



British Columbia
School Trustees Association

working together for BC students

September 22, 2003

By email: don.wright@gems1.gov.bc.ca

Don Wright
C/o Ministry of Skills, Development and Labour
Box 9052, Stn Prov Govt
Victoria, BC V8W 9E2

Dear Mr. Wright:

Re: Terms of Reference for Review of Teacher Bargaining Structures

I. Background

The factual history of teacher bargaining in BC has been documented elsewhere and will not be repeated here. The role of BCSTA in teacher bargaining prior to BCPSEA is not always understood, particularly the enormous efforts made by BCSTA in developing the school board consensus that led to the creation of the present structure.

At one time, BCSTA bargained on behalf of school boards, first directly, then through its regional labour relations councils. Later it provided support services by collecting and coordinating information to support board negotiations. Labour relations advisory services and some legal services were added when full scope collective bargaining was introduced. In the early 1990s, the BCSTA Employee Relations Committee undertook a lengthy process of examining options and seeking out consensus among school boards on how local bargaining could be replaced with a better system. This history is summed up in an internal BCSTA memo (attachment 1).

In its 1993 brief to the Commission of Inquiry into the Public Service and Public Sector (the "Korbin Commission"), BCSTA recommended that the province implement a 3 tier process (see attachment 2): local bargaining, province-wide bargaining by a provincial employers' association, and a "pre-contracting" conference involving the Ministry of Education, other ministries as required, school boards and teachers. Certainly school trustees today support a public policy development process that would deal with workplace-related issues in a way separate from collective bargaining. Such a process would clearly need to involve at least the co-governors of the education system: government and school boards. For other elements of public policy, such processes exist – some bilateral involving the co-governors and some multilateral including all education partners.

Following the Korbin Commission report, BCSTA worked on developing a model for a provincial education employer association. This model was presented to the Implementation Working Committee. The preferred option was the "unified model," which had a separate Human

Resources Council within BCSTA, but shared infrastructure and staff with BCSTA. In current practice, the two associations have carefully avoided duplication of services. BCSTA survived the challenge of creation of another school board association. Separation from the tensions of collective bargaining has enabled BCSTA to focus on assisting boards in supporting student achievement.

The story of teacher bargaining in BC (and probably elsewhere) is that:

- There is no "good" system: systems are more or less successful depending on the criteria for success; they all are stressful to some degree and have potential negative effects on students.
- The more tightly government attempts to control bargaining outcomes, the more rigid and inflexible the process becomes and the less likely it is to lead to a freely negotiated collective agreement. Where incentives to success can only be accessed by bypassing the collective bargaining processes, it is unsurprising that collective bargaining is unsuccessful in achieving a collective agreement.

Since 1993, school boards have directed their concerns about the collective bargaining process to BCPSEA, and BCSTA has supported that direction. Formal resolutions from our governance meetings have been aimed at ensuring that the associations cooperate and do not duplicate services. However school boards have expressed through BCSTA their support for this teacher bargaining review.

II. Terms of Reference

As to the terms of reference of the review, BCSTA makes the following observations:

1. Criteria for Success

Before deciding the answer, it is important to know the question. If the present structure has "failed," what are the criteria for success? Have the expectations changed since 1993?

For example, is success to be measured in terms of degree of harmony (provincially and locally)? Lack of strikes? Low cost settlements? Implementation of provincial policy directives? Full consideration of educational impacts of labour relations and human resource decisions? Impact on student achievement?

In late 1992 and early 1993, through an extensive process of facilitated workshops led by its Employee Relations Committee, BCSTA member school boards evaluated seven possible models for a teacher bargaining structure against six stated criteria as set out in attachment 3. Does government have the same criteria? Have its criteria changed since 1993?

2. Right to Organize and Bargain Collectively

In 1987, BCSTA supported the extension of organization and collective bargaining rights to teachers. We do not believe trustees would see removal of these rights as fair. We suggest that the terms of reference not include these issues.

3. Scope of Bargaining

Any limitations on the scope of bargaining need to be clearly based on principle and on public policy considerations. Confusion arises when government introduces a detailed regulatory scheme to substitute for collective agreement provisions. Legislation is a very blunt instrument in this circumstance. We recommend that your report examine what other processes could be used in this situation.

