

ARBITRATION BULLETIN

Grievance Issue: Extra-Curricular Duties are Assignable

May 24, 1996

IN THE MATTER OF AN ARBITRATION BETWEEN:

THE RIVER EAST SCHOOL DIVISION NO. 9
AND
THE RIVER EAST TEACHERS' ASSOCIATION NO. 9
OF THE MANITOBA TEACHERS' SOCIETY

AND BETWEEN:

THE INTERLAKE SCHOOL DIVISION NO. 21
AND
THE INTERLAKE TEACHERS' ASSOCIATION NO. 21
OF THE MANITOBA TEACHERS' SOCIETY

AND BETWEEN:

THE MOUNTAIN SCHOOL DIVISION NO. 28
AND
THE MOUNTAIN TEACHERS' ASSOCIATION NO. 28
OF THE MANITOBA TEACHERS' SOCIETY

AWARD

BOARD: David I. Marr, Chairperson
G.D. Parkinson, Nominee for the School Divisions
Mark. A. Gabbert, Nominee for the Associations and Grievors

APPEARANCES: Robert A. Simpson, Counsel to the School Divisions
Mel Myers, Q.C., Counsel to the Associations.

It is important to note that this arbitration award once again confirmed that Manitoba school divisions/districts do have the legal right to assign extra curricular activities. This award reiterates the findings of the previous Churchill Extra Curricular Arbitration which upheld the right to assign using the following criteria:

- 1. Assigned workload must be fair to the employee.**
- 2. Assignments must be related to the education enterprise.**
- 3. Assignments must be reasonable in that they are a furtherance of the principal duties to which the teacher is expressly committed**
(please see note at end of Bulletin).

THE AWARD (IN PART)

These grievances were heard together on June 27 and 28, 1995 and August 22, 1995 in Winnipeg, Manitoba. The substance of the grievances is, essentially, whether participation in "extra-curricular" activities by teachers in these School Divisions is voluntary or obligatory pursuant to the terms of their respective supervision of students and Collective Agreements between the parties in which there was no express provision therefor. Nevertheless, as stated by [O'Sullivan, J.A., in Snow Lake](#), at page 209:

"For his part, I think Scollin, J., was not quite correct in treating the matter as one of construing and applying provisions in a statute, regulation or contract. No doubt the questions of construction are relevant to the determination of the issue, but in the end I think that what Laskin, C.J.C., has said should be accepted as a statement of law of Manitoba in regard to employment contracts generally, and that what must be decided is whether the duties sought to be assigned by an employer are reasonable incidents of the employer/employee relationship in all of the circumstances of the case." (our emphasis)

And what [Laskin, C.J.C., said in Winnipeg School Division No. 1](#), at pages 234-235, was:

"I am satisfied that there is nothing in the Collective Agreement, nor in any of the documents or legislation which are made part thereof or to which it is subject, that expressly puts upon the teachers a duty of noon-hour supervision. That, however, is not the end of the matter..."

"Almost any contract of service or Collective Agreement which envisages service, especially in a professional enterprise, can be frustrated by insistence on 'work to rule' if it be the case that nothing that has not been expressed can be asked of the employee. Before such a position can be taken, I would expect that an express provision to the effect would be included in the contract or in the Collective Agreement. Contract relations of the kind in existence here must surely be governed by standards of reasonableness in assessing the degree to which an employer or a supervisor may call for the performance of duties which are not expressly spelled out. They must be related to the enterprise and must be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed."

Clearly, the essence of the grievances is the disagreement between employers and employees as to the involvement of teachers in extra-curricular activities. This disagreement has certainly not been unique to these School Divisions as there have been several arbitrations in the past involving other school divisions in Manitoba concerned with this same issue, some, if not all, of which have been cited to us by counsel for both parties.

The three Associations, in their respective grievances submit that all activities or work carried out by or assigned to teachers outside of the School Day are not part of the contractual duties for which teachers are paid, but are services provided by teachers gratuitously and voluntarily.

