

IN THE MATTER OF AN INTEREST ARBITRATION:

BETWEEN:

THE SEVEN OAKS SCHOOL DIVISION

Division,

- and-

THE SEVEN OAKS TEACHERS' ASSOCIATION  
OF  
THE MANITOBA TEACHERS' SOCIETY

Association.

**AWARD**

BOARD OF ARBITRATION: MICHAEL D. WERIER, Chairperson  
GRANT L. MITCHELL, Q.C., Nominee of the Division  
LEA BATURIN, Nominee of the Association

APPEARANCES: GEORGE COUPLAND, BRIAN O'LEARY and  
WAYNE SHIMIZU for the Division  
  
TOM PACI, MIKE BELL, GLENN ANDERSON and  
ANDREW PETERS for the Association

DATES OF ARBITRATION: June 4, 5, 6, 7 and 8, 2012

LOCATION OF ARBITRATION: Winnipeg, Manitoba

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## **INTRODUCTION AND BACKGROUND**

The last Collective Agreement between The Seven Oaks School Division (“Division”) and The Seven Oaks Teachers’ Association of The Manitoba Teachers’ Society (“Association”) expired on June 30, 2010. The parties were unable to successfully negotiate a new Collective Agreement (“Agreement”).

As a result, an Arbitration Board (“Board”) was established pursuant to the section of Part VIII of *The Public Schools Act* (“Act”) to arbitrate the existing dispute between the parties.

The Association appointed Lea Baturin and the Division appointed Grant L. Mitchell, Q.C. as their nominees to the Board. It was agreed by the nominees that Michael D. Werier would be Chairperson of the Board.

The parties agreed that the Board had jurisdiction to hear the matters in dispute and was properly appointed under the Act.

The parties provided the Board with extensive written submissions, studies, reports, financial information and economic data. This material was comprehensive and assisted the Board greatly in its deliberations.

The parties also provided the Board with excerpts from many past Interest Arbitration decisions in Manitoba.

The Board heard oral submissions from the parties during the hearings that were held in the City of Winnipeg on June 4, 5, 6, 7 and 8, 2012. Two Division teachers, Diane Cameron, a kindergarten teacher, and Shannon Plischke, a middle years teacher, made presentations on behalf of the Association. Barb Cummings explained the history of the negotiations of the group benefit plan on behalf of the Association.

### **OPENING SUBMISSION OF THE ASSOCIATION**

On behalf of the Association, Mr. Bell stated that the key basic comparators for this Division are the other metro divisions. The Association also noted that the francophone division is also a comparator. The Division has approximately 800 teachers with 731 full-time equivalent. There has been tremendous growth in the Division. Approximately 50% are Class 5 teachers and this is the key comparable. 7% of the teachers employment in the Division are beginning teachers.

The growth in the Division has been accelerated from 2009 and in comparison to other areas. Certain other divisions in the Province are growing as well, but not at the same rate. Of the 21 schools in the Division, 7 are dual track or French immersion. Approximately 13% of the student population is enrolled in French programming. Student enrollment is expected to increase another 15% by 2015.

Overall, the Association referred to financial figures obtained from Manitoba Education/FRAME which stands for Financial Reporting and Accounting Manitoba Education. The figures reveal that based on the operating expenditure per pupil, the Division is a low-cost low-spending Division by Manitoba standards. The Association referred to the chart at page 34 of their brief:

KEY COMPARATIVE SCHOOL DIVISION FINANCIAL INDICATORS																	
Ranked highest to lowest for: \$, %, rate or ratio value																	
Division	Operating Exp. Per Pupil (2011/12b)	Rank	Division	Special Levy Mill Rate (2011)	Rank	Division	Assessment Per Pupil (2011)	Rank	Division	Accumulated Surplus as % of Operating Exp. (June 30, 2010)	Rank	Division	Provincial Funding as % of Operating Expenditure (2011/12b)	Rank	Division	Pupil to Educator Ratio (2011/12b)	Rank
FRONTIER	17,686	1	KELSEY	22.6	1	EVERGREEN	450,100	1	WHITESHELL	17.4	1	KELSEY	81.7	1	WTC	17.3	1
WHITESHELL	16,343	2	THOMPSON/MYSTERY LAKE	21.7	2	PEMBINA TRAILS	409,189	2	WTC	9.6	2	THOMPSON/MYSTERY LAKE	79.2	2	HANOVER	15.9	2
D.S.F.M.	13,472	3	MOUNTAIN VIEW	21.3	3	FORT LA BOSSE	405,673	3	FLIN FLON	7.1	3	TURTLE RIVER	77.7	3	WESTERN	15.1	3
THOMPSON/MYSTERY LAKE	13,353	4	SWAN VALLEY	21.2	4	ST. JAMES - ASSINBOIA	393,848	4	PINE CREEK	6.1	4	SEINE RIVER	75.7	4	SEVEN OAKS	15.0	4
TURTLE RIVER	12,931	5	GARDEN VALLEY	21.0	5	SOUTHWEST HORIZON	356,056	5	THOMPSON/MYSTERY LAKE	5.9	5	FLIN FLON	73.9	5	GARDEN VALLEY	14.9	5
WTC	12,892	6	BORDER LAND	19.7	6	SUNRISE	316,590	6	RED RIVER VALLEY	5.3	6	SWAN VALLEY	72.7	6	RIVER EAST TRANSCONA	14.5	6
SWAN VALLEY	12,625	7	TURTLE RIVER	19.7	7	LORD SELKIRK	323,349	7	D.S.F.M.	4.9	7	D.S.F.M.	72.0	7	SEINE RIVER	14.2	7
PRAIRIE SPIRIT	12,580	8	LAKESHORE	19.1	8	LOUIS RIEL	322,832	8	FORT LA BOSSE	4.7	8	SEVEN OAKS	71.9	8	LOUIS RIEL	14.1	8
12,188	9	PINE CREEK	18.9	9	PRAIRIE ROSE	308,112	9	ROLLING RIVER	4.4	9	HANOVER	71.6	9	RED RIVER VALLEY	14.0	9	
FORT LA BOSSE	12,098	10	FLIN FLON	18.5	10	ROLLING RIVER	305,761	10	PEMBINA TRAILS	4.1	10	LAKESHORE	71.0	10	ST. JAMES - ASSINBOIA	14.0	10
ROLLING RIVER	12,082	11	RED RIVER VALLEY	18.5	11	RED RIVER VALLEY	295,119	11	LORD SELKIRK	4.1	11	RIVER EAST TRANSCONA	70.1	11	PEMBINA TRAILS	13.8	11
FLIN FLON	11,872	12	WESTERN	18.0	12	TURTLE MOUNTAIN	294,611	12	TURTLE RIVER	4.1	12	MOUNTAIN VIEW	69.3	12	FLIN FLON	13.8	12
BORDER LAND	11,865	13	HANOVER	17.8	13	D.S.F.M.	283,387	13	BRANDON	4.0	13	BORDER LAND	68.8	13	EVERGREEN	13.8	13
LAKESHORE	11,772	14	FRONTIER	17.6	14	BEAUTIFUL PLAINS	281,078	14	EVERGREEN	4.0	14	INTERLAKE	68.7	14	TURTLE MOUNTAIN	13.7	14
SOUTHWEST HORIZON	11,749	15	TURTLE MOUNTAIN	17.6	15	WINNIPEG	279,505	15	HANOVER	3.9	15	GARDEN VALLEY	68.6	15	WINNIPEG	13.7	15
EVERGREEN	11,746	16	SEVEN OAKS	17.6	16	PARK WEST	275,857	16	PRAIRIE ROSE	3.9	16	LOUIS RIEL	68.2	16	PINE CREEK	13.5	16
MOUNTAIN VIEW	11,632	17	PRAIRIE SPIRIT	17.1	17	PRAIRIE SPIRIT	275,524	17	SUNRISE	3.8	17	PINE CREEK	67.4	17	BEAUTIFUL PLAINS	13.5	17
PINE CREEK	11,557	18	PORTAGE LA PRAIRIE	16.8	18	RIVER EAST TRANSCONA	274,682	18	LAKESHORE	3.8	18	WTC	67.1	18	PARK WEST	13.4	18
TURTLE MOUNTAIN	11,550	19	ROLLING RIVER	16.8	19	INTERLAKE	267,246	19	SWAN VALLEY	3.7	19	PRAIRIE ROSE	67.1	19	PORTAGE LA PRAIRIE	13.3	19
LORD SELKIRK	11,438	20	WINNIPEG	16.5	20	BRANDON	266,821	20	ST. JAMES - ASSINBOIA	3.6	20	EVERGREEN	67.1	20	PRAIRIE SPIRIT	13.3	20
PRAIRIE ROSE	11,322	21	SUNRISE	16.5	21	PORTAGE LA PRAIRIE	257,290	21	INTERLAKE	3.6	21	WINNIPEG	66.7	21	ASSET	13.3	21
RED RIVER VALLEY	11,311	22	BRANDON	16.3	22	PINE CREEK	231,885	22	MOUNTAIN VIEW	3.6	22	WESTERN	66.5	22	BRANDON	13.2	22
PARK WEST	11,270	23	BEAUTIFUL PLAINS	16.3	23	SEVEN OAKS	229,601	23	BEAUTIFUL PLAINS	3.4	23	LORD SELKIRK	66.3	23	SOUTHWEST HORIZON	13.2	23
PEMBINA TRAILS	11,132	24	SEINE RIVER	16.0	24	BORDER LAND	222,229	24	RIVER EAST TRANSCONA	3.4	24	PRAIRIE SPIRIT	66.1	24	MOUNTAIN VIEW	13.2	24
INTERLAKE	11,119	25	PARK WEST	15.8	25	WESTERN	219,015	25	FRONTIER	3.2	25	PORTAGE LA PRAIRIE	63.8	25	LORD SELKIRK	13.2	25
ST. JAMES - ASSINBOIA	11,080	26	RIVER EAST TRANSCONA	15.8	26	SEINE RIVER	207,775	26	SEINE RIVER	3.2	26	TURTLE MOUNTAIN	63.0	26	ROLLING RIVER	13.0	26
WINNIPEG	11,058	27	INTERLAKE	15.4	27	MOUNTAIN VIEW	200,580	27	TURTLE MOUNTAIN	3.2	27	BEAUTIFUL PLAINS	62.9	27	FORT LA BOSSE	12.9	27
KELSEY	10,946	28	SOUTHWEST HORIZON	15.2	28	SWAN VALLEY	195,941	28	SEVEN OAKS	3.0	28	SUNRISE	62.5	28	PRAIRIE ROSE	12.9	28
LOUIS RIEL	10,710	29	PRAIRIE ROSE	14.8	29	LAKESHORE	186,080	29	SOUTHWEST HORIZON	2.9	29	RED RIVER VALLEY	62.3	29	BORDER LAND	12.8	29
SEINE RIVER	10,477	30	LORD SELKIRK	14.3	30	HANOVER	172,748	30	KELSEY	2.8	30	BRANDON	61.8	30	LAKESHORE	12.8	30
BEAUTIFUL PLAINS	10,419	31	PEMBINA TRAILS	14.2	31	TURTLE RIVER	171,103	31	PARK WEST	2.6	31	ROLLING RIVER	60.4	31	SWAN VALLEY	12.8	31
SEVEN OAKS	10,278	32	LOUIS RIEL	14.2	32	GARDEN VALLEY	170,861	32	WESTERN	2.6	32	ST. JAMES - ASSINBOIA	60.4	32	INTERLAKE	12.8	32
RIVER EAST TRANSCONA	10,238	33	ST. JAMES - ASSINBOIA	14.1	33	FLIN FLON	145,319	33	LOUIS RIEL	2.6	33	SOUTHWEST HORIZON	60.0	33	SUNRISE	12.7	33
PORTAGE LA PRAIRIE	10,097	34	FORT LA BOSSE	13.4	34	THOMPSON/MYSTERY LAKE	142,540	34	WINNIPEG	1.5	34	PEMBINA TRAILS	58.2	34	TURTLE RIVER	12.6	34
BRANDON	9,550	35	EVERGREEN	11.1	35	KELSEY	109,200	35	BORDER LAND	1.6	35	FORT LA BOSSE	58.1	35	D.S.F.M.	12.5	35
WESTERN	9,302	36	D.S.F.M.	0	36	FRONTIER	64,043	36	GARDEN VALLEY	1.1	36	PARK WEST	53.8	36	FRONTIER	12.1	36
GARDEN VALLEY	9,128	37	WHITESHELL	0	37	WHITESHELL	0	37	PRAIRIE SPIRIT	0.7	37	WHITESHELL	40.7	37	THOMPSON/MYSTERY LAKE	11.0	37
HANOVER	8,720	38	WTC	0	38	WTC	0	38	PORTAGE LA PRAIRIE	0.3	38	FRONTIER	38.9	38	WHITESHELL	9.0	38
PROVINCE	11,180			16.0			277,985			3.1%			65.2%			13.7	

