British Columbia Teachers' Federation

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September 26, 2003

Don Wright
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Victoria, BC
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Dear Mr. Wright:

SUBJECT: Bill 27 Section 5—Education Services Collective Agreement Act—Review of Collective Bargaining Structures, Practices and Procedures *(ESCA)*

In your meeting with representatives of the BCTF on September 11, 2003 you asked that our organization provide you with background material ("off the shelf") dealing with collective bargaining in the K-12 sector together with any historical perspective we may have regarding that same topic. As well, you invited our submission as you formulate recommendations to the minister concerning the terms of reference and composition of the commission provided for in Section 5 of *ESCA*.

We forwarded material in support of the first of your requests earlier. The Federation will provide an historical overview of collective bargaining to your office on Monday, September 29.

We are pleased to respond, in this letter, to your final request of us concerning the commission.

On January 28, 2002, Bill 27 the *Education Services Collective Agreement Act*, imposed a legislated settlement upon public school teachers and school districts. Section 5 of *ESCA* provided, in part, as follows:

> 5 (1) The minister may appoint a commission, consisting of one or more persons, to do the following:
>
> (a) inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
>
> (b) make recommendations, after taking into consideration the factors referred to in subsection (2), with a view to improving those structures, practices and procedures;
>
> (c) report the recommendations to the minister within the time set by the minister.

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The BCTF agrees that there is a need to change the existing structures that govern teacher bargaining. As our supporting materials will describe, the present scheme is inherently flawed; no further proof of this assertion may be required than to recall that since 1995 the provincial parties have been unable to conclude a negotiated collective agreement at the table. Government, in successive rounds and for a variety of reasons, has seen fit to intervene in the bargaining process. The most recent and draconian of such interventions occurred in January of 2002 with the passage of Bill 28 the *Public Education Flexibility and Choice Act* (*PEFCA*). As you will know, the legislation struck down provisions in the collective agreement governing workload and staffing ratios; provisions that had been secured, sometimes at great sacrifice to teachers, in the period of full scope local bargaining. At the same time, *PEFCA* eliminated ten local agreements in school districts that had been amalgamated in 1996 but where multiple agreements had, by agreement of the local parties, continued to operate.

While the BCTF accepts the need for change, the decision to establish a commission of review in September of 2003 can hardly be considered timely. The imposed agreement expires in June of 2004. Already this organization is preparing for the upcoming round, which must commence in March of that year. In our meeting, you indicated that you are unaware of any predetermined deadline for the work of the commission to conclude. The Federation does not accept that collective bargaining should be postponed or curtailed in the event that the commission is still functioning on June 30, 2004. Should that prove to be the case, BCTF will seek to provide further submissions to government that would allow bargaining to proceed as scheduled.

Specific Recommendations:

In June of 1994, the report of the "Commission of Inquiry into the Public Service and Public Sector" was made public. Judi Korbin, who headed that commission, observed that:

> "A restructuring process born out of frustration with the current model that does not offer all parties an opportunity for meaningful input is not a guarantee for success. Finding a collective bargaining system that responds to the needs of the parties necessarily means including all of the parties in its formation."

Recommendation 1:

Mindful of Korbin's comments regarding the need to have all parties meaningfully involved, we recommend that the intended commission established under Section 5 of *ESCA* be comprised of the following:

...3

- One person named by the BCSTA;
- One person named by the BCTF;
- A third person familiar with the K-12 system including human resource issues and collective bargaining agreed to by the two parties.

A commission composed as we have recommended would enjoy the confidence of employers and employees alike. To the degree that it is possible, the commission should be free to operate beyond the direct control of government.

We have not provided for a representative to be named by BCPSEA. That is not simply an error of omission. BCPSEA is the offspring of an earlier legislative coupling, (Bill 78 the *Public Sector Employers Act, PSEA*, and Bill 52 the *Public Education Labour Relations Act, PELRA)* the procreation of which gave rise to the present scheme of bargaining. As such, it is an organization that is answerable to government and is not, in our view, accountable in any meaningful fashion to the public constituency. Government now funds the entire budget of BCPSEA (3.4 million in 2003-2004). The fees previously paid by school districts as a consequence of their compulsory membership are no longer required. In contrast, BCSTA is an organization comprised of individuals who hold office only because they have the confidence of an electorate that is served by the K-12 system.

Recommendation 2:

Section 5 (2) of *ESCA* sets out the factors which the commission "must consider" in its deliberations:

(a) the public interest in stable industrial relations in the public school system and a bargaining environment that:
  (i) reduces the potential for disruption in the provision of education programs to students,
  (ii) does not interfere with any student's access to a quality education, and
  (iii) results in expeditious settlement of disputes;

(b) the need for effective and efficient structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;

(c) the views of the employers' association, school boards and the BCTF on how to achieve effective and efficient structures, practices and procedures referred to in paragraph (b);

(d) any other factor that the commission considers relevant or that the minister may direct.