Prima facie, this position is not justified at law. Several decisions, both judicial and by way of arbitration, have clearly established that School Divisions do have the right to expect teachers to do certain things outside the instructional School Day. Both of the aforementioned cases, [Winnipeg School Division No. 1](#) and [Snow Lake](#), for example, held that if the duties were related to their main duties (i.e., teaching), and were reasonable and fair, then it was consistent with the duties of teachers that they fulfill such supervisory functions during the noon-hour on a reasonable basis at the direction of their principals. As stated by [Laskin, C.J.C., in Winnipeg School Division No. 1](#), at page 236, and applicable to the Collective Agreements under our consideration:

"I dispose of the first point on the simple ground that the parties' collective relations envisage that directions will be given from time to time by the principals of the schools which may, when issued,

become part of the duties to be discharged under the Collective Agreement. I do not agree with the Association's contention that any such directions to be valid must be limited to instructional duties during the instructional day."

It must be noted, of course, that following the above quotation, Laskin, C.J.C., went on to state:

"At the same time, nothing said here should be taken as endorsing the right of the respondent to impose duties upon the teachers either in the early morning before they are required to report or in the late afternoon after the close of the school day, at least where those duties are not related directly to instructional matters."

As stated by O'Sullivan, J.A., in [Snow Lake](#), at page 210:

"I deplore any tendency to relegate teachers to the sole function of classroom instruction. Education is much more than merely instructing; it is a process of formation. Teachers are not simply servants of the school division; they are professional persons who function as role models and as inspirers, as well as providers of information and work skills.

The essential question for the arbitrators in this case was not to construe law, but to find whether the rota system in force in Snow Lake was or was not reasonable. In determining what is reasonable in the circumstances, no doubt an arbitration board may take into account matters such as the history of teaching in this province, the practices that have grown up not only in this school but elsewhere in the province... and so on."

To be fair, the context of the grievances under our consideration and the opening statement of counsel for the Associations and Grievors, revealed that what is at issue here is not really all activities carried on outside the instructional day, but, rather, "extra-curricular" activities. Counsel for the Associations and Grievors acknowledged, and decisions of courts and awards of arbitration boards have found, that such activities as noon-hour supervision, parent-teacher interviews, remedial work, managing disciplinary matters, preparing class material and marking assignments, tests and examinations, are part of teachers' contractual obligations, notwithstanding that they may not be expressly set out in their contracts, or otherwise.

In other words, the issue is not whether or not teachers are never legally obligated to work outside the instructional day, but, rather, whether, **in law and the circumstances of the grievances before us, the School Divisions are entitled to order teachers to perform extra-curricular duties outside the normal instructional day.** Further, we are required to decide whether, if the School Divisions do have such power to assign extra-curricular activities, they have done so reasonably in all the circumstances.

While some may prefer to categorize obligatory duties as relating solely to instructional duties, we prefer a wider definition as emphasized by O'Sullivan, J.A., at page 210. Where he referred to Laskin, C.J.C.'s statement in [Winnipeg School Division No. 1](#), as follows:

"Contract relations of the kind in existence here must surely be governed by standards of reasonableness in assessing the degree to which an employer or supervisor may call for the performance of duties which are not expressly spelled out. They must be related to the enterprise and be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed." (our emphasis)

It is acknowledged that none of the Collective Agreements in question contain any definition of "extra-curricular" activities, nor, for that matter, do they specifically set out any of the teachers' duties. Two of these Agreements - River East (Exhibit 1) and Interlake (Exhibit 9) - do, however, in [Article I: Purpose](#) of their respective Agreements, incorporate, by reference, the provisions of [The Public Schools Act](#)

(Manitoba) which, of course, does provide that "**every teacher shall (a) teach diligently and faithfully according to the terms of his agreement with the School Board and according to this Act and the Regulations**".

Schedule D, Form 2, of the Public Schools Act sets out the statutory form of agreement to be executed between the School Division and teacher, wherein Clause 4 provides:

"The teacher agrees with the School Board to teach diligently and faithfully and to conduct the work assigned by and under the authority of the said School Board during the period of this employment...and to perform such duties and to teach such subjects as may from time to time be assigned in accordance with the statutes and the regulations of the Department of Education and Training..." (our emphasis)

Indeed, both the River East and the Interlake Agreements express the purpose and intent of the Divisions and Associations, among other things, to "**provide a basis for both parties to improve the professional and academic services rendered to the taxpayers and the school children of those Divisions**". Although not so stipulated in the Mountain Agreement (Exhibit 13), we would be surprised if the Mountain School Division No. 28 and the Association did not embrace similar intent and purpose.