The Division is at the median for average salary comparisons on a province-wide basis whereas they were ninth in 2003/2004, and are therefore falling down the rankings. Teachers were below the provincial and metro salary average as at 2009/10. Teachers are approximately 50% of the Division's operating budget. That is consistent with other divisions.

The Association referred to the fact that 2002 was the last year of significant amalgamation. The Division has fallen further behind other divisions, and overall the Association argued that teachers should have equal rights and working conditions in this Division as teachers in other divisions. In sum, the Association argued that Seven Oaks was a growing Division, a low-cost employer, had the highest ratio of student to regular teacher in the Province, and is a Division with a heavy workload.

The Association submitted that the areas of contention between the parties represent the key priorities of teachers in the Division. The dispute is about more than money and represents the teachers' concerns about teaching and learning conditions. It is therefore appropriate that the Association come forward with the proposals that they have, and the proposals will benefit not only teachers but students.

The Association referred to the purpose of collective bargaining and argued that they have to create rights within the context of the Agreement. Some of the proposals of the Association have integrative characteristics, and the Association is trying to advance professional rights. One of the objects of interest arbitration is to provide for a fair and equitable result and an arbitrator should arrive at a resolution that would have been arrived at if the parties had bargained in good faith.

The Association then turned to the criteria that an Interest Arbitration Board should

consider in arriving at a decision. Reference was made to Arbitrator Teskey's decision in *Lord Selkirk School Division* where a number of factors are listed, including comparability, ability to pay (which is really political willingness to pay or inability to pay), general economic conditions, demonstrated need, and fairness. Reference was also made to Justice Dubin's criteria in his 1976 decision in *Metro Toronto Board of Education*. The Division argued that comparing teachers with other teachers is the best comparator. Not all factors are to be given the same weight, but many of the basic concepts have been referred to time and time again in the arbitral jurisprudence.

The Association referred to Arbitrator Sectar's award in the *City of Winnipeg/Police Association* decision released in 2012. Arbitrator Sectar reaffirms many of the leading principles with respect to interest arbitrations, including the use of relevant comparables and the application of the principle of replication.

The purpose of an Interest Arbitration Board is not to manage a gap between divisions.

The Association indicated that there were three areas of comparability: regional comparisons, metro comparisons, and market adjustments based on the two comparisons. One of the major comparators, and the best comparisons, are teachers in surrounding areas. The Association's position is that there are unique circumstances facing this Division. Market adjustments are made when there are

circumstances where an adjustment should be above the pattern because teachers have fallen too far behind other teachers. In this instance, the Association argued that the Division teachers have fallen too far behind other Winnipeg teachers, and particularly those in Louis Riel. There should be no difference with Winnipeg teachers, and at the very least, with other divisions in metro Winnipeg. In fact, an argument can be made that the Division teachers should be paid above other teachers in Winnipeg.

The Association referred to 1983 settlements in which teachers were paid less than the prevailing rate and then the parties proceeded to arbitration at the next round of bargaining. Agassiz School Division was one of those situations and ultimately Arbitrator Chapman in 1988 awarded market adjustments to bring teachers in Agassiz to a "closer end rate position with their colleagues in other rural divisions". Similar adjustments were awarded by Arbitrator Chapman in other rural divisions.

Based on this reasoning and these principles, the Association proposed that the teachers in this Division be granted a market adjustment equivalent to the salary levels of Louis Riel School Division and then pattern increases be awarded.

The Association referred to the amalgamation of school divisions which occurred in 2002 where the number of divisions was reduced from approximately 56 or 57 to 37. This Division was not part of the amalgamation and others that merged saw a resulting increase in salaries for their teachers. There is no increased corresponding

benefit to the teachers in this Division. In the 2007-2010 agreement, the Division provided some catch up to the teachers in the Division. Other divisions then applied a catch up as well. Ultimately Seven Oaks fell behind some of the teachers in other divisions.

In summary, the Association submitted that the best comparator for an interest arbitrator to consider are other teachers in the surrounding regions and in the metro area. The Association argued that there is no justification for this Division to be unfairly treated as compared to other divisions. When salaries fall too far behind other comparable divisions, a market adjustment of salaries is justified in the circumstances.

### **OPENING SUBMISSION OF THE DIVISION**

On behalf of the Division, Mr. Coupland confirmed that the parties have had a good working relationship over the years. He responded to a number of the initial comments made by the Association in its opening submission.

In reply to the Association's submission that Seven Oaks has the highest workload, the Division said it is important to look at the pupil/teacher ratio of those actually in the classroom. In response, overall, to the Association's position that the Division lags behind Louis Riel and Winnipeg, the Division pointed out that the Association did not take into account the Division's payment of a portion of the employee

benefits which is not present in other divisions' agreements.

There is no evidence that there are less resources being expended in the classrooms in Seven Oaks. The Division also pointed out that River East Transcona has less expenditure per pupil than Seven Oaks. Further, Seven Oaks is not the largest metro division, and Winnipeg is approximately three times larger than Seven Oaks.

The Division stated that all metro school divisions have settled their collective agreements which will expire on June 30, 2014, and in total 34 of 38 divisions in the Province have settled on the same wage increase in four year agreements.

The Division stressed that they valued all their teachers. They recognize their responsibility to the broader community to behave in a fiscally responsible manner. The Division recognizes the limitations of community members to pay for certain items, and as a result, the Division operates without fees for many items. The Division believes they have a good collective agreement which provides certain benefits that have not been present in agreements across the Province.

Prior to these negotiations, only seven (7) divisions had minutes guaranteed for preparation time. Personal leave is a new development and only eight (8) divisions have a PD fund, only four (4) divisions have voluntary participation in extra-curricular activities, and only a few divisions have an advance notice retirement/resignation

gratuity. Only 17 of 38 divisions have a process to protect teachers in case of complaints.

Division teachers have done very well by being employees of this Division. The Division acknowledged that they have budgeted for increases, but any other additions over the pattern settlement are not contained in the budget.

In response to the Association's reliance on the recent City of Winnipeg Police Association Award of Arbitrator Sector, the Division indicated that the police contract bears little resemblance to the teacher's situation. City police officers are unique within the Province, and therefore must rely on extra-provincial comparisons. Teachers have other divisions as comparators.

The Division referred to a number of arbitration decisions which review the role of an Interest Arbitration Board (see *City of Winnipeg and United Firefighters*, Arbitrator Chapman, 1990; *Vancouver Police Board and Vancouver Police Officers' Association*, 2011). Principles cited included that arbitrators must take into account the fiscal capabilities of the period. It is not the role of an interest arbitrator to be an innovator. A significant goal of interest arbitration, in the circumstances before this Arbitration Board, must be the pattern of settlements between different bargaining units of the same employer (*Vancouver Police Board*).

The Division stated that in an interest arbitration one must be looking at a total

compensation package using a replication theory. It is appropriate to use a reasonable range of comparators with the object being to obtain a fair and equitable result, but not to break new ground except in the most compelling of circumstances. In this year's negotiations, 34 of 38 divisions have settled. The Division referred to Arbitrator Scurfield's decision in *River East School Division* (1995) wherein he stated:

Both parties acknowledge at the outset that numerous school divisions in Manitoba, including five major urban divisions, have entered into voluntary Collective Agreements with respect to salaries and benefits for the 1995 year.

All of those Collective Agreements are strikingly similar. In essence wages and monetary benefits have been frozen. Our job is clear. We are to impose a Collective Agreement which is fair and reasonable. In doing so, we should pay appropriate attention to similar agreements entered into by similar parties in a similar sector of the economy. There is no better comparison than an adjacent school division. When five adjacent school divisions and, indeed, all of the school divisions that have settled in the province prior to the date of this arbitration, have agreed to freeze salaries and monetary benefits, the persuasive burden clearly shifts to any party who opposes an award at that level.

The Division stated that there is no evidence that the work performed by the teachers in this Division is any different than in any other division. The best guide is the wage pattern in the 34 out of 38 divisions that have settled. The Division referred to other arbitration decisions where arbitrators have looked at the pattern of settlements and found that persuasive in coming to a decision. The Division maintained that an interest arbitrator's role is not to impose their view of social justice.

The Division stated that they were going to review the local economic conditions and reference the taxation situation that the Division finds itself in. Furthermore, the Division will focus on the lack of recruitment and retention issues faced by the Division. In addition, the Division emphasized that an interest arbitrator must take into account the overall compensation received by the employees including pension and medical benefits (see Justice Dubin in *Metro Toronto Board of Education*, 1976).

