IN THE MATTER OF: An interest arbitration under *The Education Act, 1995*, R.S.S. Chapter E-0.2 ("the Act").

BETWEEN:

THE TEACHERS' BARGAINING COMMITTEE,
appointed by the Saskatchewan Teachers' Federation (STF) pursuant to section 234(1) of the Act,

- and -

THE GOVERNMENT-TRUSTEE BARGAINING COMMITTEE,
appointed by the Saskatchewan School Boards Association (SSBA) and the Lieutenant Governor in Council pursuant to section 234(2) of the Act.

AWARD

Appearances

For the Teachers' Bargaining Committee: Randy Schmaltz, Committee Chair and Executive Director, Saskatchewan Teachers' Federation (STF); Rex Beaton, STF General Counsel; Patrick Maze, STF President; Brent Keen, STF Vice President; Debbie Ward, STF Executive Member; Murray Wall, Dustin McNichol, Angela Banda, Kevin Schmidt and Ali Fedrau, STF Staff.

For the Government-Trustee Bargaining Committee: David Stack, Q.C. and Amelia Lowe-Muller, Counsel; Doug Forseth, Committee Chair; Dave Spencer, Wayne Back, Rick McKillop, Government Appointed Committee Members; Shawn Davidson, SSBA President; Alana Young, SSBA Vice-President; Darren McKee, Executive Director, SSBA; Tom Fortosky, SSBA; Gerry Craswell, Brian Bettcher, Delores Loewen, Ministry of Education.

Arbitration Board

Arne Peltz, Chair; Carol Moen, appointed by the Teachers' Bargaining Committee; Don Zerr, appointed by the Government-Trustee Bargaining Committee.

Hearing date and place

July 24-27, 2018; Saskatoon, Saskatchewan.

Table of Contents

Introduction

This is a final and binding interest arbitration award to establish the terms of a renewal collective agreement between the Teachers' Bargaining Committee (representing the Teachers of Saskatchewan, hereafter referred to as "the Teachers") and the Government-Trustee Bargaining Committee (representing Boards of Education and the Government of Saskatchewan, hereafter referred to as "the GTBC"). Teacher collective bargaining in Saskatchewan is governed by *The Education Act, 1995* ("the Act") and provides for bi-level negotiation of collective agreements. At the provincial level, contracts cover salaries, allowances, pension, group life insurance, sick leave and other matters. The last collective agreement between the parties (2013/17) expired on August 31, 2017 but continues in effect until revised in accordance with the Act (Article 1.2.1). Local agreements are negotiated by boards of education and local teacher committees, dealing with leaves, substitute teacher salaries, pay periods, special allowances and other matters. The current round of provincial bargaining began in May 2017 and continued until the Teachers requested arbitration on January 24, 2018, in accordance with section 244 of the Act. At the outset, the Teachers had chosen the interest arbitration dispute settlement option under section 239(1) of the Act rather than the conciliation-strike option.

The present board was constituted on February 20, 2018. Although the regime of bi-level bargaining has been in place since 1973 under the Act and predecessor legislation, this is the first time the parties have resorted to arbitration in order to settle a collective agreement. As a result, certain jurisdictional issues have arisen

and must be resolved by the board without the benefit of arbitral precedent. Substantively, both parties have pursued an aggressive approach to bargaining, driven by their respective needs and interests.

The Teachers tabled 24 proposals under a wide variety of headings. They urged acceptance of the satisfaction triangle model in which an agreement addresses psychological needs (respect, support, health), procedural fairness in the workplace and adequate compensation. A collective agreement should be built holistically and comprehensively. In terms of basic wages, the Teachers sought CPI plus 1.0% in a one-year agreement, applied across the salary grid and all allowances. They also urged that the board make an award on assignable hours, given that recent legislative changes mean school boards are free to increase teacher hours of work, whereas salaries remain constrained by the provincial collective agreement. The parties have struggled to reach a consensus on assignable hours, both in past negotiation and in sidebar processes, and they seemed to have come close to agreement in the last round. As stated by STF President Patrick Maze, this was a core objective for Teachers in the present arbitration. Clearly it was also a sensitive issue within the GTBC.

The Teachers said they applied for arbitration reluctantly in the face of an intransigent negotiating partner. In doing so, they ceded the right to take economic action and the ability to fashion their own settlement. The membership (about 13,500 teachers) lost the opportunity to ratify or reject the new agreement.

According to the GTBC, the Teachers' proposals amounted to an additional cost of nearly $33M on a base cost of $1.17B, or a 2.81% increase for the 2017-2018 school year. This was unacceptable and unsustainable in light of the government's serious

fiscal challenges flowing from the recent drop in oil prices. Government revenues fell in the 2014/16 period and while the economic slump has now ended, there has been no recovery as of yet. The GTBC presented 11 proposals and rejected almost all Teacher proposals, both economic and textual.

GTBC's objective was to achieve a saving of 3.5% in total compensation cost. The proposed salary and allowance reduction was 3.67%, which would bring Saskatchewan teachers back in line with the Western Canadian Average, a previously adopted comparator. While maintaining its position at the hearing, the GTBC conceded that the province has not been able to achieve compensation reductions in bargaining elsewhere in the public sector. Government has budgeted a zero increase for teachers in the current fiscal year as a placeholder. As for the use of arbitration, GTBC too expressed great disappointment that ordinary collective bargaining was being displaced. For decades, the parties have reached agreements at the table, despite some difficult rounds. GTBC said that the breadth and cost of the Teachers' package was a misuse of the interest arbitration model, which has always been understood to be a conservative vehicle for resolving labour disputes. Arbitration should not be used to transform longstanding elements of a mature collective agreement.

In sum, the parties entered bargaining very far apart and little agreement was reached at the table. There was not even consensus on what was bargainable. As a result, virtually all the issues were put before the board for determination.

Both parties expressed frustration with the approach taken by the other side. This is hardly uncommon in labour relations. The relationship between teachers, school boards and government is especially complex, involving legislation, policy, public

finance, historical practices and present expectations. Without reciting the detailed grievances aired during the hearing process, it is apparent to the board that relationships are badly in need of repair. An arbitration board is not equipped to solve such problems with an award but nevertheless should strive to help the parties move forward toward a better relationship in future.

This thinking has guided the board in its deliberations. The award should allow the parties to complete the current difficult bargaining round with each achieving at least some basic objectives, to the extent reasonably possible under the circumstances. This flows directly from the replication principle as well as labour relations reality. At the same time, the parties now need a break from the burden and stresses of bargaining, so the board will award a longer duration than was originally contemplated in the tabled proposals. Most importantly, given the vital roles played by teachers, local boards and government in sustaining the public education system, the parties urgently need to work on rebuilding two essential elements of any long term relationship – mutual respect and trust.

Description of the statutory collective bargaining regime

The *Saskatchewan Employment Act*, R.S.S. Chapter S-15.1, does not apply to collective bargaining for teachers. Provincial bargaining committees and their mandates are set out in section 234 of *The Education Act, 1995*, as follows:

> **Bargaining committees to negotiate provincial agreements**
> **234**(1) The federation shall appoint a bargaining committee of four members to have exclusive authority, and be the sole party, to bargain collectively and to execute collective bargaining agreements on behalf of teachers with respect to the matters set out in subsection 237(1).

> (2) The association shall appoint four persons and the Lieutenant Governor in Council shall appoint five persons to a bargaining committee to have exclusive authority, and be the sole party, to bargain collectively and to execute collective bargaining agreements on behalf of boards of education and the conseil scolaire and the Government of Saskatchewan with respect to the matters set out in subsection 237(1).
> (3) Subject to subsection (4), where there is an insufficient number of appointments made pursuant to subsection (1) or (2), the Lieutenant Governor in Council may appoint the number of persons that is required to constitute each committee mentioned in subsection (1) or (2).
> (4) The Lieutenant Governor in Council shall:
> (a) in the case of the committee mentioned in subsection (1), only appoint persons who are teachers; and
> (b) in the case of the committee mentioned in subsection (2), only appoint persons who are members of a board of education or the conseil scolaire.
> (5) A majority of the members of a bargaining committee constitutes a quorum.
> (6) A bargaining committee appointed pursuant to this section may bargain on its own behalf or through one or more representatives who may or may not be members of that committee.

With respect to local negotiations, section 235 of the Act requires each board of education to bargain collectively with its teachers regarding the matters listed in subsection 237(2).

In the present case, considerable attention was paid to section 237 of the Act, which provides for both mandatory and permissive bargaining topics at each level. The GTBC took the position that 15 of the Teachers' proposals were outside the scope of provincial bargaining in the current round because they were non-mandatory and GTBC never agreed to negotiate them, or because they were mandatory *local* bargaining issues and were thereby precluded from being provincially bargained. The GTBC said it listened carefully to all the Teachers' proposals during negotiations but chose not to bargain the non-mandatory items, for a variety of reasons. The Teachers characterized this position as an unreasonably narrow and incorrect reading of the legislation. Without question, the lack of consensus on basic features of the bargaining regime impeded efforts to reach a negotiated resolution.

Section 237 provides as follows (mirror provisions for the conseil scolaire omitted):

Scope of bargaining authority of bargaining committees
237(1)
The bargaining committees mentioned in section 234:

(a) shall bargain collectively with respect to:
(i) salaries of teachers;
(ii) allowances for principals and vice-principals;
(iii) superannuation of teachers;
(iv) group life insurance for teachers;
(v) criteria respecting the designation of persons as not being teachers within the meaning of any provision of this Act pertaining to collective bargaining;
(vi) the duration of a provincial agreement;
(vii) sick leave for teachers;
(viii) any other matters that may be ancillary or incidental to any of the matters mentioned in subclauses (i) to (vii) or that may be necessary to their implementation;

(b) may bargain collectively with respect to matters other than those mentioned in clause (2)(a).

(2) Subject to subsection (4), each board of education and each bargaining committee mentioned in subsection 235(2):

(a) shall bargain collectively with respect to:
(i) sabbatical leave for teachers;
(ii) educational leave for teachers;
(iii) salaries for substitute teachers:
(iv) the duration of a local agreement;
(v) pay periods for teachers;
(vi) special allowances for teachers;

(b) may bargain collectively with respect to matters other than those mentioned in clause (1)(a).

…

(4) Where a board of education and a bargaining committee have agreed to bargain collectively with respect to a matter covered by clause (2)(b) and the matter subsequently becomes part of a provincial agreement, the local agreement with respect

> to that matter applies to the teachers and the board of education notwithstanding the terms of the provincial agreement with respect to that matter.
>
> …
>
> (6) No collective bargaining agreement is to contain terms regulating the selection of teachers, the courses of study, the program of studies or the professional methods and techniques employed by teachers.

In summary, provincial bargaining must be conducted on the enumerated items in section 237(1)(a), which includes matters that may be ancillary or incidental to the items listed in sub-clauses (i) to (vii), or that may be necessary to their implementation. To determine the scope of these latter categories, it would be necessary to apply considered judgment in the context of specific bargaining proposals. This is addressed later in the award as necessary.

In addition to these mandatory matters, the provincial parties may agree to bargain other matters, but not if they are mandatory local bargaining topics listed in section 237(2)(a).

Logically, it follows that some subject matters with a local dimension may still be negotiated into the provincial agreement. There is an overlap zone for discretionary bargaining topics. The provincial parties must stay away from mandatory local topics and the local parties must eschew mandatory provincial topics. That aside, and subject to the list of statutorily barred topics, all parties are free to explore areas of mutual interest. To resolve possible conflicts, section 237(4) provides that a local agreement applies to those teachers and that board in the scenario where the same matter becomes part of the provincial agreement. The Act does not prevent provincial negotiation of matters with a local focus but rather establishes selective paramountcy.

The statute-barred terms are stated in section 237(6): selection of teachers, the courses of study, the program of studies and the professional methods and techniques employed by teachers.

If bargaining is unsuccessful, arbitration may be invoked to settle the dispute as provided by Sections 244 to 250. Notice is provided to the chairperson of the Educational Relations Board. Section 244(3) states as follows:

> (3) Where arbitration of the dispute is requested pursuant to subsection (1), the party requesting the arbitration shall specify in the notice:
>
> (a) the matters with respect to which it requests arbitration and its proposals concerning the award to be made; and
> (b) the name of the person whom it appoints as a member of the arbitration board.

As per section 245(1), the other party is required to respond as follows upon receipt of a request for arbitration:

> **245**(1) Where a notice pursuant to section 244 has been received by the chairperson of the Educational Relations Board, the chairperson shall immediately send a copy to the other party to the dispute with respect to which arbitration is requested.
>
> (2) Within 10 clear days after receipt of the copy of the notice mentioned in subsection (1), the party that received that notice shall notify the chairperson of the Educational Relations Board and the other party to the dispute in writing of:
>
> (a) the name of the person whom it appoints as a member of the arbitration board;
> (b) its proposals regarding the award to be made with respect to matters concerning which the other party has requested arbitration pursuant to section 244; and
> (c) its proposals with respect to any matter, in addition to the matters specified in the notice pursuant to section 244:
>
> (i) that has been a subject of negotiation between the parties during the period before the arbitration was requested;
> (ii) on which the parties were unable to agree; and

> (iii) with respect to which the party providing notice pursuant to this subsection requests arbitration.

The Act provides for the board's terms of reference in section 247, as follows:

> **247**(1) The matters in dispute between the parties to an arbitration that must be specified in the notices pursuant to sections 244 and 245 constitute the terms of reference of the arbitration board.
>
> (2) After considering the matters in dispute together with any other matter that it considers necessarily incidental to the resolution of the matters in dispute, the arbitration board shall make an award with respect to the dispute.
>
> (3) An award must not include provision for matters that the parties have not agreed to negotiate.
>
> (4) A dispute between parties consisting of a disagreement with respect to requesting arbitration proceedings pursuant to this Act is not to be the subject of arbitration proceedings pursuant to this Act.
>
> (5) Where, at any time before an award is made, the parties reach agreement on any matter in dispute, the arbitration board shall not make an award with respect to the matter that has been resolved.

There was discussion during the present hearing about the effect of section 247(3), given that the GTBC said it had legitimately declined to negotiate a number of Teacher proposals, characterizing them as non-mandatory items. For this reason, said the GTBC, none of these matters could be included in the award. The Teachers disagreed and maintained that the items in question were ancillary or incidental to mandatory matters under section 237(a)(viii) or necessary to their implementation, and thereby qualified to be awarded by the board as mandatory bargaining matters. In response to questions from the board, the parties confirmed that if during negotiations, an item had been erroneously identified as non-mandatory, as a result of which it was not negotiated by the parties as it should have been, the board would be authorized to provide for that matter in its award.

The legislative intent behind section 247(3) was to ensure that on discretionary bargaining matters, the board would only make an award where the parties had agreed to bargain those matters but had not been able to reach agreement. In the present case, the live issue is whether the items resisted by GTBC were mandatory, whether by virtue of enumeration under section 237(1)(a) or inclusion as ancillary, incidental or necessary for implementation. GTBC agreed that if the board finds against it on the characterization of any of these matters, there would be authority to make an award, although the board could still decline to do so on the merits.

Section 248(4) requires the board to render its decision within 28 days or such extended time as the parties may agree or the chairperson of the Educational Relations Board may direct. By agreement of the parties, confirmed by the chairperson, time was extended to September 7, 2018.

The board asked the parties their position on whether the board may retain jurisdiction after issuing its award, if necessary. This is a common practice for labour arbitration boards when implementation issues may require the further assistance of the board. The Act makes no specific reference to the point, although sections 249 and 250 state as follows:

> **Referral of certain matters back to arbitration board**
>
> **249**(1) Where it appears to either party to an arbitration that an arbitration board has failed to deal in an award with any matter referred to it, the party may, within seven days from the day on which the arbitration board made the award, refer the matter back to the arbitration board for consideration.
> (2) Where a matter has been referred back to an arbitration board pursuant to subsection (1), the arbitration board shall consider the matter.

> **Power of arbitration board to amend award**
> **250** On application by both parties who were parties to an arbitration before it, an arbitration board may amend, alter or vary any provision of an award made by the arbitration board where it appears to the arbitration board that the amendment, alteration or variation is warranted.

In the Teachers' view, the board would be allowed to retain jurisdiction if it saw fit. Arbitrators have broad powers to retain jurisdiction until they believe the matter before them has been finally and properly concluded. As well, the Act allows time to be extended for the completion of the award. The GTBC stated that the Act was not definitive but the board was not necessarily *functus officio* upon rendering its award. To avoid uncertainty, GTBC suggested the board defer finalizing its final form of award, if necessary. The GTBC was not opposed to an extension of time.

Finally, it is worth noting the relationship between individual teacher employment contracts and the collective bargaining regime under the Act. Section 200 provides for the process of offer, acceptance and confirmation of an employment contract between a teacher and a board of education or the conseil scolaire. Contractual forms are prescribed under *The Education Regulations, 2015*, c. E-0.2 Reg. 24 ("the Regulations") but they are skeletal. The substantive content of a teacher employment contract is established by the Act and the applicable collective agreements:

> **General terms of employment**
>
> **209**(1) The applicable provisions of this Act and of the regulations are deemed to be terms of employment under a contract of employment between a teacher and a board of education or the conseil scolaire.
> (2) Any ancillary conditions of employment are to be given effect where they are incorporated in a collective bargaining agreement.

> **Contracts deemed to include terms and conditions of collective agreements**
>
> **265** All contracts of employment between teachers and boards of education and between teachers and the conseil scolaire are deemed to include all applicable terms and conditions contained in a collective bargaining agreement made between the parties pursuant to this Act and, notwithstanding the termination of a collective bargaining agreement, those terms and conditions shall remain in force for the duration of any contract of employment and until a new or revised collective bargaining agreement is concluded between the parties.

The duties of a teacher are specified in section 231 of the Act. The duties of a principal are stated in section 175 of the Act.

The Teachers put on record the fact that Section 239(1) of the Act was amended in 2017 to specify that interest arbitration may only be invoked with the consent of all parties. This was a significant change to the bargaining regime, but there was no advance consultation with stakeholders at the time. The amendment was not applicable to the present case.

