IN THE MATTER OF AN INTEREST ARBITRATION PROCEEDING

BETWEEN:

THE TURTLE MOUNTAIN SCHOOL DIVISION NO. 44
(hereinafter referred to as the "Division"),

- and –

THE TURTLE MOUNTAIN TEACHERS' ASSOCIATION NO. 44
OF THE MANITOBA TEACHERS' SOCIETY
(hereinafter referred to as the "Association")

ARBITRATOR:
G. Campbell MacLean, Q.C.

APPEARING:

<u>For the Association</u>	
Valerie Matthews Lemieux	Counsel (Jurisdictional issues)
Saul Leibl	MTS Staff
Tom Paci	MTS Staff
Joan Larsen	MTS Staff
Evan Castleman	TMTA Negotiations Chair
Darrin Knight	TMTA President
Al Stewart	TMTA Negotiations
Keith Forsyth	TMTA Negotiations
Gwen McTavish	Teacher (Family Leave Presenter)
Pam Karau	Teacher (Transfer presenter)
Linda Lyons	Teacher (Preferential Hiring Presenter)
Wendy Wytinck	Teacher (Extra-Curricular Presenter)
<u>For the Division:</u>	
R.A. Simpson	Counsel (Jurisdictional issues)
Terry Cooper	MAST labour Relations Consultant
George Coupland	MAST Labour Relations Consultant
Gordon Wooley	Turtle Mountain School Div. Chair
Armin Neufled	Trustee
Rhonda Coupland	Trustee
Kevin McKnight	Secretary-Treasurer,
and others	Turtle Mountain School Division

AWARD

The Turtle Mountain Teachers' Association No. 44 of the Manitoba Teachers' Society, which represents the teachers employed by the Turtle Mountain School Division No. 44, and the Board of Trustees of the Division, were unsuccessful in revising their Collective Agreement. On February 14, 2000 I was appointed Mediator/Arbitrator, in accordance with Article 131.1 of the Public Schools Act, by the Honourable Drew Caldwell, Minister of Education and Training for the Province of Manitoba, to assist in concluding that Collective Agreement, by mediation or, if necessary, by arbitration. **The term of the Collective Agreement is not an item in dispute: January 1, 1998 to June 30, 2000.**

A mediation process was undertaken and discussions took place. The Association expressed its discomfort with any mediation process which involved a mediator who would be called upon to arbitrate issues which could not be settled. The Association was concerned that positions revealed in the course of a candid mediation process would compromise the positions it might take in the arbitration process.

I encouraged the Association and the Division to meet together privately, which they did. Although their discussions were not entirely unproductive, the parties were unable to attain a comprehensive agreement, making arbitration proceedings necessary.

Not all items that were in dispute at the time of my appointment remained in dispute at the commencement of the arbitration proceedings (for example the parties agreed to a settlement of their differences related to salary), and certain of the remaining items were changed from their original form. The thirteen remaining items were as follows:

Interest on Back Pay
Credit for Extra Grades
Leave of Absence for Executive Duties
Personal Leave
Sick Leave
Maternity Leave
* Transfer and Reassignment
Part-Time Teachers
Family Medical Leave
Involuntary Absence Due to Inclement Weather
* Medical Physical Procedures
* Extra Curricular Activities
Titles/ Coordinator's Allowances

The four items in dispute marked with asterisk, namely "Transfer and Reassignment", "Part-Time Teachers", "Medical Physical Procedures", and "Extra Curricular Activities", are items which the Division argues are beyond the jurisdiction of an Arbitrator.

The arbitration proceedings convened in Winnipeg on Friday, the 9th day of June, 2000, with submissions by Mr. Simpson and Ms. Matthews-Lemieux on the jurisdictional issues. The proceedings continued in Killarney, Monday to Thursday of the following week. The principal presenters there were Mr. Leibl and Mr. Cooper. There was one very brief informal meeting in September.

The Parties made very thorough presentations, providing many hundreds of pages of information, all of which was very educational, so to speak.