Exhibits 19 and 22 filed in these proceedings are copies of teachers' application forms for the Grievors, Kenneth Sturk and Brock Brown, respectively, for employment in River East School Division No. 9. Mr. Sturk completed such an application on March 30, 1966, stating that he was qualified to teach (in order of preference) physical education and natural sciences (Section 10).

Under Section 12, "Extra-Curricular, Cultural and Community Services Activities", subparagraph (e), Mr. Sturk stated that if accepted on the River East School Division staff, he would be prepared to do his share of direction and supervision of extra-curricular activities. In particular, he would be prepared to help supervise "coaching".

Similarly, Mr. Brown, in filling out his application on May 8, 1990, stated that his subject/grade preferences were: (1) French (10-12); (2) History (10-12); (3) French (7-9). Further, if accepted for employment in River East School Division, he indicated he was prepared to assist in the direction and supervision of the following co-curricular or extra-curricular activities: "debating, newspaper, all sports, everything".

Although other examples might be cited, the totality of this evidence clearly establishes the general recognition that, as stated by O'Sullivan, J.A., in [Snow Lake](#), at page 210:

"...education is much more than merely instructing; it is a process of formation. Teachers are not simply servants of the School Division; they are professional persons who function as role models and as inspirers, as well as providers of information and work skills."

Whereas the teaching of the curriculum is largely dictated by the legislature of Manitoba pursuant to The Education Administration Act and the Public Schools Act, other teachers' duties are determined by the elected Trustees of each School Division, pursuant to The Public Schools Act. The overall effect of such legislation is to provide for a standardized core education throughout the province, while, at the same time, allowing individual communities to meet their perceived needs and desires for the more amorphous requirements of "education".

We conclude, therefore, that teachers do have, if not expressed, then implied contractual duties to perform work assigned to them outside the School Day. However, any such assignments must be fair and reasonable, and relate to the enterprise or function of education. In determining what assignments qualify in the circumstances, as O'Sullivan, J.A., stated in [Snow Lake](#), such matters at the history of

teaching in this province and the practices that have grown up, not only in the schools in these three Divisions, but also elsewhere in the province, should be considered.

The two Grievor teachers, Messrs. Sturk and Brown, employed at Kildonan East Collegiate in the River East School Division, testified as to the nature and extent of their participation in activities outside normal school hours, as did teachers, Gregory Pruden (Stonewall Collegiate) and Scott Kwasnitza (Warren Collegiate), in the Interlake School Division, and Diane Bereford, a teacher at Notre Dame Collegiate (in the Mountain School Division). They testified as to their teaching and administrative assignments, as well as the extra-curricular activities for which they had previously volunteered but to which they had subsequently been assigned by their respective principals. Without getting into all of the details, it should be understood that Mr. Sturk had been employed in the River East School Division since 1966. During the teaching year 1993-94, he was the Head of the Department of Physical Education at Kildonan East Collegiate. I-le testified that, in addition to his normal 8 to 9-hour-day, during 1993-94, he was assigned to coach the Freshman Boys' Volleyball Team. He estimated that this activity took approximately 100 hours during a 6 to 8 week period. Although he had done this for many years on what he thought was a voluntary basis, he objected to doing so in 1993-94, but did carry out that function under protest. This arose because, for the 1993-94 school year, an additional teaching credit was assigned to high school teachers in the River East School Division. This brought the number of credits up from 6 to 7 and in line with other school divisions in the province. Nevertheless, it meant an increase of 110 hours, or approximately 74 minutes per day (assuming that 4 credits were taught in the first semester and 3 credits were taught in the second semester, or vice versa).

Mr. Sturk indicated that, in the prior year, he had been on a leave of absence as a result of a back problem and, having regard to his condition, would "probably not have volunteered" to coach the boys' volleyball team. He had a new course for which to prepare, and 7 to 8 teachers with whom he had to coordinate the health curriculum. Given the increased teaching load, he did not feel that it was fair or reasonable that he be asked to coach the volleyball team in 1993-94. Although he had done so in the past and, indeed, had devoted many hours to such activities, and additional athletic activities as well, for approximately 26 years, he took exception to being "assigned" to that activity.

