

Summary

Voice, Accountability and Dialogue

Recommendations for an Improved Collective Bargaining System for Teacher Contracts in British Columbia

Ministry of Skills Development and Labour
December 2004

Recommendations for an Improved Collective Bargaining System for Teacher Contracts in British Columbia

SUMMARY

Overview

In all three rounds of teacher collective bargaining since 1994, government intervention has been required in order to conclude a collective agreement.

Don Wright was appointed by the labour minister in December 2003 as a one-person commission to review the collective bargaining structure for B.C. teachers and their employers and develop options for improvement in the future.

During his consultations, Wright met with and received submissions from the British Columbia Teachers' Federation (BCTF), the British Columbia Public School Employers' Association (BCPSEA) and the British Columbia School Trustees Association (BCSTA). He also met with school boards and local teacher associations from all parts of the province and received input from a number of other organizations with interests in public education in British Columbia.

In his final report, Wright makes twelve specific recommendations that, in the commission's view, will lead to healthier collective bargaining and an end to the established pattern of government intervention in collective bargaining. These recommendations reflect three key principles:

- Teachers must have an effective voice in influencing the terms and conditions of their employment;
- There must be sufficient transparency so that proper accountability can be established; and,
- We need to find the ability to engage in a true dialogue about how to make a good public school system even better.

The commission's recommendations are organized around five key questions regarding teacher collective bargaining:

- Where will issues be bargained?
- Who should be the bargaining agent for the employer?
- How will impasses at the bargaining table be resolved?
- What is to be bargained?
- What transition measures are needed?

Where Will Issues Be Bargained?

In British Columbia, as in most Canadian jurisdictions, responsibility for education funding, policy and delivery is shared between the provincial government and local school boards. In broad general terms, funding and major policy direction is primarily the responsibility of the provincial government, while delivery sensitive to local needs is the responsibility of local school boards.

This structure should be maintained with the provincial government continuing to have responsibility for determining and allocating the bulk of funding for the school system.

To maintain alignment between bargaining structure and the accountability for financing the K – 12 system, major cost drivers of the system should be bargained at a provincial table and issues that are primarily about the local employer – employee relationship should be negotiated at the local table.

Locally negotiated issues could include: non-cost matters (all matters now identified as local under the *Public Education Labour Relations Act* and in the current provincial/local split of issues); unpaid leaves of absence; leaves of absence paid or subsidized by the employer; discipline and dismissal for misconduct; evaluation; posting, filling and assignment; layoff and recall; supervision duties and duty free lunch.

All other matters would be negotiated provincially, unless the provincial table determines otherwise.

Recommendation One:

British Columbia should maintain a two-tier bargaining approach where the major cost items continue to be negotiated at the provincial table.

Recommendation Two:

The split of issues between the provincial and local tables should be revisited, and a wider range of issues – ones that are primarily “relational” - should be negotiated at the local level. Local agreements about local issues should not be subject to ratification by the provincial table.

Who Should Be the Bargaining Agent for the Employer?

The question of who should bargain for the employer stems from the fact that the provincial government and local school boards share responsibility for governance and funding of the K – 12 system. There are, in essence, two parties to the negotiations on the employer side, and the challenge is how to ensure the interests of those two parties are properly represented.

The most practical approach is to stay with the model established in 1994 – where the employers’ bargaining agent is accountable to a board with representatives of both local school boards and the provincial government.

The lack of clarity about how BCPSEA’s bargaining mandate is established and who should be accountable for it – should be addressed.

There will naturally be tension between the interests of the provincial government with its broader responsibilities and the more focused interests of school boards. This is inevitable given the decision to blend provincial accountability for funding with local administration of the school system. The ongoing challenge for BCPSEA is to balance the fiscal and policy objectives of the provincial government with the interests of school boards as public school employers.

Local level negotiations should be conducted with greater “autonomy” from the provincial table. This will require, through amendments to the *Public Education Labour Relations Act* if necessary, delegation of authority to negotiate and sign agreements with respect to issues identified as local to the local teachers’ associations and school boards.

Recommendation Three:

The bargaining agent for the employers should continue to be accountable to both the provincial government and school boards.

Recommendation Four:

The process and accountability for the development of the employers’ mandate for negotiations through BCPSEA should be confirmed.