Two important themes developed by the Parties during the course of their presentations looked at the roles of the Division and the Teachers: one focused upon the Board's responsibility to provide education for the children of the Division and to set educational policy to achieve that goal; the other focused upon the professional nature of teaching.

There is clearly a shared responsibility in the quest to provide the best education possible with the available resources. The teaching professional, who is, after all, the person who actually does the job of bringing knowledge to learners, will certainly be able to report on what improves and what impedes that crucial process. Good communication, and a co-operative approach will improve the system.

It is easy to lose sight, in the course of an adversarial bargaining process, of the primary importance of the education of children and the fact that the Division and the teachers work together with the common goal of providing that education. There are few goals of greater value: to the children, who learn about the world; to their parents, who want the best for their children; and to society as a whole, which can only function at its best with an educated and well-informed population.

Here is the Mission Statement of the Turtle Mountain School Division No. 44:

> *Education is the preparation for a meaningful life in a changing world. We are committed to focusing our efforts and resources on students and promoting academic success and the maximum development of each individual. We will actively foster personal and social development and encourage students to participate fully as members of a democratic society. Educational opportunities will be provided to assist students to enter the field of their choice. These ideals will be achieved through mutual respect, co-operation, trust and responsibility.*

Successful education begins in the home, continues in the school and is supported by the community. The needs of students are the focus of all our efforts.

Jurisdictional Issues

While communication and co-operation are essential components of a good educational system, the Board has the authority to set educational policy. In some cases a proposed collective agreement provision can be said to be both an "educational policy issue", and a "working condition issue". In such cases a determination must be made as to which of these two characterizations is most apt, based on the wording of the provision and the circumstances of the case.

Such a determination was made by Arbitrator Chapman in *Flin Flon School Division No. 46 and Flin Flon Teachers' Association No. 46 of the Manitoba Teachers' Society* (1998)` where he considered the issue of "mainstreaming":

> It is common ground that Divisions and the Community have adopted the laudable view that students who have special needs be integrated into regular classrooms. The Association has proposed an Article which, inter alla, would provide that the Association and Division would have to mutually agree that the necessary conditions exist to provide a positive education experience for both the students with special needs and the other students, and that the Association and Division would have to jointly examine the various alternatives and jointly develop the detailed procedure and to provide an appeal procedure for the teacher and/or the parent/guardian. The input of teachers and parents is undoubtedly worthwhile. I note the comments of the Association that a special needs student can create additional work for the teacher and, as it was pointed out, "57 of the students can take up 95% of the teacher's time".
>
> The Association argues that "mainstreaming" falls within the umbrella of "working conditions" and that the teachers should have the opportunity to express their concerns. As mentioned, that aspect of the issue might be desirable and I would hope the teachers would be given the opportunity to have input into many aspects of the integration of special needs students. However, one cannot disregard part III of the Act which mandates certain duties on Boards and, in particular, sections 41(1)(a) and 41(4). In essence these two sections require the Board to provide adequate school accommodation from grades 1 to 12 for all persons entitled to education as defined in section 259 which mandates that every person who has attained the age of 6 years has the right to attend school.
>
> I am of the opinion that such policy and the implementation of it, clearly rests within the jurisdiction of the Board. I agree with Arbitrator Scurfield who said, at page 12 of the Brandon award, that, "he did not believe it was the role of the Arbitrator to shape the educational policy of the Division through an arbitration award". I note the Division has a policy respecting Special Education Services which addresses many of the concerns raised by the teachers.

> I would hope that teachers, parents and the administration would all work towards providing a meaningful education for all students regardless of disabilities. However, I do not believe it would be appropriate for an arbitrator to order the inclusion of an article such as that proposed by the Association. Although it is not a matter specifically prohibited by section 126(2) I do not believe that it falls within the general ambit of a "dispute" relating to "term of employment or work done" under 97(1). One cannot disregard the sections of the Act relating to the powers and duties of Boards. I am of the view that I do not have the jurisdiction to impose such a condition and accordingly' the request of the Association is denied.