Charter of Rights considerations

During pre-hearing sessions conducted by the board, the Teachers confirmed they would not be raising any issue under section 2(d) of the *Canadian Charter of Rights and Freedoms* (the Charter) as part of their case. In their brief, however, the Teachers stated that they have not waived any Charter rights to meaningful collective bargaining. In their view, the GTBC was obligated to respect constitutionally protected bargaining rights under the Charter. For purposes of the present case, the Teachers submitted that contested provisions of the Act should be interpreted in light of Charter values, which would support a broader scope for mandatory bargaining than the GTBC was prepared to recognize.

The Teachers referenced leading court decisions including *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, [2007] S.C.R. 391; *Attorney General of Ontario v. Fraser*, [2011] S.C.R. 3; *Saskatchewan Federation of Labour v. Saskatchewan*, [2015] S.C.R. 245; *Mounted Police Association of Ontario v. Canada*, [2015] S.C.R. 3; Meredith v. *Attorney General of Canada*, [2015] S.C.R. 125; and *British Columbia Teachers' Federation v. British Columbia*, [2016] S.C.R. 407, reversing 2015 BCCA 184.

Good faith bargaining has been defined as follows (*British Columbia Teachers, supra*, at para. 331-334, BCCA judgment):

> The Supreme Court of Canada described the components of good faith negotiation in *Fraser* at para. 41, as follows: "Section 2(*d*) requires the parties to meet and engage in meaningful dialogue. They must avoid unnecessary delays and make a reasonable effort to arrive at an acceptable contract." In *Health Services* at para. 98 this was described as parties "endeavoring to reach an agreement, engaging in genuine and constructive negotiations, avoiding unjustified delays in negotiation and mutually respecting the commitments entered into, taking into account the results of negotiations in good faith." Parties must be willing to exchange and explain their positions: *Health Services* at para. 101.
>
> … Importantly, although a court does not generally inquire into the content of bargaining positions, in some circumstances, even though a party is participating, "that party's proposals and positions may be 'inflexible and intransigent to the point of endangering the very existence of collective bargaining'": *Health Services* at para. 104, citing *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369 at para. 46. Parties must "honestly strive to find a middle ground between their opposing interests": *Health Services* at para. 101, citing *Royal Oak Mines* at para. 41. …
>
> To summarize, good faith negotiation, from a constitutional perspective, has been described by the Supreme Court of Canada as requiring parties to meet and engage in meaningful dialogue where positions are explained and each party reads, listens to, and considers representations made by the other. Parties' positions must not be inflexible and intransigent, and parties must honestly strive to find a middle ground.

In response, the GTBC insisted that the Teachers be held to their pre-hearing commitment and declined to engage in argument about the effect of the Charter. Throughout this round of bargaining, GTBC insisted it had met the duty to negotiate in good faith as defined by the Charter and otherwise. Any consideration of a Charter argument should be accompanied by the full opportunity to present factual and contextual background specific to the legislative framework in question. The GTBC said it did not do so, relying on the Teachers' stated position at the pre-hearing stage.

Collective bargaining now has a constitutional dimension in Canada and all parties must govern themselves accordingly. However, the board finds it is unnecessary to address Charter issues in the present case. The jurisdictional questions that arise can be determined based on ordinary principles of statutory interpretation.

Interest arbitration principles

The parties did not disagree on basic principles of interest arbitration, although they emphasized different strands from the case law. The Teachers pointed to Canadian labour jurisprudence recognizing that collective bargaining touches on the fundamental question of power relations between employers and employees. Employees exercise their freedom of association to negotiate limits on the employer and improve working conditions. In the public sector, where the employer is also the legislator, workers are especially vulnerable to unilateral action that can dramatically alter employment rights and the scope of collective bargaining. Interest arbitration is an integral part of the bargaining process and has long been used as an alternative to work stoppage during particularly difficult rounds. In such cases, the

replication principle has been accepted as the primary tool in fashioning an arbitrated collective agreement.

The Teachers referred to *Re Beacon Hill Lodges of Canada and Hospital Employees Union* (1985), adopted by the present chair in *Re City of Winnipeg and Winnipeg Police Association* (March 17, 2004, at p. 7):

> A board of arbitration should attempt to replicate the result which would have occurred if the collective bargaining process had not been interrupted by arbitration … Arbitrators are expected to achieve replication through an analysis of objective data from which conclusions are drawn with respect to the terms and conditions of employment prevailing in the relevant labour market for work similar to the work in issue …

In *Re Winnipeg Regional Health Authority and Professional Association of Residents and Interns of Manitoba* (June 25, 2012), again the present board chair wrote as follows about replication (at p. 7):

> The analytical process is theoretical given that, in reality, the parties have failed to agree at the table. Nevertheless, interest arbitrators must consider objective labour market and related data, seeking out reasonable comparators among employee groups performing the same or similar functions, giving appropriate weight to all relevant factors.

On compensation issues, said the Teachers, basic principles have been in place for many decades. The Teachers relied on a series of well-known authorities. In *British Columbia Railway* (1976) (Shime), it was stated: "… if the community needs and demands the public service, then members of the community must bear the necessary cost to provide fair and equitable wages and not expect the employees to subsidize the service by accepting substandard wages." In that decision, Arbitrator Shime outlined four other key criteria in determining public sector compensation: cost of

living, productivity, internal comparisons and external comparisons (in the same industry as well as outside the industry but in similar work).

The Teachers noted that interest arbitrators have consistently rejected "ability to pay" as a factor in public-sector cases: "as long as the employer possesses taxation authority, in theory there can be no inability to pay, merely an unwillingness to exercise the available levying authority to raise the necessary revenue. … The test, then, is the arbitration board's view of what a majority of fair-minded, well-informed taxpayers would consider to be a fair and reasonable award, even if it meant tax increases": *Winnipeg Teachers Association and Winnipeg School Division*, (December 14, 1998), at p. 9-10, issued by the present chair. Also cited on this point was *University of Toronto and University of Toronto Faculty Association* (October 5, 2010) (Teplitsky) at p. 5-6.

In education sector interest arbitration cases, said the Teachers, arbitrators have recognized the importance, complexity and hard work of the teaching profession. They have consistently rejected the argument that the financial burden for funding education should fall disproportionately on teachers: *River East School Division No. 9* (June 24, 1996) (Fox-Decent) at p. 4. At the same time, arbitral precedent recognizes that the economic conditions within which public employees work should also be given due consideration. As held by Arbitrator Scurfield in *Brandon School Division No. 40,* (2000), in a frequently quoted passage:

> Common sense must prevail. … An arbitrator's task is to award a public employee economic benefits which the arbitrator believes that the parties bargaining in good faith should have agreed to. Public sector employees normally reside in the communities where they work. They are part of that community. A reasonable teacher should expect to benefit from its prosperity and share a proportionate share of the hardships which befall the general community. Any objective right-thinking public employee should

> expect to receive wage increases which are related to the prevailing economic circumstances in the province.

Finally, the teachers argued that another guiding principle for interest arbitration is the achievement of a fair and equitable outcome for both parties: *Lord Selkirk School Division* (1994) (Teskey); *Re Kingston General Hospital* (June 12, 1979) (Swan). Market replication is a basic principle but in the public sector, there is no actual free market for employee services. Hence the analysis is artificial, and as stated in *Brandon School Division, supra*, "the point is better made from the opposite perspective, namely, that an arbitrator ought not to impose an agreement that a party acting reasonably would have rejected." The present chair concluded in *Winnipeg School Division, supra*, that "The fundamental object of arbitration is a fair and equitable outcome for both parties. The Board attempts to fashion an award which would most likely represent what the parties could achieve in free collective bargaining."

In its submissions, the GTBC did not refute any of the foregoing principles but emphasized that interest arbitration is a conservative process that respects the existing bargaining relationship: *City of Penticton and Penticton Fire Fighters Association, [2015] B.C.C.A.A.A. No. 75* at para. 65. It is not a means to introduce fundamental changes to a collective agreement. As explained in *Regional Municipality of Halifax and I.A.F.F.*, Local 268 (1998), 71 L.A.C. (4th) 129 (Kuttner) at para. 30:

> … the interest arbitration process takes place within the general climate of the market in much the same way as does the collective bargaining process. But because the parties have forsworn recourse to economic sanction -- a process which is rational in its own terms -- to test the limits of what the market will bear vis-a-vis their particular relationship, an arbitration board must do the same by a process which is likewise rational. Indeed, George Adams, Canada's premier practitioner of the arbitrator's art

> has noted that it is the pre-eminence given to the comparability factor "that makes interest arbitration an inherently conservative process" and this is as it should be, for it is but a substitute for the preferred method of resolving such disputes -- that of free collective bargaining. …

Beyond that, interest arbitration should not be seen as an incentive to either party. There can be a "chilling or corrosive effect" on collective bargaining if parties hesitate to make necessary compromises at the table, knowing that a third party will decide their terms and conditions of employment: *University of Northern British Columbia and University of Northern British Columbia Faculty Association* (2015), (Lanyon), at para. 99, citing the *Yarrow* decision.

During the hearing, the GTBC was clear that it was not relying on an "ability to pay" argument. Nevertheless, the authorities establish that the overall economic climate is fundamentally relevant in a public sector interest arbitration: *Town of Kentville and Kentville Police Association, A.P.A. Local 107*, 2017 CarswellNS 183 at para. 48; *City of Fredericton and I.A.F.F., Local 1053*, 2004 CarswellNB 736 at para. 44. Accepting that public employees should not be expected to subsidize the community by taking substandard wages, neither should they make gains denied to others during poor economic times. The community should not have to subsidize public employees, a point also made in *Brandon School Division, supra*, cited by the Teachers. An interest award should be "sensitive to the prevailing economic climate on the basis that such an award represents what the parties bargaining in good faith should have agreed to" (*Brandon School Division, supra,* at para. 44). The GTBC submitted that the government's financial mandate, while obviously not binding on the arbitration board, "must be given serious consideration … To ignore such mandates would be to potentially put public sector employers and employees at risk" (*University of Northern B.C., supra*, at para. 96.)

In its reply brief, the GTBC indicated that the parties appear to be in agreement over the established principles of interest arbitration. It is the application of these principles that separates the parties. "The GTBC agrees that fair comparators are necessary and that the comparisons must satisfy the generally held perception of fairness" (at para. 27).

Duration of the agreement

The current collective agreement runs from September 1, 2013 to August 31, 2017. Both parties entered collective bargaining in 2017 with proposals for a one-year agreement, which would expire on August 31, 2018. However, they were unable to reach a settlement at the table and the present arbitration board was constituted on February 20, 2018. Given the time necessary for the preparation and exchange of briefs, along with the coordination of diaries for a large number of participants, the arbitration hearing was scheduled for late July 2018. By agreement of the parties, confirmed by the Chairperson of the Educational Relations Board, the time for rendering an award was extended to September 7, 2018. By this date, a renewal one-year collective agreement would already have expired.

Under the Act, negotiations to commence bargaining must be given not later than 100 days prior to expiry of the existing collective agreement: section 238. No notice has been given because the interest arbitration process has been ongoing. The board was concerned that if it awarded a one-year agreement expiring August 31, 2018, there could be a legislative hiatus that might obstruct efforts to resume bargaining. Without question, the parties would be required to re-engage immediately after a difficult bargaining round.

The GTBC maintained its position that a one-year agreement should be awarded. Applying replication theory, it said that this was the duration the parties likely would have chosen, given their original tabled positions. Moreover, it is evident that the parties have a multitude of live issues to contend with, so whatever the outcome of the award, there is a necessity to resume bargaining as quickly as possible. In response to an inquiry from the Board, the Chairperson of the GTBC filed a letter of assurance dated June 18, 2018 stating it would not assert that the statutory timelines and requirements have not been or cannot be met for the next round of bargaining. The GTBC also referred to section 359 of the Act which allows the Minister to extend the time to do a thing prescribed under the Act. The Minister indicated an openness, in consultation with the parties, to making such an order to address any lingering doubt, if necessary. The GTBC reiterated its preference that differences be resolved through the bargaining process as much as possible, rather than by third party intervention.

The Teachers revised their one-year position on duration in light of all the foregoing developments. The new school year will already be underway when the award is issued. Implementation of some items may be complicated or impossible as a result. The Teachers noted that in recent times, the parties have rarely opted for one-year agreements. This is largely due to the increased complexity of issues facing the parties and the time necessary to negotiate settlements. The last six agreements ran as follows: 4 years, 3 years, 3 years, 3 years, 2 years and 2.5 years. Across Canada, multi-year collective agreements are the norm now. British Columbia has a six-year agreement, flowing from unique circumstances, but the other provinces have agreements ranging from two to five years. In the result, at the close of their oral

presentation, the Teachers requested a two-year agreement, or longer, in the discretion of the board.

The board was concerned as the pre-hearing process unfolded that a one-year term might be problematic and therefore invited the parties to supplement their economic filings so that at least two years of data and projections would be on the record. Both parties presented detailed updates as requested with forecasts extending into 2019. The board appreciates the parties' efforts in this regard. As a result, there is an appropriate evidentiary foundation for a two-year award on salaries, allowances and other monetary cost items.

As stated earlier in these reasons, the parties have experienced a difficult bargaining round and relationships have become strained. The board is concerned that an immediate return to collective bargaining, even if potential legal pitfalls could be avoided, would not be in the best interests of the parties. Moreover, there are implementation issues that can best be managed with a longer term agreement. Applying the replication principle in full context, and keeping in mind labour relations realities, the board awards a two-year collective agreement: September 1, 2017 to August 31, 2019.

Salary and allowances

Submissions of the parties

A central question during negotiations and again at the present arbitration hearing was the state of the Saskatchewan economy. The Teachers maintained that by the spring of 2017, the economic health of the province was recovering after the

precipitous drop in oil prices during 2014-2015 period. In the Provincial Budget of 2017, Real GDP growth was projected at 0.8% for 2017, 2.0% for 2018 and 1.9% for 2019. Major Canadian banks issued similar projections. Public revenue had stabilized and there was no justification for demanding wage rollbacks, said the Teachers. To the extent that the government has a financial shortfall at this stage, it is due to a deliberate policy of lowering taxes. In particular, since moving to province-wide mill rates in 2009, there has been a drastic reduction in property tax rates and revenue. With central government funding of education now in place, this has put pressure on the education ministry to secure adequate funds and has also squeezed local school boards. The Teachers asserted that in the 2017 Provincial Budget, overall education funding dropped 6.7%. There was widespread public outrage over the austerity and cuts included in the 2017 Budget, which was evidence that fair-minded taxpayers do not accept the kind of approach proposed for teachers by the GTBC. Subsequently the government reversed a number of the cuts.

The Teachers' primary goal in salary negotiations has always been to maintain teacher purchasing power. This was recognized as a fair and reasonable wage factor in a mediation report issued to the parties by Richard Hornung in July 2011, leading to settlement of the 2010-2013 collective agreement: *Report to the Minister of Labour Relations and Workplace Safety*; July 5, 2011 (the Hornung Report). In that round, professional services were withdrawn for three days and voluntary services were refused for two days. The Teachers therefore argued that it was reasonable to award 1% above the 2016 CPI (All Items) for Saskatchewan in the present case. (CPI was 1.1% on 2016 and 1.7% in 2017, but is projected at 2.0% or higher in 2018.) Historically, the Teachers have settled within one percent of CPI 67% of the time. By contrast, the GTBC demand for a salary reduction of 3.67% is

unprecedented, even during the near-bankruptcy of the 1990's and the global recession in 2008-2009.

In terms of comparators, the Teachers pointed to 2.2% growth in Average Weekly Earnings in Saskatchewan for 2017. Saskatchewan ranks second in Canada for median after-tax income. Thus, teachers reasonably expect to be well paid as hard working and contributing professionals. Compared to teachers across Canada, the GTBC position is extreme and unfounded. Average salary increases for Canadian teachers were 1.28% in 2017, 1.13% in 2018 and 1.10% in 2019. For professional employees bargaining collectively within Saskatchewan (doctors, nurses, residents, police, firefighters, office employees and university professors), the average increase was 1.71% in 2016 and 0.60% in 2017.

The Teachers emphasized that the pattern of current public sector collective agreement wage settlements does not support the GTBC position. Government offered the Saskatchewan Government and General Employees' Union (SGEU) the following increases in a proposed four-year agreement: 0% (2016), 0% (2017), 1% staggered (2018) and 2.0% (2019). The proposal was rejected in a ratification vote and SGEU has now obtained a strike mandate from the membership. A small CUPE bargaining unit at South East Cornerstone Public School Division (Local 4869) bargained against the provincial wage mandate and settled for 1.0% (lump sum, off grid) in 2016 and 1.0% in 2017, totaling a monetary package of 3.32% overall with other benefits.

Saskatchewan has a resource economy but teachers should not be subject to boom and bust fluctuations in salary. Teacher salary structures tend to be relatively stable, as noted by Arbitrator Freedman in *Fort La Bosse School Division* (1987). Teachers

do not get bonuses, as some workers do, when the economy is robust, and should not be hit with cutbacks when conditions temporarily worsen. Overall, Saskatchewan continues to enjoy a very favourable fiscal position, considering debt-GDP ratio, credit rating, projected Real GDP and other measures, said the Teachers.

For its part, the GTBC reiterated the interest arbitration principle that the general economic climate is an important factor. As stated by Arbitrator Scurfield in *Brandon School Division, supra*, "Neither the public purse nor the private purse is inexhaustible." The GTBC's evidence showed that there was a significant drop in provincial finances in 2014/16 and it may take considerable time for a recovery to completely backfill the decline. While the Teachers criticized the government's low-tax policy, in fact there were numerous tax increases totaling 6.4% in 2017/18, without which the deficit would have been far worse. A reasonable, well-informed taxpayer would not accept paying yet more taxes to further increase teacher salaries.