The Division stated that overall there has been a growth rate of at least 400 students per year. In the face of this growth, the Division has been able to maintain an average classroom size of 22 students for kindergarten to grade 8. This has been held constant through the years of growth.

Overall, the Division maintained that they have preserved the teachers' working conditions by increasing the use of resource, guidance, and child guidance clinics.

Two ratios are used by FRAME, one being the educator/pupil ratio and the other being the student/teacher ratio. The Division believes that the regular student/teacher ratio is the most appropriate one to use in analyzing working conditions. Louis Riel's ratio is 19.4, Winnipeg's is 18.6, and Seven Oaks' is 18.4.

As to the overall financial status of the Division, it was pointed out that the Division has less revenue than other school divisions. This Division has a Scoop and Burger versus Ikea in another area. The Division has the highest mill rate and, as a result,

they have to be disciplined in their spending decisions. The Division feels that it is better to have smaller classes in the kindergarten to grade 8 to build better foundational skills.

The Division acknowledged that it has always had a diverse student body and newcomers have always come into the Division. That does not mean that they are more difficult to teach, and the Division supports teacher and professional development. Teaching requires skill and is very challenging. Overall the attendance rates are high at the high school. There is a graduation rate of 87%. The Division feels confident that its system is good and continues to get better. Winnipeg has far more significant needs in terms of diversity and poverty.

The Division stated that property taxes have been held flat since 1999 because three different property tax suppression measures have been in place (property tax rebate, tax incentive grant, and education support levy). These are now done and the Division will be facing financial challenges. The Division referred to the Association's argument that the Division receives sufficient equalization grants from the Province so as to put it on an equal footing with other divisions. The Division acknowledged that the tax incentive grant has allowed them to maintain the property taxes at a certain level. However, the Division could not take advantage of the tax incentive grant in the first two years. If they had not received the grant in 2010, it would have resulted in a sixty-four (64) teacher reduction or a tax increase of \$221.00 on a \$205,000.00 home.

In response to the Association's argument that there are sufficient equalization grants, the Division pointed out it is made in the following year, but is nowhere near what other divisions can raise in the current year. Seven Oaks is the only metro division on a funding formula, and the government has said that they will not receive less than previous years. The Division pointed out that Louis Riel has more assessment, but receives similar funding per pupil because of government measures to assist with declining enrollment figures.

In summary, Seven Oaks has not been afraid to go to the taxpayer to ensure that resources are not eroded. The Division tabled a summary of the special levy mill rate in each urban division for 2010 and 2011. Seven Oaks was the highest of all the divisions.

Lastly, the Division submitted that it has invested more in teachers. Co-teaching is one strategy employed as well as institutional placements and individual education plans.

### **INTEREST ARBITRATION PRINCIPLES**

The parties made extensive references to the authorities dealing with interest arbitrations and the role of interest arbitrators. It is not our intention to recite and review the many cases in this jurisdiction which were referenced.

We endorse the comments of the late Arbitrator Samuel Freedman, Q.C. (as he was then known) in the *Tiger Hills* award in 1983 where he stated:

I do not think that I need to write an essay on either economic or social considerations that can play a part in the determination of the award that this Board of Arbitration should make. Perhaps I have arrived on the scene a bit late for that. The essays have already been written - and well written, I must add - by other arbitrators, in whose company my present colleagues hold an honoured place. I do not perceive an arbitrator's role in this area as one of restating principles that have become familiar by usage and repetition, but rather one of applying those principles in a given situation with such wisdom and fairness as he is able to bring to the task before him. This I have tried to do here.

“Suffice to say”, the replication model has been endorsed as the guiding light in interest arbitrations. An interest arbitration board has to fashion an award which represents what the parties, bargaining in good faith, would have agreed to.

Obviously, opposing parties at an interest arbitration have not been able to reach an agreement so an arbitration board utilizes the object of delivering an award which is fair and reasonable.

The range of factors, all of which have been considered by the Board in this case, include comparability to other similar employers in terms of recent wage settlements, the general economy, ability to pay, recruitment and retention issues, and special or specific needs.

It is also a well established principle that an interest arbitrator must take into account a total compensation model when comparing other workplaces.

Further, there is a body of authority to the effect that interest arbitrators should be hesitant to interfere in operational areas, which are best left to the parties to resolve themselves.

As Arbitrator Hope stated in the *Vernon Fire Fighters* case (1995) “Interest arbitration is not an appropriate medium for the imposition of fundamental changes in the collective agreement relationship”.

### **AGREED UPON ARTICLES**

At the outset the parties advised that an agreement has been reached on the following Articles:

- (a) Article 6.11 Sick Leave (pro-rata sick leave upon return to work)
- (b) Article 11 Bulleting of Positions
- (c) Article 13 Deduction of Professional Fees
- (d) New Article Memorandum of Agreement re: Substitute Teachers

The agreed wording for these Articles is as follows:

#### **Article 6.11 - Sick Leave (pro-rata sick leave upon return to work)**

8. Any teacher, who for reasons of illness or injury exhausts his/her sick leave allocation and is placed on short term and/or long term disability, shall receive:

- (a) a pro rata share, **or 5 days** of the 20 day sick leave allocation, **whichever is greater**, if returning during the school year, or
- (b) 20 days of sick leave if returning at the beginning of the succeeding school year.

#### Article 11 - Bulletining of Positions

The Board proposes a joint committee to review and implement a process for bulletining of positions that provides for greater transparency. The committee will report no later than January 1<sup>st</sup>, 2013.

#### Article 13 - Deduction of Professional Fees

Effective September, 2012:

13.03 All teachers of the Division shall be required, as a condition of their employment, to pay the annual fees of the local Association.

1. Each **teacher's dues** shall be deducted in equal parts from the September to August cheques and submitted to the Treasurer of the Seven Oaks Teachers' Association on or before the 15<sup>th</sup> day of the succeeding month with the final payment for the June, July and August deductions being submitted on or before July 15<sup>th</sup>.
2. New teachers, full time or part time, engaged by the Division during the school year shall have their local Association dues deducted monthly from the date of their employment.
3. **Substitute teachers engaged by the Division shall have full local Association fees deducted from that pay period.**

#### New Article - Memorandum of Agreement re: Substitute Teachers

Inclusion of Memorandum of Agreement re: Substitutes into Article 5 - Substitute Teachers, Teacher-General, Limited Teacher-General and Part-Time Teachers Contracts and numbered as 5.07 with the following changes and subsequent renumbering:

**Article 18: Interest on Retroactive Pay: Interest on a retroactive salary adjustment will be calculated similarly to the interest on retroactive pay calculation (second paragraph) and paid to the Association in one lump sum.**

Article 19: Working Conditions

19.01 Extra-Curricular

19.02 Freedom from Violence

19.03 Meal Period

**19.04 Working Conditions: Preparation time will only be provided to substitutes in an extended (greater than 5 days for the same teacher) substitute assignment.**

## **ARTICLES IN DISPUTE**

The following Articles remained in dispute:

- (a) Article 2 Effective Period
- (b) Article 4.02 Salaries
- (c) Article 4.04 Allowance for Measurable Responsibility
- (d) Article 5 Substitute Teachers
- (e) Article 6.03 Leave of Absence with Pay
- (f) Article 6.10 Personal Leave
- (g) Article 6.11 Sick Leave (On-the-job Injury)
- (h) Article 6.12 Family Leave
- (i) Article 8 Community Schools Staff
- (j) Article 9 Group Plans
- (k) Article 19.03 Meal Period
- (l) Article 19.04 Working Conditions (Preparation Time)
- (m) New Article E Sole Bargaining Agent

The Board was advised that thirty-four (34) out of thirty-eight (38) divisions in the Province had settled their agreements, including all the divisions in metropolitan

Winnipeg.

The Articles in dispute will be reviewed separately. Each of the parties' proposals will be set out together with their submissions. This will be followed by the Award.

### **Duration of the Collective Agreement**

#### **Article 2 - Effective Period**

##### **Association Opening Proposal**

2.01 This agreement shall come into force and take effect as and from the first day of **July, 2010 and shall remain in force for a period of three (3) years from that day**, and shall thereafter continue in effect from year to year unless either party gives written notice of its intention to amend or terminate this agreement. Should either party desire to amend or terminate this agreement, such party shall notify the other of its intention not more than ninety (90) days and not less than thirty (30) days prior to the expiration date hereof.

##### **Division Proposal**

The Division proposes a **four (4) year agreement for the period of July 1, 2010 to June 30, 2014.**

### **Submission of the Association on Duration of the Collective Agreement**

The Association submitted that the duration of the agreement should be for three (3) years with an expiry date of June 30, 2013 as opposed to the Division's position of a four (4) year agreement expiring June 30, 2014. While the Association acknowledged that most divisions, if not all, have settled for a four (4) year agreement, the Association submitted that there was a good rationale for a shorter

term.

They submitted that critical issues have arisen during this Agreement and others may arise. For example, a grievance was filed with respect to group insurance and therefore it is prudent for the parties to come to the bargaining table sooner rather than later.

The Association stated that long held understandings have changed such as executive leave and the ability to have a full-time VP position, and there is a need to address these issues sooner rather than later.

#### **Submission of the Division on Duration of the Collective Agreement**

The Division argued that the duration of the agreement should be consistent with that negotiated by other divisions. The Division maintained that it should be a four (4) year agreement consistent with the provincial pattern. The Division stated that if certain issues arise during the currency of the agreement which cannot be resolved, then the Association is free to file a grievance to have a decision made by an arbitrator.

Furthermore, the Division stressed that there were not sufficiently compelling items raised by the Association which would warrant a shorter duration.

The Division stated that for budget purposes there was a value to having a longer agreement.

In addition, for the parties to have to go back into bargaining earlier would impose a time burden on them. Furthermore, the Division had been successful in negotiating a four (4) year agreement with their support union, and a majority of the support unions across the Province have agreements expiring in 2014.

Lastly, if this agreement is of a shorter duration and is an outlier, the rest of the Province will be looking at this Division to set a trend and this will potentially give rise to a whipsaw effect on agreements throughout the Province. Overall, the Division stated that one must look at the pattern which has been established in the Province and that this is one that should be followed with respect to this Division.

### **Decision on Duration of the Collective Agreement**

We have determined that the contract's duration should be four (4) years; the same period agreed to in 34/38 of the divisions in the Province.

The reasons offered by the Association as rationale for a three (3) year period are not persuasive. If there are ongoing issues in dispute between the parties, they can utilize the grievance procedure as a means of resolution. None of the issues are of such an urgent nature to warrant a change in duration.

As Arbitrator Peltz stated in *St. Vital School Division No. 6* (2001), a respite from bargaining would be helpful to both sides. Moreover, there is ample precedent for longer term agreements, both in the public and private sectors.