Arbitrator Chapman's conclusion on this point was reviewed by Mr. Justice Morse in *The Flin Flon Teachers' Association of the Manitoba Teachers' Society and the Flin Flon School Division No. 46 (1999)* who agreed that Arbitrator Chapman was without jurisdiction to deal with "mainstreaming". I note that the Manitoba Court of Appeal also agreed with the assessment that mainstreaming was predominantly an educational policy issue.

Other limits on arbitrability are contained in Section 126(2) of The Public Schools Act.

> **126(2)** Notwithstanding any other provision of this Act, the following matters shall not be referred for arbitration and shall not be considered by the arbitrator or included in the arbitrator's award.
>
> (a) the selection, appointment, assignment and transfer of teachers and principals;
>
> (b) the method of evaluating the performance of teachers and principals;
>
> (c) the size of classes in schools;
>
> (d) the scheduling of recesses and the mid-day break.

One day of hearing was dedicated to the issue of the jurisdiction of an arbitrator to deal with certain of the items in dispute. Thorough presentations were made, supported by extensive documentation. I have reviewed the material and in particular the comments made and the conclusions drawn by Arbitrator Scurfield in *The Brandon Teachers' Association No. 40 of the Manitoba Teachers' Society v. The Brandon School Division No. 40 (1998),* Arbitrator Chapman in the *Flin Flon* Award, noted above, as well as the decisions rendered by Mr. Justice Morse and the Manitoba Court of Appeal.

I find myself with nothing to add regarding the nature and effect of the legislation in force (at the time of the hearing of this matter) and I do not see a need to add further comment. I am of the view that the Legislature, through Section 126(2), intended to exclude the items set out therein from the process of binding arbitration. I am thus unable to consider matters excluded by Section 126(2).

There remains the question of the application of this section to the particular items in dispute. This will be dealt with in due course.

I am also mindful of my duty under Section 129(3) to consider certain factors when dealing with matters that might reasonably have a financial effect:

> 129(3) The arbitrator shall, in respect of matters that might reasonably be expected to have a financial effect on the school division or school district, consider the following factors:
>
> (a) the school division's or school district's ability to pay, as determined by its current revenues, including the funding received from the government and the Government of Canada, and its taxation revenue;
>
> (b) the nature and type of services that the school division or school district may have to reduce in light of the decision or award, if the current revenues of the school division or school district are not increased;
>
> (c) the current economic situation in Manitoba and in the school division or school district;
>
> (d) a comparison between the terms and conditions of employment of the teachers in the school division or school district and those of comparable employees in the private and public sectors, with primary consideration given to comparable employees in the school division or school district or in the region of the province in which the school division or school district is located;
>
> (e) the need of the school division or school district to recruit and retain qualified teachers.

I note as well that Section 129(2) directs an arbitrator to include "reasoning as to how the requirements of sub-section (3) have been applied."

ITEMS IN DISPUTE

Article 3:02 Interest on Back Pay

The Division contends, because the amount of interest payable under this provision is very small in the present circumstances, and the administrative cost related to the processing of the payments is relatively large, (the administrative cost was not specified), that the requirement to make these payments ought to be removed from the Collective Agreement, or at least waived in relation to the present Collective Agreement.

It would appear to me to be a matter of simple fairness to provide interest and I am not prepared to waive the requirement or to alter the Collective Agreement in this regard.

Article 3:06 Credit for Extra Grades

The Division seeks the removal of the present provision which provides those teachers who teach more than one grade during the same time period with an allowance of $273 per year per extra grade. (This allowance does not cover the teaching of Band, Music, Physical Education, Art, or any subject area in grades 10, 11, and 12.)

I accept the Association's submission that there is an increase in difficulty and workload related to teaching a multi-grade class. I have noted as well the history of the Article. In the result, I am not prepared to remove this Article from the Collective Agreement.

Article 4:01 Personal Leave

The Parties having withdrawn their proposals during the course of the hearing, this item ceased to be in dispute.

