

ARBITRATION BULLETIN

Grievance Issue: Parent Teacher Interviews

January 13, 1995

BETWEEN:
MORRIS-MACDONALD TEACHERS' ASSOCIATION NO. 19
-AND-
MORRIS-MACDONALD SCHOOL DIVISION NO. 19

AND BETWEEN:
MOUNTAIN TEACHERS' ASSOCIATION NO. 28
-AND-
MOUNTAIN SCHOOL DIVISION NO. 28

ARBITRATION BOARD

Division Nominee: G.D. Parkinson
Union Nominee: Mark Gabbert
Chairperson: Gavin Wood

APPEARANCES

For the Division R.A. Simpson
For the Union M. Myers, Q.C.

BACKGROUND (taken from the Award)

"The Grievances

Both Teachers' Associations submit grievances on the basis that the School Divisions are estopped from requiring teachers to conduct parent-teacher conferences outside of the instructional day during the term of the Collective Agreement; or that such a requirement be declared "an unreasonable rule and/or policy and/or unreasonable exercise of discretion"; and that the Divisions be required to pay teachers a proper salary for all hours worked in conducting parent-teacher interviews outside of the instructional day."

"The Facts

The parties at the outset verbally presented a set of stipulated facts. The Board was initially advised that there might be some evidence called but ultimately the only evidence presented was by way of the stipulated facts. Those agreed facts follow:

(1) The period involved was the 1993-1994 school year;

(2) During that period both School Divisions and Teachers' Associations were under Collective Agreements (Exhibits 1, 2) effectively running from January 1, 1992 to December 31, 1994;

(3) Grievances were brought by both Associations in the fall of 1993 (Exhibits 3 and 4);

(4) The Public Schools Act, R.S.M. c. P250, by "The School Day Regulation", R.M. 470/88R., provides the Minister of Education with the authority to designate the teaching days for the school year to be counted for the purpose of computing grants (section 6(1)). The regulation further provides:

- ? 1.1 Unless the minister gives specific written approval of other arrangements, the instructional day shall be not less than five and one-half hours including recesses but excluding the midday intermission.
2. Subject to section 1, any school board may, by resolution duly recorded in its minutes, determine the hours of opening and closing, as well as the time and duration of the midday intermission.
10. In each school year the number of days set aside for teacher inservice, parent-teacher conferences, administration

and pupil evaluation in Kindergarten through Grade XII shall not exceed 10 days of which at least 5 shall be used for teacher in -service.

(5) For the school year 1993-94 the teaching days were set at 197 ("Revised Designation", Exhibit 7);

(6) At one time the parent-teacher interviews were carried out before or after the instructional day. But for the past several years in the two School Divisions the interviews have been scheduled during the instructional day, although if a parent could only attend before or after the instructional day, arrangements were made to accommodate the parent. So then for the past several years before the 1993-1994 school year, parent-teacher conferences were scheduled as part of the 10 days provided for under section 10 the School Days Regulation;

(7) The Public Sector Reduced Work Week and Compensation Management Act S.M. 1993 c.21, (hereinafter referred to as "[Bill 22](#)") provided authority to School Divisions to require teachers to take leave "without" pay days. The Act provided for a particular procedure by which these leave without pay days would be designated. And section 8 provided:"

"If a school board implements a reduced work week under this Part, the days or portion of days on which leave without pay is to be taken by teachers:

? (a) shall not exceed a combined total of 10 days in the 12 month period for any one teacher;

(b) shall be days that are set aside for teacher in -service, parent-teacher conferences, administrations and pupil evaluation days in that school division and not other days; and

(c) continue to be counted as teaching days for the purpose of computing grants for the school year.

(8) Pursuant to Bill 22 the Morris -MacDonald and Mountain School Divisions implemented a reduced work week for the 1993-94 school year. Eight days were designated for leave without pay. The two remaining days by section 10 of the School Days Regulation were set aside for administrative purposes and not for parent-teacher conferences:

(9) The procedure provided by Bill 22 for the implementing of a reduced work plan was complied with by both of the School Divisions;

(10) The School Boards for the Divisions advised the teachers that for the 1993-94 school year the parent-teacher meetings would take place outside of the instructional day; and

(11) The Morris -MacDonald Teachers' Association grieved on November 10, 1993 and the Mountain Teachers' Association grieved on October 4, 1993.

Jurisdiction

As previously noted, Counsel for the School Divisions raised a preliminary objection on the ground that the Arbitration Board had no jurisdiction to deal with the issues or remedies sought because there was no foundation within the Collective Agreements. It was emphasized that no specific provision of the Collective Agreements dealt with the nature of the obligation which is the subject matter of the grievances.

