointed an official representative or delegate of the Society or any branch thereof and, being authorized by the Executive of which he or she is a member, or to act as a representative or delegate of the Society of any branch of the Society in the matter of Society business requiring absence from school, shall have the right to attend such meeting, or to act as such representative or delegate and shall be excused from school duties for either purpose or for both purposes on not more than a total of five days in any one school year provided that a substitute can be secured and that the cost of the substitute, where one is needed, shall be assumed by the Society and not be a charge on the Board. Additional leave of absence of this nature shall be granted only at the Board's discretion.

The Board agrees to grant the Local Association President up to one quarter (1/4) release time, upon request of the Local Association. Payment of salary and benefits for the release time will be the responsibility of the Association. Such request is to be made on or before May 15th for the following school year.

Individuals so released will revert to their original percentage of teaching time in the following year.

15. Personal Leave

The Division's proposal is accepted to be effective as and from the 30th day of June, 2004. The new collective agreement shall contain the following clause:

Each teacher, upon authorization of the Superintendent, shall be allowed one day of leave of absence per school year, without loss of pay.

One day leave of absence may be carried over to the next school year for an overall maximum accumulation of three days.

Written application shall be submitted to the Superintendent and where possible such application shall be made at least one week prior to taking the leave.

Leave shall not be taken to extend the Christmas, spring or summer breaks and will not be used during either administrative or in-service days.

16. Special Leave

The proposal of the Association is not granted. This is the type of Article that should be negotiated by the parties and it would be more appropriate to be discussed during negotiations for the new agreement.

17. Part-Time Teachers

The parties have substantially agreed on an Article respecting this matter. The only question remaining for the Board is to determine the effective date and whether or not one of the submitted Articles known as D is to be included. The Association's proposed Article D has its source in the last agreement with White Horse Plains Division. It simply provides that if a full time teaching position becomes vacant within the Division any part-time teacher who applies for the position and is in the employ of the Division is entitled to an interview. We feel that this is a reasonable request and does not in any way mandate that teachers should be hired. We accordingly hold that Article D be incorporated in the new collective agreement.

18. Hours of Work/Preparation Time

This proposed Article reflects, to some extent what is in the previous White Horse Plains agreement and we note that there is no such clause in the Midland agreement. Again this is an item which should be resolved by discussion between the parties. However, we are of the view that some minimal recognition should be given to the issue and accordingly we hold that the following Article D be incorporated into the agreement:

The Board recognizes the value of preparation time.

19. Meal Period

This particular Article has been the subject of numerous arbitrations and much discussion. In coming to its conclusion the Board has considered that a number of these schools are small and in isolated areas and that there may be circumstances where emergencies occur.

Accordingly we rule that the Division's proposal be accepted and the following Article be in the collective agreement:

Except in cases of emergencies, or in unforeseen circumstances, every teacher shall be entitled to an uninterrupted meal period of 55 consecutive minutes between 11:00 a.m. and 2:00 p.m. each school day. Designated staff will be on call during this meal period to deal with emergencies or unforeseen similar circumstances.

20. Posting of Positions

The Division has submitted that to grant the Association's proposal would create an undue workload. We do not accept that there would be any undue administrative difficulties. Accordingly the Board holds that the Association's amended proposal be accepted and that the following Article be included in the collective agreement:

The Board shall post in each school an advertisement of any vacant teaching position in the School Division for at least one week. Vacant teaching position shall mean a position where the incumbent has retired, resigned or been assigned to other duties and which it is anticipated will be vacant for a whole or substantial portion of either the fall term or the spring term.

21. Professional Development

There is no question that it is in the best interest of the Division, the members of the Association and the public that the teachers are able to develop their professional ability and to be aware of circumstances which may change in the field of education. Although submissions were received the Arbitration Board does not feel that it is qualified to determine such matters. We are satisfied that it would be in the best interest of the parties to establish a committee to study the comprehensive submissions of the Association and make recommendations to the School Board for consideration or Board policy. We emphasize that the recommendations would be only for consideration by the Board and not binding on the Board and that the appropriate clause be incorporated in the agreement.

However we are of the opinion and hold that when the Superintendent or the School Board requests that a teacher take part in a professional development day on a non regular work day, and if the teacher so takes part, the teacher shall be compensated with a personal leave day during the year with no deduction for substitute costs.

22. Inclement Weather

Obviously neither the Board nor the members of the Association or the parents of students wish any member of their community to be endangered by inclement weather. The Board has a policy and in various Divisions there are some mandated provisions. The parties are far more familiar with the conditions, which may exist in the Division, than the members of the Board are. However, we determine that the parties should establish a committee to study and make recommendations to the Board regarding the matter of teacher absence due to inclement weather. We emphasize again that the committee would only be entitled to make the recommendations and the implementation of it or the acceptance would be up to the Board.