Article 4:04 Leave of Absence for Executive Duties

The Division seeks to change the present Article dealing with leaves of absence taken for Manitoba Teachers' Society ("MTS") work. Presently the Society is responsible for providing the cost of a substitute for teachers on leave, while the Division pays the teachers salary. The proposed Article specifies that a leave would be without pay. Under the proposal it is anticipated that the cost of a substitute would be covered by the Division. The change requested would have the effect of lowering the daily cost to the Division by the difference between the daily rates of the teacher on leave and the substitute, with an increase in cost to the Society corresponding to the Division's saving, presuming that the Society covered the teacher's salary.

The Division acknowledged that this approach is new for MTS leaves, but that it is in line with that taken in relation to other Division staff.

The Division also requested a change, from 7 to 5, of the maximum number of teachers who can be on leave of absence on any given teaching day, which it argued was a too great a maximum, considering the size of the teaching staff.

The Association argued that a teacher continues to have numerous responsibilities while on leave. Mr. Evan Castleman, in his presentation on this point, described his continuing duties, including lesson preparation and other assistance to the substitute teacher, as well as marking and reviewing his students' work.

The Association indicated that while it is not often necessary to have teachers on MTS leave, it is on occasion.

A review of numerous other Collective Agreements reveals that the present provision, requiring the cost of a substitute to be paid by the Association, is standard.

I see no compelling reason to alter the present provisions.

Article 4:05 Sick Leave

The Association is requesting an increase in the maximum number of days of accumulated sick leave. The maximum stands presently at 95. The Association seeks an increase of this maximum to 100.

A review of relevant provisions in effect across the Province indicates that the vast majority of Divisions provide a maximum of 100 or more days, with the greatest number of Divisions (27) providing 100. Only 7, including Turtle Mountain, of the 54 Divisions in the Province are below 100 days.

I am prepared to impose an amendment to the Collective Agreement, following the Association's proposal, namely: amend Section a), third paragraph, to read "80 in the fourth, and 100 in the fifth, and subsequent years."

Article 4:06 Maternity Leave

The Association is proposing a "SUB" Plan, namely a "Supplementary Unemployment Benefits" Plan, which would substantially increase the benefits received during Maternity and Parental leaves.

There was a great deal of material provided in relation to this proposal. Involved are larger societal issues, "equality", and support of family issues, which must be balanced against the realities of the budget. I also note that this type of provision is uncommon in teacher collective agreements in Manitoba.

I find myself sharing the reluctance expressed by Arbitrators and Arbitration Boards which have been asked to impose similar provisions. Of concern is the question of requiring the Division to address what can be seen as a societal matter that ought to be addressed in the larger context.

While the current economic situation in Manitoba may be positive, I do not see evidence of an economic upturn in Turtle Mountain. A comparison with other Divisions and the absence of this type of provision in general does not favour the proposal. Although it may be that this provision would assist in the recruitment and retention of teachers, on balance, I deem it inappropriate to impose it.

* **Article 9:00 Transfer and Reassignment**

The Association is seeking a change to the current Collective Agreement provision dealing with the transfer and reassignment of teachers. The Division argues this matter is not arbitrable as a result of Section 126(2)(a). I agree that I am without jurisdiction to deal with this item.

* **Article 17:00 Part-Time Teachers**

The Association seeks an alteration and expansion of the provisions of Article 17:00, an article dealing with part-time teachers. Some aspects of the Association proposal cover matters already covered by other Articles in the Collective Agreement. It is important to note these other Articles are not in dispute. In addition, another aspect of the extension concerns what I take to be matters which are specified in section 126 as being not arbitrable.

I would add as well that the proposed multi-faceted Article goes far beyond the scope of the existing Article 17:00, to the extent that I think it can reasonably be regarded as a "new Article".