The "provincial educational policy" tier of decision-making may be helpful in dealing with issues that have been removed from the scope of collective bargaining but in which the province has good grounds for seeking a uniform practice across school districts.

4. Who Bargains With Whom?

BCSTA has as its first policy on accountability, the principle that:

Responsibility, accountability and authority should reside in the same place.

Our sense is that trustees' major concern about the way that the present process has functioned is that it has violated this principle. School boards are accountable for bargaining outcomes even though their authority has been severely limited and government has bypassed their bargaining representatives. Government's objectives in bargaining with teachers have been different from school boards' and the assumption of bargaining by government has not always served the education system well.

School boards have not sought a return to local bargaining: this would not be feasible without a return of taxation authority and school boards have not sought this. A provincial bargaining agent remains necessary.

An examination of the provincial bargaining structure should include an examination of the role of the provincial government and PSEC in teacher bargaining. How have they supported or failed to support "successful" teacher bargaining? What has been the role of government appointees to BCPSEA?

An examination of the government role and the structure of BCPSEA will be difficult issues for BCPSEA to comment on directly and school boards may have to express their views on this through BCSTA.

5. In What Forum Does Bargaining Occur?

Boards in our view perceive the vastness of the provincial table as being a barrier to reaching agreement. We suggest that your review examine the provincial/local split, with a view to returning some items to the local level, along with the resources to deal with them.

As noted above, we suggest that matters that fall outside the scope of bargaining be addressed in other, either new or existing, public policy forums.

6. Dispute Resolution

Many trustees supported the introduction of essential services legislation that has limited the right to strike in the education sector. Interest arbitration is not popular with trustees. Problems with interest arbitration were one of the reasons that school boards supported teachers' acquisition of collective bargaining rights.

School boards are concerned about legislated solutions to bargaining impasse. If teachers expect government intervention to quickly end a strike, a strong mandate to strike is more likely. Strike votes become political statements.

We suggest that the terms of reference include an examination of dispute resolution mechanisms, within the existing essential services framework.

7. Bargaining Climate

In the current climate, government attention to education has been construed by many teachers as extremely negative, almost punitive, in its approach to the teaching profession. School trustees are well aware that strikes are not the worst thing that can happen to a school system. Neither is cost control the most important thing to be accomplished through bargaining. The most important thing, and the reason trustees care about and need to continue to be involved with collective bargaining with teachers, is the effect on the students. Not only bargaining content, but also bargaining processes have an effect on the classroom. A demoralized, de-motivated teaching force IS one of the worst things that can happen and the government needs to be sensitive in this review to avoid this outcome.

Your study should take these factors into account.

I hope you find these comments helpful as you formulate the terms of reference for the review of teacher bargaining.

Yours truly,



Gordon Comeau
President

cc: Ron Christensen, Chair, BC Public School Employers' Association
Neil Worboys, President, BC Teachers' Federation
Chairs, BCSTA member school boards

ATTACHMENT # 1
MEMORANDUM

February 20, 2003

To: Lee Southern
Cc: Susan Job
From: Judith Clark
Re: Revisiting Education Bargaining Structures: Background

You have asked me to assemble the background on BCSTA's involvement in the question of teacher bargaining structures. Note that the resolutions from 1991 and 1992 are "policy", which was understood at the time to mean that it persisted as our position until repealed or perhaps superceded. Policy resolutions did not expire by effluxion of time like normal resolutions.

I have started in 1991 not because that was the beginning (there were previous resolutions and debates) but because it started us firmly down the provincial bargaining road.

Documents not in the library are from my files.

AGM 1991 Res. #21	BCSTA policy: the current system of local teacher bargaining is unsatisfactory.
AGM 1991 Res. #24	The Board of Directors initiate a process towards achieving a better teacher bargaining system, and the process involve a collaborative effort of consultation involving the Ministry of Education, BCTF and BCSTA.
June 1991	BCSTA brief: Achieving a Better Bargaining System (revision of earlier brief): guiding principles, structures, process, relationships analytical framework.
Jan 92-Jan 93	Joint process with BCTF: Joint Exploration of a Cooperative Package on Teacher Bargaining: 9 joint enterprises which the parties might undertake to improve current bargaining system.
March 1992	Establishment of Korbin Commission (Commission of Inquiry into the Public Service and the Public Sector): to inquire into human resource management issues in the broad public sector in BC.