In our respectful view, the terms of reference enunciated in 5 (2) (a) i-iii can only serve to validate and extend the existing system where the rights of one party are constrained by a reduced scope of bargaining and a limited right to strike. To have any chance at success, a newly-minted bargaining scheme must be supported by both parties who are required to live within its construct. The present system does not have the support of teachers. The Federation urges that your report to the minister include a legislative amendment that would repeal Section 5 (2) (a) i-iii and allow for the commission to recommend any bargaining structure that is based upon full, fair, and free collective bargaining rights.

Of necessity, such a structure would allow for the following elements:

- Ability (authority) to conclude a collective agreement;
- Bargaining styles that contribute to a negotiated settlement;
- Resources sufficient to meet bargaining outcomes;
- Employer structures that are publicly accountable;
- Respect for the role of trustees and local community decision making.

The foregoing elements are those endorsed by the membership of the BCTF through its Representative Assembly in 2003.

We thank you for the opportunity to present and discuss our recommendations and look forward to the establishment of a commission that has our support and confidence.

Yours truly,

Neil Worboys

Neil Worboys
President

NW03Sept26a
NW:jb:utfe/TWA Local 1-3567

HISTORY OF TEACHER COLLECTIVE BARGAINING 1917-2002

ATTACHMENTS FOR LETTER SUBMITTED TO DON WRIGHT

from the

British Columbia Teachers' Federation

September 2003

Teacher Bargaining 1917-2002

Introduction:

The BCTF has been asked by Mr. Don Wright to offer its views on teacher collective bargaining (K-12) over the last twenty years. What follows is presented in partial fulfillment of that request.

Teachers want to bargain terms and conditions of employment with their employers on a face-to-face basis.

This attitude reflects both the attitudes of teachers today as well as the views of teachers over the last 50 years of our history.

To be effective, a collective bargaining system requires the following key ingredients:

- A respect for the role of trustees and local community decision-making;
- An ability to conclude an agreement;
- Bargaining styles that contribute to the achievement of a negotiated settlement;
- Sufficient resources to meet bargaining outcomes.
- Employer structures that are publicly accountable.

The history of our collective bargaining relationship has shown that unless a bargaining system has integrity that is based on these important principles, it will not gain the confidence of the parties to the relationship or that of the broader public.

What are the lessons of the pre-collective bargaining era?

1. Limits on scope of negotiations did not prevent parties to the relationship from negotiating the full terms and conditions of employment.

   For over 40 years, teachers negotiated beyond the "salary and bonus" scheme that was originally enunciated in the 1937 *School Act*.

   In the late 1960s, teachers in Vancouver, Burnaby, West Vancouver, Coquitlam, Powell River and Surrey negotiated working and learning conditions contracts.

   Table 1:

   Sample of the Kinds of Provisions Negotiated into Working and Learning Conditions Agreements 1968-1975 Period

PROVISION	DESCRIPTION
1. Terms of Employment	• Appeal process to deal with administration of the contract.
2. Sick Leave: Above that which was set out in the *School Act*	• Set out accumulation and utilization rates for teachers and front-end loading of sick leave for first year teachers.
3. Retirement Gratuity	• Provided for a payout based on years of service.
4. Maternity Leave	• Provided for maternity leave above that provided for in the *Maternity Protection Act*, 1966.
5. Staff Committees	• Established an on-going school committee to deal with school philosophy, staff utilization.
6. Class Size and Teacher Workload	• Established class size limits for kindergarten, any classes, special classes, and average daily pupil load.
7. Library Staffing	• Requirement that every school be served by a qualified librarian.
8. Noon Hour Supervision	• Restriction on the amount of noon hour supervision that a teacher must provide or specification that no member of the association shall be required to perform routine school supervision during the noon hour.
9. Teacher Transfers	• Language setting up voluntary transfers.
10. Detached Duty	• Establishment of a detached duty fund for education conference, seminar, workshop, in-service course or other approved educational activity.
11. Teacher exchange provisions	• Provisions that allow for domestic and foreign exchanges of teachers.
12. Professional Improvement Leave	• Provides for full, partial or unpaid leave for Professional Improvement Leave.

13. Sabbatical Leave	• Provides for the establishment of a Sabbatical Leave Fund in the amount of 1/3 of 1% of the Teachers' Salary.
14. Portability of Sick Leave	• Allows for credit for sick days earned outside of the current school district.