In this regard I deem it appropriate to take into account the comments of Arbitrator Scurfield in *Brandon,* at pages 2 and 3:

> Arbitrators have frequently stated that an interest arbitration should try and replicate the result of free collective bargaining. In a sense, this is an artificial exercise because we know that the parties have not been able to reach an agreement. I think the point is better made from the opposite perspective, namely, that the arbitrator ought not to impose an agreement that a party acting reasonably would have rejected. In my opinion, arbitrators have the right to impose new articles in collective agreements where the arbitrator has concluded, based on the evidence, that the reluctance of one party to agree to the article is neither logical or fair. On the other hand, arbitrators should be reluctant to unilaterally introduce entirely new articles into collective agreements which have been developed over a long history of bargaining. The exceptions to this approach should be based on evidence that the current practice is impractical, inequitable, or out of step with what is occurring in other Divisions. Minor or marginal problems will rarely be addressed through the unilateral imposition of new clauses by an arbitrator. Arbitrators must be careful not to substitute their discretion for that of a party who has a different but defensible view of the proposed article.

> In the instant arbitration, the Division was strongly opposed to the imposition of any new articles by way of arbitration. In fairness to the Division, all of the new articles proposed by the Teachers have very little support by reference to other agreements which have been arbitrated or bargained throughout the province. In plain terms, while there are occasional divisions which have accepted all or part of the proposals which the Teachers urge me to impose on the Division, none of the new articles are widely accepted in the contracts throughout the province. Certainly I am not compelled by reference to other agreements, to conclude that the Division is out of step with collective agreements generally in place throughout the province. Thus, no compelling argument exists to impose any of the new articles unless I have concluded that based on the evidence there is a practice or procedure within the Division which is inherently unreasonable or unfair and ought to be rectified. In the result, I propose to commence by examining each new article from this perspective.

There are four parts to this proposed provision: A. Placement and Salary, B. Seniority, C. Additional Assignments, and D. Preferential Hiring.

A. Placement and Salary - The first proposed Placement and Salary sub-section is designed to delineate circumstances under which a part-time teacher would be deemed to be full-time. Insofar as this involves changes to the employment status of a teacher, it would appear to be excluded by reason of its relation to "the selection, appointment, assignment and transfer of teachers and principals".

The three remaining Placement and Salary sub-sections are variations of parts of Article 2 of the Collective Agreement, an Article which is not in dispute.

The second and third proposed Placement and Salary sub-sections are variations of Article 2(e). The fourth proposed provision involves an alteration of the method of counting time worked for the purpose of triggering salary increases. The existing method, set out in Article 2(f), in effect, relates a salary increment to time spent in the classroom, while the proposed method ties an increment to the calendar year.

B. Seniority - The seniority provision is focused upon seniority issues related to part-time teachers. I note that Article 5 also deals with seniority.

C. Additional Assignments - This provision is a reformulation of the present Article 17:00.

D. Preferential Hiring - The Preferential Hiring provisions are concerned with hiring and are thus excluded under Section 126.

It was suggested that there could be severance of certain parts of the proposed provisions, if need be. I have considered this possibility.

However, it would appear to me that changes should be approached in a comprehensive and coordinated manner, rather than in snippets. If the Association continues to view the reworking and rationalization of the part-time teacher provisions as a priority, it should sit down with the Division and attempt to work things out, with reference to all relevant provisions of the Collective Agreement. There should be clarity as to what is in dispute.

One would of course hope that the Parties could come to an agreement, but in the event that the Parties are unable to do so, it may be that the recent legislative changes will empower an arbitrator to look at these issues in a more comprehensive manner than is possible in relation to this award.

Although I have considered the changes suggested, I am reluctant to attempt to fashion a new provision that would deal with only a fraction of the issues raised. I do not believe myself in a position to alter Collective Agreement articles not in dispute. Clearly I must avoid creating ambiguities that would in turn spawn disputes.

In the result, I am not prepared to alter the present Article.

New Article - Family Medical Leave

The Association altered its proposal at the hearing. It is seeking a provision that would allow three days of accumulated sick leave for the purpose of attending to an illness or injury or medical appointment of a teacher's spouse, parents, children or dependents. It also requests a provision that allows, in emergency circumstances, both parents, where both are teachers, to take this leave concurrently.

I note that there are a number of Collective Agreements in the province that contain family medical leave provisions similar to the one proposed here, including those in effect in the nearby divisions of Antler River, Birdtail River, Brandon, Fort La Bosse, and Pelly Trail. One significant difference between many other articles and the one proposed here, is the others exclusion of concurrent access to this leave, where both parents are teachers in the division. The proposed provision does however restrict concurrent access to emergency situations.