He explained that, in the past, he considered that he was performing those activities voluntarily and purely by his own choice, but as soon as he was being assigned, he felt that his professionalism was being taken away as a teacher. He stated that, in his opinion, he was paid a salary to teach, and that his participation in extra-curricular activities was above and beyond his teaching duties. At the same time, he acknowledged the intrinsic value of extra-curricular physical activities to students, both as a professional educator and as a parent. He acknowledged that teachers were required to participate as coaches for various teams if such teams are to be fielded and participate in different leagues available to students. Further, he never asked to be relieved of coaching duties due to health reasons. Under all of these circumstances, therefore, was it unfair or unreasonable for Mr. Sturk to be assigned the coaching duties for the Freshman Boys' Volleyball Team in 1993-94?

Some Associations think there are special circumstances for a physical education teacher (page 4 of the [Churchill Arbitration Award](#) [1988]; also see page 14, paragraph 14, of Arbitrator Piercy's Award/Decision in [The Transcona-Springfield School Division No. 12](#) arbitration), suggestive of the position that such coaching duties are part of the job. We are being asked to decide whether, notwithstanding his increased workload (6 to 7 teaching credits), it was unfair or unreasonable that Mr. Sturk be assigned the responsibility of coaching the Freshman Boys' Volleyball Team. Remember, as well, that Mr. Sturk indicated on his initial application for employment with the School Division that he would participate in extra-curricular coaching activities.

Brock Brown, another teacher at Kildonan East Collegiate in the River East School Division, testified that, in addition to his normal teaching subjects amounting to 7 teaching credits, 3 courses in the first

semester and 4 courses in the second semester, which took up 8 to 9 hours Monday through Friday and 3 to 4 hours on Saturday or Sunday, preparing course material and/or correcting assignments, he was assigned to oversee the Students' Association in 1993-94. In the three previous years, he had also overseen the Students' Association, in addition to which he coached field hockey and had been on the Leadership Committee and the Workplace Health and Safety Committee.

Duties associated with the Students' Association included 1 formal meeting each week between September and June. These meetings lasted approximately 1 hour. In addition, there was the occasional Saturday function, such as the UNICEF banquet, as well as contact with teachers and students at various times (between classes, during lunch and after school) regarding the Students' Association. Beyond his regular work week, Mr. Brown estimated that he spent an average of 3 hours per week on Students' Association business, which translated to 120 hours during the school year. He explained that, in the fall of 1993, his wife was pregnant and had a baby in December of that year. Because his wife worked part-time, he desired to devote more of his free time to family duties and, under the circumstances, would not have volunteered to be advisor to the Students' Association in 1993-94 had he not been assigned that responsibility.

Mr. Brown also completed an application for employment wherein he indicated that he would be prepared to participate in "everything" concerning extra-curricular activities. True to his word, he certainly did participate in extra-curricular activities to a great extent. For 1993-94, he was not assigned to coach field hockey, although he was assigned the role as advisor to the Student Council. In the past, his field hockey duties consumed approximately 90 hours of time, in addition to the Students' Association commitment.

Again, the question we are being asked to answer is, under all of the circumstances, was it fair and reasonable that Mr. Brown be assigned the role as an advisor to the Student Council in 1993-94?

Gregory Pruden, who did not file a personal grievance, testified on behalf of the Interlake Association, as a teacher at Stonewall Collegiate. During 1993-94, he taught English at the high school level. Prior to that year, he participated in the extracurricular activities of football and Theatre Club on a voluntary basis. Theatre Club involved attending productions at the Manitoba Theatre Centre in Winnipeg with students from Stonewall Collegiate. Not much time was spent on explaining the extent of his involvement in that activity. However, his football duties as a line coach for the Stonewall Collegiate football team in the Winnipeg High School Football League required 15 'A' to 17 hours per week during the ten-week season, followed by 25 hours after the season, and 30 to 40 hours in August prior to the season beginning, amounting to more than 200 hours, outside of his regular teaching duties. Although he had performed this task voluntarily in the past, in 1993-94, he asked to be assigned it because the School Division had decided to implement Bill 22 whereby School Divisions were provided with the authority to lay off teachers without pay for up to ten days. In the case of the Interlake School Division, four days were invoked, two professional development days and two administrative days, as a result of which the Association decided that its members would not volunteer any longer for extracurricular activities.