Admittedly there has been improvement in some areas of the economy but a number of sectors are still sluggish. In its updated filing on economic indicators presented to the board, the GTBC asserted that the 2017 slump has ended but the recovery has not yet begun. The economy is in a kind of holding pattern. This has not translated into a level of government revenues that would make the Teachers' wage increase affordable. Revenues are still down 7% over base and this is the reason GTBC was given a mandate for 3.5% in savings on compensation. The 2016/17 deficit exceeded $1B and the projected 2017/18 deficit was $685M, although the actual reported deficit was $303M, still a substantial negative result. The projected deficit for 2018/19 is $304M and a return to surplus ($15M) is not expected until 2019/20.

GTBC stated that funding for schools dropped by $54M or about 1.0% in 2017/18. The number of teacher FTE's fell by about 240. After a long period of rising Average Weekly Earnings in Saskatchewan, inflation-adjusted incomes began to fall in 2016 for the first time. This is a reality faced across the province, not just by teachers.

The GTBC questioned bank forecasts for Saskatchewan GDP cited by the Teachers (1.9% to 2.9% for 2018) and recommended reliance on the Budget Papers, while conceding that all the forecasts are similar. The Budget predicted 1.3% Real GDP growth in 2018. This much was acknowledged by the GTBC during its presentation at the hearing: "We've turned the corner."

The GTBC rejected cost of living as a reliable indicator for replication analysis. On a year to year basis, teacher salary increases have been both above and below inflation. There is no pattern linked to CPI. To the extent that it is relevant, the historical data shows that teacher salaries have outpaced inflation by 12% since 2006. An increase above inflation at the present time is simply unnecessary and unjustifiable. Living costs in Saskatchewan are favourable compared to other parts of Canada and recruitment-retention has not been a problem.

Replication theory suggests that the best objective labour market data will be other employees performing similar work in the same or related markets. As of September 2016, Saskatchewan teachers ranked 3.7% higher than the Western Canadian Average (WCA, average salary of a Class IV teacher in BC, Alberta and Manitoba). The WCA has been recognized by conciliators and the parties themselves as the best comparable for collective bargaining purposes. In an October 2016 collective bargaining document entitled "History and Significant Events", the STF wrote as

follows with respect to the 2011 round: "Adopted western Canadian average of B.C., Alta. and Man,, Class IV minimum and maximum salaries."

The GTBC noted that applying the negative 3.67% salary adjustment would put teachers very close to the WCA for September 2018. Saskatchewan salaries would be 1.2% higher than Manitoba, 23.8% higher than BC and 9.9% lower than Alberta. Teachers would continue to be well paid professionals. In many Saskatchewan communities, such as rural and remote areas, teachers are considered among the highest paid members of the community with superior working conditions. The GTBC did not assert that salaries must move in lock step with the WCA but it remains the most significant comparator for replication purposes.

Thus, contrary to the Teachers' argument, the salary mandate was not unfair or unreasonable, particularly given the fiscal position of the province. The Teachers were not singled out. The government sought to implement the same mandate across all its bargaining units. The GTBC admitted that the public sector settlement pattern has not developed as planned. However, in 2017 most agreements have seen a zero increase in wages. This was the offer to SGEU. Two SaskTel-Unifor related bargaining units rolled over their agreements rather than seek to negotiate wage increases, effectively agreeing to zeros (SecurTek and DirectWest, in both 2017 and 2018). South East Cornerstone-CUPE, a small unit, was not a significant settlement. GTBC told the board that by December 2017, government was assessing the success of its mandate and requested a counter offer from the Teachers, but none was provided.

In reply, the Teachers denied that the WCA has been used historically by the parties for salary settlements. In the 2011 Hornung special mediation process, WCA was

part of the discussion but agreement was only reached when the GTBC accepted an additional market adjustment to improve the purchasing power of the package. There was no agreement to be bound by WCA as a formula in future. The parties entered conciliation in 2015 with Andrew Sims and did not rely on the WCA in reaching agreement: *Conciliation Board Report*; February 10, 2015 ("the Sims Report"). The Teachers characterized the WCA as a tool used for a purpose at a specific point in time, and nothing more.

As for CPI, the record speaks for itself, said the Teachers. Past salary increases have outpaced inflation over the past decade, as the GTBC itself observed, thereby constituting a reliable factor under replication theory. Adopting the GTBC position would roll teachers back to 2008 salary levels when they stood at 94.7% of indexed inflation.

Decision on salaries and allowances

What would have been the result if the parties had been able to complete the collective bargaining process and conclude an agreement on salaries and allowances? The analysis is theoretical, by definition, but the answer is to be sought in objective labour market data. The board has considered all the evidence presented by the parties and has applied the replication principle. The best available comparator is the WCA representing teachers working in B.C., Alberta and Manitoba. It is not, however, a mathematical determinant. Also relevant are current settlement patterns in the Saskatchewan public service. We agree with the GTBC that the general economic climate in Saskatchewan, including the government's fiscal position, is an important factor. So is the cost of living, as argued by the Teachers, because it affects the real value of salaries and allowances, and has been

taken into account by the parties in past bargaining. Finally, an interest award should meet the test of fairness in the particular bargaining context.

Teacher salaries are currently above the WCA but it was not suggested that this *per se* dictates a salary reduction. In 2011, the Hornung Report confirmed the following (at p. 6): "an agreement was ultimately reached that the fair, reasonable and competitive comparators to determine the appropriate valuation of work that teachers provide in the Province of Saskatchewan are the average minimum/maximum salaries paid to Class IV teachers in the Provinces of Manitoba, Alberta and British Columbia (the 'Western Canadian Average')." However, intensive further bargaining took place in that round before a salary settlement was reached. The mediator noted that the Teachers ultimately agreed to the GTBC position (then called the Purchasing Power formula) on the condition that an appropriate market adjustment would be added "to bring teachers to the point where they are paid at, or above, the average of their colleagues in comparator provinces" (at p. 9). The WCA was seen as a reasonable and durable formula but as the mediator acknowledged (at p. 14), a number of adjustments were required to reach an agreement and negotiation around the formula would likely be necessary in future rounds.

In 2015 the parties again utilized dispute-resolution services and as stated in the Sims Report (at p. 11):

> No one seriously disputes that the three provinces used for the "Western Canadian Average" are indeed the best available teacher comparables. It is no secret as to why, in 2015, the formula yields results disappointing for teachers. First, Alberta had the highest salaries of the four provinces, but the framework agreement the ATA and the Government of Alberta negotiated in their last round of bargaining included 0% increases in three out of its four years. Second, British Columbia and the BCTF

> experienced a difficult and highly publicized work stoppage with what teachers in that Province generally viewed as disappointing results. This led to a lower Western Canadian Average than Saskatchewan's teachers might have hoped for. The net, and perhaps the inevitable, result of using an average (despite the undisputed comparability), is that the increases it sometimes yields can fall short of anticipated changes in other important indicators, such as the cost of living index or the average weekly earnings figures.

The Sims conciliation board recommended a four-year agreement with increases of 1.85%, 1.90%, 1.90% and 1.90%. This was justified as favourable compared with settlements in comparable provinces and as much as could be obtained in the current economic climate (at p. 12). The recommendations were accepted by the parties and formed the basis of the next collective agreement. Evidence before the present board showed that if the parties had applied the WCA rigidly in that round, salaries would have been reduced by about 0.25%, not increased. That is, like the present round, Saskatchewan teachers were already being paid salaries above the WCA.

The fact that there was a settlement including salaries at least 2% above WCA indicates that the parties acted upon a series of considerations, such as cost of living and average weekly earnings, not just the WCA. It is apparent from the Sims report that the settlement hewed fairly closely to the government mandate. The GTBC stated to the present board that bargaining was difficult in 2015 and the Teachers would not accept the WCA formula. GTBC added that probably cost of living was a factor. Significantly, government oil revenues were known to be dropping in 2014/15 (at p. 12) and during the Sims conciliation, the GTBC stressed that prosperity can be volatile. It urged wage restraint and likely mitigated the Teachers' demands at the time but the line was not held on WCA. The end result, as might be expected in successful collective bargaining, was a compromise.

In applying replication theory, arbitration boards look closely at bargained results like these for guidance. Thus, in a sense, both parties in the present case were right. The WCA is the best comparator (GTBC position) and the WCA is not a driver of wage settlements (Teachers' position). To replicate the result that reasonably should have been reached by the parties, a variety of relevant factors must be taken into account.

The public sector settlement pattern evidence was sparse. It does not support the GTBC position but neither does it support the Teachers' claim to CPI plus 1.0%. What emerges from the available information is that bargaining parties may be deciding to ride out the current difficult times by staying with the status quo for a period of time, *ie*, zero percent wage increases. The economic outlook is clearly more favourable looking down the road to 2018 and 2019, so it would not be surprising to see positive wage increases begin to reappear around that time. In the Provincial Budget for 2018/19 (at p. 7-8), it was stated that economic growth in Saskatchewan is projected at fourth highest in Canada for 2018 and third highest for 2019. … A number of indicators point to a Saskatchewan economy that is on track."

On this approach to replication, we observe that the government acting reasonably would accept the reality that it cannot, without unacceptable consequences, force public sector units to roll back wages at this time. The Teachers acting reasonably would accept the reality of an economic downturn and forego their goal of inflation protection, focusing on non-monetary issues and simply waiting while the government's fiscal position improves. These are descriptors of reasonable bargaining positions in the current period and they should guide an interest arbitration board in reaching its decision. As the board was completing its deliberations, it was reported that SGEU and the Saskatchewan Liquor and Gaming

Authority concluded an agreement for the period April 2017 to March 2020 with zero wage increases but side-assurances of job security, a major issue in those negotiations.

The Teachers also argued that teacher assigned time has been rising at the school division level while salaries have been set provincially. The board has applied replication principles in coming to its decision on salaries and allowances, but is also cognizant of the award it is making on the subject of assignable hours of work.

Considering all the foregoing, the board awards 0% on September 1, 2017, 0% on September 1, 2018 and 1.0% on August 31, 2019, applicable to salaries and allowances.

The August 31, 2019 increase of 1.0% is intended as part of the collective agreement awarded by the board. The parties will have more information when they meet again in May 2019 to resume bargaining for another agreement and will be able to discuss at that time what adjustments, if any, should be made to salaries and allowances effective September 1, 2019 and later.

Allowances for Principals, Vice-Principals and Assistant Principals

Both parties made proposals to revise aspects of Article 4.

The Teachers sought to raise the vice-principal allowance (Article 4.3) from 50% of the principals' allowance rate to 60%. The board declines this proposal.

Under Article 4.2.2, allowances are calculated based on "Personnel Equivalents" (PE). The Teachers asked that all staff in the school building be counted when the PE calculation is done. All teachers employed in the school are included in the PE and non-teaching personnel, exclusive of custodial and maintenance staff, currently count as 0.25 PE. The board finds the present arrangement to be reasonable and declines to add custodial and maintenance staff to the count.

The GTBC noted that since vice-principals and assistant principals receive a percentage of the principal's allowance, and since their positions are part of the PE count, effectively they count themselves in their own PE. The GTBC proposed language to eliminate this anomaly. The Teachers' opposed the proposal and said it would overly complicate allowance calculations. We agree. The board declines this proposal.

The GTBC proposed to amend Article 4.6 (Protective Provisions), which provides for continuation of a principal's allowance when she or he is transferred to a smaller school with a lower PE count. The protection does not apply if the principal formally requested the transfer or it was a demotion. GTBC said the protective clause raises equity issues if the prior allowance is continued in perpetuity. The working conditions and smaller staff complement may not justify the level of payment provided at larger schools, particularly in rural divisions. GTBC proposed a two-year transition period. The Teachers opposed the change and pointed out that Article 4.6.2 is a red-circle clause, not a permanent protection.

The board finds there is merit to the GTBC proposal but also believes that there should be advance notice of this change. Moreover, affected individuals should have

more time to adjust to the adverse financial effect. The board awards revised GTBC language, adding the following new provision:

> **4.6.2.1** Where a principal is transferred by the employing board of education to another principalship in a school having fewer personnel equivalents than the school from which the principal is transferred, the annual allowance shall be not less than the allowance for which the principal was eligible prior to the transfer, for a maximum of three years. This clause is effective August 31, 2019 and replaces Article 4.6.2 on the effective date.

The board retains jurisdiction with respect to implementation.

Definition of duties

The Teachers proposed that the collective agreement be amended to include the legislated duties of teachers and principals as currently set out in section 231 and section 175 of the Act. As well, the professional duties of teachers employed in positions with added responsibilities should be included in the agreement. In an employment relationship, said the Teachers, it is impossible to separate the duties of a worker from the salary they are paid and the time required to perform those duties. No change in the statutory list of duties was sought but they would be anchored in the agreement to prevent government from making unilateral changes without the consent of the Teachers. Teachers are facing increasing expectations, demands and workload. They are entitled to negotiate reasonable limits on their duties, it was argued.

When the Act was first introduced in the legislature on March 31, 1978, the Minister stated that teachers require some type of job description so that they and their employers know their respective obligations. At that time, the Minister said that the

three options were employer-drafted job descriptions, collectively bargained duties or a legislative enactment. While the government chose to legislate, teacher duties are also a matter of labour relations. Negotiated terms of employment are quite compatible with a legislated list of basic duties. At the table in the current round, the GTBC refused to negotiate this matter, claiming that teacher duties are a non-mandatory item under section 237(1)(a) of the Act. The Teachers rejected this position.

In terms of replication, the Teachers asserted that Saskatchewan is the only jurisdiction in Canada where there are no prescribed limits or parameters for teacher duties in collective agreements. Elsewhere, it is commonplace for teacher duties to be vested in multiple areas of authority including collective agreements. Typical bargained subjects include extra-curricular activities, noon hour supervision, non-teaching duties, staff meetings and preparation time.

In response, the GTBC argued that entrenching duties in the collective agreement would create an unduly rigid structure and interfere with the exercise of teacher professional responsibilities. No evidence was presented to substantiate any actual problems with the placement of duties in the Act. As for practice in other provinces, the Teachers overstated the facts. While there are some references to particular tasks in other collective agreements, nowhere are the full duties embedded in a collective agreement as sought by the Teachers here. In any event, the GTBC maintained that teacher duties are not a mandatory bargaining matter. Since there was no agreement to bargain it, the board has no jurisdiction.

The board declines to award as proposed by the Teachers. On the present record, a case has not been made for intervention by an interest arbitration board. Therefore,

it is not necessary to rule on the GTBC's jurisdictional objection. In future, if specific problems arise or the parties wish to add teacher duties to the agreement, they may address the matter, keeping in mind the possible interrelationship with local agreements.

There was discussion during the hearing about whether or not teachers could grieve in a case where they felt their employment rights as specified by statute were being infringed. The question arose in terms of the duties of a teacher under sections 231 and 175 of the Act, but in the course of the hearing, discussion extended to statutory requirements for contracts of employment and cases of teacher transfer or demotion. After discussion between the parties, assisted by the board, it was agreed that the following provision would be added to Article 16 of the collective agreement:

> **Agreed new clause in Article 16**
>
> A grievance may be filed alleging
>
> (a) violation of the terms and conditions of employment set out in *The Education Act, 1995* or the regulations thereunder, as may be amended from time to time, or in other employment related legislation applicable to teachers, or
>
> (b) that a discretionary decision made with respect to a teacher's employment was made arbitrarily or in bad faith.

Assignable hours of work

Submission of the Teachers

The Teachers proposed that maximum assigned hours of work and days of work should be defined in the collective agreement, with salary recognition for any service beyond the prescribed limits. Assigned teacher time (defined as student

instruction/supervision time plus other assigned time not involving student instruction) would be capped at 985 hours within the school year. The maximum school year would be 197 days.

The proposal was not intended to negate the professional and legal obligation of teachers to meet the duties listed in section 231 of the Act, which necessarily extend beyond assigned teacher time (as defined above) and are carried out by teachers, in their discretion as professionals, when and how they see fit. This point was emphasized by the Teachers during the arbitration hearing and is crucial to the board's understanding of the proposal and its award herein. The overall work of a teacher is not now, and would not in future, be limited to 985 hours or whatever number is fixed for annual hours. There are numerous demands outside the ambit of "assigned teacher time", as defined in the proposal, and the proposal acknowledges and affirms that reality.

Teachers are excluded from the application of standard hours of work and overtime provisions under *The Saskatchewan Employment Act*, Chapter S-15.1: see *The Employment Standards Regulations*, Chapter S-15.1 Reg 5, s.3(5). Numerous studies have documented the nature of teachers' work time and the intensification of teacher workload in recent times. Teachers work nights and weekends, outside of assigned time at school, but they manage their own time autonomously to meet their responsibilities. The report of the Joint Committee on Student and Teacher Time (the Joint Committee) in January 2015, with representation from the STF, the SSBA and the government, included a survey that estimated actual weekly work time of 55.08 hours for the survey group (at p. 75; Praxis Analytics Study). This was intended to be illustrative, not definitive, as the Joint Committee was unable to resolve the quantity of time issue. However, weekly hours in that range equate to an

11-hour day and 2,170 hours for the school year. The Teacher proposal for recognition of 985 hours of assigned teacher time per annum was presented in that context.

Assignable hours of work were not negotiated in the current round because the GTBC said the issue was non-mandatory and it declined to bargain after listening to the Teachers' request to put it on the table. The Teachers insisted that hours of work fall within section 237(1)(a) (viii) as a matter ancillary, incidental or necessary to implementation of salaries and allowances.

In their submission to the board, the Teachers made reference to legislative changes effective January 1, 2013 that generated a major push for defining and limiting assigned time in the collective agreement. Until then, the Act prescribed school instructional hours as five hours per day. Boards and schools could alter or shorten daily hours by up to 30 minutes per day within the prescribed five-hour limit. With ministerial approval, boards could lengthen daily hours by up to 30 minutes per day provided that the total hours did not exceed 985 in the school year. Holidays and vacations were also prescribed. In the result, with a standard school year of 197 days, teachers could normally expect a hard cap of 985 hours of annual instructional time (5 x 197 = 985).

