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**Support Staff Collective Bargaining in the
K-12 Public Education Sector
– The BC Experience**

Resource/Discussion Paper

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Support Staff Collective Bargaining – The BC Experience

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Support Staff Collective Bargaining in the K-12 Public Education Sector – The BC Experience

H.J. Finlayson

Introduction

On April 2, 2000, in response to support staff labour disputes in 44 of BC's 60 public school districts (37 on strike and another 7 with collective agreements that had expired), the British Columbia government passed the *Public Education Support Staff Collective Bargaining Assistance Act*. The Act brought an end to job action and prohibited job action in the 44 districts. The Act provided for an Industrial Inquiry Commission (referred to as IIC #2), to determine support staff collective agreements in those districts.

The Act also provided for another Industrial Inquiry Commission (referred to as IIC #3) to study and make recommendations to government on the structure and operation of support staff collective bargaining. The number of disputes and the way in which they occurred raised questions on the part of government and the unions involved as to whether the disputes were caused by an unworkable bargaining structure.

Employment relations are the product of a mixture of common interests and competing interests. These disputes and the roles of the actors – employers and its bargaining agent, support staff employees and their bargaining agents and government – are illustrative of how those involved in public sector labour relations attempt to balance their respective interests.

It can be observed that government balances two objectives in public sector collective bargaining – allowing the parties to pursue their objectives through collective bargaining while reducing the costs of industrial conflict and the consequences resulting from out of line settlements. The right to unionize, the right to strike and how government deals with collective bargaining disputes illustrates how far policy makers in this case were prepared to go in emphasizing one objective over the other.

What Led to the Dispute?

In order to examine what led to the disputes it is necessary to review the historical record as it relates to bargaining structure in order to put the events in the proper context.

The K-12 public education sector has negotiated on a local school board-local union basis for, in most cases, over 40 years. The sector's support staff employees are represented by 15 different unions. The majority, however, are represented by locals of the Canadian Union of Public Employees (CUPE). The 1999-2000 round of negotiations clearly represented an exception — the sector has a long history of industrial stability. With 77 union locals and 60 districts, there have been relatively few strikes and school days lost in the previous 10 years.

The local school board-local union collective bargaining structure was altered with the passage in 1994 of the *Public Sector Employers Act*. That Act established six employers' associations in the public sector. The British Columbia Public School Employers' Association (BCPSEA) was established as the employers' association and accredited bargaining agent in the K-12 sector. In September 1995, the Labour Relations Board issued an accreditation order for the Association under both the *Labour Relations Code* and the *Public Education Labour Relations Act*. Following questions as to whether this accreditation order also covered support staff, in July 1998, the *Public Education Labour Relations Act* was amended to affirm BCPSEA's accreditation status relating to support staff.

The only practical change in the bargaining structure from the previous decade, aside from the advent of an employers' association, was the requirement, since 1994, that agreements negotiated by school boards be ratified by BCPSEA. However, the ratification criterion was limited to meeting the compensation guidelines and mandates established by the Public Sector Employers' Council (PSEC), the organization responsible for broad public sector strategies on human resource matters.

The Council is comprised of the chairs of the six employers' association and the cabinet ministers associated with the particular part of the public sector. The Minister of Finance is the chair of the Council. In the PSEC model, it is the responsibility of each employers' association to develop sectoral strategies consistent with their members' interests, PSEC objectives and government strategies.

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For support staff bargaining in the K-12 sector, BCPSEA adopted a delegated authority model whereby BCPSEA's bargaining authority was delegated to individual school boards within certain parameters. The use of this model was designed, to the extent possible, to replicate the local bargaining model that had existed prior to the creation of the association.

PSEC established compensation mandates for the public sector. These mandates were used to control government expenditures on compensation. The first mandate covered three years ending in the fall of 1998. In October 1998, PSEC's 36-month Mandate II was released and provided for a 0% increase in the first two years, with 2% in the third year (referred to as 0, 0, 2). Public sector negotiations during this period had an additional process – the Public Sector Accord initiative. The Public Sector Accord process was initiated by the Premier in January 1998 with the purpose of encouraging public sector unions to accept the compensation mandate of 0, 0, and 2. It was recognized by government that public sector collective agreements could not be concluded based on strict application of the mandate. The government wanted, however, to establish the 0-0-2 pattern. The Accord process was a parallel process to collective bargaining affecting all parts of the public sector and focused on public policy initiatives that would have the effect of encouraging contract settlements. This parallel process would ensure the mandates were accepted and unions received the necessary incentives to conclude collective agreements with their respective employers.