This proposal must be seen in the context of the other leave provisions in the Collective Agreement, which include "Compassionate Leave", and "Personal Leave".

I also have considered the presentation made by teacher Gwen McTavish and the account she gave of her difficult experience.

All factors considered, I deem it appropriate to allow the Association's revised proposal, and would include a family medical leave article as follows:

> 4:10 Family Medical Leave
>
> Each teacher shall be entitled to use up to 3 days of accumulated sick leave per year to attend to the illness and injury or medical appointment of that teacher's spouse, parents, children or dependents. In the case of child or dependent where both parents are teachers within the scope of this agreement, both teachers shall not have access to this provision concurrently, except where the said child or dependent is involved in an emergency illness or injury involving hospitalization.

I have numbered this new article "4:10". The Parties may wish to reorganize and rationalize the Article 4:00 leave provisions. I will leave that to the Parties.

New Article - Involuntary Absence Due to Inclement Weather

At present the matter of involuntary absence due to inclement weather is dealt with through Division Policy. It is common for School Divisions to address the matter of storm policy in this manner.

The Division's "Storm Day Policy" specifies that during periods of inclement weather, all staff are expected to be at work at their regularly scheduled times, with pay deducted for failure to attend. Mr. Cooper indicated that a review of the Division records revealed no instances of deductions of a teacher's pay related to bad weather during the past five years, suggesting that the practice followed does not correspond to the written policy.

As to the matter of concern for the teachers' well being, I do not perceive any controversy; the Division is clearly concerned about the Teachers' well being.

The Division stressed its willingness to meet with the Association and negotiate a solution that will satisfy both the needs of the teachers and those of the Division.

I have reviewed, in addition to the storm policy of Turtle Mountain, those of neighboring divisions that have been provided. Decisions related to school closures and the cancellation of bus operation have an impact on students, parents and teachers alike. These decisions must be carefully made; balancing many factors, and then communicated efficiently. Rural School Divisions such as Turtle Mountain are relatively large, and not all areas and routes may be equally affected by a particular storm.

I have carefully considered the proposed article but find myself unconvinced of its adequacy. I am of the belief that the parties will be able to reach a mutually acceptable solution that will clearly and accurately address their concerns. In the circumstances I am not prepared to impose a new article.

***New Article - Medical Physical Procedures**

The Division's primary argument is that issues relating to the assignment of teachers are not arbitrable and that the assignment of a teacher to carry out medical procedures is therefore not arbitrable.

I find myself unable to agree with the Division's position on this point. It would seem to me that the Division, while certainly empowered to make assignments pertaining to the work of "teaching", is not in a position to assign a teacher to perform work that is beyond the scope of teaching. In my view, carrying out medical procedures, or at least certain medical procedures, is beyond that scope.

It is certainly recognized that teachers have a responsibility for the well being of their students, must respond when a student's health is imperiled, and in this regard may be called upon to carry out what would be termed a "medical procedure". Accepting that taking a responsive action in an emergency has been and continues to be within the scope of a teacher's work, there are certainly numerous medical procedures not in the nature of an emergency response and which are not a part of "teaching".

The Association requested the inclusion of a new provision in the Collective Agreement which recognizes a teacher's duty to render medical assistance in an emergency, but which relieves a teacher of any requirement to administer medication or other medical or physical procedures on a regular or predictable basis.

The issues here are emerging issues that present themselves at a societal level. They are somewhat like, and perhaps to some extent related to, "mainstreaming". But whereas "mainstreaming", is an educational policy issue, and relates to the activity of education, carrying out medical procedures relates to the activity of providing health care. It appears to me that teachers have enough new challenges to face as teachers, without calling upon them to take up a new occupation, and new challenges, as health care providers.

While I have sympathy for the Association's position, I am not prepared to impose a provision upon the Parties. It appears to me that the there are potential difficulties with the definitions of the terms "medical procedures" and "physical procedures". I also note, based upon the considerable documentation provided on the topic, that a significant amount of work is being done in relation to "URIS", an acronym for "Unified Referral Intake System". The material reveals the complexity involved in categorizing medical procedures. I am simply not close enough to the issues to craft a provision.