Source: Learning and Working Condition Agreements from some of the districts that entered into those agreements, (1968-1975).

In the early 1980s, employers and teachers freely entered into a range of terms and conditions that were incorporated into local collective agreements or school board policy tied into the collective agreement.

During that period the following improvements were mutually agreed to in contract or tied policy:

Nature of Provision Agreed to in Contract or Tied Policy	**Number of Districts Agreeing to Improve Provisions (in addition to those who already had provisions) (N=75 school districts)**
Increased elementary preparation time	27
Elimination of some or all noon hour supervision	30
Transfer provisions	12
Improved statements on personnel practices	19
Improved provisions for leaves of absence	36
Improved professional development package	42
Paid educational leave	11
Grievance procedure	27

Source: B.C. Teacher Agreements 1980-1985

Conclusion: Local parties entered into these arrangements because, notwithstanding the restricted scope in the *School Act*, both parties saw a need to address issues that confront teachers and students in classrooms.

2. Highly restrictive regimes can serve to frustrate the parties.

In 1919, the government of the day introduced legislative amendments to the *Public Schools Act* providing for consensual arbitration in the settling of teacher salaries. These amendments followed on the heels of a two-day strike of Victoria teachers, the first in the British Empire.

A one-week strike followed by mass resignation occurred in New Westminster in 1921, following the failure of the school board and community to fund the bargaining outcomes related to salary.

Even the introduction of the compulsory arbitration system in 1937 did not bring an end to frustration arising from the limitations on the scope of bargaining.

Mass resignations, "in-dispute tactics," strikes, "work-to-rules" were used throughout the period from the 1920s to the 1980s.

3. Bargaining can only be effective when those responsible for the bargaining have the ability to fund the bargaining outcomes. Bargaining can only be stable when the funding rules and mechanisms can be relied upon over the long term.

The history of teacher bargaining reveals the dynamic and direct relationship between the effectiveness of the bargaining system and the funding of public education. The bargaining system is most effective when those charged with bargaining also have the direct ability to tax.

Traditionally in this province, local school boards have had the autonomy to determine the financial and program needs in their districts, and establish their budget accordingly. That budget was comprised of the basic provincial funding to ensure a uniform minimum standard of education, together with supplementary funding, determined by the school board, to meet the further needs identified in its budget. The supplementary funds were generated by school board access to the local property taxation base.

Local authority to tax beyond a provincially determined funding formula was lost with the introduction of the referenda funding system of the late 1960s, and subsequently restored in the early 1970s. It was suspended by an *Interim Education Finance Act* in 1982; restored in 1987, and again removed in 1990.

Both trustees and teachers have identified the removal of local taxation authority as a major impediment to successful negotiations at the local level.

Conclusion: The greatest periods of tension in the bargaining system occurred when there was no capacity of employer bargainers to deliver on the financial promises made in negotiations and when there were wild swings in government policy that led to uncertainty in the funding system.

4. Public education will always contain an element of conflict. Efforts should be made to localize it and provide negotiators with the authority and responsibility to conclude collective agreements

Public education is established and delivered through the co-operative efforts of teachers and democratically elected officials at the local and provincial level. It is an expression of the norms, values and priorities of the society at large.

The content and processes used in delivering educational programs requires a broad social and political consensus. Establishing that consensus requires an open and public debate.

Bargaining is a subset of that broader debate.

Bargaining history even in the pre-collective bargaining era demonstrated that conflict needs to be managed effectively. Historically, conflict was most effectively managed when local parties were given the tools and the responsibility for resolving the issues. Arbitrary efforts by government to intervene typically pushed the parties farther away from resolving the dispute.

This can be seen in the introduction of the wage and budget control program in the early 1980s. In the spring of 1982, the provincial government enacted the *Interim Education Finance Act* and the *Compensation Stabilization Act*. Ceilings for expenditure were placed on school boards, while arbitrary controls were placed on wages. Teacher bargaining was conducted under a most adverse set of conditions in which virtually all financial control was arrogated to the provincial government.

Under this centralized, iron-fisted control, school boards lost all real power to bargain. Inevitably, the system was tested by teachers who engaged in a broad range of political action and job actions. Aside from the Solidarity strike, work-to-rule activities were undertaken a wide range of locals including major areas of metro as well as Victoria, Qualicum, Sooke, Vancouver Island North, Vancouver, North Peace and Grand Forks.

During this period, legal challenges were the order of the day, including a challenge under the equality provisions of the Charter of Rights and Freedoms.

Conclusion: This history shows that curtailment of rights and arbitrary interventions by government serve to significantly destabilize and undermine the bargaining structure.