23. Long Term Leave of Absence

This is a new article. As with certain other clauses it would have no effect during the term of the agreement. We are proposing and accordingly we recommend that the parties deal with this matter, if they so desire, in their negotiations for the new collective agreement.

We believe that we have given our decision with respect to the issues which are outstanding. If we have not dealt with any of the issues then they may be referred back to us. If our decisions are unclear or if the parties wish further reasons for our decision they are of course at liberty to refer such questions to us.

The Board will stay seized of jurisdiction to amplify, clarify or if necessary amend any of our responses to the above.

As stated earlier we have purposely avoided reciting the well known jurisprudence which was supplied to us in comprehensive detail. Those submissions both written and oral were of great assistance to us and we wish to thank the parties for their assistance.

In accordance with the legislation each of the parties will be responsible for the cost of their representative on the Board and the parties will jointly share the cost of the Chairperson.

As well, we want to pay particular thanks to the parties for making arrangements for the hearings.

DATED at Winnipeg, this 20th day of June, 2005.

Jack .Chapman, Q.C. Chairperson

G. D. Parkinson, nominee of the Division do/do not concur
and I am/am not attaching reasons

John Collins, nominee of the Association do/do not concur
and I am/am not attaching reasons

IN THE MATTER OF
AN ARBITRATION BETWEEN
THE PRAIRIE ROSE SCHOOL DIVISION

(hereinafter called the "Division")

-and-

THE PRAIRIE ROSE TEACHERS' ASSOCIATION OF THE MANITOBA
TEACHERS' SOCIETY

(hereinafter called the "Association")

DISSENT OF JOHN K. COLLINS, NOMINEE OF THE ASSOCIATION

I have reviewed the Chairperson's award and, with respect, must dissent from it with regard to the items set out below.

IN GENERAL

I cannot agree that the Association's case can be reduced to an "extremely simplistic" suggestion that this Board should create a collective agreement comprising the most favorable items from the previous two agreements. That may well have been the Association's conclusion but it was firmly based on extensive and complex evidence relying on the principle "that the fairest and most realistic approach to salary schedule and the associated benefits is to seek comparisons with school divisions of a comparable nature." The Association provided comprehensive documentation attesting to the acceptance of this principle by numerous arbitrators including the present Chairperson. Comparability is recognized as the surest way of determining the kind of settlements that reasonable people in similar circumstances would make and so may fairly be applied by arbitrators to parties that cannot agree.

The Association then analyzed the pattern of settlements among school divisions that had been amalgamated under Bill 14 and, as of the dates of the arbitration hearing, had collective agreements freely settled with their teachers. Two thirds of those divisions had settled new collective agreements with their teachers. The evidence was that 75% of those similar divisions and associations had from the first day harmonized their salary scales into one new scale based on the highest figures from the previous collective agreements and 75 % had increased that scale by 3% in each of the first two years of amalgamation. The Association was seeking no more nor no less.

The Association further provided an analysis of working condition items that demonstrated that the general tendency in the new amalgamated agreements was, in fact, to protect the more favorable terms and conditions of work that had been available to the predecessor associations. They illustrated the point with tables, provided examples and even a binder of all the old collective agreements that had been the basis of the new agreements freely negotiated in other amalgamated divisions. In the majority of cases, those terms more beneficial to the teachers had survived either to the letter or in substance in the new agreements. In the circumstances, it was hardly unreasonable for the Association to expect that its members would not lose hard won rights merely by reason of the amalgamation.

In refuting the Division's arguments on inability to pay, the Association again provided uncontested documentation demonstrating that the new Prairie Rose School Division was the sixth richest division in the province (out of 39), had the sixth highest surplus in the province (more than twice what the Division itself conceded was desirable) and as a result the cost of the Association proposals would not have had an additional effect on the taxpayers of the Division.

Far from being "simplistic," the Association's argument was based on compelling evidence , presented within the context of what the Chairperson himself has on other occasions recognized as the paramount interest arbitration criterion.

In reference to the salary scale, the Chairperson expressed concern that harmonization from the first day of the contract would result in an inequity to the ex-White Horse Plain teachers as the ex-Midland teachers would receive a larger increase. However, the overall effect of his award is to create an inequity for ex-White Horse Plain teachers insofar as many of the rights they had gained in past bargaining have been lost. With two exceptions, all the articles proposed by the Association had already been in the predecessor collective agreements, most of them coming from White Horse Plain. Up to about a decade ago, teacher collective agreements differed from collective agreements in general in that they contained few articles relating to conditions of employment apart from schedules of remuneration. Nevertheless, White Horse Plain teachers had painstakingly created a measure of rights in their collective agreement. The denial or reduction of those articles constitutes a significant erosion of their terms and conditions of work.