AGM 1992 Res. #17	BCSTA policy: BCSTA supports some form of bargaining of collective agreement with teachers on a province-wide basis.
October 1992	BCSTA Teacher Bargaining Survey for October PC: document Teacher Bargaining Experience. PC accepts BCSTA Employee Relations Committee work place: continuation of joint process with BCTF, continuation of information sharing with Korbin Commission, development of BCSTA ability to create bargaining system options.
November 1992	BCSTA workshop manual (Redbook) Issues and Options.
December 1992	Synthesis: Report from Issues and Options.
December 1992	Korbin Interim report.
January 1993	Working Conference to develop BCSTA positions: A Better Way Starting Today, report.
February 1993	BCSTA submission to Korbin report: Focus on the Future (BCSTA library RGT B8 F6 1993): Recommendation for a three-tier strategic framework for effective teacher-board relations; clear enabling legislation and mandatory participation of all BC school boards.
AGM 1993 Res. #17	Explore ways for BCSTA to accommodate new role of bargaining coordination while maintaining primary focus on education.
AGM 1993 Res. #44(a)	Request legislation for mandatory membership in BCSTA.
June 1993	BCSTA Briefing Paper: the Employers' Association: A Process for Development and What It Might Look Like: (1) enhance ER service area of BCSTA, create a human resource management service area; (2) create Human Resource Management Council within BCSTA, including geographical representation of trustees, government reps, management employees (superintendents and secretary-treasurers); (3) maintain four BCSTA strategic direction: education focus, board services, trustees' service and advocacy; (4) enable human resource issues to be dealt within the context of the BCSTA strategic plan. <i>Korbin Commission</i>
June 1993	Final report (2 volumes) (BCSTA library RGT K8 R4 1993) recommends establishment of PSEC and employer associations in each of the public sectors, including K-12 education, to be responsible for coordination of excluded compensation, benefit administration, human resource practices, collective bargaining objectives within respective sectors, fostering consultation with employee representatives and assisting PSEC in carrying out its objectives.

	For K-12: recommends review of governance and administration, including roles of trustees and administrators and existing SD boundaries. Acknowledges loss of public confidence in the present bargaining arrangements between school districts and teachers, recommends immediate creation of employers' association.
July 1993	Public Sector Employers Act establishes PSEC, 6 public sector employers associations.
July 1993	Issues and Options: BCSTA discussion paper on the formation of K-12 employers' association, prepared by BCSTA Employee Relations Committee.
August 1993	Appointment of Implementation Working Committee (Lynn Smith, chair) to make recommendation for establishment of employers' association for the public school sector. IWC includes BCSTA representatives.
November 25, 1993	BCSTA position paper submitted to the IWC: "The Unified Option"; What do we want? (see attachments)
December 15, 1993	Lynn Smith Report to Minister of Education (JVG B K1 1993) makes recommendations on major structural issues, terms of reference, appointment of initial board.
March 10, 1994	BC government announces intention to establish two-tiered province-wide teacher bargaining, establishment of separate education employers association.
April 1, 1994	BCSTA Discussion and resource paper on Education Employers' Association and Two-Tier Teacher Bargaining includes BCSTA proposal for constitution and bylaws March 22, 1994.
June 1994	Public Education Labour Relations Act: BCPSEA is the accredited bargaining agent in two-tier bargaining structure.
May-June 1994	BCPSEA commences operations; 5 BCSTA staff transfer to BCPSEA and BCSTA disbands its employee relations service and Employee Relations Committee.

From 'Focus on The Future', Brief to Commission of Inquiry into The Public Service and Public Sector (Korbin Commission) BCSTA Feb. 1993.

A STRATEGIC FRAMEWORK
FOR EFFECTIVE TEACHER-BOARD RELATIONS IN B.C. PUBLIC EDUCATION

FORUM	PARTNERS	MANDATES	PROCESSES
Ministry of Education's provincial precontracting conference.	Ministry of Education and other ministries as required. School boards. Teachers.	Education policy & regulation of major working/learning conditions. Education funding.	* Principled consultation and resolution prior to commencement of collective bargaining.
School boards & teachers' provincial contracting table.	School boards. Teachers.	Written and legally enforceable contracts on terms and conditions of employment which have a predominantly provincial impact and are not governed by regulation. Development, implementation, and maintenance of joint enterprises in support of public education.	* Principled collective bargaining. * Principled consultation.
School board & teachers' local contracting table.	School board. Teachers.	Written and legally enforceable contracts on terms and conditions of employment which have a predominantly local impact and are not governed by provincial contracting or regulation. Development, implementation, and maintenance of joint enterprises in support of local education delivery and of the persons responsible for that delivery.	* Principled collective bargaining. * Principled consultation.