5. Curtailment of rights and arbitrary interventions significantly distort bargaining outcomes.

Finally, our bargaining history has demonstrated that unless full collective bargaining rights are provided in a stable predictable political and funding environment, bargaining outcomes become highly distorted.

Federal and provincial interventions including: wage and funding controls, imposed lay-off schemes, and restrictions on the granting of full collective bargaining rights and thwarted the ability of local parties to achieve mutually agreed to bargaining outcomes.

In turn, these interventions serve to severely distort results. This can be seen in the introduction of the federal wage controls in 1975. The legislation came into effect on October 13 in the midst of local teacher bargaining. Those districts and locals which managed to conclude agreements on the eve of the legislation, were able to significantly boost their relative salary standings over those who were not able to conclude an agreement.

This can be seen in comparing Nechako (School District No. 56) and Burns Lake (School District No. 55) salary grids over the period from 1975 to 1980. (Note these districts were amalgamated in 1996 to form Nechako Lakes (School District No. 91.)

Contract/ Salary Grid Category	Nechako: Category 5 Minimum	Burns Lake: Category 5 Minimum	Dollar Amount Burns Lake is Behind Nechako	Burns Lake Salary as a % of Nechako
Year				
1975	12,436	12,349	87	99.3%
1976	14,252	13,769	483	96.6%
1977	15,748	14,630	1118	92.9%

While there was some narrowing of the wage gap after 1977, it can be seen that arbitrary government interventions can serve to significantly distort historical compensation relationships. These distortions are not limited to Category 5 minimum of the teacher salary grid. The key in this case is that the distortions occurred in school districts that were political and geographic neighbours. There was no logical basis for the differences other than as a result of a result of arbitrary federal government in establishing ceilings on salary.

Conclusion: This is but one example that illustrates the need for government to take a hands off approach to teacher negotiations. Further examples will be provided should the BCTF decide to make a submission to the commission established under Bill 27.

Teacher Bargaining 1987-1994

Full Collective Bargaining Rights and Local Bargaining:

In May 1987, the Social Credit government enacted Bill 19 the *Industrial Relations Reform Act* and amended the *Labour Code* to provide teachers with the right to strike as an option for dispute resolution and enabled teachers to bargain most terms and conditions of employment. At the same time, the government deregulated longstanding statutory provisions on sick leave, teacher evaluation, and BCTF membership, leaving those issues for the parties to bargain. Virtually every teacher in the province signed up to belong to the BCTF, and in every local members voted to select the right to strike over arbitration. Teachers voted democratically, in huge numbers, with a clear voice. B.C. teachers were the last group of public school teachers in this country to achieve collective bargaining rights.

Some have characterized the three rounds of collective bargaining in this period as being marked by disputes, in which teachers overpowered school boards. This is simplistic and misleading. Decades of restricted rights are described previously in this paper. While some teachers were able to negotiate working and learning conditions contracts, others were rebuffed and in some cases defeated in the courts. The negotiation of these conditions depended totally on a board's willingness to enter into negotiations. Not all boards were willing to negotiate. In many districts, working and learning conditions were contained only in school board policy. The first three rounds of bargaining therefore had to address not only three significant issues that had been deregulated overnight by government, but decades of unmet teacher/student needs such as class size, preparation time, maternity leave, professional development support, and other critical demands. There were, in fact, remarkably few lockouts or strikes.

Teacher strikes in this period were always a last resort, after protracted negotiations had failed to reach an agreement. School boards, many armed with expensive hired lawyers or negotiators, were resistant to collective bargaining. It was difficult for district managers to accept that rules about their behaviour could be negotiated and enforced. In spite of the fact that virtually all teachers signed BCTF membership forms, some school boards even resisted union membership clauses. It is never easy for teachers to leave their classrooms. The public pressure, their professional commitment, and their economic needs are always balanced with their commitment (and need) to improving learning and working conditions, and to improving their economic situation.

Legislative initiatives that significantly impacted on teacher bargaining were a feature of this period and contributed greatly to the protracted nature of bargaining. Immediately after the first round of collective bargaining, the government rewrote the *School Act*. These legislative amendments forced teachers to bargain fundamental issues such as contracting out, hours of work, and employment status. In effect, since most of the rules had been changed, teachers were forced to renegotiate a first contact.

Further legislative changes occurred during the 1990-92 negotiations when local school board fiscal autonomy was removed after only being restored in 1987. Bill 79 was enacted and a retired

rear admiral with no labour relations experience , Robert Yanow, was placed in charge of overseeing the positions taken by the parties. What both parties predicted came true: this intervention frustrated, distracted and delayed teacher bargaining until it was scrapped in the spring of 1991.