We also have taken note of Arbitrator Peltz's comments in the above case in which he rejected a request by the division for a shorter duration than the pattern. He stated the following:

Mr. Wallis conceded that to justify a departure from the clear pattern of awards and contracts late in the bargaining cycle, he was required to prove "compelling and exceptional" circumstances. See *Winnipeg School Division No. 1* (1998), citing the awards in *Leaf Rapids* (1988), *Kelsey* (1994) and *Lord Selkirk* (1994). Applying this test here, I am unable to hold for the Division, notwithstanding the cogency of the argument advanced by Mr. Wallis. I also find persuasive Arbitrator Fox-Decent's reasoning in *Fort Garry* (2000). For these reasons, I have concluded that a two year contract is appropriate.

We find the same situation exists in the case at hand. Compelling circumstances do not exist here.

Accordingly, we therefore award the Article as proposed by the Division as follows:

A four (4) year agreement for the period of July 1, 2010 to June 30, 2014.

**Article 4.02 - Salaries**

**Association Proposal on Salary Increases**

4.02	Fall Term 2010:	1. Adjust teachers' salary scale to 2009-10 Louis Riel salary levels, and 2. Increase by 1.5%
	March 1, 2011	1.5%
	Fall Term 2011	2.0%
	Fall Term 2012	2.0%

**Division Proposal on Salary Increases**

4.02	September 1, 2010	1.5%
	March 1, 2011	1.5%
	September 1, 2011	2.0%
	September 1, 2012	2.0%
	September 1, 2013	2.0%

**Submission of the Association on Salary Increases**

The Association's amended proposal and the one that was presented to the Board was that there be a market adjustment of salaries to the Louis Riel salary scale for 2009-2010. The Association also was seeking the following salary increases for the 2010-2013 period:

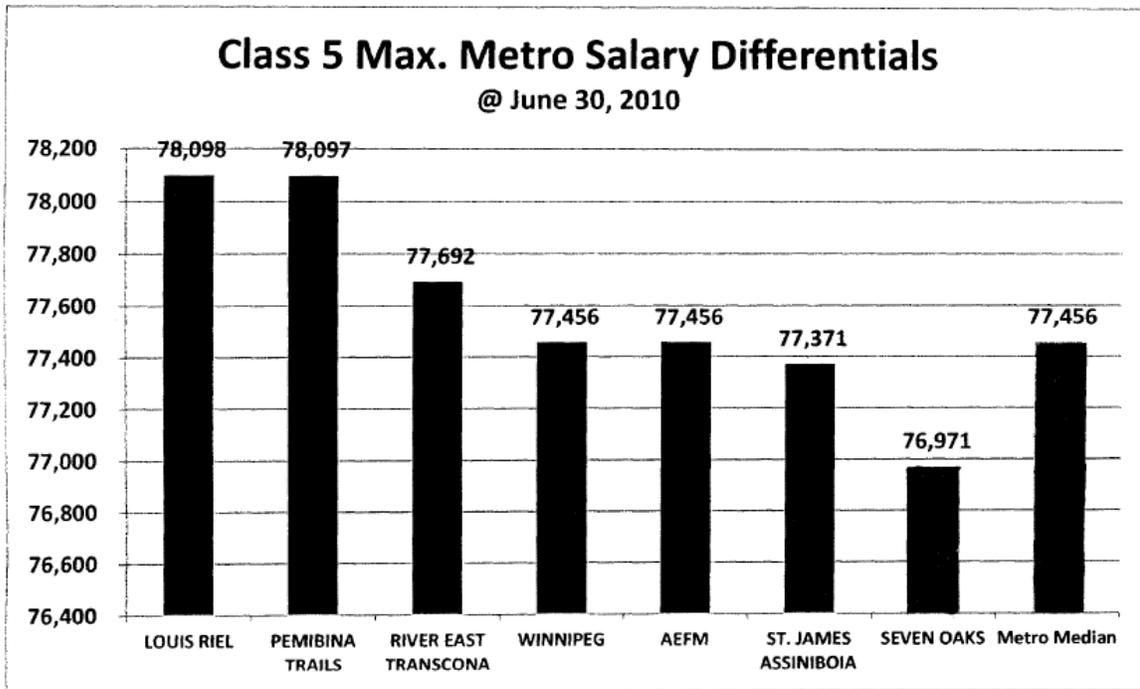
September, 2010: 1.5% increase on all salaries, allowances and rates in the collective agreement.

March 1, 2011: 1.5% increase on all salaries, allowances and rates in the collective agreement.

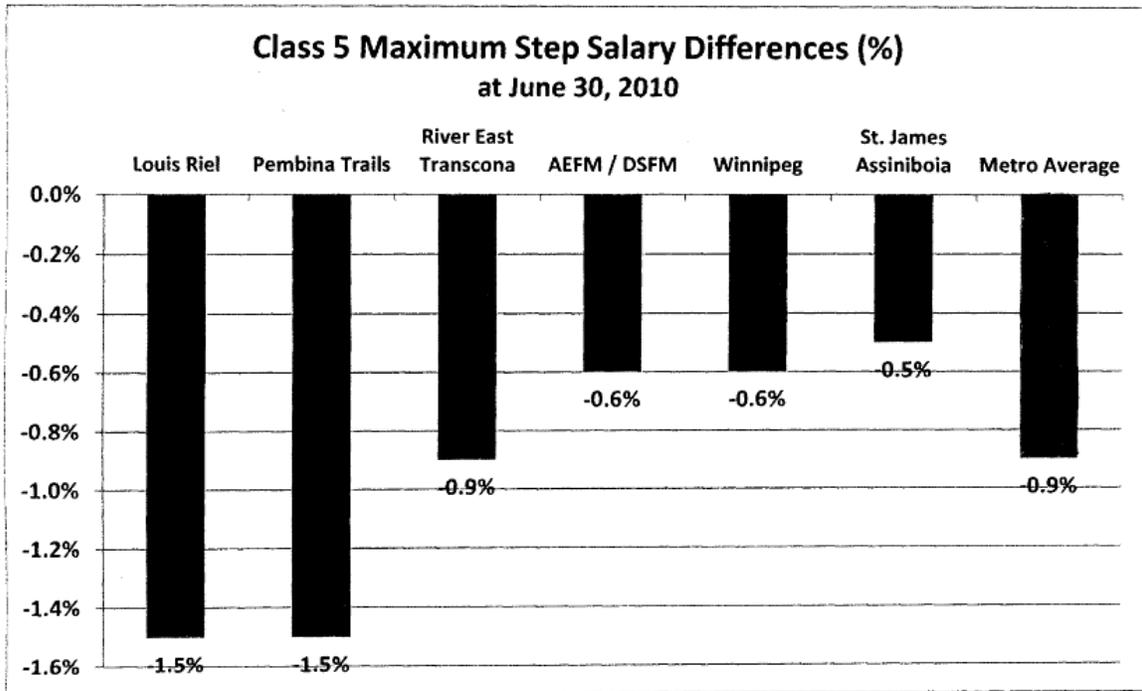
September, 2011: 2.0% increase on all salaries, allowances and rates in the collective agreement.

September, 2012: 2.0% increase on all salaries, allowances and rates in the collective agreement.

The Association tabled in their written submission a graph outlining the Class 5 Maximum Metro Salary Differentials as at June 30, 2010. The table is reproduced below:



The Association also tabled a number of other graphs including one showing the Class 5 Maximum Step Salary Differences by way of percentage as at June 30, 2010. That table is reproduced below:



The Association stated that the rationale for the market adjustment to Louis Riel is that Seven Oaks falls below every other division in the metropolitan area. The salary differential affects teachers' pensions which are based on the best five (5) of twelve (12) years. If this Division is awarded the pattern settlement, these differences are compounded. The Association submitted that there are fairness and equity considerations which factor into their position that they be treated the same as Louis Riel.

In terms of parameters such as occupational training, job qualifications, employer mandate, education funding, cost of living, the economy, and working conditions, this Division is no different than other divisions.

As to the economy, it was submitted that teachers in the metropolitan Winnipeg area are supported by the same overall economic base. Further, the Province provides equalization support for school divisions with lesser tax bases such as Seven Oaks, and in 2010-2011 the Province provided it with 72% of its operational fund revenues as opposed to a 65% provincial average.

While working conditions are similar, Manitoba education reports via FRAME that this Division has the highest pupil to educator ratio in the metro area, suggesting a greater workload for Seven Oaks' teachers. The Province does not report on class sizes across the Province and the only information that is reported is what is available from FRAME.

The Association submitted that the Division salaries were approximately right in the middle of other divisions in or about 2001-2002 and they have gradually fallen behind. Thirty (30) years is an average career for a teacher, and based on the percentage differences, a Louis Riel teacher will earn a little under \$40,000.00 more over a career than a comparable teacher in Seven Oaks.

While this Division rarely has difficulty hiring teachers, the Association submitted that the question is whether the Division is able to hire the best teachers. There is a competition amongst school divisions and the issue of salaries is related to the future competitiveness of the Division. The Association referred to Arbitrator Peltz's comments in the Winnipeg No. 1 School Division award in 1998 where he stated that

it is vitally important that the best available educators be hired and retained. Salary alone does not guarantee high professional standards, to be sure, but on the other hand, a policy of paying substandard salaries in order to meet revenue shortfalls would eventually erode the quality of teaching in a division. The Association submitted that the higher the salary, the better people the Division can attract.

The Association stated that there is a competition between the divisions for the top talent. Given the high percentage of French of taught in Seven Oaks schools, it is in competition to hire French teachers. The DSFM employs 500 teachers and it was noted that there is no separate scale for French teachers versus math versus administration. Due to the number of retirements annually, this Division is very active in recruitment.

In summary, recruitment and retention is a factor in this Division when assessing salary levels. Even though the Association is arguing for a market adjustment together with the pattern settlement, they indicated they would introduce certain general economic information to the Board to consider.

The Association indicated that nominal GDP increases usually average 4.0-4.5%. Growth in the economy is at historical norms and the rate of income increases is greater than the increases sought by the Association. The average percentage change in real GDP from 1995-2008 was 2.5%. The Association has calculated that to increase the Seven Oaks' salaries to the level of that of Louis Riel would

necessitate an increase of 2.04%.

The Association referred to the FRAME reports which indicate that Seven Oaks consistently under spends relative to the majority of metro divisions. The provincial average operating expenditure per pupil is \$11,160.00 and Seven Oaks' expenditure is \$10,272.00. Seven Oaks receives 72% provincial funding as a percentage of its total operating revenue which ranks eighth (8<sup>th</sup>) in the Province for 2011-2012. In terms of its fiscal capacity, its assessment per pupil for 2011 ranked at twenty-third (23<sup>rd</sup>) amongst the divisions. Given the equalization formulas in place, part of an increase for salaries would not be borne by the residents of Seven Oaks alone. While it is acknowledged that there is a lack of commercial assessment within the Division, there does not have to be a correlation between fiscal capacity and teachers' salaries.