In response, counsel for the Associations argued that because the jurisdictional objection was not raised initially (but only at the outset of the hearing) that it had effectively been waived."

"The Arbitration Board is not prepared to accept the argument that simply because an obligation or right is not spelled out under the Collective Agreement that there is no jurisdiction to deal with the grievance. The real issue to determine is whether the Collective Agreements cover the issues raised by the grievance. To decide by way of preliminary objection is to attempt to determine the substantial issue raised between the parties in a preliminary and inappropriate way.

Express Obligation

Argument was presented that the parent-teacher interviews are an express obligation of teachers in Manitoba with interview times being set at the discretion of the School Divisions.

The terms of employment of teachers are set by:

- (1) the provisions of **The Public Schools Act** and its regulations;
- (2) the individual statutory form of contract; and
- (3) the terms of the applicable collective agreement.

Counsel for the School Divisions maintained that while the collective agreements do not expressly deal with parent-teacher conferences that both **The Public Schools Act** and the individual statutory form of contract do. The various provisions pointed out to the Board must be considered.

Section 96(g) of **The Public Schools Act** (headed as "Duties of Teacher") provides:

s.96 Every teacher shall

(g) deliver or cause to be delivered or provide the parent or guardian of each pupil taught by him reports of the pupil at the times and in the manner determined by the school board.

Section 41(1) (i) and (r) of **The Public Schools Act** (headed as "Certain Duties of School Boards") provides:

41(1) Every school board shall...

(i) subject to this Act and the regulations, prescribe the duties that teachers and other personnel are to perform...

(r) determine the times when and the manner in which reports and other information respecting pupils shall be delivered or provided or made available by teachers under section 96.

It was argued that the Act specifically requires reporting and that each school division in Manitoba is given express authority to set the times, and the manner, of that reporting.

Reliance was also placed on section 92(1) of **The Public Schools Act** which provides:

Every Agreement between a school board and a teacher shall be in writing signed by the parties thereto and sealed with the seal of the school board and except in the case of a school board authorized to sue another form of contract approved by the minister shall be in Form 2 of Schedule D."

"With reference to Form 2 of Schedule D, emphasis was placed on paragraphs 2,4 and 7 which provide:

- ? 2. The school board agrees that it will pay the said salary to the teacher in equal consecutive monthly payments of \$___ each, on or before the last teaching day of each month beginning with the ___ day of ___ 19___, in each year during the continuance of this contract:

Provided that if a salary schedule is in force, the school board shall pay the teacher at the rate prevailing from time to time in said schedule or any temporary modification of it.

.....

4. 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, according to the law and regulations in that behalf in effect in the Province of Manitoba, 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 of the said Province.

.....

7. Sections 41, 48 and 96 of The Public Schools Act shall form part of this agreement.

By these statutory form provisions of the individual contract, the School Divisions argued, there is an express incorporation of the obligation to carry out parent-teacher interviews at times and manner to be prescribed.

Mr. Simpson maintained that by the above noted statutory and contractual provisions the School Boards have the right to impose the times of the parent-teacher interviews. Furthermore, it was pointed out that the Collective Agreements do not specifically limit parent-teacher interviews.

On the basis of all of these provisions it was urged that the Board find that the School Divisions have broad discretion as to when teachers can be required to report to parents. And as a result it followed, according to counsel for the School Divisions, that the School Boards acted within and pursuant to their statutory authority and the statutory contractual relationship in requiring parent-teacher interviews to take place outside of the instructional day for the 1993-94 school year.

In response counsel for the Teachers' Association pointed to school divisions being statutory bodies with no inherent power. While the reporting requirement set forth in section 96 (g) was "a given", it was suggested that the section is broad enough to be satisfied by such matters as the periodic issuing of report cards without the section necessarily requiring parent-teacher conferences.

As one would imagine, there was considerable discussion by the Board members on the whole issue of express obligation. The discussions centered on some very fine reading of the sections of **The Public Schools Act** and individual statutory contract. Ultimately the distinction comes back to whether those provisions are mandatory or enabling. After consideration, the legislation must be considered as enabling. Of particular importance in reaching that conclusion is the fact that the legislation does not prevent bargaining as to the times and manner of parent-teacher conferences."

"Counsel for the Teachers' Associations is correct in arguing that while the holding of parent-teacher interviews are an implied obligation under the contract between the teachers and the School Divisions, that the times and scheduling of such conferences are not within the sole discretion of the School Divisions by statute.

Bill 22

There was considerable argument dealing with the School Divisions having utilized Bill 22. It was argued that the School Divisions need not have imposed this particular scheme and that this Arbitration Board could deal with the perceived underlying unfairness of the manner in which Bill 22 was imposed on the teachers.