ITEM 1: SALARY SCALE

The Chairperson's award flies in the face of his own statement that "It is a generally accepted principle of industrial relations that workers doing the same work in the same workplace and for the same employer and with the same qualifications should receive the same salary and other benefits." It also ignores the Chairperson's often-expressed belief in the fairness of comparability as a criterion. For instance: "(Norwood, 1994) A review of the arbitration decisions concerning teachers' salaries in Manitoba reveals that the most significant factor is "comparability" or "(St. James-Assiniboia, 1994) In our view, one must give paramount consideration to increases granted to teachers in similar divisions." A precedent for the Chairperson's award cannot be found in any other salary settlement in any Manitoba school division, amalgamated or otherwise. Surely, "similar divisions" first and foremost are amalgamated divisions. At the time of the arbitration hearing, only two out of eight amalgamated settlements had split the salary increase. Each provided 2% in September, 2002 and 1% in January, 2003. None was 1.5% and 1.5%. None of those agreements had a split in the contract year 2002/2003. All of those freely negotiated amalgamated settlements included predecessor salary scales that were not equal, where some discrepancies were greater than others and where the harmonization of the salary scales resulted in some teachers receiving larger increases than others

It should be noted that the Chairperson's stated objective of saving ex-White Horse Plain teachers from inequity is defeated for the almost 60% at maximum by the percentage increase split in the second year.

In its survey of similar settlements and its analysis of the Division's financial circumstances, the Association demonstrated that its proposal was fair to teachers and school board alike. Whether one looks at "Comparability", the criterion preferred by the Association or at "Ability to Pay", the criterion seen as significant by the Division, the Association's proposal is fair and reasonable and I would have awarded it.

ITEM 4: SALARY ADJUSTMENTS

White Horse Plain teachers had the right to have any salary adjustments arising out of collective bargaining paid to them within 20 days of signing the new agreement. The Association proposed including this in the Prairie Rose agreement. The award denies that proposal. The division's only argument against it was to assert the possibility that there might be administrative difficulties in meeting the deadline. As against this is the fact that the article had been administered without difficulty by the old White Horse Plain Division. I would have awarded the article.

ITEM 7: PRINCIPALS' ALLOWANCE

I concur with the Chairperson in adhering to a per teacher rate for the computation of the principal's allowance. The per-teacher rate maintains the model previously in place in the predecessor divisions, is more transparent and is less prone to fluctuations than a weighted per student rate. However the article as awarded does not appear to take into account the size of the Carman Collegiate nor does it provide any red circling to protect incumbents whose allowances might be reduced. Furthermore, it awards annual percentage increases lower than the going rate. In light of those concerns, I believe it would be more appropriate to have awarded the Association proposal.

ITEM 9: ACTING PRINCIPAL

The article awarded requires a teacher acting as principal to be on duty for at least a half-day before being entitled to an allowance. The Association's proposal would have paid the allowance on an hourly rate. The Division's argument against this was that it would be more onerous for the Secretary-Treasurer. This seems a poor argument to put against requiring an acting principal to work for perhaps two hours for nothing. I would have awarded the Association's proposal.

ITEM 10: STUDENT SERVICES COORDINATOR:

I concur with the Chairperson's award except that I would have awarded, as of the 1st. day of July, 2003:

"Start	\$3,310
<i>On completion of one year</i>	<i>\$3,970</i>
<i>On completion of two years</i>	<i>\$4, 634</i>
<i>On completion of three years</i>	<i>\$5,296"</i>

ITEM 11: SICK LEAVE

I concur with the award on Sick Leave except that I would have included in H:

"Compassionate medical leave shall be granted up to a maximum of one day if required, upon application by the teacher for each case of life threatening illness or injury of grandparents, aunts, uncles and grandchildren."

ITEM 12: SABBATICAL LEAVE

I do not concur with the article awarded. It puts the burden on the applicant to negotiate the terms of the leave with the board. Apart from the disadvantage an individual teacher faces in trying to negotiate with his or her employer, a collective agreement should spell out conditions common to all members. I would consider more appropriate the Association's proposal on Special Leave which provides a formula whereby the board can provide a sabbatical allowance without cost to itself or, failing that, the Association's detailed proposal on Sabbatical Leave.