The Association indicated that the Division has always maintained a high mill rate because of a lack of a commercial base. In 2010 the mill rate dropped which suggests many more divisions are taxing on a higher basis. The Association stated that frugality comes from paying teachers less. Overall, the Association argued that teachers' salaries should be the same regardless of which division employs them. The Association referred to certain charts indicating the comparative operating expenditure growth from 2002-2003 to 2011-2012. The overall percentage change in per pupil operating expenditure over that time period was 44% in Seven Oaks as compared to 50% excluding Seven Oaks for the metro divisions and 51%

provincially. The Association referred to a chart as to what expenditure at the metro average would mean to Seven Oaks. The cost to obtain salary parity with Louis Riel teachers would involve \$2.5 million dollars in expenditure. The Association's position was that teachers' salaries should not be automatically tied to the same ranking as mill rates or expenditure per student. Further, the Association tabled a chart outlining the cost of the salary proposal. It is reproduced below:

### COST OF SALARY PROPOSAL

1. SOSD's mill rate of 16.287 yields \$2,495,693 in revenue
2. Pattern Rate Cost Implications
  - *Already budgeted for in SOSD's 2012-13 budget*
3. Incremental Cost Implications of SOTA's Salary Proposal to Attain Salary Parity with LRTA Teachers at September 2010
  - *Incremental cost to attain June 2010 salary parity*
  - *2.04% incremental salary increase on payroll basis*
  - *~\$1,022,955 net cost for salary parity at all levels on grid*
  - *Relative to 2012-13 budget revenues (\$115.2M) = 0.88%*
  - *In 2012 mill rate terms = .41 mills*
  - *Per \$100,000 of market value assessment, 1 mill equates to \$45 taxation*
  - *For a typical \$250,000 home, the annual cost is \$46 or **less than \$4 per month increase** in education-related property taxes*

In conclusion, the Association submitted there would be really no tax burden on Seven Oaks taxpayers if the request for a market adjustment and then furthermore a pattern settlement was awarded.

### **Submission of the Division on Salary Increases**

The Division submitted that the issue of comparability is most relevant in assessing the issue of salary adjustments. The Division pointed out that due to economic circumstances the Province was planning to ask certain of the public sector to take a two year wage freeze. In response to the Association's position that Louis Riel set a trend and created a new scale for the highest max of the Step, the Division pointed out that no one in metro or the Province went to the highest of the highest scales. There was no catch up involved in any of these divisions. The Division pointed out that one has to look at total compensation and the fact this Division as employer pays part of healthcare premiums. In the 2005-2006 agreement, the employees by a vote of 94% ratified an agreement under which the employer and the employees shared the cost of premiums. On a net basis, the Division submitted that they are the best of the best based on a net pay calculation. The Division referred to a chart which showed the difference between the Seven Oaks grid and other divisions for the Class 5 teacher taking into account the employer's share of premiums together with the tax advantage involved. On this basis, the Division's position ranked it at the highest level.

The Division argued that there were no recruitment and retention issues in this Division. The annual "reflections" done by each teacher in the Division are overwhelmingly positive and the Division has been very effective in its recruitment

and in competing for candidates when there are vacancies.

The Division argued that to push salaries up to the highest level will just result in a “whipsaw and leapfrog” effect, which is a burden on the taxpayers. They referred to the *Metro Toronto Teachers’ Award* made by Arbitrator Dubin in 1976 where he stated:

Although the teachers in Toronto have been amongst the highest paid teachers in Ontario, (they now seek) a salary scale higher than all other teachers except for Nipissing and substantially higher than what is being paid by other municipalities... In my respectful opinion such an increase is completely unrealistic having regard to the present economic climate... To accede to this proposal would be to accept the principle of “leapfrogging or whipsawing” which has played such a prominent part in the bargaining process for a long time. It would in turn encourage others who had received higher salaries to urge that their salaries, having at one time been higher, should again be leapfrogged... To give effect to such a submission could, in my opinion, put the cost of education beyond the financial ability of both the municipalities and the province and threaten the very future of education in this province.

### **Reply Submission of the Association on Salary Increases**

In response to the Division’s contention that it values the teachers, the Association replied that teachers in the Division would like to be valued on remuneration and working conditions. The authorities tendered by the Division do not contradict the Association’s authorities with respect to the replication process. The Association referred to a series of awards that were referred to by the Division. These awards were referenced because in these cases arbitration boards chose not to depart from a pattern of settlements across the Province.

The Association submitted that all these awards dealt with circumstances where the association was asking for the pattern and school divisions were maintaining a request for a lesser amount. That is a different situation than the case at hand.

The Association referred to Arbitrator Freedman's decisions in the 1980s and suggested that it is necessary to look at the structure and see where the Division fits in. In five or six cases where teachers asked for a market adjustment, they were successful. The Association referred to Arbitrator Scurfield's comments in *Birdtail River* arbitration 1993 in which he stated the purpose of an arbitration should be to "maintain, promote and repair the negotiation process".

In response to the Division's submissions on the "whipsaw" effect, the Association responded that school boards advocate local bargaining and are opposed to Province-wide bargaining. The "whipsaw" effect, if it does occur, was not because of arbitration, but because parties chose the process and it takes "two to tango". The Association maintained that it came about voluntarily. As to the fiscal ability of the Division to be able to afford the increases demanded by the Association, the Association reiterated that nominal GDP continues to grow at a rate sufficient to accommodate the increases. The Association does not believe that there is a tax wall or a restraint. While the Division argued that it gets further equalization support in the subsequent year, they are spending money this year which attracts money next year. In the first year there is a partial equalization. The Association stated

they were not disputing the numbers per se that were put forward by the Division, but did emphasize that additional spending draws additional dollars to a lesser extent and down the road. The Association is not able to look into the future to predict what will happen. It has to go on the basis of what they know now.

The Association responded to the comments made by the Division as to the applicability of the recent Police award. It was noted that the arbitration board was dealing with the same fiscal capacity and an 8.9% increase was awarded. While the Division has engaged in a tight budgeting process, there is quite a variance between a budget and the final audited statements in which one sees a healthy surplus and often a transfer to a capital reserve fund. The Association submitted that the Division is actually bringing in more revenue than they acknowledge.

The Association responded to the comments of the Division on recruitment and retention and said that in the future it could become an issue. Furthermore, the Association disputed the potential impact known as the whipsaw effect. The Association was not sure how this would be impacted as they are at the tail end of bargaining. This, therefore, is an ideal time for a market adjustment to be made. As to any narcotic effect, the Association pointed out that the last arbitration between the parties was 1977, and since 2004 there have only been three (3) interest arbitrations between the school divisions and the associations.

The Association freely negotiated a market adjustment in 2007 to bring them up, not

to the highest level of wages, but to the midrange. Subsequently other settlements pushed the Division down. An adjustment is required to bring them back to an appropriate level.

The Association stated that their request was a fair one taking into account the past history and to achieve what the parties tried to do before. Now is an ideal time to move to a level equal to Louis Riel. The Association stated that if the Division was prepared to do that, the Association would be prepared to live with employees paying 100% of the cost of the benefit plan premiums.

### **Decision on Salaries**

Three issues need to be addressed at the outset before proceeding to decide the issue of salaries.

The first concerns what circumstances are required for there to be a departure from a well established pattern of settlements across the Province and or across metro divisions.

The Division maintains that for there to be a departure from a well established pattern, as is present in this case, the onus is on the party seeking such a departure to demonstrate some compelling reasons. The Division argued that there are not any compelling reasons to warrant a departure.

The Association replied that those cases that refer to this principle involved cases where school boards sought to have lower wage settlements than the pattern and were unsuccessful in convincing an arbitration board as to the merits of their position. Therefore this line of authority is not applicable in this case because the Association is seeking a market adjustment higher than the pattern of settlements.

While it is true that some, or all of the cases, involved divisions seeking to depart from a pattern, we are of the view that this fact does not derogate from the basic principle. This was enunciated by Arbitrator Teskey in *Transcona Springfield* (1994) where he stated:

..... Although each jurisdiction (and each arbitration board) is obviously autonomous, once such an overwhelming trend has been established, it is difficult to ignore and, at least on a practical level, requires the party seeking to depart (whichever party that might be) significantly from the established norm to demonstrate some compelling reasons to do so other than those that have already been considered arbitrarily (with some degree of consensus) or upon which negotiated settlements have not been concluded prior to those new factors arising.

In our respectful view, the Division has not established a sufficient basis upon which we are prepared to significantly depart from that norm.

In this quote Arbitrator Teskey cites two other scenarios where departures would be accepted. Neither are present in the case at hand. Of course the Association did argue that there were circumstances which justified a market adjustment. I will deal with our findings on this point later on in this Award.

Secondly, there is a dispute over the state of the economy in the Division and its ability to pay the wage increases proposed by the Association. The Board heard limited economic evidence, due mainly to the fact that the pattern of settlements across the Province took into account the restraint on salaries in the public sector. In fact, one could say that teachers on the whole fared better than some public sector workers.

We accept that the Board must take into account the general state of the economy and be mindful of the public sector settlements during the relevant timeframe. The Board must also be sensitive to the potential of increased demands on the taxpayers, some of whom are public sector employees. The Board must also take into account the tax rates in the Division due to its lack of a commercial base.

Thirdly, there was a major factual dispute between the parties over a very critical issue. The Association stressed from the outset that the Seven Oaks lagged behind in salary compared to other metro divisions, particularly Louis Riel and Winnipeg.

There is no dispute over the salary levels, but the Division's contention was that an Interest Arbitration Board has to take into account a total compensation model which includes amounts paid by an employer for employee benefits, among other things.

The Division stated that when one factored into the equation their 50% payment of

health benefit premiums, this Division's standing among other metro divisions was comparable. Fifty (50%) percent of employees were at least equal to or better than employees at Louis Riel.

The Association counters by offering that employees would pay 100% of health benefit premiums in exchange for a market adjustment bringing teachers' wages to the level of Louis Riel teachers. The Association, while not disputing some of the financial benefits accruing to certain employees because of the health care premiums, stresses that salary equivalency is their goal and the market adjustment puts employees in a better overall financial position than the employer paying 100% of the health premiums. In particular, this benefit does not impact pension value as does a salary increase.

We accept that there is a distinction between an employer's contribution to healthcare benefits and salary increases. We also accept that an Arbitration Board in an interest arbitration must take into account a total compensation model.

As a result, we find that the difference in total compensation between this Division's teachers and teachers in Louis Riel and Winnipeg is not material.