* "Principled" means an "interest-based" approach which is driven by the "principle" of maintaining a focus on education for students.

From "Synthesis: Structure, Relationships, Processes"
BCSTA Employee Relations Committee, January 1993.

PART C - RESULTS

Section 7: Notes on the Interpretation of the Criteria

During the workshop discussions and through their written representations, participants clarified how they were interpreting the criteria. The more common points are indicated below.

A GENERAL NOTE ON RELATIVE AND ABSOLUTE.

Respondents and workshop participants were asked to determine a relative ranking of options on the basis of whether the options were relatively better or worse at satisfying a particular criterion. Respondents and participants were not expected to determine whether or not any particular option absolutely satisfied any criterion.

Accordingly, the cumulative results do not purport to identify examples of perfection. Rather they identify areas where further examination and development are most likely to be fruitful.

CRITERION A:

Enrichment of the educational experience for students.

This is a very broad criterion and tends to overlap into the others. Logically it could have been placed last as a summative criterion. However, it seemed symbolically appropriate to place it at the head of the list as a reminder of the ultimate purpose of the education enterprise and its constituent parts, including the collective bargaining system.

This criterion focuses on the likely impact of each bargaining system option at the classroom level. Workshop discussions and written feedback identified several considerations including: strike frequency and duration; conflict resolution modelling for learners; locus of conflict; effective human resources allocation; and, effective material resources allocation.

CRITERION B:

Sensitivity to community values and educational priorities.

This criterion focuses on the likely impact of each bargaining system option on the community's ability to have its own particular values and educational priorities reflected in the delivery of education.

Several considerations emerged, including: acknowledgement that there are truly different and equally valid realities; reconciliation of logical expectations and accumulated experience with respect to the various options; balancing personal experience with some aggregate assessment of provincewide experience; and, the appropriate scope of community (immediate, regional, provincial).

CRITERION C:

Contribution to power-balanced and cooperative relationships

Behind this criterion is an acceptance of the argument that the probability of achieving and sustaining a cooperative relationship is proportional to the degree to which power is in equal balance (it being assumed that, at least in the long run, the parties will act rationally).

Accordingly, discussion centred on the relative impact that the options were expected to have on the balance of power between board negotiators and teacher negotiators.

CRITERION D:

Impact on cost and duration of the bargaining process

On this criterion, participants evaluated the likely impact of the various options on the process costs and the time span of collective bargaining activity.

Discussion included: cost of specialized staff and consultants; opportunity cost of board and union educators involved in the process; travel and expenses; complexity of structures and processes; and, communications and administrative logistics.

CRITERION E:

Appellation of funding authority with expenditure authority

On this criterion the underlying issue is fiscal accountability. More specifically it addresses the linkages and sensitivities between: responsibilities arising out of expenditure decisions taken at the collective bargaining table; and, responsibilities arising out of taxation and distribution decisions taken to fund collective bargaining mandates and/or outcomes.

Discussion included: pros and cons of direct provincial government representation at the bargaining table; locus and extent of taxation authority; administrative accountability; political accountability; determination of appropriate political constituencies; and, considerations for school board/ministry of education cogovernance.

CRITERION F:

Durability for promotion of long-term planning and maturation

This criterion speaks to the probable survival rates of the various options in the medium to long term (it being assumed that any change is likely to be met with resistance in the immediate term). Rather than only comparing longevity in the options' home jurisdictions, assessments were made as to the degree of long-term acceptability (durability) in the event that the option was implemented in British Columbia.

Discussions included: distinguishing among structural, procedural, and relational features as contributing factors to a system's durability; impact of B.C. political history; impact of B.C. labour relations climate and trust levels; general evolutionary trends in employee relations culture; attitudes to change; intensity of strategic responses from key players; the degree to which the extent of change is impacted by hindsight on the one hand and foresight on the other hand; and generally, the relative importance of maturation as a factor in durability.