I can foresee that in some situations a teacher may volunteer to perform a certain type of medical procedure. Or it may be that a teacher would accept some form of compensation for taking on the task of dealing with certain medical procedures in relation to one or more students.

It is important for the Association and the Division, in consultation with relevant regulatory agencies as necessary, to deal with these issues and meet the challenge presented by changes to the health needs of students.

***New Article - Extra-Curricular Activities**

The Association proposes the inclusion in the Collective Agreement of a new article concerning extra-curricular activities. The Association seeks to have the participation of teachers in extra-curricular activities declared to be voluntary, with compensation for participation in the form of a leave of absence at the rate of one day for each fifty hours of extra-curricular activities performed, and provision for determining when such leave may be taken. The Association also seeks the inclusion of a provision concerned with reimbursement of a teacher for out-of-pocket expenses

Part of the challenge here, as 1 see it, stems from the difficulty associated with understanding and categorizing the "voluntary" nature of a teacher's participation in extra-curricular activities.

Teachers regularly volunteer to participate in extra-curricular activities. This is a long-standing practice in the teaching profession.

It is possible to look at this practice as something teachers have done as a public service, without remuneration, distinct from their contractual obligations with the School Board.

However it is also possible to see this practice as an integral part of a teacher's employment relationship. According to this view, the salary a teacher receives covers the extra-curricular work done, as well as class time teaching duties. This view also recognizes the right of the Division to assign extra-curricular participation.

Thus there is the long standing practice of participating in extra-curricular activities, and this activity is capable of being interpreted as being done as a volunteer, or as an employee.

Adding to the difficulty in assessing this problem is the use of the word "volunteer" in this context. As I understand it, a teacher will "volunteer" to undertake an extra-curricular program without an assignment being made. This would seem to indicate that the work is done on a voluntary basis rather than as a part of the employment relationship. However, it is necessary to consider that there are situations where someone volunteers to do something that is not truly voluntary.

For example, in an employment context, where a certain objective must be achieved, a request may be made for individuals to carry out the various required tasks. The personnel have a duty to participate, and could be ordered to do so, but are given an option to volunteer prior to an order being given. An order will need to be given if there are insufficient volunteers.

It is possible to view teachers' extra-curricular volunteerism from this perspective: they volunteer, or choose, according to their interests, skills, and abilities, to do required employment-related work. The work they do then cannot be said to be truly voluntary.

In *The Churchill Local Association No. 37-3 of the Manitoba Teachers' Society and The School District of Churchill No. 2264 (1988)* it became necessary to examine the essential nature of extra-curricular participation, and to determine if it was part of a teacher's contractual duties, or if it was voluntary. Teachers there withdrew their participation in extra-curricular activities as part of a contract dispute over other non-related issues, and the Board of Arbitration held that such activities can be, but are not necessarily, part of a teacher's work assignment. To be considered part of a teacher's duties, certain criteria must be met. The essence of the conclusion drawn, and I do not intend to review the award in detail, was that reasonable assignments were part of a teacher's duties.

I have considered the arguments of the parties as well as decisions which have grappled with the particularly challenging issues involved.

I have reached the conclusion, based upon the evidence and argument presented, that I do not have the authority to impose an article which states that participation in extra-curricular activities is voluntary. While there is a degree of choice on the part of a teacher as to the particular activities, and the amount of time spent on those activities, there is at present an understanding and an expectation that a teacher will spend a reasonable amount of time participating in extra-curricular activities. In contrast to the performance of medical procedures, discussed above, a reasonable level of participation in extra-curricular activities is part of teaching.

Insofar as this participation is within the scope of a teacher's employment, is work which is compensated for through a teacher's salary, and is work which can, if necessary, be assigned, (providing the assignment is reasonable), it is an issue excluded from arbitration by Section 126(2)(a).