ITEM 15: PERSONAL LEAVE

The Association proposed an article similar to one which had given White Horse Plain teachers one day leave of absence per year and allowed unused leave to be accumulated without a cap. Midland teachers had been entitled to one day per year with no provision for the accumulation of unused leave. The article awarded imposes a cap of three days on unused leave and restricts the time when leave can be taken. If there must be a cap, I would base it as far as possible on objective evidence. As has been mentioned, the Association had demonstrated that the majority of amalgamated agreements had protected those rights more favorable to the teachers in the predecessor associations. Further evidence before the arbitration board was that a number of ex-White Horse Plain Teachers have accumulated from 3 to 13 days. These teachers had postponed using their days in good faith expecting them to be honored by their employer. It is clearly unfair that they should lose what is, in effect, an earned entitlement simply because a political decision was made to amalgamate the divisions. Neither of the predecessor articles contained any restrictions on times within the school year when the days could be taken. I would have awarded the following article:

"Each teacher, upon authorization by the superintendent, shall be allowed one day of leave of absence per school year, without loss of pay.

Unused personal leave days may be accumulated from year to year to a maximum of eight (8) days but no more than two days may be taken consecutively.

Teachers who have accumulated more than eight days under the provisions of the previous White Horse Plain collective agreement shall have their accumulation red-circled "

ITEM 18: HOURS OF WORK/PREPARATION TIME

The Chairperson's award denied the inclusion of the sentence: "Preparation time shall be provided for teachers where reasonably possible."

The Division had argued against the inclusion of the whole article because 1) it was a "value statement" and as such had no place in a collective agreement, and 2) it might give rise to grievances. Apart from ignoring the "Preamble" and "Purpose" articles common to collective agreements, the logic of the Division's argument on grievances would entirely invalidate collective agreements as meaningful instruments in labour relations.

Most arbitrators have recognized that without provisions affecting workload and preparation time, school divisions have a unilateral and unrestricted right to increase teacher workload. The Association's proposal itself was a minimal step and I would have awarded it.

ITEM 21: PROFESSIONAL DEVELOPMENT

Although the phrase "during the school year" was at issue between the parties, I am not dissenting from this article. I would like to explain why. There is a fine line, if any, between a "request" from an employer and an "order." It is not realistic to regard compliance with an employer request by an employee as voluntary. The teacher's individual contract and the related regulation clearly specify that the school division may not require any work from a teacher between June 30 and the day after Labour Day. I believe the words "during the school year" merely serve to emphasize that teachers are under no obligation to perform any duties whatsoever for the employer during the period specified in the regulation as well as removing from the collective agreement any suggestion that such might not be the case.

All of which is respectfully submitted.

Dated at the City of Winnipeg, in the Province of Manitoba, this 28th day of June 2005.

John K. Collins, Nominee of the Association

IN THE MATTER OF: AN ARBITRATION

BETWEEN:

Prairie Rose School Division

(hereinafter called the "Division")

- and -

Prairie Rose Teachers' Association of the Manitoba Teachers' Society

(hereinafter called the "Association")

PARTIAL DISSENT

I concur in part with the Award of the Chair on implementation of the Salary Scale, on the Sick Leave Article and on the Personal Leave Article.

I concur with the Award of the Chair with respect to Placement on the Salary Scale, Interest, Vice-Principal's Allowance, Acting Principal, Sabbatical Leave, Leave of Absence without Pay, Special Leave, Prep Time, Meal Period, Professional Development, Increment Weather, Long Term Sick Leave and with respect to the Association requests for "no reductions" and timing of salary adjustments.

I dissent on the timing of the wage increases and the harmonization of the Salary Scale, the Sick Leave Article in part, the Article with respect to Part-Time Teachers, Principals' Allowances, Special Allowances and the Student Services Coordinator.

With respect to the timing of the harmonization of the Salary Scale and the scheduling of wage increases, the parties did agree that there would be a two year Collective Agreement that at the end of each year of the Collective Agreement each Salary Scale would receive a 3% increase and that the teachers would be harmonized onto the higher of the two scales no later than at the expiry of the Collective Agreement.

That simple agreement would result in a windfall increase for the majority of the teachers in the amalgamated Division. That windfall increase even if given on the last day of the Collective Agreement, would be the highest increase for teachers any where in the Province as a result of amalgamation. Of course this means that the taxpayers in the former Midland Division would be footing the highest bill of any previous Division in the Province.

We were referred to other Divisions that have amalgamated.

Contrary to the Association's submission, it appears that each of those Divisions formed their own unique agreement. Although there was "blending without loss" in many Articles, there were in every case unique approaches to the timing of blending and other Articles. Articles were negotiated out of agreements. Some agreements were extremely close in Salary Scale in any event. Some agreements were settled on a forward speaking basis. Some agreements split the 3% increases. Some agreements deferred harmonizing the Scales until the end of the second year or the end of the agreement in whole.

