

A Fact Finding Report

To

**Honourable Michael de Jong, Minister
Ministry of Labour and Citizens' Services**

On

The Current Collective Bargaining Dispute Between The

**BC Public School Employers' Association
And The
BC Teachers' Federation**

I. TERMS OF REFERENCE

On September 19, 2005, I was appointed as a Fact Finder to inquire into and report by September 30, 2005 on the collective bargaining dispute between the BC Public School Employers' Association (BCPSEA) and the BC Teachers' Federation (BCTF).

My mandate was to examine the positions of the parties in their negotiations, to report on the perspective of each party on the matters of critical importance, and to assess the prospect for re-engagement in collective bargaining. My mandate was not to conduct facilitation, mediation or any other form of process designed to reach agreement between the parties.

This report will briefly describe the background to this dispute, process followed, critical issues for each party, costing of proposals and conclusions.

II. BACKGROUND

The parties to this dispute are the BC Teachers' Federation (BCTF) representing approximately 42,000 teachers in the public education system and the BC Public School Employers' Association (BCPSEA) representing 60 school districts as the accredited bargaining agent. Since the establishment of the current province-wide bargaining structure in 1994, the parties to this dispute have had a history of challenges in reaching a negotiated settlement. Each of the four settlements since 1994 have had some form of legislated intervention.

During the last round of bargaining, a three-year collective agreement that provided for a 7.5 percent wage increase was legislated. At the same time, the Government removed collective agreement provisions on class size and composition, placed those provisions in the *School Act* and mandated a review of what was perceived to be a dysfunctional bargaining relationship between the parties. The Commission to Review Teacher Collective Bargaining (Wright Commission) undertook consultations and reported in December 2004.

The collective agreement in dispute expired on June 30, 2004 and the parties have met approximately 35 times in efforts to conclude a collective agreement. On September 15 the parties reached impasse in their negotiations. The union subsequently received a strong strike mandate from its members and is currently seeking rulings from the Labour Relations Board on essential services. The union commenced their first phase of job action on September 28.

As there have been detailed reviews and reports on the labour relations in this sector, I did not explore issues of bargaining process or structure in my research and consultation with the parties.

III. PROCESS

During my meetings and discussions with the parties, both the BCTF and the BCPSEA were most cooperative and open with me in articulating their critical goals for this round of negotiations and the rationale for these positions. In addition, the parties provided numerous documents including the following:

- A full accounting of proposals, with an emphasis on the key issues and their rationale and implications,
- Costing of the proposals and key assumptions used, and
- Demographic information.

My meetings with the parties were each held separately, and at no point did I bring the parties together.

IV. BARGAINING POSITIONS

British Columbia Teachers' Federation (BCTF)

In those meetings the BCTF articulated two priority issues in these negotiations that are critical to teachers. These are:

1. Working and Learning Conditions; and
 2. Compensation
1. I heard from the BCTF that the issue of Working and Learning Conditions (WLC) relates to a variety of issues previously contained within their collective agreements and removed by legislation in 2002. These include the establishment of class size and class composition limits, and ratios for non-enrolling teachers. The BCTF is passionate about the issue of working and learning conditions and would like to establish a mechanism in their collective agreement that involves teachers in determining the manner in which decisions are made by School Boards and consequences for non-compliance with established levels such as increasing paid time for preparation.

The BCTF also expressed to me an interest in exploring options for entering into dialogue with Government directly to discuss the public policy issues related to learning conditions and, in particular, the class size levels through to Grade 12, composition of all classes (e.g., the number of special needs children in any one class), a system of guarantees that the levels and conditions established by legislation are adhered to, and remedies in the event there are breaches of the established policy. The BCTF articulated a process that is parallel to the collective bargaining process, with different participants (Government and the BCTF), but linked to and concluded at the same time as a collective bargaining framework.

2. The second issue of importance for the BCTF is the achievement of a “fair and reasonable” wage and benefit settlement. The BCTF makes two arguments on this matter:
 - a. The BCTF recounted the historic practice of some local districts to agree to lower compensation settlements in order to fund the cost of smaller classes. The BCTF argues these provisions, while not universal, were removed from their collective agreements without associated compensation increases. The union believes that the removal of class size and composition language from the collective agreement resulted in savings for the Employer. They argue that, even though an increase of 7.5 percent over three years was provided, this did not adequately compensate them for the deletion of the learning condition articles from their collective agreement. The BCTF states that the savings from changes in class size provisions should be accepted as their contribution to the 0%-0%-0% mandate accepted by many other public sector unions for the period of 2002 to 2006.
 - b. The BCTF also claimed that historically BC led the country in salary level and that the Province must ensure compensation is equal to that of other jurisdictions in order to recruit and retain the best teachers in BC. This means providing salary increases to keep them competitive, primarily with their historic comparators in Alberta and Ontario.