Ostensibly, the Act was changed to give boards greater flexibility and independence. The government was also responding to an Auditor General report that questioned whether existing practices were providing students with the prescribed minimum hours to achieve their high school credits. The locus of ministerial authority was moved to the Regulations from the Act. Now there is a regulatory *minimum* of five hours per day and no legislated maximum. The Teachers said that many school

boards took this opportunity to increase teacher workload and lengthen the school day. According to the Teachers, they attempted to point out the nexus between salary, which is negotiated province-wide, and assigned hours, which were now variable, but there were minimal consultations. The new regime left working teachers vulnerable to unfair employment practices and increased working hours without limits or compensation, said the Teachers.

The Regulations now define student instructional time and school hours as follows:

> **Instructional time**
>
> **25** Instructional time is any time in which pupils of a school are in attendance and under teacher supervision for the purpose of receiving instruction in an educational program, including work experience programs, parent-teacher-pupil conferences, examinations, and other learning activities provided by the board of education or conseil scolaire.
>
> **Non-instructional time**
>
> **26** Non-instructional time is any time:
> (a) when pupils of a school are not in attendance but teachers are present at the school or at another site agreed to by the board of education or conseil scolaire; or
> (b) when teachers are present at the school and pupils of the school are in attendance at school but are not receiving instruction in an educational program.
>
> **School day**
> **27(1)** A school day shall consist of not less than five hours of:
> (a) instructional time;
> (b) non-instructional time; or
> (c) a combination of instructional time and non-instructional time.
>
> (2) Each school day on which instruction is given to pupils must include:
> (a) a recess period of 15 minutes, or break periods amounting to 15 minutes, in each the morning and the afternoon; or
> (b) a recess period or break periods amounting to 30 minutes.
>
> **School year**
> **28(1)** In each school year, every board of education and the conseil scolaire shall provide at least:
> (a) 950 hours of instructional time for grades 1 to 12; and

(b) 475 hours of instructional time for kindergarten.

(2) Subject to subsection (1), a board of education or the conseil scolaire may allow for fewer than five school days in a week.

Notice of school calendar

29 On or before May 1 in each year, every board of education and the conseil scolaire shall notify the minister of, and publish information for employees, trustees, parents and pupils respecting the school calendar for next school year, including holidays, vacation periods, school hours of operation, kindergarten hours of operation, instructional days and non-instructional days.

The Act was amended during the period of the 2010/13 collective agreement. Bargaining for a renewal agreement was extremely difficult and two tentative agreements were defeated in ratification votes. Conciliation was sought and commenced in October 2014. Assignable time was the Teachers' second priority (after salaries) in the 2015 conciliation process leading to the Sims Report. The Joint Committee had already reported but without achieving any basis for resolving assignable hours. The Sims Report recommended forming a Task Force to examine the issues in depth and address maximum teacher time, including the appropriate mechanism for implementing maximum figures. The report indicated without preference that collective agreement terms, legislative solutions, local solutions or a combination of the foregoing were the options for dealing with defined teacher time.

The Sims Report stated (at p. 14):

> Everyone recognizes teachers do much more than instruct students in their classrooms during school hours. They are assigned to do other tasks at other times, and they do much other work to be effective, albeit "off the clock". Defining these differing aspects of a teacher's professional responsibility is essential if collectively bargained terms are used, but precise definitions are elusive. It is true that the pre-2012 legislation defined student hours, but this was, at best, only a rough metaphor for a teacher's working time. Our recommendations build on the parties' best efforts to craft these definitions, but an important part of the Task Force's work, if this approach is accepted, will be to finish the process.

The Sims Report recommended terms of a detailed Letter of Understanding for a Task Force on Teacher Time, which was accepted by the parties and included in the present collective agreement (at p. 40-45, the LOU). The nine-person body would be comprised equally of representatives from STF, SSBA and the government. According to the LOU (at p. 40):

> Provincial teacher collective bargaining yields, among other things, an annual pay rate for full-time teachers and a prorated pay rate for part-time teachers. The parties wish to identify a way of expressing, in clear terms, the expectations of a full-time teacher, and by extension a part-time teacher, in terms of the quantity of time a teacher can be assigned work by their employing school board.
>
> The parties wish to identify an effective mechanism to regulate the quantity of time a teacher can be assigned work generally within the definitions used below. …

The LOU was especially responsive to the fact that local conditions could be relevant to how teacher time should be defined. Two questions to be addressed were the following (at p. 44):

> How can any global statement of the expectations of a teacher be adjusted to accommodate the needs of particular educational situations?
>
> How could/should variations in locally negotiated terms and conditions of employment that affect the availability or allocation of teacher time be integrated into provincially bargained, uniform, provincial salary rates?

Finally, the LOU stated that if the Task Force recommended that the issues be addressed through formal discussion between the parties to the collective agreement, the parties would meet within 60 days of receiving the report to engage in good faith discussion of the appropriate disposition. Moreover, the parties committed to determine how to implement the recommendations during the term of the agreement

(*ie*, by August 31, 2017). In short, the parties viewed the teacher time issue as a matter of priority and urgency.

Andrew Sims was appointed to chair the Task Force. It included senior representation from all three constituencies including the Assistant Deputy Minister of Education and the Vice-President of SSBA, as well as the President of STF. The Task Force met nine times, issued two interim reports as required and in March 2016 released a unanimous 41-page report. In its introduction, the Task Force summarized the issues before it as follows, emphasizing the strong nexus between hours of work and salary:

> Teachers, like most other employees, swap work for pay. School boards, like most other employers, swap pay for work. Often, an employee's pay bears a direct relationship to the hours they work. But professional teaching is a unique form of employment. Teachers devote a great deal of time beyond the classroom: planning, marking, collaborating with others, all for the good of their school and the quality of student education.
>
> Compensation for teachers involves an annual salary detached from a specified workweek. For their salary, and as professionals, teachers deliver classroom instruction during the school year, but they do a lot more than that. Some of it involves assigned non-teaching duties that must be performed at set times and places. Much of it involves self-directed work, which is essential for their teaching, but which can be carried out at times and places they choose.
>
> Until recently, teachers drew comfort that their assigned time was closely related to the school day and the school year, matters set out in legislation. When legislation changed it left some teachers with the feeling that new demands were, or could be, placed on their time without restraint. At much the same time, some school boards found themselves having to carry out their responsibilities to provide quality education, including specified hours of student instruction, with restrained financial resources and without their earlier ability to raise revenue through local taxation.
>
> Due to changes in legislation, some boards chose to lengthen the school day. Some teachers reasoned that longer days should mean higher salaries. This translated into enhanced financial demands during collective bargaining. Such expectations proved difficult to achieve; in the view of the Government-Trustee Bargaining Committee

> there was not, and should not be, any such link between the length of the school day for students and the salaries paid to, and the assigned time of, teachers.
>
> Much time in bargaining was spent, some with the help of a Conciliation Board, in grappling with this issue, which, once all parties set aside their assumptions and simplistic solutions, proved complex and multi-faceted. Few denied that teachers are entitled to experience a reasonable work-life balance and that the demands placed upon them to complete assigned work should be subject to reasonable and ascertainable limits. However, given the self-directed nature of many professional duties, questions emerged. How should the various aspects of their work be defined, just what limits might be appropriate and who should set those limits? These questions had to be considered in the context of diverse demographics and geography, as well as the diversity of school boards and teaching assignments.
>
> A new collective agreement was reached without resolving these questions but recognizing that answers had to be found. This Task Force was given that job. It requires us to answer just how can teachers be assured that the demands on their time will not expand without restraint, to the detriment of their personal lives or their capacity to carry out their self-directed professional responsibilities. It equally requires us to assess, and to state with some clarity, just what can be expected of a teacher, quantitatively, by their employing board in exchange for their salary.
>
> The overarching goal is to strike a fair and respectful balance. A teacher's time is a valuable resource, to be compensated fairly, offered up professionally and used wisely, all for the betterment of Saskatchewan's students.

The Task Force report discussed school board calendaring processes and diversity across the province. Turning to definitions, it reiterated the professional role of teachers and the various duties they perform outside the classroom and the school setting, noting as follows (at p. 18):

> Where the pressure for limitations arises is when assigned time, being a combination of classroom duties and other assigned professional duties, reaches a level that, combined with their essential "take-home work," becomes or appears to become inordinately high. The general sense is that some limit placed upon the amount of assigned work by the day, the week or cumulatively over the year would be appropriate, but initial views differed on what such limits might be. The wish for such limits does not seek to diminish, or have "clocked," the "take-home work" that each teacher undertakes. Quite the contrary, in many respects it seeks limits to the amount of assigned hours precisely so that this other work can be done within a reasonable division between a teacher's total working hours and their non-working hours.

The Task Force developed specific defined terms based on the foregoing conception of teacher time, including the existing legislative framework. The Task Force then concluded that 1,044 hours should be the defined limit on assigned teacher time, explaining as follows (at p. 23):

> The Task Force considered a variety of ways to describe a reasonable limit on assigned teacher time based on the definitions previously set out. It considered options that placed some of those limits in regulations, and options that used only agreement terms. It weighed the possibility of adding a daily limit, but found that too restricting given the special situation of a number of schools with unique scheduling requirements, either now or in the future. These involved diverse issues such as student transportation, the schedules of non-teaching staff, special needs communities, the possibility of four-day weeks with extended hours during those four days, and so on. Ultimately, it concluded that the most flexible and practical cap would be to use a global figure within the school year. Various numbers were discussed as definitions developed, and then reassessed once final recommended definitions were adopted.
>
> The figure of 1,044 hours is informed by the survey of the length of day and teaching days currently in use throughout the province, along with the current experience with negotiated and school board-directed assigned teacher time, recognizing, in both instances, that outliers exist. It is a figure that can be easily pro-rated for less than full-time employment. It was thought this figure was appropriate to avoid any need to reopen some local agreements. Currently, while the school year may be set at no more than 200 days, 197 days is specified. A total assigned hours cap is sufficiently flexible to still apply even if the specified number of days changes. …

Finally, the Task Force carefully reviewed the legislative option for regulating assigned teacher time, the collective agreement option and a hybrid option. It wrote as follows regarding the collective agreement option (at p. 25-26):

> A collective agreement is a form of contract, but it is also an educational tool that school boards, teachers and administrators use in order to understand the parameters within which they operate. It is a guide for operating as well as a contract that, if broken, yields a remedy. This is particularly true of the format within which the Teachers' Bargaining Committee and the Government-Trustee Bargaining Committee have customarily published their collective agreement. In addition to the text of the agreement, they have regularly agreed upon and published a companion document called an Interpretive Bulletin to summarize and clarify the language in the main document. This approach is partly responsible for the very low number of grievances

> and even lower number of arbitrations on the meaning of the Provincial Collective Bargaining Agreement than is experienced in most other jurisdictions. Again, it reinforces the role the agreement plays as a guide to practice, as opposed to simply a remedial tool.
>
> An expressed concern about the collective agreement option is that collective agreement terms, once negotiated, may prove difficult to change or remove. That is true, to the extent such changes require consensus. That said, unless this issue is resolved in a way that is mutually acceptable now, it is certain to re-emerge in collective bargaining again and again, making future agreements more difficult to resolve. It is simply an issue unlikely to disappear. Complex issues, resolved under pressure in the heat of a dispute, rarely receive the detailed attention they need.
>
> A second concern over the collective agreement option is that it might generate a series of individual grievances with individuals alleging non-compliance with the agreed-upon limits or definitions as they apply to the teacher's individual situation. The Task Force's recommendations include provisions to lessen that concern. The overriding purpose of the recommendations advanced is preventative, to provide a common standard that can be used in preparing school calendars that respect the specified limits on assigned teacher time. The definitions are written, as are the explanatory notes, to accommodate unexpected events. The remedy for any individual would be in the form of future time off, rather than damages. The record of the parties dealing effectively with grievances without arbitration is encouraging.

In the end result, the Task Force recommended using the collective agreement option and provided detailed language for inclusion in the agreement (Appendix B), along with explanatory notes suitable for adoption in the Interpretive Bulletin. Speaking to school boards in particular, the Task Force stated (at p. 28):

> The role of school boards is a difficult one. They must provide first-rate education with limited resources and competing calls on those resources they do have. Negotiated limits on assigned time will, at times, require that choices be made, and priorities established as to which uses of assigned time hold the highest priority. The alternative of an unrestrained ability to assign teacher time beyond reasonable limits has the potential to create powerful collective bargaining demands for additional compensation, or to create dissatisfaction that, while ensuring that "assigned time" work is carried out, it is at the expense of the enthusiastic performance of broader professional responsibilities. The Task Force has no wish to see teachers disengage; engagement is an essential feature of successful teaching. No two teachers are the same, and the schools in which they work are each unique. We urge school boards and teachers alike to accept the parameters recommended in this report as reflecting a reasonable balance between their respective interests.

The Task Force urged the parties to move forward expeditiously and to implement its recommendations for the 2016/17 school year. To this end, it suggested the Teachers and the GTBC convene and agree to revise the collective agreement by incorporating the terms of Appendix B.

The government agreed to meet but as it turned out, there was no constituted GTBC in place at the time. The Task Force had contemplated a communication plan to support the release of the report, but due to the April 2016 provincial election, it was not possible to circulate any explanatory information. The Minister was quoted as stating that the Task Force recommendations were a top priority. He said that when the report had been received in the spring of 2016, the ministry was supportive but SSBA, or some of its member boards, raised concerns. He expressed disappointment over the lack of direction from the SSBA but committed to working toward a solution. The Minister also stated that ultimately it was a government decision (Saskatchewan Bulletin; September 7, 2016).

Meanwhile, SSBA had written to the Minister on May 10, 2016 to say that its member boards did not support including teacher time provisions in the collective agreement. The Minister responded to SSBA on June 27, 2016, encouraging further discussion and agreeing to work with the boards as partners in addressing the issue of teacher time. He wrote that he hoped for a resolution before the start of the next round of bargaining. However, no progress was made. The GTBC was not reconstituted until February 2017. When the 2017 bargaining round began, the GTBC refused to negotiate teacher time. Asked about the basis for this position by the present board during the hearing, the GTBC said “there were concerns, we take a team approach.”

The Teachers expressed considerable frustration over what they called the Minister's "empty promises" on the issue of teacher time. They advocated for a cap of 985 hours but acknowledged that an award of 1,044 hours in the collective agreement would be accepted. It was a compromise reached within the Task Force. It would "stop the bleeding." However, they still argued there should be compensation for excess hours, something the Task Force did not recommend.

As for the legal position advanced by the GTBC denying that assigned time was ancillary or incidental to salaries, the Teachers noted that this was directly contrary to the perspective of the Task Force in which both the government and SSBA had participated.

The Teachers presented data showing that there is ongoing growth in student numbers while total teacher FTE's have been reduced due to government underfunding. Saskatchewan is a young province demographically. Over time, local boards will face irresistible pressure to ratchet up teacher workloads. The student-teacher ratio has been rising for the past five years. The literature on work intensification recognizes a growing impact on teacher workload and work-life balance. In a recent STF survey, 70% of teachers said they had insufficient time within the regular work day and work week to complete necessary activities such as lesson planning, assessment and parent contact.

As for comparators in other provinces, the Teachers referred to Alberta where the *School Act* provides that, unless the teacher agrees, a board may not require a teacher to instruct students for more than 1,100 hours in a school year, or for more than 200 days: section 97(2). In Alberta's first provincial collective agreement (2017),

notwithstanding the legislative limits, the parties at the central table agreed to a definition of assignable time and the following contractual limits: 907 hours of instructional time and 1,200 hours of assignable time. The latter includes operational days, instruction, supervision before and after classes as well as recess and lunch, parent teacher meetings, jurisdiction and school directed professional development, staff meetings, time assigned before and after the school day, and "other activities that are specified by the school jurisdiction to occur at a particular time and place within a reasonable work day."

Several Manitoba agreements stipulate the length of the instructional day or limit increases in contact time. The Quebec provincial agreement provides for 32 hours per week during which a teacher must be present, comprised of 27 assigned hours and 5 hours for work of a personal nature related to general duties. The New Brunswick agreement specifies maximum hours of instruction. The Newfoundland and Labrador agreement and the Nova Scotia agreement each have some provisions for school year, holidays, teacher workload and professional time. The Teachers argued that the current proposal is reasonable and supportable based on the Canadian comparators.

It was noted that the 985-hour benchmark is embedded in the present agreement (Article 2.3) as part of the hourly rate calculation for teachers assigned to summer school or night school classes. The denominator is the product of the number of school days in the school year and 5 (197 x 5 = 985). To this extent, it would be consistent with the existing agreement to insert a cap of 985 assignable hours.

Submission of the GTBC on assignable hours of work

The GTBC submitted that this proposal is not a mandatory matter under section 237(1)(a) of the Act and is not ancillary or incidental to any mandatory bargaining item. The mere fact that there is a connection between workload and salaries does not render teacher time a mandatory bargaining topic. Virtually any aspect of employment could be said to be related to salary, which would render the scope provisions in section 237(1) meaningless if the Teachers' reasoning was accepted.

On the merits of the proposal, the GTBC said it was a significant change to the established bargaining regime and was inappropriate for awarding through interest arbitration. Teacher time has never been bargained. Teachers have always been compensated based on an annual salary covering all the duties they provide to the school division. This is consistent with the historic position that teachers are professionals without rigidly defined hours of work. STF has consistently argued that teachers exercise professional autonomy and agency over workload and teacher time matters. They have resisted working by the clock. This proposal is inconsistent with long established practices.

Admittedly, the stakeholders have had extensive discussions on this subject in recent years but it requires further study because of the far-reaching implications throughout the education sector. There could be unintended consequences if the present board imposed a solution. The Task Force itself highlighted the concerns for school boards (at p. 13):

> It became readily apparent that each school board's calendaring development process is crucial to, and profoundly affected by, questions concerning assigned teacher time. Calendaring establishes, in a fairly concrete way, when and how assigned time will be

> employed. It is the process during which most choices between different time allocations have to be made. Calendar development must, with a finite number of available teachers, accommodate all the statutory requirements for the education of students, all locally agreed upon non-instructional assigned time commitments and much of the other work assigned to teachers.