In 1991, Bill 82, a system of wage controls, was imposed during the middle of the second round of collective bargaining. Half of the districts had reached agreements, and most others were nearing settlement. This bill exacerbated already strained relations, disrupted agreements and their implementation, and placed enormous obstacles in the way of reaching settlements.

Even the third and last round of local bargaining was frustrated by legislation in the form of Regulation 8 (an instructional requirement that ignored the actual provincial school calendar and the negotiated agreements) which interfered with local agreements on school calendar and hours of work.

The parties were able to conclude negotiations on a range of very complicated topics, ranging from layoff and recall to post and fill, from class composition to class size. The parties to teacher bargaining were able to reach agreement on items involving significant management and union rights, including contracting out and professional autonomy–no mean feat. In a work environment that embraces so much professionalism and includes so many professionals, surely it can expected that the working relationship as expressed in the collective agreement, ought not to be one of master/servant, but one of collegiality in which decisions and responsibilities are shared. This was the case with the thousands and thousands of articles negotiated between parties around the province.

Teachers and some employers who were involved in the third round of local bargaining believe that had the government not once again interfered by imposing a provincial bargaining scheme, interruptions in the next round would have been rather minimal in nature. Most of the major issues had been addressed by the local parties, and the parties themselves had established working relationships in regard to collective bargaining and their obligations and responsibilities.

Most school-based administrators actually took comfort in having established rules about topics such as class size because of the clarity produced by such rules. They also knew the benefit of reduced class size, and improved support to the teachers and students. Professional development funding, for example, allowed for staff development initiatives to flourish when teachers could attend courses or workshops. Staffing ratios ensured adequate levels of support for students.

Weighed against all the obstacles outlined above and the decades of unmet needs, local bargaining proceeded remarkably smoothly and with a great deal of accord between the parties. So much so, for example, that much of the language that was bargained between the local parties remains in place today. Granted, some of it is stale, but three rounds of provincial bargaining have not managed to achieve a settlement, let alone provincial standards on most significant issues. Face to face negotiations, at the local level between the parties who are accountable to one another, has been the tried and proven method of working out problems, finding solutions, and putting those answers to print.

Teacher Bargaining 1994-2002

Background: The Korbin Commission–Mandate and Outcomes:

In April of 1992 the NDP government of the day announced the establishment of a "Commission of Inquiry into the Public Service and Public Sector". The commission was charged with the examination of human resource practises within the sector in order that government might "meet the public's demand for services within fiscal limitations." The conduct of negotiations in the public sector, including those in K-12, came under the commission's scrutiny.

Judith Korbin was named to head up the commission. Her final report was released in July of 1993. Submissions from the K-12 employer community had lamented the existing structure of district by district "full scope" bargaining. The major criticisms from the employer's view were essentially two-fold:

- An inability (some would say unwillingness) on the employer's part to compete with the co-ordinated front presented by locals of the BCTF and;
- An inability to fund agreements with teachers once they had been achieved. (Local taxation authority to fund district commitments beyond the basic funding formula provided by government had been removed in 1990).

With respect to the first of these concerns, the employer urged the following upon the commission:

> *The lack of coordination amongst school boards has resulted in situations where Boards have had to trade off economic issues with delivery of service issues. Costs and counter-productivity of the present bargaining system interfere with the effective utilization of resource and breeds ill will as districts compete and draw unfair comparisons with one another.*
>
> *In fact, the present structure of seventy-five (75) parallel sets of negotiations has resulted in a multiplicity of the bargaining process and an increasing degree of confrontation as settlements made in one school district unduly influence negotiations in other school districts.*
> *(BC School District Secretary-Treasurers Association – Submission to the Korbin Commission – September 1992)*
>
> *"As a consequence, it seems that everything is up for grabs". School boards are being whipsawed and cherry-picked around the province."*
> *(Special Report – Public Education and The Public Interest – Brief of the BC Principals' and Vice-Principals' Association to the Korbin Commission – June 1993)*

BCSTA in its submission to Korbin called for a "three-tiered"form of provincial bargaining.