However, it was stipulated that the procedure provided by Bill 22 for its implementation was followed by both School Divisions. There is no basis to deal with the issue of perceived unfairness of Bill 22.

Implied Obligation

The nature of parent-teacher interviews was considered.

Parent-Teacher conferences are part of the process of teaching. Not surprisingly, then, it was recognized by both counsel that teachers do have an obligation to perform these interviews. As noted extensively above, counsel for the School Division took the position that the obligation was express and mandatory. Counsel for the Teachers' Association recognized the obligation but said that under the teacher-student relationship, there is an implied obligation to provide interviews.

In stating the position of the Teachers' Association on this issue, reliance was placed on the cases of [Winnipeg Teachers' Association No. 1 v. Winnipeg School Division No. 1](#), [1976] 1 W.W.R. 403 (S.C.C.) and [School District of Snow Lake v. Snow Lake Local Association No. 45-4](#) (1987), 46 Man. R. (2d) (C.A.). These cases deal with the supervision of students by teachers at the noon-hour recess."

"The Manitoba Court of Appeal determined that if the parties could not reach agreement on noon-hour supervision that by the implied duty arising from the enterprise of education the school division had the right to impose noon-hour supervision "provided that it does so in a reasonable way".

These two cases have been reviewed in this award because of their relevance to the present issue. Mr. Myers argued based on these decisions that the imposing of parent-teacher interviews outside of the instructional day is unreasonable without additional compensation. In doing so he in part relied on the doctrine of estoppel. In this award, an attempt is being made to keep separate each of the arguments raised by Counsel."

"But at this juncture it is difficult not to summarize the Teachers' Associations argument in estoppel-like terms. Briefly it is that the actions of the School Divisions in implementing Bill 22 have "taken something away" from the teachers which they had - specifically that parent-teacher conferences were held during the school or instructional day. It is urged the School Divisions have acted unreasonably.

The full extent of the interesting position reached by Counsel for the Associations is then revealed: he acknowledged that the assigning of the task of parent-teacher interviews to teachers can be done by school divisions. But he argued that in assigning that task that it cannot be done without limits. And furthermore that under the particular circumstances, those limits have been exceeded with the School Divisions having acted unreasonably.

Mr. Myers went on to request that this Arbitration Board maintain its jurisdiction in declaring that the actions of the School Divisions have been unreasonable. He proposed that in reaching that declaration that the Board also order the parties to negotiate a pay scale for the parent-teacher interviews and that if such a negotiation cannot be successfully concluded that the Board should then reconvene and determine the compensation scheme.

Consistent with his overall position, counsel for the School Division maintained that the Board has no jurisdiction to apply

any reasonableness test derived from the **Winnipeg School Division** and **Snow Lake** decisions. Having said that, however, in the alternative Mr. Simpson emphasized that in both those cases the education process was seen as much more than simply "the instructional day" and that parent-teacher interviews are an integral part of that system and an essential contractual obligation, whether that obligation be express or implied.

Counsel for the School Divisions also argued that what the Teachers' Associations were attempting was to place severe limitation on any obligation outside of the instructional day. In *Winnipeg School Division* and *Snow Lake*, it was said, the Courts recognized a discretion on the part of School Divisions in dealing with implied obligations.

Finally, Mr. Simpson stressed that based on the stipulation before this Board there was no basis to find that the School Divisions had acted unreasonably. The parent-teacher interviews were at one time conducted outside of the instructional day; for the past several years they had been conducted during the instructional day. He urged on that basis that the decision that parent-teacher interviews would be held outside of the instructional day was the result of the discretion allowed to the School Divisions pursuant to Bill 22.

In considering these various arguments, it is necessary first to consider the issue of the jurisdiction of this Board. Based on the decisions of *Winnipeg School Division* and *Snow Lake*, the Board has jurisdiction to deal with these grievances. The implied obligation of parent-teacher interviews are part of the teachers' contractual duty. Thereby they constitute an arbitrable matter. And in turn the grievances are arbitrable."

"The implied obligation of parent-teacher interviews is governed by a standard of reasonableness. However, in considering all of the case material referred to by counsel (as set out above) and all of their arguments, it cannot be found that the actions of the School Divisions were unreasonable under the circumstances of these grievances as set forth in the stipulation.

In reaching this conclusion the key is [Bill 22](#), for if relied upon by a school division, Bill 22 has a very particular effect given the statutory requirements of "The School Day Regulation" R.M. 470/88 R. of The Public Schools Act R.S.M. 1987, c. P250.