Calendaring and school schedules, determined on the basis of both regulatory provisions and local needs, could be impaired if the proposal is awarded without the full concurrence of all parties. In the last decade, some school boards and local teacher associations have worked to establish alternate school calendars. There is a wish for greater autonomy after a period during which most scheduling was dictated by the Act and the ministry. A province-wide collective agreement clause on assignable hours will have implications for local arrangements.

The Task Force proposals were not accepted by the school boards or the GTBC. In responding, SSBA stated that "a one-size-fits all approach restricts innovation and collaboration and the ability of boards to respond to local and individual situations …". The boards made it plain that government lacks adequate knowledge or understanding of the complexity of school calendars and the implications of choice within the calendar. In an Options Paper submitted by SSBA to the Minister on July 20, 2016, a series of concerns and responses were articulated: a contract clause will be subject to ongoing bargaining and will trigger grievances; teacher time is not a zero-cost item; teachers as professionals should not be punching a clock; boards should be trusted not to put unreasonable demands on their employees; the educational endeavor is too fluid to pick a fixed number of hours; boards need to provide flexibility to teachers.

The SSBA offered three approaches for ministry consideration: status quo, adopt a standard 197-day calendar or move to a standard 40-hour work week for teachers.

SSBA reiterated that boards are the employers and should be left to handle the issue of teacher time, *ie*, status quo. On the other hand, "If Government proceeds and imposes assignable time, boards of education will be left to manage the challenges associated with this decision."

Asked by the present arbitration board whether the Government of Saskatchewan accepted the Task Force recommendations, the GTBC Chair replied that at the time the report was issued, government neither rejected nor accepted it.

During the arbitration hearing, it was put to GTBC that for decades, the ministry refused to extend beyond 985 hours per year and yet local boards always managed to construct their schedules within this limitation. The Task Force raised the hours to 1,044 in recognition of current practice in some districts. In response, the GTBC said that the boards did live within the limits but it created difficulties. No specific evidence was led to show how boards would be unable to carry out their responsibilities if an assigned hours clause was inserted in the agreement. GTBC filed the Regina Board of Education local teacher agreement and cited Articles 16 and 17, which created advisory committees on calendar process and workload. Committees of this type emerged from the Joint Committee on teacher time in 2015. It was suggested that boards and teachers are discussing these matters and working through the issues at the local level. The time is not ripe for a provincial solution.

Finally, the GTBC argued that no evidence has been provided to the present board that teachers are in fact being required to work unreasonable hours under the current regime.

The Teachers' reply on assignable hours of work

The Teachers challenged the statement that government had not accepted the Task Force recommendations. In fact, both government and the Teachers did endorse the recommendations, and only the school trustees did not.

While the GTBC pointed to local advisory committees on calendars and workload, these are no substitute for collectively bargained arrangements. There is no negotiation of calendars. Local boards make the decisions and there is no recourse by way of grievance or otherwise. The ministry's oversight is limited to basic regulatory compliance. It is essential to have a provincial solution and this was what the Task Force recommended after detailed study by all parties.

The Teachers asserted that there would still be no "time clock" if assignable hours were put into the collective agreement. The proposed cap of 985 hours does not include work outside of school time, a point glossed over by the GTBC and the SSBA. As for proof of the problem, the Teachers referred to unilateral increases in teacher time after the new legislation was implemented in 2013. Teacher surveys repeatedly disclose that teachers feel stressed and overwhelmed by the totality and complexity of the demands upon them. The issue of teacher time is a live issue across the country and solutions must be found.

Submissions on the arbitrability of teacher time

The list of mandatory bargaining matters in section 237(1)(a) of the Act does not expressly include hours of work. The Teachers maintained that assignable hours can be awarded by the board because this item "may be ancillary or incidental" to

salaries and allowances, two of the enumerated bargaining topics in sub-section (a). The GTBC disagreed that the words "ancillary or incidental" were sufficiently broad to encompass hours of work, succinctly stating its position as follows (Brief, para. 25):

> The GTBC's position, based on the case law relating to the terms "ancillary" and "incidental", is that it is not sufficient for the proposal to merely be 'connected' in some way to the mandatory bargaining items. Rather, the words 'ancillary' and 'incidental' should be considered in their ordinary sense. Courts have consistently referred to *Black's Law Dictionary* to interpret these words in various contexts. **'**Ancillary' is defined in *Black's Law Dictionary* as "[s]upplementary; subordinate." An ancillary matter does not stand on its own, but rather is necessarily dependent on the primary purpose: *Needham v. Needham* (1964), 43 D.L.R. (2d) 405 (Ont. H.C.) 'Incidental' is defined as "[s]ubordinate to something of greater importance; having a minor role." *Black's Law Dictionary, supra*. Case law indicates that incidental matters are 'usually or naturally associated with or arising out of' other matters. *Canadian National Railway v. Harris*, [1946] S.C.R. 352 at p. 386. Similarly, a matter that is "incidental" does not exist in a vacuum, but derives its essence based on its "subordinate conjunction" with something superior. *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*, 2001 BCCA 469 at para. 8-9. Thus, s. 237(1)(a)(viii) means that the parties are required to collectively bargain in relation to matters that flow from; are supplementary to; or grafted on; meaningfully associated with; or existing as a by-product of the various mandatory bargaining items outlined in s. 237(1)(a).

The GTBC said its interpretation was consistent with the intent of the legislative scheme. Section 247(3) precludes an arbitration award on a matter that the parties have not agreed to negotiate. Aside from the mandatory items in sub-section 237(1)(a), agreement is needed to introduce a new subject into bargaining. As explained by the Minister in 1973 during second reading of the original legislation (Debates and Proceedings (Hansard), March 28, 1973, at p. 1957):

> I should like to point out specifically, a part of the Act that might otherwise be overlooked — the last half of Section 18. This part deals with the scope of the arbitration boards and it excludes from arbitration any item to which both committees have not given consent to negotiate.

> This is a very important clause. It prevents either side from using the arbitration procedure to have new items placed on the bargaining table without agreement. I believe this is a vital section of the Act, especially in a sensitive field such as education. It will protect both the public interest and the integrity of the powers assigned to the bargaining committees.

The GTBC submitted that statutory language must be respected, even if the effect is to narrow the scope of arbitral jurisdiction. In *Re Brandon School Division (Jurisdiction Ruling)*, [2000] M.G.A.D. No. 1 (Scurfield), dealing with new amendments aimed at limiting the areas available for teacher arbitration, the arbitrator held (at para. 21):

> Arbitrators should be loathe to abandon jurisdiction within a labour environment where the right to strike has been replaced by compulsory arbitration. On the other hand, an arbitrator has no right to ignore the plain meaning of legislation. I have already stated that Section 126(2) alters and was intended to alter, the jurisdiction of arbitrators in Manitoba where appointed under the Act. While the Association urged a restrictive interpretation of the legislation in order to avoid a construction which it suggests would result in a significant inequality of bargaining power, an arbitrator has no right to override the clear intention of legislation or avoid the application of its plain meaning.

Similarly, the present chair stated as follows in *Re St. Vital School Division* (2001) with reference to the same statutory provision that was before the board in *Brandon School Division* (at p. 8):

> Matters listed in section 126(2) are excluded from arbitration, and the stated exclusions are to be broadly interpreted with a remedial purpose in mind, namely, preventing arbitrators from imposing new contract clauses in these areas with resulting cost increases to school divisions. …

St. Vital followed direction from the Manitoba Court of Appeal in *The Flin Flon Teachers' Association No. 46 of the Manitoba Teachers' Society v. The Flin Flon*

School Division No. 46, 2000 MBCA 78. The court in *Flin Flon* cited and approved the approach taken by the arbitrator in *Brandon (Jurisdiction Ruling)*.

The GTBC cautioned that if the "ancillary or incidental" category of matters is construed expansively, it would defeat the legislative intent as described above. The Teachers' approach would treat every item related to employment as "ancillary or incidental", rendering the restricted list of mandatory bargaining matters meaningless.

Finally, the GTBC submitted that the Teachers' position was incompatible with bi-level bargaining, a fundamental characteristic of the statutory regime. With such a sweeping meaning given to "ancillary or incidental", either party could pull virtually any workplace item out of local bargaining and onto the provincial table. This could have the absurd result that locally bargained terms and conditions would trump the provincial collective agreement.

In *Swift Current Board of Education, Rural School Division No. 75 v. Bargaining Committee under Education Act* [1986], S.J. 162 (Q.B.), the court reviewed the bi-level structure in a case where a school board tried to force the GTBC of the day to put noon-hour supervision on the provincial table. The teachers in Swift Current refused to do noon hour supervision as demanded. The school board believed that the teacher salary, negotiated provincially, covered all necessary services including noon hour duties, and therefore teachers must supervise at noon. The court considered the role of the GTBC under the Act, holding as follows in the course of refusing to issue a writ of mandamus (at para. 6-7):

> The provincial agreement involved in the present motion deals with the manner of calculating salaries of teachers. This is in line with s. 232(1)(a)(i) of the Act [now s. 237(1)(a)]. The respondent [the GTBC] contends that it does not address the issue of the services to be provided by teachers in return for that salary, including the matter of noon hour supervision.
>
> I find that contention to be well founded. In *The Board of Education and The Swift Current Rural School Division No. 75 of Saskatchewan v. Tedrick*, dated October 10, 1984, unreported, Moore, J. said:
>
> The *Education Act* ... contemplates two levels of bargaining, *i.e.* at the provincial level and at the local level. Without exhaustively setting out the matters which can be bargained at the respective levels suffice to say that matters which are of a province wide interest, such as salaries, are bargained at the provincial level. Matters which are of local interest such as maternity leave, leave to further a teacher's education, are bargained at the local level with the school board concerned and the local teachers' bargaining committee.

The GTBC said that in the present case, as in *Swift Current*, an attempt was being made to force it to act beyond its mandate under the Act. The court in *Swift Current* essentially held that the duty to bargain "salaries of teachers" under sub-section (a)(i) does not require the GTBC to bargain *what teachers do* for the salary. GTBC suggested that neither does the duty extend to bargaining the hours of work expended by teachers to earn their salary.

The Teachers rejected all the foregoing as excessively narrow and urged the board to construe "ancillary or incidental" as enabling language, intended to facilitate successful collective bargaining and workable agreements. The phrase should be given a liberal and generous interpretation. This is especially so because of the legislative history of the sub-section. In the original version of the bi-level bargaining legislation, *The Teacher Collective Bargaining Act, 1973*, mandatory provincial bargaining topics were listed in section 4(1)(a), and sub-section 4(a)(vi) stated as follows: "any other matters *as are* ancillary to or incidental with the foregoing or that may be necessary to their implementation." In the 1978 overhaul

of the legislation, this clause emerged as the current 237(1)(a)(viii), cast in more permissive terms: “any other matters that *may be* ancillary or incidental …”. The Teachers argued that since the intent of the legislature is derived from the language used, the 1978 amendment was clearly intended to facilitate a broader scope of collective bargaining. *The Interpretation Act, 1995*, section 10, directs that every enactment be interpreted as remedial and be given a fair, large and liberal interpretation that best ensures attainment of its objectives.

The Teachers referred to *Miller v. Gibralter General Insurance Co.* (1979), 104 D.L.R. (3d) 143 (Ont. Co. Ct.) and *Assessor of Area #10 – Burnaby/New Westminster v. SCI Canada Ltd.*, 2000 BCCA 217. In *Miller*, the court construed “incidental” uses of property as “side occurrences”. In *Burnaby*, a funeral home sought exemption for its buildings on the basis that they were “incidental or ancillary” to its cemetery lands. The Assessment Appeal Board found as a fact that all the buildings on the property were part of the integrated operation of the cemetery, and thereby exempt. The court agreed and wrote as follows (at para. 8-10, 13):

> Mr. Justice Holmes decided that there is "a significant relationship" between funeral and cemetery services; ... Mr. Justice Holmes relied also on *Canadian National Railway v. Harris*, [1946] 2 D.L.R. 545 (S.C.C.) for the conclusion that a building or use does not have to be necessary for the functional operation of another building or use in order for it to be incidental to the other building or use. In that case, at p. 574, Mr. Justice Estey said that "the word 'necessarily' further limits the word 'incidental'". Mr. Justice Holmes also relied on the Concise Oxford Dictionary which defines "incidental" as casual, not essential; and "ancillary" as subservient, subordinate. I add, parenthetically, that the Oxford Dictionary, in its full version, defines "incidental" as "occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part." Mr. Justice Holmes also observed that the definition of "incidental" in Black's Law Dictionary seemed to be governed by the circumstances of the case from which it was taken, namely *Davis v. Pine Mountain Lumber Co.* 273 Cal. App.(2d) 825 (1969). Black's Law Dictionary provides the following definition of "incidental":

> Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose.

Black's provides the following definition of "ancillary":

> Aiding; attendant upon; describing a proceeding attendant upon or which aids another proceeding considered as principal. Auxiliary or subordinate.

I agree with the decision of Mr. Justice Holmes and with his reasons. …

My first additional point is that it is common place throughout legal usage to describe something as "necessarily incidental" to something else. That usage reveals the meaning of "incidental" when not qualified by the word "necessarily". It means something which may be expected to occur in fortuitous or intended subordinate conjunction with something else of which it forms no essential part. When the word "necessary" is added it means that the functioning of the principal operation can not, in itself, produce the ultimate result; the principal operation represents only a completed stage in the process to the ultimate result; and the incidental subordinate operation is needed to produce the ultimate result. …

My fourth additional point is that it is an important finding of fact by the majority of the Assessment Appeal Board that all of the buildings on the properties were part of the integrated operation of the cemeteries. That integration leads to the conclusion that the buildings are incidental or ancillary to the use of the land as a place of interment.

Applying these principles to the present case, the Teachers argued that a teacher's salary is the "primary" matter, but incidental to this matter is the amount of time a teacher is deployed and must work in order to earn that salary. The connection between pay and hours of work is well established in employment relations and arbitral law. It is also explicit in the remuneration clauses currently contained in Article 2 of the collective agreement for summer, night school or additional service. As the court in *Burnaby* also explained, it is noteworthy that the legislature did not choose the words "necessarily incidental", which connotes a closer connection. Thus, a salary can be paid without "necessarily" defining work time, but there is an integrated relationship between the two concepts.

This point has been repeatedly recognized in arbitration decisions, said the Teachers. They cited *Transcona-Springfield School Division No. 12* (December 13, 1989) (Freedman); *River East School Division* (June 24, 1996) (Fox-Decent); and *Winnipeg School Division* (December 14, 1998), where the present chair wrote (at p. 31):

> Aside from the salary issue, the question of workload occupied more time and attention during the current arbitration hearing than any other issue. This is understandable, since the two most fundamental provisions of any employment contract are pay and hours of work. In professional employee bargaining, of course, as compared to industrial plants, the overall workload cannot be precisely quantified, nor would it be desirable for either party to do so. …
>
> Notwithstanding the difficulties in defining work time for professional employees, I believe that there must be a workable clause in the collective agreement on this subject, recognizing that the Division must have some reasonable flexibility and that teachers must have some benchmark for assessing perceived unreasonable growth in their workload.

The Teachers emphasized the observation made in *River East* by Arbitrator Fox-Decent in response to the school board's opposition to a workload clause in that case (at p. 8): "Flexibility is desirable, but in labour relations it is rare to permit one side to unilaterally move the goal posts."

The Teachers distinguished the result in *Flin Flon School Division, Brandon School Division* and *St. Vital School Division, supra*, cited by the GTBC on statutory restrictions to bargaining. In the Manitoba legislation at that time, certain items were expressly excluded (assignment and transfers, evaluation, class size, scheduling of breaks), much like section 237(6) of the Act (selection of teachers, courses of study, professional teaching methods and techniques). Otherwise, terms and conditions of employment were open for bargaining and arbitration, as held by the court in *Flin Flon*, at para. 20. The Teachers said that Arbitrator Scurfield's approach in *Brandon*

actually supports their position (at para. 17-19):

> Absent the express exclusion of jurisdiction, arbitrators have assumed jurisdiction over all matters which might properly be construed as working conditions or even hours of work as well as issues pertaining to salaries and benefits. This assumption of jurisdiction has been considered by the Courts and they have been quite liberal in determining what can be arbitrated under this heading. This is perhaps because they recognize that the Association has given up its right to strike in exchange for arbitration.
>
> For example, in *Dauphin Ochre School Area No. 1 v. Dauphin Ochre Division Association No.33 of Manitoba Teachers' Society*, [1971] 4 W.W.R. 138, (Man. C.A.) Freedman, C.J.M., in writing for the Court, concluded that a Board of Arbitration had jurisdiction to make an award regarding the payment of insurance premiums for a salary continuance. The Court said:
>
> > A sickness and accident insurance plan is by no means a novel or unheard of thing in arrangements between employers and employees. Indeed, one may safely assert the view that such plans are being encountered with more and more frequency in a modern society concerned about the welfare of the individual. But whether widespread or not, such a plan by its nature concerns or relates to terms or conditions of employment. As such it falls, if not expressly, at least impliedly within the scope of the powers vested in the parties under the Act.
>
> Further, Justice Wright held in Rolling River School Division No. 39 v. Rolling River Division Association No. 39 (1979), 3 Man.R. (2d) 7 (Q.B.), at page 11:
>
> > If a provision in the statute can be interpreted properly to mean the legislature had chosen to deal fully with the terms or conditions of employment of teachers in a specific area, then it is not open to the parties to engage in the collective bargaining process in that area. But if that interpretation cannot be made, then there should be no impediment to collective bargaining, so long as the negotiations do relate to terms or conditions of employment of teachers.

The Teachers submitted that each contested proposal must be individually assessed to determine whether it was a mandatory bargaining item in accordance with section 237(1)(a). Given the nexus between pay and hours of work, the Teachers said assignable time was clearly bargainable, and the board is entitled to make an award on this matter.

Decision on arbitrability of assignable hours of work

The board affirms its obligation to respect the collective bargaining regime enacted by the legislature, which includes a demarcation in section 237(1) between matters which must be bargained by the parties and matters which *may* be bargained if both sides choose to do so. Leaving aside potential Charter considerations, the scope of mandatory bargaining is a policy choice open to the legislature and we agree that an unduly expansive reading of the words "ancillary or incidental" could undermine the legislative intent, as the GTBC argued. Not every aspect of the employment relationship is ancillary or incidental to salaries.