We are satisfied that Seven Oaks teachers are faced with the similar demands, challenges and complexities as teachers in other metro divisions. They are a dedicated group of professionals who are hardworking and respected. No one from

the Division argued to the contrary.

The question then facing this Board is whether it should be awarding a market adjustment at this time given the Provincial pattern of wage settlements and the state of the economy in the Division. Has the Association made out a case, on balance, that there are circumstances existing that warrant such an adjustment at this time?

For the reasons that follow, we have determined that such circumstances do not exist right now to justify a departure from the pattern of settlements.

Firstly, we must place significant weight on the overwhelming pattern of wage settlements in 34/38 of the divisions across the Province.

We had many historic wage patterns presented to us and none were as near complete or as unanimous as for this contract period.

While we are not prepared to say that we are bound to impose the pattern settlement, there must be convincing reasons to do otherwise. Many arbitrators in Manitoba over the years have emphasized that comparison of settlements with other surrounding divisions is a key factor when determining fair and reasonable compensation.

When assessing wage patterns in the past, arbitrators have looked at the percentage adjustment in salaries and not the precise wage levels.

The Association stated that comparisons to other metro divisions were the most important.

We acknowledge (as Arbitrator Peltz did in the *Winnipeg School Division* decision in 1995) that there may exist factors which exist to preclude uniformity and that “the notion that some awards or settlements will differ from the pattern should not be troubling”. However, we do not find that such factors exist here.

We confirm that our obligation is to award clauses which taken together form a fair and reasonable contract and one which is what the parties would have arrived at in bargaining.

Secondly, as we have commented on earlier, we have to factor into consideration the total compensation received by the teachers in the Division.

As Arbitrator Hamilton said in the *Turtle River* arbitration in 2006:

When evaluating the cost implications of any proposed award to the employer, it is well accepted that the overall cost of the award including the cost of matters agreed to by the parties prior to the arbitration must be taken into account on a global basis.

Arbitrator Hamilton then cites Arbitrator Samuels decision in *Meadow Park Nursing*

*Home and CUPE* (1990) wherein he states:

Firstly, in the end one cannot consider each proposed change to the collective agreement in isolation, rather, one has to take into account the overall increase in wages and benefits in order to determine the real demands that are being made of the employer. If it is decided that an overall increase of X% is fair and reasonable, this increase can be made up of improvements to various parts of the compensation package. There are tradeoffs to be made. Significant increases in one area may necessitate little or no increase in other areas.

Secondly, when comparing the wages and benefits of one group of employees to another group, it is essential to do this on a total compensation basis, rather than a simple comparison of the treatment of one area. It is the overall comparison which is significant, not the piece by piece comparison. For example, Group A may have foregone some wages in order to have a very rich health and welfare package. It would not be fair for Group B to demand the same health and welfare package as Group A if it insisted on retaining its more generous wage structure.

We endorse the above statements and have applied them to the facts at hand.

While there was a dispute between the parties as to the actual dollar value benefit of the Division's contribution to healthcare premiums, we accept that there is a monetary benefit to the teachers.

What this means is that on a total compensation basis the gap between Louis Riel and Seven Oaks is not substantial or as great as alleged by the Association. It has been recognized by arbitrators that there will not necessarily be exact uniformity between divisions in terms of teacher salaries.

The salary difference in this case is not sufficient to warrant a departure from the pattern of settlements and to justify a market adjustment equivalent to Louis Riel.

While the Association proposed that teachers would pay 100% of premiums instead of 50%, we are not in a position to assess whether this is workable.

The Association's proposal was made near the conclusion of their submissions of the hearing. To the Board's knowledge, the parties have not discussed this proposal. It represents a fundamental change from a settlement negotiated not too long ago.

In the circumstances, we are of the view that this could be the subject of bargaining at the next round of negotiations.

At that time, more information will be available as to costing, and what amounts, if any, might be freed up for potential wage adjustments. With the availability of this information, an assessment can be done as to how it may impact other participants in the plan, in the Division (other bargaining units), and on the plan and the Division itself.

Thirdly, while we accept that Seven Oaks teachers face challenges in terms of a diverse student body, we are not convinced that there exist factors such as classroom size (Seven Oaks has maintained a lower ratio than others) or classroom makeup, that might impact a salary market adjustment.

Fourthly, there was no evidence that there was a recruitment and retention problem in the Division. To the contrary, the Division has significant interest shown from other teachers when it has openings. Nor is there any evidence that the Division is not attracting high quality educators.

Fifthly, we have to take into account the lower tax base in the Division because of the lack of a commercial component. The uncontradicted evidence is that if there was to be an increase in salaries over the pattern, the Division would have to cut the number of teachers. Of course, this would not be a desired outcome.

Sixth, while the general economic conditions apply to all divisions, we are of the view that now is not the appropriate time to award a market adjustment, even if warranted. Many public sector employees have had to endure wage pauses, and it is hard to justify an increase in these more challenging economic times.

Therefore, for all of the above reasons, we have determined that the wage increase for the agreement shall be based on the Division's proposal and it shall form part of the agreement.

Therefore, the salary schedule in the agreement shall include the following:

September 1, 2010	1.5%
March 1, 2011	1.5%
September 1, 2011	2.0%
September 1, 2012	2.0%
September 1, 2013	2.0%

#### **Article 4.04 - Allowance for Measurable Responsibility**

##### **Division Proposal on Allowance for Measurable Responsibility**

The Division proposed certain increases, based on a formula, for certain schools where there has been population increases.

##### **Association Proposal on Allowance for Measurable Responsibility**

The Association proposed the status quo.

##### **Submission of the Association on Allowance for Measurable Responsibility**

The Association submitted that any discussion about an allowance for measurable responsibility and any increase be better left to the next round of bargaining. It is best to deal with other issues now and fix any additional allowance over the long run. While the Division is seeking a market adjustment for administrators, the Association reaffirms that they are seeking a market adjustment for teachers now.

##### **Submission of the Division on Allowance for Measurable Responsibility**

The Division responded that they were proposing a modest correction for administrators based on increasing enrollment and therefore increased responsibility. The Division utilized a formula for calculating the increases. The increases will give these administrators a retroactive pay increase and impact their

pension in a positive way. A number of administrators are about to retire and this will be of benefit to them.

### **Reply Submission of the Association on Allowance for Measurable Responsibility**

In reply, the Association indicated that they never understood that the calculation of increases for measurable responsibility was based on a formula. They submitted that they did not believe there was jurisdiction to consider an ongoing adjustment because this was never clear to them from the beginning of negotiations.

The Association stated that they did not think that increases were justified because individuals were due to retire. This was not a reason for it to be put into the collective agreement. The reason should be that it is fair and reasonable. Enrollment is not the only factor in determining what is fair and reasonable compensation.

### **Decision on Allowance for Measurable Responsibility**

We are not satisfied based on the material submitted to us that the Division has made out a case on balance for an increased allowance for measurable responsibility.

While there may be an arguable case based on increased enrollment, the calculation

of the increase was based on a formula. There is not, in the circumstances, sufficient justification to warrant an award for increased compensation, especially in light of the refusal to grant a market adjustment to teachers.

We encourage the parties to share information in the next round of bargaining, including the formula proposed by the Division based on enrolment.

The Division's request is denied.

### **Article 5 - Substitute Teachers**

#### **Association Proposal on Substitute Teachers**

Increase will be equal to the increase negotiated on the salary grid.

Fall Term 2010	1.5%
March 1, 2011	1.5%
Fall Term 2011	2.0%
Fall Term 2012	2.0%

#### **Division Proposal on Substitute Teachers**

September 1, 2010	1.5%
March 1, 2011	1.5%
September 1, 2011	2.0%
September 1, 2012	2.0%
September 1, 2013	2.0%

Overall, the only distinction here was that the Association was seeking an adjustment to Louis Riel levels and the Division was maintaining that the pattern proposal be applied to them.

**Decision on Substitute Teachers**

For the reasons outlined earlier, we have determined that the award shall be based on the Division's proposal for salaries and duration.

**Article 6.03 - Leave of Absence with Pay****Current Agreement on Leave of Absence with Pay**

A leave of absence shall be granted without any deduction in salary for the following reasons, subject to the approval of the Superintendent:

1. To attend conventions or meetings of organizations with programs relevant to the teacher's work;
2. To deliver addresses before educational bodies;
3. To attend examinations in order to secure a higher certificate or to secure university standing;
4. To attend convocation to receive a university degree.

**Association Proposal on Leave of Absence with Pay**

Current 6.03 with the addition to read:

- 6.03 1) To attend the Secondary or Post-Secondary Graduation of a family member.

**Division Proposal on Leave of Absence with Pay**

The Board wishes to retain the current wording.

**Division Amended Proposal on Leave of Absence with Pay - June 8, 2012****6.03 Leave of Absence with Pay**

A leave of absence shall be granted without any deduction in salary for the following reasons, subject to the approval of the Superintendent:

- 1) To attend conventions or meetings of organizations with programs relevant to the teacher's work;
- 2) To deliver addresses before educational bodies;
- 3) To attend examinations in order to secure a higher certificate or to secure university standing;
- 4) To attend convocation to receive a university degree.
- 5) **Up to one (1) day to attend the secondary or post secondary graduation of a child, spouse and/or partner.**

The parties ultimately agreed near the close of the hearing to the Division's amended proposal. The amended article shall be included in the Agreement.

**Decision on Leave of Absence with Pay**

Based on the submissions of the parties, we are satisfied that the following amended clause is fair and reasonable.

The following shall form part of Article 6.03(5):

- 5) Up to one (1) day to attend the secondary or post secondary graduation of the teacher's child, spouse and/or partner.

## **Article 6.10 - Personal Leave**

### **Current Agreement on Personal Leave**

1. Absences for emergency purposes or in extenuating circumstances as determined by the Superintendent, shall be either at:

- (a) no cost to the teacher involved, or
- (b) at the actual cost of a substitute required to replace the teacher during the period of such absence.

The decision as to whether (a) or (b) shall apply shall be made by the Superintendent based upon the nature of the emergency or circumstances.

2. In the event of the death of a member of a teacher's immediate family or relative, no deduction from salary shall be made for the teacher's absence up to a maximum of five (5) days. Should more than five (5) days absence be required, Article 6.10(1) shall apply.

3. Request for absences for other personal reasons must be submitted to the Superintendent for approval.

The absence shall be at:

- (a) for up to one (1) personal day per school year at sub cost to the teacher involved (no reason required). This day will not be used for extending holidays.
- (b) no cost to the teacher involved, or
- (c) at the actual cost of a substitute required to replace the teacher during the period of such absence, or
- (d) without pay (per diem rate).

The decision as to whether (b), (c), or (d) above shall apply will be made by the Superintendent based upon the nature of the circumstances.