Recommendation Five:

The authority of school boards and local teacher’ associations to negotiate agreements on local matters should be established as a delegated authority from the BCPSEA and the BCTF respectively. The *Public Education Labour Relations Act* should be amended accordingly, if necessary.

How Will Impasses at the Bargaining Table be Resolved?

Currently, provision of educational services in British Columbia is deemed to be an essential service under the *Labour Relations Code*. In the event of a possible work stoppage in education it would be up to the Labour Relations Board to identify which services would continue in the event of a strike or lockout.

The commission recommends that the provincial government clarify, as a matter of public policy, what level of disruption in the K-12 system it believes is in the public interest in the context of an impasse at the collective bargaining table. If, for all practical purposes, the right to strike does not exist, an alternative mechanism for dispute resolution needs to be provided.

Proposed Collective Bargaining Process

Teacher collective agreements in British Columbia generally have duration of at least two years and expire on June 30. On the expectation that this will continue to be the norm, a process is defined with specific milestones and phases:

Phase 1 – April 1 to September 30

- “Normal” collective bargaining (no imposed conciliation, mediation) between the parties;
- Initiated on April 1 prior to expiration of previous agreement.

Phase 2 – October 1 to October 31

- If no agreement is reached by September 30, a Commissioner is appointed to investigate the status of negotiations;
- Negotiations continue through the month; parties may ask for assistance of the Commissioner by mutual consent;
- If no agreement is reached by October 31, the Commissioner will issue a public report outlining:
 - Issues at the table;
 - Which issues are resolved;
 - Which issues remain unresolved;
 - Position of the parties; and,
 - Financial and other implications of those positions.

Phase 3 – November 1 to January 31

- The Commissioner is appointed as a Mediator / Arbitrator;
- The Commissioner attempts to mediate an agreement between the parties.

Phase 4 – February 1 to February 28

- If no agreement is reached by January 31, the Mediator / Arbitrator gives each party two weeks to propose a final offer, encompassing all issues that either side has put on the table and not withdrawn;

- Negotiations can continue if both parties agree;
- If no agreement is reached by February 28, the Mediator / Arbitrator chooses one of the final offers as the “default contract.”

Phase 5 – March 1 to March 15

- Parties may try to negotiate an alternative agreement. If they reach settlement by March 15, the alternative agreement becomes the contract;
- If no alternative settlement is reached, the “default contract” becomes the contract.

The Commissioner/Mediator/Arbitrator should be an experienced mediator/arbitrator in the context of British Columbia labour relations. Ideally, he/she should be chosen by mutual consent of the parties. Failing this, both parties would forward three names to an impartial authority (e.g. Chief Justice of the Supreme Court of British Columbia) that would choose one of the six possibilities as the Commissioner/Mediator/Arbitrator.

The process has been designed to give effective voice to teachers through a combination of independent third party evaluation and transparent and objective presentation of positions to the public. It has also been designed to provide both sides to the negotiations incentives to engage in good faith negotiations. Finally, the process has been designed to provide more transparency to the public through an objective source so that the public is in a better position to hold the parties accountable for outcomes.

Recommendation Six:

The provincial government should clarify, as a matter of public policy, what level of disruption, if any, in the K – 12 system it believes is in the public interest in the context of an impasse at the collective bargaining table.

Recommendation Seven:

If the right to strike practically does not exist, teachers must have an alternative mechanism to provide them with effective voice.

Recommendation Eight:

A well-defined process for collective bargaining should be established. This process would have prescribed steps and consequences if a collective agreement has not been reached by particular dates. The process would establish a role for an independent Commissioner to report to the public, mediate between the parties and arbitrate a settlement if necessary.

What Is To Be Bargained? –The Scope of Bargaining

In 1987, collective bargaining rights for teachers were significantly expanded – both in terms of obtaining the right to strike and in the scope of what could be bargained. In the rounds of local bargaining from 1988 through 1993, many districts negotiated agreements that contained language concerning class size and composition. In 1998 the BCTF and the government negotiated language in the provincial agreement around non-enrolling ratios as well as K – 3 class sizes. The agreement on K – 3 class sizes was “outside” the collective agreement and expired in 2001. Legislation was passed in 2002 and 2004 restricting the ability to negotiate:

- Class size and composition;
- Case loads or teaching loads;
- Staffing levels or ratios, or the number of teachers employed by the board;
- Assignment of students to a class, course or program.