The words "ancillary or incidental" should be interpreted in their ordinary sense, keeping in mind the statutory context. The parties cited a series of authorities and definitions which were largely harmonious. As the GTBC stated in summary, the words encompass "matters that flow from; are supplementary to; or grafted on; meaningfully associated with; or existing as a by-product of the various mandatory bargaining items outlined in s. 237(1)(a)." In the board's view, the topic "assignable hours" is meaningfully associated with or supplementary to a teacher's salary. The two matters are closely related for teachers and for employees in general. As the Task Force said, teachers swap work for pay. School boards swap pay for work. The parties recognized the nexus between salaries and work in the LOU when they stated as follows:

> Provincial teacher collective bargaining yields, among other things, an annual pay rate for full-time teachers and a prorated pay rate for part-time teachers. The parties wish to identify a way of expressing, in clear terms, the expectations of a full-time teacher, and by extension a part-time teacher, in terms of the quantity of time a teacher can be assigned work by their employing school board.

> The parties wish to identify an effective mechanism to regulate the quantity of time a teacher can be assigned work …

Similarly, the Task Force framed the issue before it in these terms: "what can be expected of a teacher, quantitatively, by their employing board in exchange for their salary" (at p. 1).

In *Burnaby, supra*, the court held that because the funeral home in question was part of an integrated operation with tax-exempt cemetery lands, the building was ancillary or incidental under the words of the assessment statute. There was "a significant relationship" between funeral and cemetery services (para. 8). "That integration leads to the conclusion that the buildings are incidental or ancillary to the use of the land as a place of interment" (para. 13). The court took care to distinguish the meaning of the common legal phrase "necessarily incidental" (para. 10). Adding the word "necessarily" means that two operations cannot function without each other. But when *not* qualified by the word "necessarily", the word "incidental" refers to something which may be expected to occur in "conjunction with something else of which it forms no essential part." As the Teachers argued, salary can be paid without "necessarily" defining work time, but there is an integrated relationship between the two concepts. The board agrees.

The court in *Burnaby* cited and followed *Canadian National Railway, supra* (*CNR*), a decision of the Supreme Court of Canada. Under a shipping contract, the owner of the goods accepted the risks "necessarily incidental to transportation." The court noted the distinction between "incidental" and "necessarily incidental". "That which is incidental is something which is usually or naturally associated with or arising out of the work of transportation" (at p. 386). Both *CNR* and *Burnaby* support a conclusion that assignable hours are ancillary or incidental to salaries because of the

close association between the two topics in an employment relationship. The Teachers' arbitral authorities underline the point. As stated in *Winnipeg School Division, supra*, "the two most fundamental provisions of any employment contract are pay and hours of work." Normally the parties negotiate a mutually acceptable balance between pay and hours.

Given the foregoing, it is not necessary to consider the Teachers' submission based on the 1978 amendments to the Act substituting apparently broader language: "*may be* ancillary or incidental" instead of "*are* ancillary .. or incidental".

The *Swift Current* decision referenced by the GTBC is instructive with regard to the bi-level bargaining regime and held that the GTBC could not be forced to address the services teachers must provide to a local board. Except to say that the GTBC deals with "matters which are of a province wide interest", the court left untouched whether a limit on teacher hours of work could be bargained as a provincial mandatory matter.

The GTBC argued that absurdities could result if locally bargained terms and conditions trumped the provincial collective agreement. It is not clear that this would result from the bargaining of assignable hours at the provincial table. Local discretionary bargaining is not permitted with respect to mandatory provincial matters. Whether there could still be a conflict depends on the specific circumstances. However, the board acknowledges that any bi-level regime will have some potential problems of this nature and is confident they can be resolved in accordance with the Act by the parties' continuing best efforts.

The line of authority emanating from the Manitoba legislative amendments of the late 1990's, cited extensively by both parties, is useful for general principles but does not directly assist in the present case. That regime also differs in that Manitoba teachers have no right to strike. Arbitration is the substitute process when parties reach impasse. Still, to be clear, the board reaffirms that a statutory restriction on bargaining or arbitration must be upheld. To the extent that there is no bar, however, the comment in *Brandon (Jurisdiction Ruling)* applies (at para. 17): "Absent the express exclusion of jurisdiction, arbitrators have assumed jurisdiction over all matters which might properly be construed as working conditions or even hours of work as well as issues pertaining to salaries and benefits."

The fact that the Teachers and the GTBC have not previously bargained hours of work is not logically relevant to the interpretation of section 237(1)(a)(viii). As both parties argued, the board must interpret the meaning of "ancillary or incidental" and apply the will of the legislature. We find that the Teachers' proposal for assignable hours was ancillary or incidental to salaries and allowances, and therefore it qualified as a matter the parties were required to bargain collectively. Regrettably there was no bargaining on this issue. The parties needed a ruling and now they have one. It follows that the board has authority to make an award on assignable hours.

Decision on assignable hours of work

The board has given careful consideration to the GTBC argument that the assignable hours of work proposal, with obviously significant operational implications, should not be awarded at this time, given the conservatism principle that has long been accepted in interest arbitration. We agree that generally speaking, interest arbitration is not a vehicle for introducing fundamental changes to an existing bargaining

relationship. Normally, the conservatism objection would succeed and the parties would be encouraged to return to the bargaining table for further discussion in search of better understandings and hopefully an eventual consensus. However, there are unique and exceptional facts in this case.

The present parties have expressed a strong wish to address and resolve the question of limits on teacher assigned time. Without repeating the chronology of events and the terms of the LOU, it is clear the parties mutually regarded the matter as pressing and important. They saw the nexus between negotiated salaries and hours of work. They appreciated that left unresolved, the assignable hours issue might rear up again and again, becoming an obstacle to successful collective bargaining.

The relevant stakeholders, albeit not being identical with the statutory bargaining parties, convened as the Task Force and studied the matter intensively. They concluded their deliberations with a unanimous recommendation to add language on assignable hours to the collective agreement. They did not merely cobble together a broad statement of principle requiring detailed further work. Rather, the Task Force produced fully formed language and explanatory notes, ready to be inserted directly into the collective agreement and the accompanying Interpretive Bulletin. In these circumstances, the usual hazards of awarding a substantive new operational provision are mitigated, and the Teachers' proposal should be considered on its merits.

Much was said about teacher professionalism and the fact that teachers do not work on the clock. This topic was explored at length by the Task Force and we accept its assessment of the issue. A negotiated limit can be put on assignable hours of teacher

work, as defined, while still recognizing that professionalism requires teachers to perform the rest of their duties autonomously.

It was argued that the Teachers failed to prove there is any problem in actual fact. The board does not agree. It was undisputed on the evidence that since the new legislation, some local boards have unilaterally increased hours of work. More importantly, in an environment of scarce resources where boards have lost the ability to raise their own revenues, it seems inevitable that there will be pressure to demand more teacher work for the same price. This is not intended as a pejorative comment, since it would be an entirely rational response by school boards that take their duty to students seriously. Still, it is a basic principle of employment relations that there must be a fair and reasonable balance between the interests of employers and employees. In a collective bargaining regime, balance is achieved by encouraging the respective parties to negotiate in good faith and resolve their differences. This laudable objective can hardly be achieved if one party is free to impose its will over the other party.

Does the replication principle support the Teachers' proposal? The comparators from across Canada are somewhat mixed but do provide support for the notion of a contractual limit on hours of work. The more compelling feature of the present case is the work done by the parties themselves to develop a resolution around teacher time. As we stated earlier in reviewing the replication principle, the analysis is theoretical given that, in reality, the parties have failed to agree at the table. Here the situation is further complicated by the fact that government supported the Task Force proposal, some trustees had their doubts and the GTBC was not extant, so the formal negotiation that was contemplated by the parties in the LOU did not occur when it was intended.

It must also be presumed for purposes of the analysis that the parties properly appreciated their obligation to bargain assignable hours, whereas in fact we have concluded that the GTBC erred in this regard once collective bargaining began in 2017 . Ultimately, the question is whether the parties, acting reasonably at the table, would have reached agreement on the proposed clause.

The board finds it likely that the parties, acting reasonably, would have reached agreement to adopt the Task Force terms, if the bargaining process had not been interrupted by impasse and the present arbitration proceedings had not been necessitated. The Task Force participants tackled a difficult, complex subject and emerged with a consensus recommendation that, in their view, fairly accommodated the interests of all parties. It was a compromise. This is the definition of a reasonable collective bargaining outcome and for that reason the board accepts it under replication analysis.

The board therefore awards the terms of Appendix B from the Task Force report, effective August 31, 2019. The board retains jurisdiction to hear from the parties if there are demonstrable and significant implementation issues that will likely result from the language as awarded. Either party may apply to the board by not later than January 15, 2019 to seek clarification or assistance with implementation, and the board will make a decision by not later than February 15, 2019, if possible.

The board is also prepared, if requested by the parties, to incorporate the Task Force's explanatory notes into the agreement, in such form and manner as the parties may agree or the board may direct. Jurisdiction is retained for this purpose.

The following terms are awarded. The parties may adopt the Memorandum format as below or such other format as they see fit in finalizing the new collective agreement.

MEMORANDUM OF AGREEMENT
Re: Teacher Assigned Time

The parties to this memorandum agree that effective with the commencement of the 2019-20 school year, the following definitions shall further define the terms of employment for teachers with respect to the issue of teacher time.

1. A teacher's time falls within one of the following three categories:
   (a) Assigned teacher time.
   (b) Time spent carrying on the teacher's professional responsibilities as a teacher beyond their assigned teacher time.
   (c) Voluntary time spent on extracurricular activities and similar matters of benefit to the educational system and students, but extending beyond what the teacher's professional activities require them to do.
2. Assigned teacher time consists of the total of assigned teacher time for direct student instruction and assigned teacher time not involving direct student instruction.
3. Assigned teacher time for direct student instruction will customarily take place during the school day as defined in *The Education Regulations, 2015*, but need not encompass the entire school day thus defined, and may extend beyond the school day.

Assigned Teacher Time

4. (a) In order to provide for the instruction of students and to administer schools and the programs they offer, the school or the employing school board or conseil scolaire will assign teachers to attend to teaching duties at designated times and places subject to any negotiated or contractual limits.
   (b) Assigned time occurs within a school year as defined by section 163 of *The Education Act, 1995*, RSS c. E-0.2 and the regulations thereunder, which includes periods that are considered either instructional time and non-instructional time as defined in sections 25 and 26 of *The Education Regulations, 2015*.
   (c) Assigned teacher time means the sum of assigned teacher time for direct student instruction and assigned teacher time not involving direct student instruction, each as defined below. Assigned time includes duties

assigned by the school board or school as well as duties assigned as a result of collectively bargained provisions.

Assigned Teacher Time for Direct Student Instruction

5. Assigned teacher time for direct student instruction is any time in which pupils of a school are in attendance and under the teacher's supervision for the purpose of receiving instruction in an educational program, including work experience programs, parent-teacher-pupil conferences, examinations and other learning activities provided by the board of education or conseil scolaire.

Assigned Teacher Time Not Involving Direct Student Instruction

6. (a) Assigned time not involving direct student instruction are those times when a teacher is assigned duties to be undertaken at designated times or places that do not involve direct student instruction and may not involve the presence of students. Such assigned duties include, but are not limited to, system-scheduled staff meetings and professional development or in-service training that are directed and required by the school division, in such a way they are or could reasonably by scheduled as part of the school division calendar, and therefore would be consistent for all teachers in the division.

(b) Assigned teacher time not involving direct student instruction does not include:

(i) Time spent on school-related activities collectively agreed to by staff but not mandated by the school board or conseil scolaire.

(ii) Time spent beyond the normal assigned time to attend to unforeseen or emergent circumstances.

(iii) Voluntary time as referred to in 1(c) above.

(iv) Staff meetings to address non-system directed issues except when release time is given for the purpose of that meeting.

Professional Responsibilities of Teachers

7. (a) Professional teachers are responsible for meeting those general functions and duties set out in Section 231 of *The Education Act, 1995*, RSS c. E-0.2.

(b) Nothing in the definition of assigned teacher time limits a teacher's obligation to discharge their professional responsibilities through a combination of assigned and non-assigned time.

(c) Teachers have discretion, to be exercised reasonably, as to when they carry out their professional responsibilities that extend beyond assigned teacher time. This includes duties where the outcome required of the teacher is mandatory, but the manner in which the teacher devotes their unassigned time to achieve that outcome is subject to the teacher's discretion.

8. Nothing in these recommendations affect the duties and responsibilities of teachers who are:

(a) Principals, vice-principals and assistant principals with duties assigned in accordance with Section 175 of *The Education Act, 1995*.
(b) Co-ordinators, consultants and other employees who are in receipt of a special allowance.

Agreement

The parties to this memorandum agree that for the purpose of clarifying the relationship between teacher salaries and teacher time the following conditions shall serve to further define the conditions of employment for teachers.

9. (a) The school year for teachers shall not exceed the number of school days specified in *The Education Act, 1995* and *The Education Regulations, 2015*.
(b) A teacher's assigned time shall not exceed 1,044 hours within the school year.
(c) Annual school calendars shall be designed, and Ministry of Education review shall ensure, that calendars can operate within the assigned teacher time limits referred to in (b).
(d) Any remedy for exceeding the maximum teacher time shall be through the granting of compensatory hours at a future date and not by way of additional wages or overtime, except where sections 2.3 and 2.6 of the Provincial Collective Bargaining Agreement apply.

Teacher salary classification

The Teachers proposed that the government expeditiously undertake to enact regulatory changes such that details regarding the determination of the employment class and step of the teacher be formally communicated to the teacher at the time of confirmation of employment as part of the Board of Education Confirmation of Contract, currently set out in the *Education Regulations, 2015*, or within two weeks of the provision of evidence of employment class and step. The Teachers said this would not be financially or administratively onerous but would help avoid errors and unfortunate conflict. While not enumerated in section 237(1)(a), thus matter is

ancillary and necessary to implementation of salary. The proposal was withdrawn during bargaining on November 22, 2017 but the Teachers said it remains before the board because no agreement was reached at the table.

The GTBC responded that this was not a mandatory matter under section 237(1)(a) of the Act and there was no agreement to negotiate it. Moreover, teacher salary classification is governed by *The Teacher Salary Classification Regulations*. The Teacher Classification Board (Act, Section 271-273) implements the regulations. The arbitration board has no jurisdiction to award this proposal. Even on the merits, there is no reason to accept the proposal as current procedures are adequate and the Teachers produced no evidence of a real problem. The GTBC said that misclassification of a teacher is subject to grievance so there is no reason to add language to the collective agreement.

Without ruling on the jurisdiction issue, the board declines to award the proposal.

Recognition of experience

Article 3.5 of the collective agreement provides that teachers who provide evidence of previous experience within 90 days of commencing employment shall receive outstanding salary retroactive to the start of their employment. If they file the request and provide the evidence later than 90 days, their salary is adjusted effective the date the information was provided. The Teachers proposed that the article be amended to provide for adjusted salary retroactive to the teacher's start date. It was also proposed that the Teacher Classification Board be vested with legislative authority to adjudicate appeals over recognition of experience. The Teachers argued that in

fairness, the decision should be made by an independent body and not the teacher's employer. The Teachers submitted this item was ancillary to salary.

The GTBC responded that the arbitration board has no authority to require the enactment of legislation. There would also be cost consequences for the Teacher Classification Board. In any event, a teacher wrongly classified would have the right to grieve.

Without ruling on the jurisdiction issue, the board declines to award the proposal.

One change to Article 3.4.1 was agreed.

Agreed amendment to Article 3.4.1

The parties agree to amend Article 3.4.1 in order to include government funded pre-kindergarten teaching time as recognized teaching service under this article.

Related experience

The Teachers proposed that an independent appeal process be created by legislation and the adjudication of related experience be conducted by the Teacher Classification Board. Currently this function is handled by local committees comprised of an equal number of teacher and school board members. Reaching agreement can be difficult and there is no assurance of province-wide consistency and portability. This item is ancillary to salaries and necessary for implementation.

The GTBC replied that this item was not a mandatory matter and it has not agreed to negotiate it. Also, it requires enactment of legislation. In the bi-level regime, it is more appropriate that this function continue to be managed at the local level.

Without ruling on the jurisdiction issue, the board declines to award the proposal.

Contracts of employment

The Teachers advanced a number of proposals under this heading. (1) To ensure compliance with the Act, it was proposed that statutory contracts of employment be appended to the collective agreement and that boards only be permitted to utilize those contracts when engaging teachers. (2) A form of contract for substitute teachers was proposed, also to be attached to the collective agreement. (3) More substantively, it was proposed that when a teacher employed on a temporary contract reaches an equivalent of 190 days of employment with the same board, the parties be deemed to have entered into a continuing contract from the first day of the most recent contract of employment. (4) Also, when a substitute teacher is employed for 20 consecutive days in the same classroom, it be deemed to constitute a temporary contract from the first day of the period of time the substitute teacher was retained for service in the classroom.

The Teachers stated there is no current mechanism to ensure compliance with legislative requirements regarding teacher contracts of employment. Teachers may feel vulnerable or anxious and agree to non-conforming terms, such as floating end dates. This concern arose in the last bargaining round and the parties decided to refer questions of contract consistency to the Good Practices and Dispute Resolution Implementation Committee (GPDRIC). A report was completed confirming the

inappropriate use of floating end dates but there has not been a resolution. Overall, these proposals were intended to provide clarity as well as equity among different categories of teachers.

The GTBC said these items fell outside the mandatory items and substitute teachers were a local mandatory matter under section 237(2) of the Act. Most of the issues are already addressed by legislation and teachers are able to enforce their rights under the grievance process. To date no such grievances have been filed.

The board notes that by agreement, the parties have clarified the grievance article. Without ruling on the jurisdiction issue, the board declines to award the proposals.