The BCTF, for its part, urged the continuation of full scope bargaining on a district by district basis. In part, the arguments advanced in favor of its continuation went to the need to find "made-at-home solutions" to local issues. Centralization was seen as incapable of responding in a timely or efficient way to such needs. As well, it was noted that the existing scheme for collective bargaining was, in relative terms, still in its infancy. The K-12 sector had only recently acquired full bargaining rights through the enabling amendments to the *Labour Code* in the form of Bill 19, the *Industrial Relations Reform Act.*

The commission's final report was made public in July of 1993. Despite the entreaties of the employer, the commission did not recommend provincial bargaining for teachers. What did emerge from Korbin's recommendations, later in that same month, was legislation in the form of Bill 78 , the *Public Sector Employers' Act* RSBC 1996, C. 384. The essential features of *PSEA* saw the establishment of a Public Sector Employer's Council (PSEC) and mandatory employer membership in six employer associations within the public sector, viz:

- Health
- Social Services
- K-12 Public Education
- Colleges and Institutes
- Universities
- Crown Corporations, Agencies and Commissions

(Part 1 and Regulation - PSEA)

All school boards were now bound to membership in a yet-to-be-formed employers' association for the K-12 sector. (BCPSEA came into being in May of 1994.)

PSEC, chaired by the Minister of Labour, had listed among its legislated functions:

- To set and co-ordinate strategic directions in human resource management and labour relations;
- To advise the government on human resource issues with respect to the public sector; and
- To provide a forum to enable public sector employers to plan solutions to human resource issues.

All of this:

- Consistent with cost efficient and effective delivery of services in the public sector.

(Part 2 - PSEA)

The employer associations were legislatively required to:

- Assist the council in carrying out any objectives and strategic directions established by the council for the employers' association;
- Comply with any strategic direction that is set by the council in the exercise of its functions...that is of general application or applies specifically to that association;
- Comply with any further condition prescribed by the Lieutenant Governor in Council

(Part 3 - PSEA)

Each employer association was required to reserve place settings for PSEC representatives on its board of directors and, in reciprocal fashion, PSEC provided for a member of each association's board to sit as part of the council.

Taken together, these legislatively-fashioned constructs and purposes ensured that government would set the direction and control the outcome of collective bargaining in the public sector. Government and the employers had been effectively joined at birth. Primary direction to PSEC and by extension school districts came from the Treasury Board, with the major concern being cost. (*This was soon evidenced as the Treasury Board, through PSEC, issued the first of two fiscal mandates in April of 1996 which would apply to all public sector employees. Mandate I provided for no compensation in the first twenty months and a 1% maximum for the final 4 months of its term. Mandate II was issued in October of 1997 for the period 1998-2001 Compensation was set at 0% for the first twenty-four months and a maximum of 2% in the final year.)*

While PSEA did not alter the scheme of local bargaining, (agreements with teachers would still be determined on a district by district basis) Bill 78 provided for enforced coordination of the employer community in the K-12 sector. With only minor exceptions, employer co-ordination forced or otherwise, had not been a feature of local bargaining since 1987. Section 11 of *PSEA* empowered the minister, on his/her own motion to accredit employer members of an employer association to act as the bargaining agent for a group of employers named in the accreditation.

BCTF understandably viewed Bill 78 as an unwarranted and unwelcome intrusion into the collective bargaining process.

Two-Tiered Provincial Bargaining

Legislative Scheme:

In June of 1994, the government enacted further legislation that radically altered the shape of bargaining in the K-12 sector. Bill 52 the *Public Education Labour Relations Act* (PELRA), deemed BCPSEA as the bargaining agent for every school district in the province for the purpose of bargaining collectively with a teachers' union or a support staff union. In parallel fashion, PELRA deemed the BCTF as the bargaining agent for all employees in the "bargaining unit"—all teachers in the K-12 public system.

Apart from the hijacking of local bargaining authority, PELRA required that the provincial parties determine a division of issues to be bargained provincially and those to be negotiated locally—"the split of issues". At the same time, certain features of the employment relationship were deemed in s. 7 of PELRA to be provincial in nature and thereby beyond the scope of discussions at the local level.

7 (3) All cost provisions, within the meaning set out in subsection (4), are deemed to be Provincial matters.

(4) In subsection (3), "cost provisions" includes all provisions relating to

(a) salaries

(b) workload, including, without limitation, class size restrictions, *(repealed Jan. 28, 2002 – Bill 28 Public Education Flexibility and Choice Act)* and

(c) time worked and paid leave

that affect the cost of the collective agreement.

Immediate Consequences:

For the BCTF and its locals the enactment of Bill 52 meant the loss of bargaining rights for local unions and a severely limited scope of bargaining at the local level. Beyond that, a united front on the employer side of the bargaining ledger posed a very real threat to the continuation of the workload provisions that had been negotiated in three rounds of local bargaining; often at a high price to the local teacher membership.