Mr. Pruden acknowledged the value to students being able to play on the football team and compete against other schools. In addition to himself, two other teachers were involved with the high school football team, as well as two community volunteers.

It was the imposition of Bill 22 by the School Division that led to the Interlake Association's taking the position that its members would not participate voluntarily in extra-curricular activities, including football, and would ask to be assigned.

Scott Kwasnitze also testified on behalf of the Interlake Association, but did not file a personal grievance. He is employed at Warren Collegiate. Prior to the 1993-94 school year, he was involved in

numerous extra-curricular activities, including volleyball and basketball, intramural competitions, the Awards Committee and the Graduation Committee, all of which he estimates took 250 hours to 300 hours of his time, aside from "normal" teaching duties between September and June. During 1992-93, he taught Mathematics 301, as well as a couple of sections of Mathematics 200, Physical Education 305 to the Grade 12 leadership class, and some physical education classes in the gymnasium. In addition, as Vice-Principal, he had administrative duties that consumed approximately 1/3 of his working day. In 1993-94, he kept a log of the hours he spent, which indicates 110 to 130 hours during a three-month period on volleyball activities alone (Exhibit 25).

Warren Collegiate, by comparison to other high schools, is a relatively small school, having an enrollment of approximately 230 students and approximately 15 full-time teachers. Once the Interlake Association (of which Mr. Kwasnitza was President in 1993) decided that members would no longer volunteer for such activities, an assignment list was circulated (Exhibit 24), and all teachers were assigned to various activities. Although the teachers had the opportunity to select the activity in which they wanted to take part, because of the Association's position, the members refused to do so and, therefore, they were assigned. Aside from whether or not the assignments were reasonable or fair, there was no evidence led to suggest that they were inappropriate. This would apply to all of the previous witnesses as well.

Diane Beresford testified on behalf of the Mountain School Association. She is currently employed by the new French School Division, where she teaches English to Grades 9 through 12 at Notre Dame Collegiate in Notre Dame de Lourdes. In 1993-94, she was employed by the Mountain School Division, where she had been employed for approximately 10 years, always teaching English to Grades 8 through 12, or 9 through 12. As a result of Bill 22, the Mountain School Division decided to close the school for eight days, four professional development days and four administrative days. In prior years, in addition to her regular teaching duties, she had devoted time to the Theatre Club, which took up 1 to 1 'A' hours per week, and a full scale school musical which, in 1992-93, consumed over 100 hours. She described those activities as "a labour of love". However, as a result of the position taken by the Mountain Association because of Bill 22, Ms. Beresford did not volunteer for those activities in 1993-94 and, eventually, was assigned as the supervising teacher for seven hockey games between November 24, 1993 and February 6, 1994, as well as three play-off games. A lot of travel time was involved, all in the evening and, of course, in winter conditions. Her role was to ensure order, appropriate behaviour and safety of participants. As well, her presence was intended to be a monitoring influence over student spectators. Ms. Beresford testified that she had little understanding or appreciation of hockey, and gave the distinct impression that she was certainly not pleased with this assignment. Yet, she did not ask to be re-assigned to another activity. It is to be noted that other teachers (both male and female) were also assigned the same functions for other hockey games.

Ms. Beresford did not file a grievance on her own behalf. Rather, she was produced as a witness on behalf of the Mountain Association to support the Association's position that, firstly, such an assignment was not related to her contractual obligations and, secondly, as an example of an unreasonable assignment by the Mountain School Division. Given that these hockey games were in connection with a hockey league not funded by the School Division, but supported, instead, by the community, and notwithstanding the benefit to those students in the Mountain School Division who participated in this hockey league, **we have no difficulty in concluding that this particular activity and Ms. Beresford's assignment does fall outside any reasonable scope of implied obligations by teachers.** Furthermore, had Ms. Beresford pointed out to her school principal that she was unable to supervise the boys in the locker room, on the bench or on the ice, and that the principal or the School Division had refused to relieve her from that aspect of her responsibility, then, again, this would have been an unreasonable expectation and an inappropriate assignment.