Employee Assistance Plan

The Teachers made a series of proposals under the general heading of "Health and Balance", arguing that there is a shared responsibility in this area. Employer boards, the government, the public, individual teachers and the STF should all play a role. Facing increasingly complex and stressful demands, teachers need support in order to fulfill their responsibilities to students.

Teachers proposed that government provide funding to school boards so that each one can offer a comprehensive employee assistance plan to teachers. This would have a positive impact on sick leave usage, reducing employer costs. While there are some plans now in place, necessary supports are not available across the province. This proposal is ancillary to sick leave, a mandatory item in section 237(1)(a), said the Teachers.

The GTBC did not agree that this proposal was a mandatory item. Programs and policies of this nature are already in place at the local level, responsive to local needs. Improvements should be negotiated locally, which would be consistent with the bi-level bargaining regime. Finally, government already contributes significant funding to the Comprehensive Health Care Plan administered by STF, which currently enjoys a large surplus.

Without ruling on the jurisdiction issue, the board declines to award the proposal.

Superannuation funding

The Teachers initially proposed that government increase its contribution rate to the Saskatchewan Teachers' Retirement Plan (STRP) by 2.0% to address solvency requirements and a significant discrepancy between employee and employer contribution rates. In the last round, government raised its contribution by 0.25%. STRP is jointly funded but administered by STF. Superannuation is a mandatory bargaining item pursuant to section 237(1)(a)(iii). The Plan is currently non-compliant with CRA rules because employees are paying more than 50% of the value of their benefits and there is a CRA waiver until 2021 to achieve compliance. The Teachers said government contributions to STRP rank very low compared to other provinces and other public plans in Saskatchewan.

Due to improved market conditions, the Teachers revised their proposal to request a government contribution increase of only 0.5%. The employee contribution level is now marginally over the 50% threshold.

The GTBC costed this item (as revised) at $4.7M annually. GTBC did not propose either an increase or decrease in government contributions. Historically, public sector pension plans in Saskatchewan moved to a defined contribution basis in the 1970's (with one exception) but teachers opted to return to a defined benefit plan in 1991 (the STRP). STF controls the design of the plan and owns any surplus. The GTBC suggested that STF is responsible to balance benefits and contributions in order to achieve solvency and CRA compliance. It argued the public should not be expected to pay more to support a defined benefit plan for teachers under these circumstances. As well, the current economic climate precludes greater government spending in this area.

The board declines to award the proposal.

Teachers' group life insurance

The Teachers proposed legislative changes to *The Teachers Superannuation and Disability Benefits Act* to extend life insurance coverage for teachers between the ages of 85 and 90, provided that all the related premiums shall be payable by the teacher. Group life insurance is a mandatory item under section 237(1)(a)(iv) of the Act.

The GTBC bargained this proposal but rejected it at the table. GTBC asserted that the proposal represents an additional ongoing cost but clarified during the hearing that it would be necessary to check with the carrier about rate effects before a definitive conclusion could be drawn. The GTBC also made the following objection (Brief, para. 139-140):

> … it is respectfully submitted that there is no authority for [the Teachers] to ask this Board to order the Legislative Assembly to enact statutory amendments to *The Teachers' Superannuation and Disability Act.* The [Teachers] refer to Article 6 of the Agreement as "explicitly obliging the government to enact legislative and regulatory changes in order to implement the provisions of the agreement." However, a reading of that Article indicates only that the GTBC will place certain changes before the legislature. It does not say that the legislature is bound to make those changes. Clause 6.1 reads:
>
> The Government of Saskatchewan agrees to proceed expeditiously:
>
> (a) to place before the Legislative Assembly of Saskatchewan such amendments to *The Teachers' Life Insurance (Government Contributory) Act;* and
>
> (b) to make such amendments to the regulations under the said Act;
> as are necessary to implement the provisions of this Article.
>
> It is reality that neither the GTBC nor this Board can bind the legislature by requiring changes to legislation.

The Teachers rejected this line of reasoning. Section 234(2) of the Act provides that the GTBC has exclusive authority to bargain and execute collective agreements on behalf of the Government of Saskatchewan, as well as on behalf of the boards. By entering into collective bargaining, the GTBC represents that it has authority to negotiate and to execute an agreement, including on the subject of group life insurance. The current version of Article 6 of the collective agreement recites the government's agreement to proceed expeditiously and place necessary legislation before the assembly to make agreed amendments. If the parties bargain to increase insurance coverage, the government is obligated to put a bill before the house, albeit the legislature cannot be ordered to pass it.

The board agrees that it cannot make an award that binds the legislature but the board can bind the GTBC, and through it the government.

The board declines to award the Teachers' proposal at this time but encourages the parties to revisit this item. Life expectancies are increasing and retired teachers are seeking to plan for their futures and the future of their families. If teachers agree to pay the added premium and there is no material cost to government, the benefit should be made available.

Supplemental Employment Benefits Plan

The Teachers proposed that benefits under the Supplemental Employment Benefits Plan in Article 8 (SEB) should be aligned with federal government Employment Insurance (EI) policies and regulations in such a manner that teachers would experience no loss of financial benefit as a result of EI changes implemented effective January 1, 2017, when the longstanding two-week EI waiting period was reduced to one week. It was also proposed that payment of benefit entitlement should occur on a monthly basis as per the ordinary pay periods specified in the teacher's local collective agreement. Sometimes the payments arrive as a delayed lump sum, which is much less helpful to families with a new child and the associated expenses.

The SEB Plan provides a maximum of 17 weeks of benefits during which teachers are paid the amount required on a weekly basis to top up the teacher's EI benefit to 95% of salary entitlement. Previously, this consisted of 95% top up during the waiting period and up to 15 weeks when the board paid the difference between the teacher's EI benefit and the 95% salary level. With the new one-week waiting period, boards would save the outlay of one week at the 95% pay level. Thereafter, teachers would continue to receive EI under federal law and boards would continue to pay top up during the SEB period.

Initially, The GTBC proposed that Article 8.2.1(b) simply be amended to change the waiting period reference from two weeks to one week. The Teachers submitted this was insufficient because at the end of her full maternity and parenting leave, a teacher would have received reduced total EI benefits – one less week. The Teachers argued that the intent of the federal law reform was to enhance employee access to EI benefits. It would be irrational if the impact for teachers, having negotiated an SEB plan, was to reduce the value of the overall benefit.

The GTBC responded that Article 8.2.1(b) was only intended to provide a benefit to teachers while the waiting period was served. This is now only one week. The clause was not intended to provide a teacher with a longer period of EI than is offered under federal law.

The Teachers tabled proposed contract language and an explanatory note as follows:

> 8.4.3.2 For the period of eligibility as determined in Clause 8.2, the board of education shall pay to the teacher the following amounts: (a) 95% of the teacher's weekly salary for the first two weeks of the maternity leave; and (b) the amount required on a weekly basis to supplement the teacher's Employment Insurance benefit to 95% of her salary for the subsequent 15 weeks of the maternity leave.
>
> NOTES
>
> Some changes may also be required to the appended Form 8-III Calculation – SEB Plan Payment (attached to this Agreement as Appendix C) as referenced in clause 8.4.3.1 to ensure consistency with the intent of the changes
>
> The general intent of the proposal is to ensure teachers do not receive less overall combined benefit from SEB and EI. This requires changes to both 8.2.1 and 8.4.3.2 and may require changes to Form 8-III appended to end of the Agreement.

> The change to a one week waiting period has had the impact of saving a board of education an amount equal to one week of the teacher's EI benefit as given current language the board is compelled only to "top up" EI to 95%.
>
> The intent of 8.4.3.2 is that the board continue to pay the same amount to the teacher as they would have prior to the EI changes, which is a full 95% of the teacher's salary for the first two weeks and the "top up" for the subsequent weeks.
>
> The impact on the teacher is that they will receive both 95% salary from the board as well as their EI benefit in the second week. This is the same amount the board would have paid the teacher prior to the EI changes and provides the teacher the same overall benefit from both the board and EI over the course of their leave.

In a nutshell, to address the problem, the Teachers proposed that a board of education should pay the amount of a 95% top-up in the teacher's second week of maternity leave, additional to the EI benefit which the teacher would be receiving for that week as her regular benefit. The teacher would be "overpaid" in week 2 in order to avoid a net reduction in benefit during the overall leave. Such an approach was in fact contemplated by the federal government, which enacted section 38(1.1) of the *Employment Insurance Regulations*, SOR/96 – 332 as a transitional provision, excluding the excess payment as earnings for EI purposes. However, this provision will be repealed on January 3, 2021. Parties were given a four-year period during which to adjust their plans in light of the shortened waiting period.

The GTBC submitted that this round of collective bargaining was the parties' opportunity to amend the collective agreement and adjust the SEB to the new regime of a one-week waiting period. In a supplementary submission filed on August 14, 2018, GTBC proposed language amending Article 8.2.1(b) to reference a one-week waiting period and providing as follows with respect to Article 8.4.3.2:

> **8.4.3.2** For the period of eligibility as determined in clause 8.2, the board of education shall pay to the teacher the following amounts:

> (a) 95% of the teacher's weekly salary for the one-week waiting period; and
> (b) the amount required on a weekly basis to supplement the teacher's Employment Insurance benefit to 95% of her salary for the remaining period of eligibility.

GTBC asserted that this proposed language would result in no negative impact to the teacher. Topped up pay would still be received at the 95% level for 17 weeks, albeit in week 2, the federal government would pay some of the dollars previously paid by the board of education. The saving to boards, however, would be quite modest. Thereafter the teacher would receive EI benefits without change for the balance of the statutory period as it now stands.

This arbitration board agrees with the GTBC that the EI transitional arrangements were not intended as a guarantee that, for four years, employees would receive precisely the same dollar payments over the course of a one-year maternity and parenting leave. The source of the problem raised by the Teachers is that while the federal government shortened the waiting period and continued 17 weeks of maternity benefits, it reduced the ensuing parenting weeks from 35 weeks to 34 weeks. The Teachers are seeking to make up the loss by adding to the amount payable by school boards in week 2. This was not the intent of the transitional regulation. As explained in the *Regulatory Impact Analysis Statement* (Canada Gazette Part 1, Vol. 150, No. 42), at page 3125, the temporary provision was designed to mitigate the adverse impact on employees while adjustments are made to SEB plans.

This board is sympathetic to the Teachers' concern, most particularly the point that teachers dealing with the challenge of pregnancy and childbirth should not experience a loss of benefits at a critical time for the family. We observe that there was little if any substantive discussion on this issue at the table but we are pleased

that the new GTBC language would update the article to accommodate the one-week waiting period and protect a teacher's full 17 weeks of SEB benefits, namely topped up salary at the 95% pay level. The benefit negotiated under Article 8 was a 17-week series of payments coordinated with EI benefits. As for the shortened overall period of support by the EI program, we agree that this runs counter to the progress made by the Teachers and other employee groups after many years of litigation, advocacy and negotiation. For this reason, we encourage the parties to revisit the SEB Plan in their next round of bargaining.

As for pay periods, the GTBC said that this topic is a mandatory local matter and not negotiable at the provincial table. The parties should discuss this as well if they revisit the SEB Plan. It may be possible to specify, as an aspect of the SEB Plan, that normal local pay periods will be followed. The board declines this aspect of the Teachers' proposal without ruling on the jurisdiction issue.

The board awards the language proposed by the GTBC for Article 8.4.3.2. To avoid adverse effects on teachers who have already taken or commenced SEB, the effective date will be August 31, 2019.

The GTBC proposed that the 120-day period under Article 8.4.2.1 for a teacher to submit forms following the birth of her child be reduced to 60 days. The forms are required for the SEB Plan benefits to be paid. The GTBC said 120 days was too long but presented no evidence that the current period is problematic in any way. The board declines the GTBC proposal.

One change to Article 8 was agreed, as follows:

Agreed amendment to Article 8.2 (preamble):

A qualified medical practitioner includes a nurse practitioner or registered midwife.

Leaves

Both parties made proposals on this subject.

The Teachers proposed five weeks of parenting leave during which the employer would top up the teacher's EI benefits to 95% of salary entitlement. Parenting leave can be taken by the birth mother, non-birth parent or adoptive parents. The Teachers said this item was bargainable because it supplements benefits already provided under Article 8 (SEB Plan) and because the collective agreement already contains provision for leaves in Article 12. There are arbitral and collective agreement precedents for awarding paid parental leave. The Teachers emphasized that approximately 73% of Saskatchewan teachers are female and they typically take more time away from their careers for parenting. Teaching is a gendered profession.

The GTBC said the proposal was not a mandatory item. Section 237(1)(a) expressly includes sick leave but not any other form of leave, indicating a clear legislative intent. In the alternative, this item should be left for local bargaining. All local agreements include clauses on leaves of various types including parenting leave. By leaving this matter to the local level, communities and teachers can decide for themselves what balance they prefer in their agreements.

The intent behind the Teachers' proposal is laudable. Without ruling on the jurisdiction issue, the board declines the proposal. We encourage the parties to

discuss parenting leave in future and consider how best to make progress under the bi-level bargaining regime.

The GTBC proposed changes to Article 12.3 respecting leave for STF officials. A teacher's absence from the classroom can have a negative impact on student learning. The GTBC proposed language requiring a minimum of four weeks written notice of an STF leave under Article 12.3.2, and a limit of five days' duration for the leave.

The Teachers opposed the proposal and characterized it as an attack on the professional association that represents the interests of teachers. No data was presented by the GTBC to justify the proposed limitations.

The board declines to award the proposal.

Duty to accommodate for disability and sick leave

Both parties again made proposals in this area. One change was agreed.

> **Agreed revision to Article 7.1.1**
>
> The parties agree that a "duly qualified medical practitioner" in Article 7.1.1 (Medical Information for Accommodation) includes a nurse practitioner.

The Teachers proposed that clauses 7.1.1 and 7.1.1.4 be amended to limit the relevant medical information required and collected to support accommodation for disability decision making to include only information describing the restrictions of the teacher.

The GTBC responded that this limited scope of information would be insufficient to determine whether and how an accommodation should be made in many cases. Protection already exists for teacher privacy rights under the common law and *The Local Authority Freedom of Information and Protection of Privacy Act*. No information was provided to show that school boards have been intrusive or unreasonable in seeking medical information.

The board declines to award the Teachers' proposal.

The Teachers also proposed that the employer bear the cost of supplying necessary medical information in support of an accommodation.

The GTBC disagreed and noted that no comparators were provided to support this proposal.

The board declines to award the Teachers' proposal.

The GTBC proposed that maximum Accumulative Sick Leave (ASL) credits under Article 7.5.2.2 be reduced from 180 days to 100 days. The intent of sick leave is to provide coverage for short term injury or illness. GTBC said many jurisdictions provide a maximum well below 180 days.

The Teachers replied that in practice ASL credits are coordinated with LTD benefits. No changes should be made to ASL without a full understanding of how the change might impact on teachers suffering longer term illness or disability. Employer costs are mitigated by the fact that unlike some collective agreements, there is no sick

leave cash-out for teachers. Expense is incurred only when sick leave is genuinely needed by a teacher.

The board declines the GTBC proposal.

Safe and healthy schools

The Teachers made three proposals. (1) The government and school boards make reasonable provisions for safe and healthy schools and classrooms, including teacher health and safety education during hours of employment. (2) Contract language be negotiated affirming a teacher's right to refuse to carry out work when he or she has reasonable cause to believe that to do so would result in real or perceived emotional, physical or psychological harm to themselves or others. (3) Contract language be negotiated prohibiting disciplinary action against a teacher for reporting a harmful work environment or for refusing to carry out work in an environment that could cause real or perceived emotional, physical or psychological harm to themselves or others. The Teachers submitted the proposal was ancillary to sick leave.

While admitting that teachers are already covered by the Occupational Health and Safety provisions of *The Saskatchewan Employment Act*, the Teachers argued that they were entitled to seek to strengthen the minimum legal standards. Many other collective agreements contain health and safety clauses tailored to the specific needs of the bargaining unit in question. The proposed language would largely mirror existing legislative protections or may slightly exceed them, but the Teachers said it was important to have visible language in the Teachers' own agreement. It would aid in securing enforcement by the labour department inspectors. It would also

provide some assurance to teachers who fear employment repercussions if they refuse to provide service due to health and safety concerns.

Arbitral awards, teacher surveys and the research literature amply demonstrate that teachers are subject to ever increasing social problems, harassment, threats and violence in the workplace. The La Loche school shooting in 2016 was cited in particular but the problem is systemic, said the Teachers. Much is under-reported. Unsafe or deteriorating building and work environments are another aspect of the issue.

The GTBC responded that this matter, while important, was not a mandatory bargaining issue. On the merits, an award is not necessary because existing legislation and policies are adequate. Considerable work has been done by boards and schools around health and safety as well as Violence Risk Threat Assessment procedures, tailored to specific communities.

The board acknowledges that the issues raised by the Teachers in this area are significant. Given the already existing network of laws, regulations and policies, additional provisions in the provincial agreement, if they are to be adopted, should be carefully crafted to avoid duplication and focus on specific teacher needs. The board encourages the parties to discuss this subject in future, whether provincially or locally, as seems best to the parties.

Without ruling on the jurisdictional issue, the board declines to award the proposal.

Personnel and medical files

The Teachers made four proposals under this heading. (1) That the language of clause 10.3.2 be clarified to state that the only items that can be submitted in confidence in teacher personnel files shall be the letters of reference received during the process of that teacher's hiring as an employee. (2) That reporting and filing of teacher information, conducted by administrators, including by principals, be acknowledged as the personal information of the teacher. (3) That the information concerning the teacher be available for review, consultation and correction or withdrawal by the teacher as per sections 5, 7, 30 and 31 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIPPA). (4) That any adverse report or any document of a disciplinary nature be removed from the teacher's personnel file after one year.

The Teachers acknowledged that LAFOIPPA is applicable and that SSBA published a useful guide to the legislation in 2014. Website materials were also produced. This work was a collaborative effort resulting from discussion at the last round of bargaining. However, the Teachers submitted that there is still not full access to all personal information. Particular concern was expressed about complaints made by parents about teachers, sometimes informally, that are unknown to the teacher but can impact the teacher's career. The teacher may never have an opportunity to respond. More generally, section 30(2) of LAFOIPPA allows a school board to deny a teacher access to evaluative material if it was compiled for employment assessment purposes. In the Teachers' submission, this is too broad and the only exception should be reference letters received during the hiring process.