In addition to the points raised above, the BCTF calls for equity in wages and benefits for teachers across the Province and appropriate pay and benefits for Teachers on Call (ToC). There are currently very different ranges and entitlements for these positions in different districts. ToCs are largely the new entrants into the teaching profession.

BCTF’s position to me is that they would like to settle their collective agreement through negotiations and that this would be of significant interest and meaning to their members. The BCTF went on to add that teacher morale was very low and that the attitude towards and relationships with Government and the employers could worsen if they are further subjected to legislation.

British Columbia Public School Employers’ Association (BCPSEA)

In those meetings with BCPSEA, the employer group expressed two major goals in this round of bargaining, given the constraints of the fiscal mandate. The BCPSEA expressed the requirement to stay within the mandate it was given and to explore a process to deal with structural issues in preparation for the next round of bargaining.

The BCPSEA proposed to settle a collective agreement with a term of two years with zero percent wage increases until June 30, 2006. At the same time they hoped to look for processes to deal with structural issues that both parties currently face, including the modernization of benefits and wage grids in preparation for the next round of bargaining.

The BCPSEA tabled a series of proposals designed to identify areas of savings. They noted that these proposals were presented as opportunities to generate savings from within the compensation system in order to fund the cost of some of the priorities the BCTF brought to the table, thereby remaining within their fiscal mandate.

The BCPSEA communicated to me that they believe proposals dealing with class size and composition are *ultra vires* and cannot be bargained. However, they also indicated an interest in discussing critical policy issues such as dispute resolution, enforcement and remedies to the provisions contained within the *School Act*.

V. FINDINGS

It appears through my discussions that there are some areas of common interest to the parties. Both parties expressed an interest in addressing the equitable treatment of Teachers on Call as well as some measure of standardization of certain parts of the collective agreement, including but not limited to, an equitable system and structure of wage and benefit plans. Both parties agree on the need to dialogue about working and learning conditions.

I will address each of the critical areas separately: compensation increases; and working and learning conditions.

Compensation:

I carefully reviewed all the proposals and discussed the costing of those proposals with each of the parties. While the parties had met 35 times over the course of the last year-and-a-half, I found that they had not discussed in detail the manner in which each item was proposed to be implemented, therefore the costing reflects certain general assumptions. At the high end, the BCPSEA estimates the cost of BCTF proposals to be approximately \$938 million annually, and according to figures provided by BCTF, their proposals reflect an annual increase of approximately \$673 million.

As noted above, the BCPSEA did provide some options for off-setting savings, their estimate of the maximum value of those savings would be in the area of 2 percent of compensation. I heard very clearly from the BCTF that, while numerous other settlements had incorporated increases to wages through this kind of “net 0 percent” trade off, their members would not.

As noted above, while BCTF did indicate that their proposals tabled with the employer were opening positions, they also firmly communicated their primary goal and direction from their members for a compensation increase in this round of bargaining. This position is therefore irreconcilable with the Government’s fiscal mandate.

Working and Learning Conditions:

The BCTF remains resolute it's their perspective that it must have an opportunity to discuss these issues directly with Government, in a one on one dialogue and that this dialogue on learning conditions must remain linked to collective bargaining.

It is clear from this fact finding process that this issue is of great concern to the BCTF. As professionals delivering the educational services to children in British Columbia, teachers are seeking an opportunity to articulate their thoughts and knowledge on the learning conditions for students. Government has elevated the issues of learning conditions to the status of legislation. However, effective public policy requires involvement of all those affected. It is my opinion that Government should develop an approach to engage with teachers and education stakeholders including parents, trustees, superintendents and principals in an effective and meaningful dialogue regarding this critical issue that is entirely separate from the collective bargaining process.

VI. CONCLUSIONS

In summary, while the parties met on numerous occasions, they failed to agree on a single item. The lack of dialogue on compensation led to a public media debate about the cost of proposals that only increased the tension and conflict between the parties and did not further understanding, clarity or opportunity to find agreement within a collective bargaining process. There is no question that the compensation demands and expectations of the BCTF, even with their declaration that these are opening positions, far exceed any opportunity for resolution within the current mandate.

While there may be some opportunity for a separate dialogue with Government on policy issues related to learning conditions, this matter remains, in the position of the BCTF, inextricably linked to collective bargaining. The BCTF agrees that it would participate in a separate process, but only along parallel timelines and linked through collective agreement language.

In conclusion, because of the positions of the parties on the two major issues, it is my opinion that there is no prospect for a voluntary resolution at the bargaining table in these negotiations.

Respectfully submitted,

Rick Connolly
Associate Deputy Minister
Ministry of Labour and Citizens' Services