Structural Flaws:

From the perspective of the BCTF the bargaining structures and employment relationship created by Bills 78 and 52 resulted in serious and fundamental flaws which act as impediments to the "efficient delivery of services" featured prominently in the legislation. Briefly stated, these flaws can be summarized as follows:

- Decisions concerning the delivery of services to the K-12 sector no longer made by the parties responsible for their delivery. Instead, such decisions are made by third parties removed from the school district arena where any decision must be acted upon. This has as a consequence reduced to a significant degree the autonomy and authority of locally elected trustees.

- The employer's approach to bargaining is driven primarily by concerns for cost. Standardization of provisions and resources is seen as a means of significant cost savings. Such an approach has scant regard for the special circumstances that confront individual districts and teacher groups as they attempt to address issues peculiar to their own circumstance.

- The centralization of bargaining creates a serious accountability void. No one from the employer community is responsible for positions advanced or strategies that are adopted. The bargaining agent for school districts can lay the blame for retrograde proposals at the feet of the trustees (its membership) or the government or both. Government can assure anyone who will listen that it has created a system where free collective bargaining has been given free reign. Trustees can point to the 1300 block of Broadway, as they often do, to explain why collective bargaining proceeds as it does.

- The legislative scheme of PELRA is unwieldy. Section 7 (1) of *PELRA* defines the collective agreement as "all Provincial matters and local matters that have been agreed on by the parties." In 1995 this meant that the following had to occur before a collective agreement could be achieved.

    a. Negotiation by the provincial parties of the split of provincial and local issues.
    b. Negotiation by the provincial parties on Provincial issues.
    c. Negotiation by the local parties on local issues.
    d. Negotiation by the provincial parties of unresolved local issues unilaterally referred by either of the local parties pursuant to s. 8 (3) of *PELRA*.

  This would involve some 78 sets of negotiations occurring simultaneously or in different time frames.

  The lack of an effective dispute resolution mechanism for impasse reached at the local level only exacerbates the unwieldy nature of the two-tiered system. The provincial parties, confronted with fixed positions on local matters referred to them, will find it difficult to move from the last-tabled proposals advanced by their counterparts at the local level.

  - Because the interests of government are so much in play, negotiations have become politicized to an extent not seen in local bargaining. Since 1995, government has shown little reluctance to enter into the public debate over teacher bargaining with representatives of government commenting in the press and electronic media seemingly at will. This has only served to prolong and further complicate negotiations.

- The assignment of exclusive bargaining agency to the provincial parties has encumbered the speedy resolution of disputes that arise at the local level during the term of the agreement. Grievance handling and resolution have additional layers of bureaucracy and complexity causing protracted delay and frustration for the parties who must live with the problem.

Bargaining History and Outcomes

The Transitional Collective Agreement:

In May of 1995 following an agreement as to the split of issues, the provincial parties undertook to negotiate the first provincial collective agreement. The approach taken by the employer in these discussions had two distinct features. The first was somewhat euphemistically named the "clean slate". BCPSEA adopted the position that all existing provisions, deemed to be provincial matters, were of no force and effect unless they were modified or renewed in a new provincial agreement. The BCTF looked upon the existing agreements as the base upon which

improvements should achieved. In the result, BCTF adopted a "no concessions" approach to negotiations and tabled a traditional package of proposals to enhance the provisions of the agreement.

The second feature of the employer's approach was more tactical in its approach. BCPSEA had no specific or written proposals. Instead, the employer's bargaining team attempted to engage the Federation in a second and more tactical feature of negotiations; an "interest-based" approach to collective bargaining. Where the BCTF would table a specific proposal on say class size, the employers' agent would respond with a statement of its "interests" in this regard and invite a dialogue as to how "our mutual interests" might best be served.

It may be that interest-based bargaining has some limited value where the bargaining relationship is well established and the parties have developed a working relationship that is built on trust. This was most certainly not the case as the two provincial parties sat across the provincial table from each other for the first time in 1995.

There was no historical relationship between the parties. At the same time, the Federation was keenly aware of the results of BCPSEA's first bargaining conference held in June of 1994. The employer's interests, if achieved, would have seen the erosion if not the extinction of those areas of the agreement that went to workload and due process. Provisions governing class size, performance assessment and discipline for cause, as well as posting and filling of vacant positions were, in the view of the employer, provisions that should either be seriously modified or stripped entirely from the agreement in favor of employer discretion and flexibility.

BCTF heard the siren song of an interest-based approach to negotiations as an less than seductive invitation to assist the employer in its attempt to dilute existing working and learning conditions for teachers and children. The "no concessions" approach of the Federation was doubly confirmed.