By Bill 22, the School Divisions were provided with the authority to lay off teachers without pay for up to ten days. That authority was exercised. In so doing, parent-teacher interviews were moved to a time frame outside of the normal School day. It seems inherent within Bill 22, given "The School Day Regulation", that this might be the result that individual school divisions could resort to. There was considerable disagreement between Counsel for the parties as to what the stipulated facts allowed this Board to conclude concerning the implementation of Bill 22; in particular, as to whether the School Divisions had acted unreasonably in the way in which Bill 22 was utilized in requiring parent-teacher interviews to be conducted outside the instructional day. However, there is no evidence as to what alternatives were open and what might have been otherwise available to the School Divisions.

One is not unmindful that the net effect of the unilateral decision of the School Divisions to implement Bill 22 was that teachers were forced to accept a reduction in salary and yet were still required to work at least a part of those unpaid hours. Again, however, it is difficult to conclude other than that this was seen by the legislators as a possible result, given in particular that section 10 of "The School Day Regulation" requires a certain minimum number of days within the 10 day period to be for teacher in -service.

It was urged that to force a reduction in salary with a requirement that part of the work lost be made up inherently is unreasonable. Under the circumstances, however, the School Divisions cannot be found to be unreasonable in the way in which they have moved to implement Bill 22 and given the authority provided by Bill 22.

Individual grievances could be brought on the basis of disciplinary proceedings against individual teachers who fail to comply with the requirement of the School Divisions that parent-teacher interviews be conducted outside of school days; for example, if the School Divisions imposed onerous time frames as to when the parent-teacher interviews in fact would be conducted. Such is not before this Board, however."

"Estoppel

Counsel for the Teachers' Association took the position as well that the School Divisions were estopped by past conduct from requiring parent-teacher interviews to be held outside of the instructional day during the term of the collective agreements. Parent-teacher interviews for the past several years have been held during the instructional day (save to accommodate particular parents). During the term of the collective agreements that practice was unilaterally changed by the School Divisions. On that basis the Teachers' Associations claim promissory estoppel or estoppel by conduct.

Counsel for the School Boards in response conceded that in appropriate circumstances past conduct can act as an estoppel against the enforcement of a provision of a collective agreement. However, Mr. Simpson and Mr. Myers disagreed on the extent of application of the estoppel doctrine.

In response, the Teachers' Association relied upon the arbitration decision in **The Province of Manitoba v. The Manitoba Government Employees' Association** in which the doctrine of equitable estoppel was set forth in the following terms:

"One might put it in the most basic terms: since the government introduced the subject, then failed to pursue it at the time of negotiation, and let the union believe it was out of the picture, it would be unfair to permit the government to do it during the current agreement (page 40)."

Turning to the element of estoppel, the stipulation at the outset of this arbitration hearing must again be noted. For the past several years the parent-teacher interviews have been conducted during the instructional day. There is no evidence presented that there has been forbearance on the part of the Teachers' Associations. While the cases referenced are not all confined to the Victoria Times doctrine, as a minimum there is a requirement of forbearance.

As well there must be reliance on the part of the Teachers' Association. The only stipulation is that interviews have been conducted during the instructional day for the past several years. There is no evidence of reliance by the Teachers' Associations.

Finally there is no evidence of detriment to the Teachers' Association.

Even in relying upon the broad concept of estoppel by conduct set forth in the award in **The Manitoba Government Employees' Association**, there is no basis in concluding that the necessary ingredients for estoppel have been made out. In particular, there is no basis for a finding that the Teachers' Associations failed to negotiate on parent-teacher interviews as a result of the School Divisions representing that parent-teacher interviews would continue to be held during the instructional day.

DECISION

"In view of the foregoing, the grievances are dismissed."

Please Note:

The arbitration award states that the performance of parent-teacher interviews is an implied duty of teachers as opposed to a mandatory explicitly stated obligation.

As has been found in the past, with other issues that have been deemed as implied duties of teachers such as noon hour supervision, extra-curricular activities, contact time, and other working conditions, the Chair of this arbitration concluded that as an implied duty, the issue of parent-teacher interviews is a proper matter for negotiations and therefore, interest arbitration proceedings.

We are advising school boards to reject the notion that this issue is implied and negotiable. Boards should maintain the position that Sec. 96(g) of the Public Schools Act confers an express mandatory obligation on the teachers to conduct parent teacher interviews at times set at the sole discretion of the school division/district, and therefore, the matter of parent-teacher interviews is non-negotiable.

Section 96(g) Every teacher shall...

(g) deliver or cause to be delivered or provide the parent or guardian of each pupil taught by him reports of the pupil at the times and in the manner determined by the school board;