The Midland/Whitehorse Plains amalgamation was unique in the Province in several aspects. The Whitehorse Plains Salary Scale, as noted, was substantially higher than the Midland Salary Scale - to a degree that occasioned the largest spread in the Province and therefore the largest windfall for a group of teachers in the Province. Similarly, every Article that the Association wishes to blend towards so that there can be blending without loss, comes from the Whitehorse Plains Agreement.

Contracting this, is that a larger majority of the teachers are in the former Midland School Division. This Board should be cautious about spending the money of the taxpayers in the Midland School Division when the only reason for the expenditure is the fact that the legislature of Manitoba merged their Division with that of Whitehorse Plains, against their wishes. Other than that stroke of the legislative pen, there is no justification advanced for the extraordinary increase the teachers in the former Midland School Division are about to receive.

No matter what we award, the teachers in the Midland School Division will be receiving a better increase over the course of this contract than every other teacher in the Province of Manitoba of which we were made aware and a vastly better increase than every teacher in the Province of Manitoba in a non-amalgamated Division and a vastly better increase than teachers in the amalgamated Divisions which had previously enjoyed the higher Salary Scale of the two Divisions.

Therefore while I agree with the Chairman in splitting the 3% and 3% increases during the course of the contract year and in deferring harmonization, I would have split the 3% increases on a non-compounded basis to be fall term 2002 – 2%, January 1, 2003 – 1%, fall term 2003 – 2% and January 1, 2004 – 1%. I would not harmonize the Scales until the last day of the two year Collective Bargaining Agreement. No teacher would lose a penny on that schedule compared to the results obtained by teachers in every non-amalgamated Division and obtained by teachers in half of the Divisions that have been amalgamated.

I note that the less apparent cost of amalgamating the Salary Scales where extra major improvements will accrue to the Midland teachers in Class 4 due to compression is an additional factor which encourages putting a drag on the impact on the taxpayers.

Administrative Allowances

I cannot concur with the Chairman's award on administrative allowances. The Division has proposed a logical sequence to administrative allowances. The Division proposed that every incumbent administrator suffer no loss and in fact during the two years, the 3% increases would be granted to each administrator. Administrative allowances would then be based on weighted enrolment to reflect more realistically the amount of responsibility on each administrator.

Consistent with the Association's proposals with respect to Salary Scale adjustments, this would bring the new Division in line with the approach of the most significant School Divisions in the Province, by population.

At the same time, the amount necessary to move the Midland scale to the Whitehorse scale is an irresponsible burden on the taxpayers particularly when it is noted that that higher scale is only now enjoyed by a small minority of the administrators in the amalgamated divisions.

Student Services Coordinator

The issue here was the number of steps to be applied to the student services coordinators and the effective date of the unified approach. In the Whitehorse Plain Agreement the coordinator was receiving a flat \$4,991.00. In the Midland Agreement there was a scale moving from start at \$2,494.00 to a four year rate of \$4,990.00. There was no reason given to compress this scale so that all coordinators would receive effectively a four year rate. I agree with the implementation of the scale. I cannot agree with the large increase for the start rate. I would have taken the existing start rate and applied the same salaries to split increases throughout the scale.

Sick Leave

I would not have granted the right to use paid sick leave for scheduled medical appointments. The term is too vague and goes far outside the original concept of burdening the taxpayers with paid leave in the event of a disability from being able to work. Transferring that burden to situations where teachers are able to work but are choosing to have a medical appointment of some sort which is available during School hours is unfair during working hours. The situations sound similar by they are in fact unrelated and there is no reason to transport the concept of paid disability to the area of elective medical appointments.

Personal Leave

The Arbitrator has allowed a carryover of unused personal leave days to a maximum accumulation of three days. This was pointless since the clause only allows one day to be taken per school year.

Part-time Teachers

The order that part-time teachers be entitled to an interview is one I would not have made. It is purely an order which has the potential to impose on administrators a farcical situation of interviewing a person with whom they are extremely well acquainted, over and over and over again. There was no demonstrated need for this clause and we should not have interfered in management's discretion to hold interviews as the case may require.

Special Allowances

There was no reason to make this clause retroactive. It should only be effective the last day of the Agreement.

Conclusion

I would like to thank the parties for their able and thorough presentations. The work of the Board has been made much easier due to the quality of the submissions received. The issues were complex and in many cases new. I appreciate the opportunity to take part in this process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of June, 2005.

G.D. Parkinson, Board Member