### **Association Proposal on Personal Leave**

1. Absences for emergency purposes or in extenuating circumstances as determined by the Superintendent shall be either at:

- (a) no cost to the teacher involved, or

(b) at the actual cost of a substitute required to replace the teacher during the period of such absence.

The decision as to whether (a) or (b) above shall apply shall be made by the Superintendent based upon the nature of the emergency or circumstances.

2. In the event of the death of a member of a teacher's immediate family or relative, no deduction from salary shall be made for the teacher's absence up to a maximum of five (5) days. Should more than five (5) days absence be required Article 6.10(1) shall apply.
3. **A teacher shall be entitled to two (2) days of personal leave per school year at no cost, no reason required.**

### **Division Proposal on Personal Leave**

The Board proposes to amend current 6.10(3)(a) as follows:

3. Request for absences for other personal reasons must be submitted to the Superintendent for approval.

The absence shall be at:

- (a) for up to one (1) personal day per school year at **no cost** ~~sub-cost~~ to the teacher involved (no reason required), **may be carried over for one year**. This day will not be used for extending holidays.
- (b) no cost to the teacher involved, or
- (c) at the actual cost of a substitute required to replace the teacher during the period of such absence, or
- (d) without pay (per diem rate).

The decision as to whether (b), (c), or (d) above shall apply will be made by the Superintendent based upon the nature of the circumstances.

### **Association Amended Proposal on Personal Leave**

6.10(3) Add subject to a maximum of no more than 10% of teachers in a school taking personal leave at the same time.

**Submission of the Association on Personal Leave**

The Association stated that this proposal was a priority item. There have been problems in the past as the current article leaves too much to the discretion of the Administration. This gives rise to an inconsistent application of the leave provisions. Two days would reduce stress and anxiety. The Association stressed that they were seeking a “nice, clean clause without restriction”.

Their amended proposal was in response to the Division’s submission that there was not a Division that had no restriction. As a result, the Association agreed to trade off discretion for a guideline of no more than 10% of teachers being away from a school at one time.

**Submission of the Division on Personal Leave**

The Division stated that many requests for leave were for the purpose to extend holidays in order to obtain a cheaper flight. While the Association maintained that there is nothing wrong with this, the Division wants consistency. At certain times of the year it is difficult to obtain substitute teachers and the students educational program suffers.

There are not any divisions that have no restrictions at all. The Division pointed out that their proposal was identical to Winnipeg. It was common for divisions to have a

number of restrictions.

### **Decision on Personal Leave**

Both parties submitted proposals in connection with personal leave.

We are not prepared to accept the Association's proposal as it would differentiate the Division from the salaries in most divisions in the province.

However, we are prepared to accept the Division's proposal as it would give some benefit to the Association without necessitating a material change to the Article.

The following shall form part of Article 6.10(3):

The absence shall be at:

- (a) for up to one (1) personal day per school year at no cost to the teacher involved (no reason required), may be carried over for one year. This day will not be used for extending holidays.

### **Article 6.11 - Sick Leave (On-the-job Injury)**

#### **Association Opening Proposal on Sick Leave**

- 6.11 **7. When a teacher suffers an on-the-job injury and is absent from work as a result of the injury, the Division shall continue to pay the salary of that teacher during such absence. The period of time absent from work as a consequence of an on-the-job injury shall not be charged against the accumulated sick leave balance.**

**The Division will reimburse out of pocket expenses incurred by the teacher as a result of an on-the-job injury.**

**For the purpose of this Article “on-the-job” means a disability resulting from an accident/incident occurring on Division premises or in the course of performing duties arising out of employment under contract with the Division.**

### **Division Response on Sick Leave**

Status quo.

### **NEW - On-the-job Injury**

No teacher shall suffer a loss of sick leave due to injuries sustained on the job. The teacher injured shall be placed on sick leave, short term and/or long term disability insurance until he/she is able to return to work. When the teacher returns to work, the Division will re-instate his/her sick leave entitlement accumulated prior to the injury.

The Association withdrew their proposal near the end of the hearing.

### **Article 6.12 - Family Leave**

#### **Current Agreement on Family Leave**

Teachers shall be entitled to use up to three (3) days of sick leave per year to attend to medical emergencies that pertain to spouses, children and/or parents. Such leave is non-cumulative from one school year to the next school year. A doctor's certificate may be requested.

#### **Association Proposal on Family Leave**

**Each teacher shall be entitled to use up to five (5) days of sick leave per school year to attend to the illness, or accident, injury or medical appointments of his or her immediate family.**

**Division Proposal on Family Leave**

The Division wishes to retain the current wording.

**Submission of the Association on Family Leave**

The Association's proposal expands the reasons for family leave, the number of days from 3 to 5, and the elimination of the potential of a request for a medical certificate.

Their proposed definition of family is:

except where otherwise specified in this Agreement, means father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, spouse (including common-law partner spouse resident with the employee), child (including child of common-law partner), stepchild or ward of the employee, grandchild, father-in-law, mother-in-law, the employee's grandparents and relative permanently residing in the employee's household or with whom the employee permanently resides.

The rationale for the proposal was set out in their written submission which stated in part:

1. Increase the number of sick days teachers are entitled to use from three (3) to five (5) days;
2. Leave is to attend to illness, accident, injury or medical appointment of immediate family;
3. Not restricted to "medical emergencies".

The Pembina Trails division is the closest comparator to what is being proposed. There has been an evolution in the number of days and the non-emergent nature of the leave throughout the Province.

The Association noted that eight (8) divisions allow five (5) days and seven (7) divisions allow four (4) days, all without an emergency requirement.

Overall, the Association stressed that there was a need for this added benefit for teachers to address the family/work life balance. The existing article is 14 years old and there has been an evolution in the Province. The current proposal is fair and reasonable. Most agreements do not include the requirement of a medical emergency or the potential need for a medical certificate.

### **Submission of the Division on Family Leave**

The Division replied that Winnipeg has one (1) paid family leave day, and half of the divisions have a cap of three (3) days, none of which allow for accumulation. Twenty-eight (28) of thirty-two (32) divisions have the same definition as Seven Oaks.

The Division expressed the concern that if this scope of the article is broadened, there will be a greater uptake. The article is costly to the Division and “too rich” to change.

### **Reply Submission of the Association**

The Association disputed that there would be an increase because despite significant increases in population, there has not been an increased usage.

The Association stressed that they want a consistent set of rules that do not depend on Administration's rules. The Association is not seeking an accumulation of days.

The Association stated that if there were any concerns about the definition of family, a more restrictive definition is contained in the Pembina Trails collective agreement which states:

Teachers shall be entitled to use up to an overall maximum of five (5) days of accumulated sick leave per school year to attend to the illness of that teacher's spouse, common-law partner, children, parents, brother or sister whether the family member is natural, in-law, step or foster. Where such cases occur, entitlement under this article may not be accessed concurrently by both caregivers who are teachers within the scope of this agreement.

### **Decision on Family Leave**

We agree with the Association that there has been an evolution in the family leave provisions over the last number of years as more recognition has been given to the demands placed on teachers (as with others in society) to deal with aging parents in particular.

A review of similar provisions across the Province confirms that close to half of the divisions have either four (4) or five (5) days leave. The wording on the scope of the leave varies, both in the definition of family, and in the purpose of the leave. Most articles do not refer to the requirement of an emergency in order to trigger the leave.

The Association points to the Pembina Trails agreement as being the preferred wording.

We are prepared to bring the Division's leave provisions more in line with other divisions by increasing the days to four (4) from three (3) in the present article, eliminating the emergency requirement, and eliminating the potential requirement for a doctor's certificate.

We believe this to be a fair and reasonable solution to the dispute over this article.

Therefore, we award the following new Article 6.12:

Each teacher shall be entitled to use up to four (4) days of sick leave per school year to attend to the illness or accident, injury or medical appointment of spouses, children and/or parents. Such leave is non-cumulative from one school year to the next school year.

### **Article 8 - Community Schools Staff**

#### **Association Proposal on Community Schools Staff**

Fall Term 2010	1.5%
March 1, 2011	1.5%
Fall Term 2011	2.0%
Fall Term 2012	2.0%

**Division Proposal on Community Schools Staff**

September 1, 2010	1.5%
March 1, 2011	1.5%
September 1, 2011	2.0%
September 1, 2012	2.0%
September 1, 2013	2.0%

This issue is the same as with other staff, whether there is a market adjustment and the duration of the Agreement.

**Decision on Community Schools Staff**

The award outlined earlier for Article 2 (Effective Period) and Article 4.02 (Salaries) applies to this Article.

**Article 9 - Group Plans**

**9.04 Extended Health Care, Vision and Dental Plan**

**Current Agreement on Extended Health Care, Vision and Dental Plan**

A plan of Extended Health Care, Vision and Dental Plan shall be made available to employees on an ongoing cost sharing formula on the following basis:

1. Participation in this plan shall be a condition of employment effective September 1, 2006.
2. That the Association select four (4) members to sit on the Benefit Plan Advisory Committee.
3. The Association may elect to opt out of the Extended Health Care, Vision and Dental Plan by providing notice to the Division thirty (30) days prior to the plan renewal date. In such an event, employee benefits shall cease August 31<sup>st</sup> and further, the Division's share of the premiums shall cease August 31<sup>st</sup> (but

paid out June 30<sup>th</sup>). The Division's cost-share contributions shall revert to the Division immediately thereafter.

### **Association Proposal on Extended Health Care, Vision and Dental Plan**

Amend wording of the Auxiliary Agreement to read:

Extended Health Care, Vision and Dental Plan - cost shared seventy (70)/thirty (30) between the Division and the employee.

### **Division Proposal on Extended Health Care, Vision and Dental Plan**

The Division proposes status quo as current Auxiliary Agreement.

### **Submission of the Association on Extended Health Care, Vision and Dental Plan**

The Association as part of their submission on group plans responded to the Division's assertions that if one factored in the benefits received by Seven Oaks teachers as a result of the Division's contributions up to 50% of Seven Oaks teachers were better off than Louis Riel teachers.

According to the Association, a majority of teachers are in a better position at Louis Riel. The Association explained that Louis Riel has three categories - family, couples and single, and opt out provisions.

Under the Seven Oaks plan there is one category - family, and no opt out provision. There is also no single category.

Further, the Association noted that in 2012, Louis Riel had a 2 ½% decrease in

premiums whereas Seven Oaks faces increased premiums.

The Association also presented historical evidence from Barb Cumming, a Welfare Officer with the Association. She explained there was some reluctance to accept the benefit plan proposal originally. Other employee groups were eager to join in. Teachers knew it would not be an equal benefit for all members as there was no opt out provision. Teachers were not asked to accept less salary because of it. She maintained it was no longer a benefit.