The NDP government of the day, in anticipation of a provincial election, passed legislation that would ensure no disruption in health care or education while the election was underway. (Bill 21- *Education and Health Collective Bargaining Assistance Act*)

Before the election, government representatives brokered a deal in the K-12 sector that rolled over the language of the existing agreements 1992-1994 (95) and provided for modest salary increases during the term of a "Transitional Agreement". Both parties ultimately endorsed the agreement, which also contained a provision for an early resumption of negotiations well before its expiration.

The First Imposed Collective Agreement:

The second round of negotiations saw a change in tactic on the part of the employer but no retreat from its fundamental position that the existing agreement required wholesale change.

BCPSEA tabled a package of written proposals in September of 1997 as did the Federation on behalf of teachers.

The two packages were antipodal in their approach. The employer continued its "clean slate" vision of the agreement. BCTF again held that existing provisions should remain subject to revision through negotiated improvements.

Expressing anger and frustration at the lack of progress at the table, BCPSEA called on the provincial government to intervene in the negotiations in February of 1998. Representatives of PSEC approached the Federation with specific proposals that they felt could form the basis of a settlement acceptable to both parties. Negotiations with government and the BCTF produced an Agreement in Committee (AiC) in April of 1998 which was then presented to both parties for ratification. The AiC contained contractual limits for class size K-3 together with guaranteed staffing ratios for non enrolling teachers such as librarians, counselors, learning assistance teachers and the like. Compensation during the term of the proposed agreement fell within government's Mandate II of 0% 0% 2% over three years.

BCPSEA was not part of the negotiation that led to the AiC. This disenfranchisement was, in part, responsible for the employer's negative reaction to its terms. Trustees, at the urging of BCPSEA, voted overwhelmingly to reject the proposed deal. In July of 1998 the government imposed the settlement as a collective agreement binding the parties through passage of Bill 39 the *Public Education Collective Agreement Act*. The ensuing period thus saw the employer community much embittered. In its view, the imposed agreement served only to exacerbate the loss of employer flexibility and control in the workplace.

The Second Imposed Agreement:

Soon after the Liberals were elected in May of 2001, legislation was enacted to make K-12 education an essential service. Bill 18 the *Skills Development and Labour Statutes Amendment Act* added "the provision of educational programs to students and eligible children under the *School Act"* to Section 72 of the *Labour Code*.

The Liberal government embarked on a program of reductions in spending, with most ministries forced to make cuts in their program budgets. Health and education had their own budgets frozen.

Negotiations towards a new collective agreement began in the spring of 2001. BCTF continued its no concessions approach. For its part, BCPSEA pressed even more vigorously its own agenda to recover "losses" experienced since 1987.

In nine months of meetings, only three issues were decided. Throughout negotiations, the government threatened to intervene especially when the BCTF began a limited form of strike and was prepared to escalate to a withdrawal of program service in an escalated phase of job action. In December of 2001, Stephen Kelleher attempted to facilitate negotiations between the parties.

The increasing threat of government intervention and the corresponding recalcitrance of the employer meant that even his best efforts went for naught.

On January 28, 2002 the legislature passed two pieces of legislation which brought all matters to a halt. Bill 27 the *Education Services Collective Agreement Act* imposed a collective agreement on the parties and provided salary increases on 2.5% in each of three years 2001-2004. Section 4 of the bill also eliminated, effective July 2002, ten local agreements in districts that had been previously amalgamated but where two or more agreements had continued to operate.

Bill 28 the *Public Education Flexibility and Choice Act* moved the employer's bargaining agenda forward with alarming force and effect. The existing agreement was stripped of any provisions concerning class size and/or workload. Those terms and conditions were now added to the s.27 of the *School Act* as being beyond the scope of teacher bargaining.

Somewhat ironically Bill 27 had confirmed that the Legislative Change provision between the parties would become part of the legislated agreement. Bill 28 contained a section which denied access to this same provision to address the impact of the legislation on the class size and workload language of the agreement.

Much has been written and said about the imposition of a second collective agreement. For some in the employer/government community it is simply the legislated expression of an old adage "turnabout is fair play". From the perspective of teachers, January of 2002 was hardly a tit for tat experience. Where imposed conditions in 1998 (the AiC) improved the working conditions for teachers and the learning environment for students, Bills 27 and 28 served only to make those conditions worse.

Bill 27 s. 5—Review of Collective Bargaining Structures, Practices and Procedures:

Government included the potential for such a review as a feature of its January 28 legislative package. Clearly there is a need for change to the present structures. The terms of reference mandated in s. 27 5 (2) appear to teachers to simply extend a government/employer agenda that would see a further diminution of rights and conditions for teachers together with further restrictions on the right to strike.

Unless those terms of reference are modified to allow for a more balanced approach to the review, it is unlikely that the commission's work will bring about the stability in this sector that teachers and the public seek.

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