George Wall, the Superintendent of River East School Division No. 9, testified on behalf of the School Divisions that, in his professional experience, both as a teacher and an administrator over a period of some 38 years, there has been constant recognition by teachers that participation in extra-curricular activities has been "part of the turf of being a teacher" and that, generally speaking, teachers participated enthusiastically in those activities.

Indeed, the evidence of the teachers who testified before us indicates that they and their colleagues have, generally speaking, participated extensively and enthusiastically over the years in such activities. However, with the increase in workload and/or decrease in pay as a result of having to teach an additional credit in the case of River East School Division, and Bill 22 in the cases of Interlake and Mountain School Divisions, those same activities in which teachers had been willing to participate above and beyond their "teaching" duties during the School Day, were now being considered by them strictly voluntary and outside the scope of their contractual duties.

What is clear to us, after hearing all of the evidence and reading decisions and awards by courts and arbitration boards dealing with the very issue of whether extra-curricular activities are beyond the scope of teachers' contractual duties or not, is that there is no satisfactory single answer. All parties are in agreement that such activities do enhance the overall education of students. The difficulty, as we see it, however, in these particular grievances is that there is no definition of "extra-curricular" activities referable to teaching duties. We know from various exhibits filed in these proceedings that these activities may be numerous and wide-sweeping. For example, in Exhibit 12, being a letter from the Superintendent of Interlake School Division No. 21 to the Interlake Association members dated September 9, 1993, some of the activities which have been historically offered by that School Division include athletic activities (including intra-school and inter-school leagues, competitions and practices), concerts and festivals (including musical presentations), choral and instrumental groups and practice sessions, preparation for an presentation of dramas, musicals and plays, science and math fairs, art displays, anthology and writing fairs, school newspapers, graduation ceremonies and convocations, yearbook preparation and publication, and "other programs/activities required by the Division to meet the goals of the Mission Statement". This letter goes on to point out that "this is not an exhaustive list but provides an overview of those activities that currently contribute, in a substantial manner, to the achievement of our goals and aims".

Exhibit 34 is a memorandum from the Superintendent of River East School Division No. 9 to high school principals listing "the co-curricular activities" to be provided in the Division's three high schools during the 1993-94 school year as graduation/convocation activities, Student Council activities, yearbook, athletics (coaching/supervising/managing) - volleyball, basketball, track/cross country, badminton, soccer/field hockey, high-light sport (football - hockey), performing arts (band/music activities/concerts, drama) and natural helpers.

Superintendent Wall explained that, in response to the position taken by the teachers with respect to volunteering, an effort was made to distinguish between those activities that were regarded as truly co-curricular/extra-curricular activities, and those that were "a club type" of activity, the latter being accepted as voluntary. Therefore, even the School Divisions are not suggesting that any or all activities which were provided to students prior to these grievances should be regarded as part of the teachers' professional responsibilities.

The evidence presented on behalf of the School Divisions can be summarized in the statement contained in paragraph 2 on page 2 of Exhibit 12 as being that **"the participation of teachers in these programs and activities forms part of the regular duties that teachers are contracted to perform: and "to a large extent (the Division has) been able to implement... by requesting that teachers volunteer to participate or choose to become involved"**.

The dispute before us is akin to that which was before the arbitration board in [The Churchill Local Association NO. 37-3 of The Manitoba Teachers' Society and The School District of Churchill No. 2264](#), another matter with which counsel for both parties are well acquainted, as well as Board member Parkinson, which dealt with issues similar to those before us. The Churchill Association took the position that no extracurricular activities (i.e., sports, social, recreational activities and concerts) could be assigned to a teacher without consent. The School Board, on the other hand, took the position that it could assign those activities and hold the teachers responsible for the performance of them. The arbitration board held for neither party and concluded that extra-curricular activities of the kind described can be, but are not necessarily, part of a teacher's work assignment (page 21). As the arbitration board in Churchill found, we also believe "that teachers can be required to offer what are commonly called extra-curricular activities, but that such requirement must be made in a way that deals with both the issues of fairness and the issues of what the principal duties of the teachers are". (page 24)