I would add that even if I had jurisdiction to deal with the assignment of extra-curricular activities, there is what appears to be something of a logical inconsistency in including a provision stating that participation in extra-curricular activity is voluntary, (and by implication not part of the employment relationship) while at the same time requiring the Division to compensate teachers for their volunteer work. It would seem to be somewhat more consistent to consider a certain number of hours of extra-curricular activity as part of the employment relationship and hours spent beyond that as a form of voluntary overtime. In any event this is not something I need to address in the present case.

I must conclude as well that I am without jurisdiction to impose a article providing compensation by way of leave, based upon time worked, as has been proposed by the Association. Again this is related to the larger "assignment" issue and as such is excluded by Section 26(2)(a).

One characteristic of extra-curricular work that is easy to assess, and must be emphasized, is the value of the extra-curricular work done by teachers.

I have no doubt that an assignment to produce and direct a school musical is far beyond extra-curricular work that could be assigned. The time required for such a project could not be "reasonably" assigned to a teacher. The work involved in seeing such a project through is, in effect, voluntary. The work she does is thus not "her job", but rather a gift she is giving the students, the school and the community. There is perhaps some "education" called for, directed towards parents and the community at large as to the nature of the effort made, and the "thanks" due.

Ms. Wendy Wytinck made a presentation at the hearing. Her participation in extra-curricular activities includes acting as the producer/director of the school musical, which she has done for the last eight years.

Ms. Wytinck indicated that she spends approximately three hundred hours involved in extra-curricular activities! She reported that she does this work not for her employer per se, but for "the kids". She noted that when she first undertook the project she received thanks, but now she perceives her participation as being taken for granted.

Ms. Wytinck's experience is instructive.

It is disturbing that Ms. Wytinck feels that her contribution is taken for granted.

I expect that much of the extra-curricular participation of teachers is likewise "voluntary" and that if teachers worked only the number of hours that could reasonably be assigned, a great number of valuable activities would simply not happen.

In my opinion individuals who go above and beyond the call of duty are, and ought to be recognized as, community heroes. By giving of themselves they make a contribution to students, the school, and the community as a whole. Such contributions should not be ignored, nor taken for granted. The positive benefits of such contributions are often immeasurable.

One intangible compensation, (although "compensation" is likely not the right word), is the esteem with which these generous individuals are regarded. Many people can recall, with gratitude, such acts of "heroism" far into the future.

I think it important to recognize that extra-curricular activities are to a large measure the result of the generosity of teachers. It is somewhat too easy to lose track of this, in the course of a legalistic analysis in an adversarial contractual bargaining exercise. What this is about, at its centre, is generosity, appreciation, and respect.

The final aspect of the Association's proposal regarding extra-curricular activities involves a proposal requiring the reimbursement of teachers for "proven, reasonable and actual out-of-pocket expenses for extra-curricular activities that take place outside the town or community in which his or her school is located".

The Division argues that the question of these costs is not arbitrable. Alternatively, the Division indicates that these costs are currently budgeted for and dealt with at the school level, which, it argues, is appropriate, in that the schools know the activities and are best able to develop budgets.

In my view I am without jurisdiction to deal with this matter. I would add only that it would seem self-evident that teachers should not be required to pay to participate in extra-curricular activities.

New Article - Titles/Coordinator's Allowances

The Parties settled monetary issues related to this item. What remains is a request by the Division of a change of title to "Co-ordinator of Student Services". The Division indicated that the change in title is merely a housekeeping matter.

The Association also made a proposal for a new Article but this proposal was vigorously objected to by the Division on the grounds that it was not part of negotiations and could not be properly added to the items in dispute for the purpose of arbitration. Apparently the Association provision was put forward in order to address a concern on the part of the Association that the title change may be a first step to the creation of a new position.

In any event, I am of the view that there is no pressing need to impose this new article.

I would like to thank all involved for their articulate and thorough presentations.

I retain jurisdiction to deal with any problem which may arise in respect to the implementation of this Award.

Dated at the City of Winnipeg, in the Province of Manitoba,
this 10th day of November, A.D. 2000

G.C. MacLean, Q.C.