The provisions that provided for such limits or restrictions were deleted from the existing collective agreement. In their place, district-wide average class size limits and individual class size limits were placed in the *School Act*.

There are legitimate differences of opinion about where the most productive table to discuss / negotiate class size, class composition and staffing ratios is.

The commission recommends that the government establish policy discussions, parallel to the bargaining table. The purpose of this policy forum would be to seek agreement on cost effective approaches to improving working and learning conditions in British Columbia’s public schools. The higher level objective of these discussions would be to ensure that B.C.’s public school system continues to be one of the best in the world and that the system can continue to attract and maintain a high quality, highly motivated and effective teaching force.

The Ministry of Education should play the leading role for the provincial government in these discussions. The employers’ side should have representation from the school districts, both at the trustee and administrative level. Both the employers’ and teachers’ representatives should be drawn from individuals who are not involved in the collective bargaining process. Teachers’ representatives should make up roughly fifty percent of the participants.

The discussions should be collaborative and interest-based, and should be facilitated by an individual acceptable to both sides. Ideally, this individual would have a thorough understanding of education policy, operational reality and labour relations.

This process would be similar to one begun earlier this year by the Nurses Bargaining Association and the Health Employers Association in which it was agreed to establish policy issue discussions.

Recommendation Nine:

Policy discussions, parallel to the collective bargaining table, be established to seek agreement on cost effective approaches to improving working and learning conditions in British Columbia's public schools.

These discussions should be facilitated by an individual acceptable to both sides. The facilitator would issue a report by June 30, 2006, which:

- i. Evaluates the efficacy of the policy discussion approach in dealing with teachers' working conditions;
- ii. Reports on whether both sides participated in the discussions in "good faith," trying to use the discussions for the intended purpose; and,
- iii. In light of i. and ii., recommends what option(s) to deal with working and learning conditions should be pursued on an ongoing basis.

Transition

While negotiations have happened at the provincial level since 1994, there is not a "real" provincial agreement in existence. In reality, what we have is an umbrella agreement that grandparented the existing seventy-five (now sixty) local agreements. The result is that, moving from school district to school district, there are differences in:

- Salaries for teachers with the same qualifications;
- The employer's share of benefit premiums;
- Coverage of extended health and dental plans;
- Benefits for part time teachers; and,
- Preparation and instruction time.

The commission recommends that an Industrial Inquiry Commissioner be appointed to supervise the establishment of a first "notional provincial agreement."

The Commissioner would first attempt to mediate a negotiated agreement amongst the parties. If, however, agreement was not reached by December 31, 2005, the Commissioner would arbitrate this notional contract by March 31, 2006.

The commissioner may also oversee the establishment of local agreements.

The logic of two-tier negotiations is that there are some issues that are best dealt with at the local level. The probability of these issues being dealt with at the local level is greater if they do not get mixed up with the issues at the provincial table. Separating the negotiations in time is one way of minimizing the chances of this mixing happening. Accordingly, provincial and local agreements should be negotiated in different years.

It has been almost twelve years since local school boards were responsible for their own negotiations. Consideration of how local negotiations will be supported is necessary.

Recommendation Ten:

An Industrial Inquiry Commissioner be appointed to supervise the establishment of a first “real” provincial agreement. The Commissioner’s mandate would be to establish a “notional provincial agreement” by March 31, 2006.

Teachers would be protected from any reduction in pay levels and any unfair change in other benefits.

This notional provincial agreement would be actualized when budgetary resources become available.

Recommendation Eleven:

The expiry date of local agreements be established either one year earlier or one year later, whichever is more practical in the circumstances, than the provincial agreement. Thereafter, the parties should endeavour to keep the expiry dates staggered in this way.

Recommendation Twelve:

Local school boards look at the possibility of cooperating on a regional basis, as some of them already do with respect to CUPE negotiations, in terms of efficiently developing the capacity for negotiations about local matters.

Concluding Comments – The Need for Dialogue

Even if fully implemented, these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides.

This will require a real dialogue – a genuine attempt to arrive at mutual understandings – between teachers and the employer group (i.e. government, trustees, and school administrators). The sooner we start on that, the better.