Counsel for the School Divisions urges upon us to find that all of these so-called "extracurricular activities" (which, as Superintendent Wall of the River East School Division No. 9 and some of the teachers who testified before us stated, have commonly been offered to students over a long period of time) are 'part of the teachers' duties. Therefore, it matters not whether teachers' participation in those activities was originally voluntary because, **"by course of conduct and of renewal of relationships over a period of time, those services became recognized as part of the obligations of service upon which the relationship (between the teachers and the School Divisions) has developed"**, as was commented upon by [Laskin, C.J.C., in Winnipeg School Division No. 1](#), at page 235. That may be so in regard to those activities which are related to **"the principal objects of the enterprise in which the parties are engaged and which they have agreed to promote under terms both general and specific"** (again, per Laskin, C.J.C., at page 235). However, in the absence of evidence which establishes a clear and unequivocal link to the teachers' professional functions, we are not prepared to hold teachers responsible for any and all extra-curricular activities adopted by School Divisions or high schools without regard to tests of reasonableness and fairness in all of the circumstances.

Absent specific obligations and duties expressly provided by contract or statute, we are only prepared to hold that there are implied obligations on teachers to participate in some activities beyond the normal School Day, but always in the context of reasonableness and fairness, and in relation to the enterprise or function of education.

As O'Sullivan, J.A., stated in [Snow Lake School District](#), at page 211:

"One test of whether an arrangement is reasonable or not is to see if the parties have agreed upon it, for what is agreed will usually be accepted as reasonable."

Counsel for the Divisions argues, of course, that what teachers have done in the past by way of participating in extra-curricular activities, regardless of whether they thought they were doing so voluntarily or not, is, therefore, reasonable.

However, O'Sullivan, J.A., stated that this was only one test of reasonability. It is not decisive or conclusive of the matter. We can not ignore the effect of the unilateral decision of the School Divisions to implement Bill 22 which was that teachers suffered a significant reduction in salary while still required to carry out all of their expected duties. Nor can we disregard the extra workload on teachers in high schools in the River East School Division, notwithstanding that having to teach an additional credit brought their workloads in line with the norm in the province. The combination of these events and, perhaps, a feeling that their professionalism was being diminished, resulted in the grievances before us. At the same time, however, we can not justify the grievances simply because of an exercise in fiscal restraint and/or a normalization of workloads.

Rather, we find ourselves in agreement with Arbitrator Freedman in the arbitration between The Transcona-Springfield School Division No. 12 and The Transcona-Springfield Teachers' Association No. 12 of The Manitoba Teachers' Society, the award being delivered in December, 1989, wherein he stated, at page 56:

"We believe that it is very important for the proper discharge by the Division of its duties, that it be able within reasonable limits and subject to reasonable safeguards to call upon teachers to participate in and supervise extra-curricular activities. We believe it is necessary to define those reasonable limits and we think the most effective measure is quantitative rather than qualitative. What may appear at one place and point in time to be non-instructional may elsewhere and in other circumstances have significant elements of instructional quality to it. We are not in a position to stipulate those extra-curricular activities in which participation is most important. That is for others to determine. We do think that there should be a quantitative cap on mandatory participation, so the limits are maintained at a reasonable level. We fully expect many teachers to continue their involvement, over and above that which may be required of them, on a voluntary basis."

As to what that "quantitative cap" on mandatory participation" should be, we also refer to the criteria set out by Laskin, C.J.C., in Winnipeg School Division No. 1, where he stated, at page 235, that the activities assigned **"must be related to the enterprise and must be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed"**.

What would be "fair" and "reasonable" will be determined by many factors, some of which, for example, are teaching loads, size of student enrollments, size of teaching faculty, participation in administrative or non-teaching functions, particular skill and expertise, and, as well, the overall number of hours a teacher can reasonably be expected to devote to school matters, whether within or outside the normal School Day, week, month or school term. Because of the way in which these grievances came before us, we are unable to determine the number of hours or the specific activities to which teachers should be expected to devote themselves outside the normal School Day as part of their professional and contractual obligations. The evidence we heard certainly described a myriad of activities and a significant number of hours devoted thereto by the teachers who testified. We rather suspect that these witnesses are examples of teachers who are and have been extremely committed to the advancement of students' well-rounded education. On a scale of commitment, ranging from high to low, they would likely be placed at the higher, if not highest, end of such a scale. We heard little or no evidence as to the number of teachers who would be in that category, or in lesser categories, within these three School Divisions.