The Teachers also argued for a one-year sunset on disciplinary documents in a teacher's personnel file, consistent with practice in other professional sectors in Saskatchewan and across Canada.

In reply, the GTBC argued that the LAFOIPPA is comprehensive and adequate. Further protective provisions in the collective agreement would be redundant. As for a sunset clause, the GTBC did not object to the concept but said that one year was far too short and not supported by the comparables.

The board declines the Teachers' proposals except that we award a three-year sunset provision on documents of a disciplinary nature in a teacher's personnel file, which is more consistent with the evidence. The sunset will apply when there have been no reoccurrences of a similar nature for the three-year period. Jurisdiction is retained if necessary for implementation of specific language.

In making the award of a sunset clause, the board is aware of the jurisdiction and practices of the Saskatchewan Professional Teachers Regulatory Board (SPTRB), which will not be affected by the clause being awarded.

Registration and professional expenses

The Teachers proposed that SPTRB registration fees, any other required professional or licensing fees and any accreditation costs in a teacher's area of expertise, if required by the employer, be paid by the board or the government. Membership approved by the SPTRB is a statutory condition of employment. The SPTRB was established in 2015 and in the last round, it was agreed that government would pay teacher fees for the first two years of operation. In fact, government has paid for the

period ending June 30, 2018 and committed to pay for one further year, but not beyond. Currently the fees are $175 per year. This item was costed at $2.13M by the GTBC or approximately 0.18% of gross salaries and allowances for the 2017/18 school year. Government currently pays necessary registration fees for a number of professional employee groups.

The Teachers said this item was ancillary to salaries and allowances, given that teachers must be certified and registered to earn a salary.

The GTBC argued that this item was not a mandatory matter and could not be awarded because the parties did not agree to negotiate. In the alternative, GTBC submitted that while the payment of several start-up years was reasonable, teachers should carry the costs of their own regulatory process going forward. It should not be a government expense.

The board agrees with the Teachers that this is a mandatory matter under section 237(1)(a)(viii), ancillary or incidental to salaries and allowances. We adopt the statutory interpretation set forth earlier in these reasons regarding teacher time.

The board awards annual payment of teacher registration fees for the Saskatchewan Professional Teachers Regulatory Board.

Teacher employment changes

The Teachers proposed the adoption of contract language dealing with cases of employer-initiated transfers, including: adequate time to prepare for the move; coverage of the cost of moving teaching materials and any necessary professional

development; and personal moving costs if the new work location is greater than 40 km away. The Teachers also proposed that government legislate an independent appeal process. Since the 2006 restructuring of school divisions, there are some very large geographic school districts and a teacher could be transferred over 200 km from her home to another school. Moreover, if a transfer occurs due to demotion of a principal or vice-principal, section 215 of the Act provides for a show-cause hearing before the school board but no independent adjudication. Fairness dictates there should be access to a third party review.

The GTBC said this was not a mandatory bargaining item. In addition, reassignment of staff is typically handled as a matter of local policy and practice. The GTBC stated that teachers have access to the grievance process but no grievances have been filed. It has not been shown there is a problem requiring attention in the collective agreement or that new legislation is needed.

Without ruling on the jurisdiction issue, the board declines to award the proposal. We note again the parties' agreement to clarify the language in Article 16 on the filing of grievances.

Secondments

Article 14 provides as follows:

> 14.1 Teachers seconded to the Ministry of Education shall be paid an allowance of 10% of the teacher's salary as set out in Clause 2.1 of this agreement. Such allowance shall be in addition to the basic salary and allowances which the teacher was entitled to receive in the teacher's employing school division.

> 14.2 Teachers seconded for period of time less than a full school year shall have their allowances pro-rated.

Both parties made proposals under this heading. There was negotiation at the table. The Teachers said that the terms and conditions of all secondments should be negotiated and included in the collective agreement. Teachers began taking these secondments in the 1980's during curriculum reform initiatives and the process has been beneficial to all parties. Typically, the positions were based in Regina and some teachers faced additional living costs and inconvenience in taking a secondment. The GTBC proposed to delete Article 14 entirely, saying it no longer served any useful purpose. Recruiting teachers for this secondment has not been a problem and there are more applicants than places available. In reply, the Teachers said removing the clause would be a step backward and that the cost savings would be minimal.

The board awards the GTBC proposal. Article 14 will be deleted effective August 31, 2019, subject to the proviso that no teacher who has commenced a secondment under Article 14 will lose their allowance during the currency of that secondment. Jurisdiction is retained to deal with implementation.

Class size and composition

The Teachers proposed limitations on class size and composition, with adequate government funding to ensure effective implementation. Teacher workload and working conditions are directly affected. Research material was presented to show the impact on workload intensification and work stress. In addition, smaller classes enhance learning. Several other jurisdictions have hard caps on class size.

The GTBC said this was not a mandatory bargaining matter and, in any event, the proposal was framed far too broadly to be negotiated in its present form. Class size and composition is addressed by school boards. They allocate resources and make policy choices to meet local needs. As for the academic issue around class size, the GTBC declined to engage in the debate as it involves value judgements and occurs outside the realm of collective bargaining.

Without ruling on the jurisdiction issue, the board declines to award this proposal.

Definitions

The Teachers proposed to add a glossary of definitions to the collective agreement, drawn from the definitions currently included in section 2 of the Act. The stated purpose was to ensure clarity and more importantly, to provide stability in an era when government has seen fit to legislate away longstanding arrangements in the education sector. In the Teachers' view, significant changes should be negotiated, not altered unilaterally by government.

The GTBC submitted that this was not a mandatory matter and opposed the proposal for the same reasons it objected to entrenching a definition of teacher duties in the agreement.

Without ruling on the jurisdiction issue, the board declines to award this proposal.

Right to representation and grievance process

Both parties made proposals under Article 16 (Grievance Procedure).

The Teachers proposed that for meetings that may be disciplinary in nature (Article 16.8), a teacher should have at least 72 hours or three teaching days' notice, a right to representation by STF and the right to postpone the meeting if notice or representation is insufficient. It was also proposed that the teacher have a right to review the contents of their personnel file prior to the meeting. Clause 16.8 was introduced in the last bargaining round and the Teachers suggested that the current proposals would enhance and clarify the new provisions, for mutual benefit. They would also allow STF to properly meet its statutory duty to fairly represent the membership. In response, the GTBC said there was no evidence that the new provisions were not working well and opposed the proposal.

The board declines the Teachers' proposal. It was not shown at this time that the newly negotiated provisions for representation need to be revised.

The GTBC proposed that the current nine-month deadline for bringing a grievance under Article 16.3 be reduced to 30 days, which would be consistent with generally prevailing labour relations practice. The current lengthy time period interferes with the expeditious resolution of disputes. Memories will fade and documents may disappear over time. Witnesses can move away. The GTBC said it is good practice for parties to address conflicts in a timely way. In response, the Teachers said that the present time frame has served the parties well, allowing ample time to address disputes before they become formalized as grievances. As a result, the parties have

an unusually low number of grievances, which the Teachers said was a positive indicator for the relationship.

The board awards the GTBC proposal, to the extent that the time for referring a grievance under Article 16.3 is reduced to six months. This is still a lengthy period of time but it will facilitate more timely discussion and resolution of grievances.

Finally, the Teachers proposed that language be added to Article 16 stipulating that the bargaining committees described in section 234 of the Act shall be appointed at all times. As related earlier in these reasons, it has not always been the case that both bargaining committees have been in existence. Under section 261 and section 263 of the Act, notice of a grievance must be served on the other party, settlement negotiations must be attempted and notice of arbitration must be served on the opposing party. This is a regime that can only be operational if the Teachers' Bargaining Committee and the GTBC both exist at the time a dispute arises. Unlike ordinary labour relations, here the parties for purposes of bargaining and grievance process (GTBC and TBC) are not identical to the constituent nominating bodies (government, SSBA and STF).

The Teachers said this proposal was a mandatory matter as it is necessary to implementation of all the enumerated items in section 237(1)(a).

The GTBC said the proposal was not a mandatory matter. In the alternative, it should not be awarded because the composition of the committees is determined under the Act, not the collective agreement.

The board finds there is jurisdiction to award this proposal for the reasons stated by the Teachers. It is essential to the effective administration of the collective agreement and the implementation of all the enumerated mandatory matters in section 237(1)(a) that the committees be maintained in existence at all times. It is not predictable when a grievance or arbitration may be necessary. It should not be necessary for a party to wait for the appointment of the opposing party in order to carry out routine business under the collective agreement.

The board awards the Teachers' proposal. The parties will meet and agree on suitable contract language. Jurisdiction is retained for purposes of implementation.

Summary of items awarded and agreed

As set forth above, the board has awarded the following:

Duration of agreement:

Two years, from September 1, 2017 to August 31, 2019.

Salaries and allowances:

September 1, 2017 – 0%;

September 1, 2018 – 0%;

August 31, 2019 – 1.0%.

Article 4, Allowances, Protective Provisions:

> **4.6.2.1** Where a principal is transferred by the employing board of education to another principalship in a school having fewer personnel equivalents than the school from which the principal is transferred, the annual allowance shall be not less than the

allowance for which the principal was eligible prior to the transfer, for a maximum of three years. This clause is effective August 31, 2019 and replaces Article 4.6.2 on the effective date.

Assignable hours of work:

The board awards the terms of Appendix B from the Task Force report, effective August 31, 2019. The board retains jurisdiction to hear from the parties if there are demonstrable and significant implementation issues that will likely result from the language as awarded. Either party may apply to the board by not later than January 15, 2019 to seek clarification or assistance with implementation, and the board will make a decision by not later than February 15, 2019, if possible.

The board is also prepared, if requested by the parties, to incorporate the Task Force's explanatory notes into the agreement, in such form and manner as the parties may agree or the board may direct. Jurisdiction is retained for this purpose.

The following terms are awarded. The parties may adopt the Memorandum format as below or such other format as they see fit in finalizing the new collective agreement.

MEMORANDUM OF AGREEMENT
Re: Teacher Assigned Time

The parties to this memorandum agree that effective with the commencement of the 2019-20 school year, the following definitions shall further define the terms of employment for teachers with respect to the issue of teacher time.

1. A teacher's time falls within one of the following three categories:
   (a) Assigned teacher time.
   (b) Time spent carrying on the teacher's professional responsibilities as a teacher beyond their assigned teacher time.

(c) Voluntary time spent on extracurricular activities and similar matters of benefit to the educational system and students, but extending beyond what the teacher's professional activities require them to do.

2. Assigned teacher time consists of the total of assigned teacher time for direct student instruction and assigned teacher time not involving direct student instruction.

3. Assigned teacher time for direct student instruction will customarily take place during the school day as defined in *The Education Regulations, 2015*, but need not encompass the entire school day thus defined, and may extend beyond the school day.

Assigned Teacher Time

4. (a) In order to provide for the instruction of students and to administer schools and the programs they offer, the school or the employing school board or conseil scolaire will assign teachers to attend to teaching duties at designated times and places subject to any negotiated or contractual limits.

(b) Assigned time occurs within a school year as defined by section 163 of *The Education Act, 1995*, RSS c. E-0.2 and the regulations thereunder, which includes periods that are considered either instructional time and non-instructional time as defined in sections 25 and 26 of *The Education Regulations, 2015*.

(c) Assigned teacher time means the sum of assigned teacher time for direct student instruction and assigned teacher time not involving direct student instruction, each as defined below. Assigned time includes duties assigned by the school board or school as well as duties assigned as a result of collectively bargained provisions.

Assigned Teacher Time for Direct Student Instruction

5. Assigned teacher time for direct student instruction is any time in which pupils of a school are in attendance and under the teacher's supervision for the purpose of receiving instruction in an educational program, including work experience programs, parent-teacher-pupil conferences, examinations and other learning activities provided by the board of education or conseil scolaire.

Assigned Teacher Time Not Involving Direct Student Instruction

6. (a) Assigned time not involving direct student instruction are those times when a teacher is assigned duties to be undertaken at designated times or places that do not involve direct student instruction and may not involve the presence of students. Such assigned duties include, but are not limited to, system-scheduled staff meetings and professional development or in-service training that are directed and required by the school division, in such a way

they are or could reasonably by scheduled as part of the school division calendar, and therefore would be consistent for all teachers in the division.

(b) Assigned teacher time not involving direct student instruction does not include:

(i) Time spent on school-related activities collectively agreed to by staff but not mandated by the school board or conseil scolaire.

(ii) Time spent beyond the normal assigned time to attend to unforeseen or emergent circumstances.

(iii) Voluntary time as referred to in 1(c) above.

(iv) Staff meetings to address non-system directed issues except when release time is given for the purpose of that meeting.

Professional Responsibilities of Teachers

7. (a) Professional teachers are responsible for meeting those general functions and duties set out in Section 231 of *The Education Act, 1995*, RSS c. E-0.2.

(b) Nothing in the definition of assigned teacher time limits a teacher's obligation to discharge their professional responsibilities through a combination of assigned and non-assigned time.

(c) Teachers have discretion, to be exercised reasonably, as to when they carry out their professional responsibilities that extend beyond assigned teacher time. This includes duties where the outcome required of the teacher is mandatory, but the manner in which the teacher devotes their unassigned time to achieve that outcome is subject to the teacher's discretion.

8. Nothing in these recommendations affect the duties and responsibilities of teachers who are:

(a) Principals, vice-principals and assistant principals with duties assigned in accordance with Section 175 of *The Education Act, 1995*.

(b) Co-ordinators, consultants and other employees who are in receipt of a special allowance.

Agreement

The parties to this memorandum agree that for the purpose of clarifying the relationship between teacher salaries and teacher time the following conditions shall serve to further define the conditions of employment for teachers.

9. (a) The school year for teachers shall not exceed the number of school days specified in *The Education Act, 1995* and *The Education Regulations, 2015*.

(b) A teacher's assigned time shall not exceed 1,044 hours within the school year.

(c) Annual school calendars shall be designed, and Ministry of Education review shall ensure, that calendars can operate within the assigned teacher time limits referred to in (b).
(d) Any remedy for exceeding the maximum teacher time shall be through the granting of compensatory hours at a future date and not by way of additional wages or overtime, except where sections 2.3 and 2.6 of the Provincial Collective Bargaining Agreement apply.

Supplemental Employment Benefits Plan:

The board awards the GTBC language effective August 31, 2019, as follows:

8.4.3.2 For the period of eligibility as determined in clause 8.2, the board of education shall pay to the teacher the following amounts:

(a) 95% of the teacher's weekly salary for the one-week waiting period; and
(b) the amount required on a weekly basis to supplement the teacher's Employment Insurance benefit to 95% of her salary for the remaining period of eligibility.

Teacher personnel and medical files:

The board awards a three-year sunset provision on documents of a disciplinary nature in a teacher's personnel file. The sunset will apply when there have been no reoccurrences of a similar nature for the three-year period. Jurisdiction is retained if necessary for implementation of specific language.

Registration and professional expenses:

The board awards annual payment of teacher registration fees for the Saskatchewan Professional Teachers Regulatory Board.

Secondments:

The board awards that Article 14 will be deleted from the collective agreement effective August 31, 2019, subject to the proviso that no teacher who has commenced a secondment under Article 14 will lose their allowance during the currency of that secondment. Jurisdiction is retained to deal with implementation.

Right to representation and grievance process:

The board awards the GTBC proposal, to the extent that the time for referring a grievance under Article 16.3 is reduced to six months.

The board awards that language be added to Article 16 stipulating that the bargaining committees described in section 234 of the Act shall be appointed at all times. The parties will meet and agree on suitable contract language. Jurisdiction is retained for purposes of implementation.

Items agreed by the parties:

Filing of grievances:

Agreed new clause in Article 16

A grievance may be filed alleging

(a) violation of the terms and conditions of employment set out in The Education Act, 1995 or the regulations thereunder, as may be amended from time to time, or in other employment related legislation applicable to teachers, or

(b) that a discretionary decision made with respect to a teacher's employment was made arbitrarily or in bad faith.

Recognition of experience:

Agreed amendment to Article 3.4.1

The parties agree to amend Article 3.4.1 in order to include government funded pre-kindergarten teaching time as recognized teaching service under this article.

Supplemental Employment Benefit Plan:

Agreed amendment to Article 8.2 (preamble):

A qualified medical practitioner includes a nurse practitioner or registered midwife.

Duty to accommodate for disability and sick leave:

Agreed revision to Article 7.1.1

The parties agree that a "duly qualified medical practitioner" in Article 7.1.1 (Medical Information for Accommodation) includes a nurse practitioner.

Conclusion

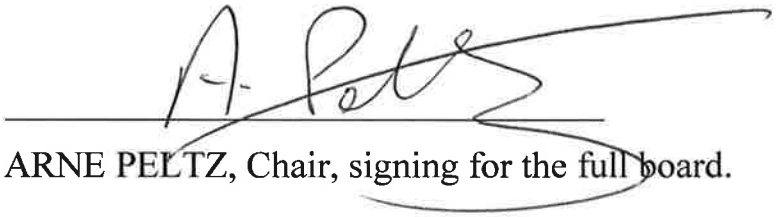
The board expresses its sincere appreciation to the parties and all participants in the arbitration process for their great assistance and cooperation. While there was disagreement on the issues, a spirit of respect and collegiality prevailed throughout the proceedings. It will be necessary for the parties to work together going forward,

in the interest of students, families and communities. The board is optimistic that the parties will be able to make real progress in building their relationship.

This award is unanimous.

Pursuant to section 248(3) of the Act, on September 5, 2018 the chairperson of the Educational Relations Board extended the time for the board to finalize its decision until March 1, 2019.

ISSUED on September 7, 2018.



ARNE PELTZ, Chair, signing for the full board.

CAROL MOEN, Member appointed by the Teachers' Bargaining Committee

DON ZERR, Member appointed by the Government-Trustee Bargaining Committee