The Association concluded that if the Division was to agree to a market adjustment on salary equal to Louis Riel, they would agree to pay 100% of the benefit premiums.

#### **Submission of the Division on Extended Health Care, Vision and Dental Plan**

The Division responded to the Association's calculations regarding value of the benefit program. While half of Louis Riel teachers are better off, one-half are not, depending on whether they have dental coverage.

There is a significant benefit to a starting teacher, and over the scope of one's career, it levels off.

Overall, the Division maintained that their teachers are not worse off and there is

strong evidence to support this position when one factors in the cost of premiums and the overall tax position.

### **Decision on Extended Health Care, Vision and Dental Plan**

We are not persuaded that any change should be made at the present time to the group plans and the cost-sharing arrangements which are in place. Earlier in this Award we outlined the rationale for awarding salary increases on the basis of the provincial pattern. Any change to the cost-sharing of premiums and what impact that would have on the plans, if any, can be the subject of future bargaining. The status quo shall remain for the new agreement.

The Association's proposal is therefore denied.

### **Article 19.03 - Meal Period**

#### **Current Agreement on Meal Period**

Each teacher will be entitled to an uninterrupted meal period between 11:00 a.m. and 2:00 p.m. each school day. This meal period shall be equal to the midday intermission given to students of the school in which the teacher is employed. Designated professional staff will be on call during this meal period to deal with discipline, parent inquiries and other problems normally under the jurisdiction of a teacher.

#### **Initial Association Proposal on Meal Period**

Each teacher will be entitled to an uninterrupted meal period of **fifty-five (55) consecutive minutes** between the hours of 11:00 a.m. and 2:00 p.m. each school day.

### **Division Proposal on Meal Period**

The Division proposes the following wording:

#### 19.03 Meal Period

Each teacher will be entitled to an uninterrupted meal period between 11:00 a.m. and 2:00 p.m. each school day, equal to the midday intermission given to students of the school in which the teacher is employed, **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.** Designated professional staff will be on call during this meal period to deal with discipline, parent inquiries, and other problems normally under the jurisdiction of a teacher.

### **NEW Meal Period**

Commencing September 1996, each teacher will be entitled to an uninterrupted meal period between 11:00 a.m. and 2:00 p.m. each school day. This meal period shall be equal to the midday intermission given to students of the school in which the teacher is employed. Designated professional staff will be on call during this meal period to deal with discipline, parent inquiries and other problems normally under the jurisdiction of a teacher.

The Association withdrew its proposal and stated they would support the status quo.

### **Submission of the Division on Meal Period**

The Division stated that their proposal was not unique. Each school should be able to decide on a given arrangement. The Winnipeg School Division has similar language in its collective agreement.

### **Decision on Meal Period**

While the Association withdrew its proposal, the Division maintains its request for a

revised article which incorporates the option that if a majority of teachers and the administration agree to a different arrangement for meal periods.

We are not satisfied there are sufficient grounds here to make an operational change to the Agreement. The present system appears to be workable and is in line with the majority of divisions throughout the Province. We are also sensitive to the Association's overall concern about votes in a single work location leading to variations in the Agreement.

The Division's proposal is therefore denied.

#### **Article 19.04 - Working Conditions (Preparation Time)**

##### **Current Agreement on Working Conditions (Preparation Time)**

The instructional day for K - 8 schools exclusive of the lunch period shall be 5 ½ hours or such time as may be determined by the Minister of Education. High schools shall be 5 ¾ hours or such time as determined by the Minister of Education.

The Division shall determine the hours of opening and closing of the school day.

Within the instructional day the Division will provide a minimum of one hundred and eighty (180) minutes of preparation time per six (6) day cycle for full time teachers in K - 6 schools. For teachers in middle schools and grade 6 - 8 teachers in K - 8 schools, the Division will provide a minimum of two hundred and forty (240) minutes of preparation time per six (6) day cycle. For teachers in high schools the Division will provide a minimum of three hundred (300) minutes of preparation time per six (6) day cycle.

The Division will make every reasonable effort to schedule preparation time in blocks of not less than thirty (30) minutes.

Part time teachers will be provided with preparation time on a pro rata basis.

### **Association Proposal on Working Conditions (Preparation Time)**

The instructional day for K - 8 schools exclusive of the lunch period shall be 5 ½ hours or such time as may be determined by the Minister of Education. High schools shall be 5 ¾ hours or such time as determined by the Minister of Education.

The Division shall determine the hours of opening and closing of the school day.

**Within the instructional day the Division will provide a minimum of three hundred (300) minutes of preparation time per six (6) day cycle for K - 12 teachers exclusive of recess and breaks.**

**Preparation time shall be scheduled in blocks of not less than thirty (30) minutes. Teachers shall not be responsible for students during their prep time.**

Part time teachers will be provided with preparation time on a pro rata basis.

### **Association Amended Proposal on Working Conditions (Preparation Time)**

	<b>Collective Agreement Provision</b>	<b>School Day</b>	<b>Recess</b>	<b>Available for Instructional Assignment</b>
K - 5	180 minutes 30 / day	5 ½ hours (330 minutes)	30 minutes	270 minutes
6 - 8	240 minutes 40 / day	5 ½ hours (330 minutes)		290 minutes
9 - 12	300 minutes 50 / day	5 ¾ hours (345 minutes)		295 minutes

### **Division Proposal on Working Conditions (Preparation Time)**

The Division wishes to retain the existing wording in the collective agreement.

### **Submission of the Association on Working Conditions (Preparation Time)**

The Association's final position was that preparation time be increased from 180 minutes to 240 minutes for Kindergarten - Grade 6. They withdrew their request for

300 minutes of preparation time for Grades 6 - 8.

The Association provided this Board with a great deal of information for the purpose of demonstrating the teacher's need for additional preparation time. It is not the Board's intention to review in detail all of the information submitted. We have taken it into account in our deliberations. The Association stressed that the teachers are employed in a complex work environment. Seven Oaks is an innovative Division. New programs have an impact on teachers. Special needs students are present in greater numbers than other divisions. The Division has a multi-racial profile which presents challenges. Teacher workloads are increasing. Team teaching is on the rise and requires a lot of planning and meetings. Therefore, preparation time needs to be increased.

While the average class size is twenty-two (22) students, the composition of the classes makes it feel like they are larger. Younger students require more care. Preparation time is a predictor of job satisfaction. Teachers are expected to differentiate lessons and employ an innovative approach to deal with a diverse student population.

#### **Submission of the Division on Working Conditions (Preparation Time)**

The Division's position is that the teachers have adequate time for preparation. There are blocks of time provided for preparation, and teachers have other time off

including a floating substitute for Individual Education Plan (IEP) meetings, team planning time, educational leave fund, and three (3) days release for K - 5 teachers.

The Division stated that the Association's requests will result in additional costs to the schools (10 - 11 additional teachers) and a loss of instructional integrity and flexibility. The Division has to preserve a balance and maintain adequate contact time between teachers and students. The Division stressed that it has the appropriate balance now.

The Division stated that the language in the Agreement was fair and reasonable. The preparation time is consistent with what is offered in other divisions, and only one division has language similar to what is proposed by the Association. There is no evidence that the Division has different working conditions than other metro divisions.

#### **Decision on Working Conditions (Preparation Time)**

The concept of preparation time is well entrenched in agreements across the Province. The Division recognizes the value of preparation time, but maintains that teachers get additional time for preparation through a number of different avenues. The Association's proposals impose a cost burden on the Division. The current Agreement provision is in line with current systems in place in a majority of the divisions in the Province.

The Association maintains that teachers in the Division face different challenges than in most divisions. The diversity of the student body is a factor to be taken into account. The added preparation time for these early grades teachers will enhance the quality of education received by the students. The Division is well able to bear whatever additional cost they have to incur by reason of enhanced preparation time.

We have sympathy for the demands that are placed on teachers at every level in the school system. No one disputes the importance of the quality of teaching in the early grades. Seven Oaks teachers are highly regarded. However, the question to be addressed in this arbitration is whether the Association has established, on balance, that an increase of 180 to 240 minutes is warranted for K - 6 classes.

We have no doubt that increasing preparation time would be welcomed by teachers. This is an operational issue which will potentially have an impact on the number of teachers and scheduling. It strikes me that this operational issue would be better left to the parties to attempt to resolve at future negotiations. In so stating, we are mindful of the general reluctance of interest arbitrators to award operational changes.

At present, the system in this Division is in line with many other divisions in the Province. Winnipeg, for example, has 180 minutes (K - 6) and 240 minutes for middle and senior students.

The cost implications, as well, are of some concern because the Division's undisputed evidence is that they would be required to hire additional staff in order to institute the increases in preparation time.

In light of the above, we remain of the view that the status quo should be maintained.

The Association's proposal is denied.

### **New Article E - Sole Bargaining Agent**

#### **Association Proposal on New Article E - Sole Bargaining Agent**

The Division recognizes the Association as the sole bargaining agent for all teachers in the employ of Seven Oaks School Division.

#### **Division Response on New Article E - Sole Bargaining Agent**

The Board does not wish to add the proposed new article into the collective agreement.

#### **Submission of the Association on Sole Bargaining Agent**

The Association pointed out that this is the only new article proposed for the Agreement. The Association is recognized as the sole bargaining agent. It has concerns about the Division negotiating with individual members.

There seems to be a difference of opinion as to the role of a bargaining agent. The inclusion of such a clause would make it clear and would be valuable for both parties. Three other divisions, including the Winnipeg School Division, have explicit recognition clauses. Similar clauses are in many public sector agreements and in the Division's agreements with its support workers.

### **Submission of the Division on Sole Bargaining Agent**

The Division's position is that the article is not required. Even if it was included, it would not change anything. There has to be a purpose for its inclusion in the agreement.

### **Decision on Sole Bargaining Agent**

We are satisfied that the Association has made its case to have this new article included in the agreement. While the article does not grant any rights to the Association which they do not already have, it is useful to have this in the agreement, especially if there is any doubt regarding the Association's mandate. In addition, similar clauses appear in the Division's agreements with their support unions and it makes good sense to have consistency throughout.

We therefore award the new article as proposed by the Association.

The agreement shall include the following:

The Division recognizes the Association as the sole bargaining agent for all teachers in the employ of Seven Oaks School Division.

We wish to thank the parties for their comprehensive and helpful presentation of the evidence and the arguments.

DATED at the City of Winnipeg, in Manitoba, this 6 day of December, 2012.



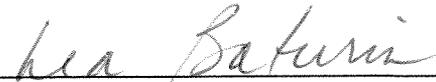
MICHAEL D. WERIER  
Chairperson

I concur with the above Award.



GRANT L. MITCHELL, Q.C.  
Nominee of the Division

I concur/dissent to the above Award.  
(Reasons to follow)



LEA BATURIN  
Nominee of the Association