Consequently, although we are unable to judge whether the River East School Division unreasonably expected Grievors Sturk or Brown to perform the specific assignments which they had previously performed without objection, it is our view, given that these teachers were already committing at least 40 hours per week to their academic/administrative duties, the number of hours these teachers had to devote to those assignments outside the normal School Day was more than their employers could reasonably continue to expect from them. The same applies in regard to the other teachers who testified before us.

School Divisions can not expect teachers to devote an unlimited number of hours to extra-curricular activities outside the School Day. Consideration may have to be given to having more teachers participate in those activities that require such time commitments in order to lessen the loads on all of them. Consideration may also have to be given to providing those teachers who contribute above and beyond the "norm" with a reciprocal benefit such as some days off, extra preparation time or other compensation. We believe that these are matters best left between the parties themselves to negotiate. They should, as have we, be guided by the criteria set out by Laskin, C.J.C., in Winnipeg School Division No. 1 and, perhaps, some of the Collective Agreements in some other School Divisions in Manitoba.

We can not say that because the three School Divisions appointed their teachers to specific extra-curricular activities when those teachers withdrew their services, that, in so doing, the School Divisions contravened the Collective Agreements in existence. However, as stated earlier, the quantity of hours expended by those teachers who testified before us in regard to extra-curricular activities, particularly in those cases where they have full teaching/administrative loads, can not be considered fair and reasonable.

There needs to be some better understanding as to the nature and extent to which School Divisions, on the one hand, can expect teachers to work outside of normal working hours, and, on the other hand, for some form of compensation (not necessarily monetary) as a "quid pro quo" to teachers who may be required to devote more time than other teachers to extra-curricular activities.

It is clearly in the best interests of all concerned - that is, the public interest, as well as the teachers' interests - that teachers not be so burdened with extra-curricular activities that their ability to carry out their instructional duties is undermined. At the same time, it is unimaginable what the school system would be like if there were no extra-curricular activities! Without the participation of teachers, such activities, for the most part, would not be possible, and our public school system, as we know it, would be markedly compromised.

We are not prepared, therefore, to hold that teachers are not required to work outside the School Day, nor that they are not required to participate in extra-curricular activities per se. Rather, as aforementioned, we believe that there are many activities which require teachers' participation outside the so-called School Day. By virtue of their participation in such activities in the past over many, many years and the importance of such activities in fulfilling the overall mandate of the public school system, we believe there are grounds for holding that teachers are required to do so as part of their contractual professional obligations. At the same time, however, we also believe that those implied contractual obligations on the part of teachers do not entitle School Divisions to require teachers to work unlimited hours and participate in unlimited activities which are regarded as "extra-curricular". In this regard, the Association and Grievors have established valid issues which directly affect the employer/employee relationship and workplace conditions. To this end, their grievances do have merit.

We hope that the parties will be able to negotiate the type of extra-curricular activities and the quantification of teachers' participation therein, as well as ways and means to strike a balance such that, in all of the circumstances, the parties consider those arrangements fair and reasonable.

Please note:

If you negotiate into your collective agreement that extracurricular activities are voluntary you are negotiating away your right to assign these duties when/if your teachers withdraw/refuse to do them.

Its a great concern that the withdrawal of these duties could be used by teachers in a job action against the Division/District for any reason whatsoever.

In the situations that brought this matter to arbitration the teachers in River East, Interlake and Mountain School Divisions in fact did refuse to do extra-curricular duties as a result of other issues, not extra-curricular. If the Division in these cases had negotiated that extra-curricular duties were voluntary the teachers would have been

able to successfully withdraw these services, thereby depriving students of these activities.

Divisions/Districts considering the negotiation of extracurricular activities for their collective agreements should discuss the issue with their Labour Relations Consultant.