In December 1999, representatives of CUPE BC and government approached BCPSEA looking to establish a voluntary provincial bargaining structure on a narrow agenda — wages, term, pay equity and benefits. The Public Sector Employers' Council Secretariat, the staff group established by the *Public Sector Employers Act* to assist the Council had suggested that to access the Accord matters a common table was needed. CUPE consequently formed a Sectoral Bargaining Committee to conduct negotiations. For BCPSEA to change how employers bargained necessitated a change in the Association's bylaws. Consistent with the commitment of the association's Board of Directors to put any request made by CUPE or government to change the bargaining structure to the membership for consideration, bylaw amendments were drafted and submitted for a vote. The initiative, however, was rejected by 87% of the total school board votes cast at BCPSEA's Representative Council. In general, school boards believed that the local bargaining structure was preferable given the history of productive labour relations. Government involvement in provincial teacher negotiations some months earlier provided evidence that a provincial system could potentially lead to further government intrusion into collective bargaining.

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Following the rejection by school boards, the provincial government and CUPE, unknown to BCPSEA or employers, then began private discussions on enacting legislation to implement provincial bargaining. However, despite government assurances to the union, no legislation was ever introduced. To that time, CUPE's bargaining strategy had been based on the assumption that there would be a provincial table for negotiating what they had termed their common issues.

The 1999-2000 school year began with an ever increasing number of negotiations starting, and a common set of demands appearing at most of those tables. The Public Sector Accord process was also initiated under the direction of the province's Chief Accord Negotiator. The Accord process confused an already complex set of negotiations. The blurring of the distinction between Accord matters and collective bargaining matters plagued the discussions. The Accord process, which was intended to examine public policy matters in a problem solving framework, became another bargaining forum within the context of either strike deadlines, strikes or pending legislation. Bargaining disputes ultimately arose in 32 of the province's school districts with the expectation that job action would spread to another 12. It was within this context legislation was introduced and passed.

Reflection and Assessment

Is there a case for structural change in support staff collective bargaining in the BC K-12 public education sector? Did the support staff bargaining structure contribute to the labour disputes in March 2000, and should the structure be changed to ensure that public education is not affected by the consequences of an unworkable bargaining structure?

The period from December 1998 to April 2001 remains a crucial turning point in labour relations and collective bargaining in the K-12 sector. Given the political climate, the bargaining environment at the time, and 37 strikes, it is not likely that this set of circumstances will be repeated. These events, however, did establish the basis for a review and evaluation of current bargaining structures and bargaining relationships.

The structure of collective bargaining is one of the most important factors shaping the processes and outcomes of bargaining. In assessing the structural options, it's necessary to examine the potential consequences of a particular choice. In general, employers are interested in reducing the use of the union strategy of winning gains from one employer and using the gains as leverage

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in subsequent negotiations with other employers (referred to as “whipsawing”). The successful use of this strategy may result in settlements inconsistent with established patterns and higher costs of employment.

Unions, in contrast, expect to increase their bargaining power either by putting pressure on the employer through strikes, or through whipsawing. As political institutions, unions strive to maximize their bargaining power to best represent the interests of their members.

The government also has an interest in the bargaining structure adopted. It must balance the public policy of permitting the employer and the union to pursue their respective goals through collective bargaining with the need to reduce the costs borne by society in terms of industrial conflict and out of line settlements. Government’s interests are often shaped by political realities, as was the case with support staff bargaining during the 1999-2000 period.

The expectations of the three actors in public sector labour relations are often in conflict. The 1999-2000 rounds of support staff bargaining demonstrate the consequences of this conflict. The decentralized local union - local school board bargaining structure was inconsistent with the government policy of fixed compensation limits with a supplementary Accord process to encourage settlements.

While wanting centralized bargaining, the government chose to encourage the parties to change the existing structure voluntarily, and make it the choice of the employers and the unions. When faced with the employers’ rejection of centralized bargaining, legislation was contemplated, but due to an unrelated political matter the government adjourned the legislature, abandoning its commitment to CUPE to legislate the structural change.

CUPE believed that it had the support of government for both the process of bargaining and the features necessary to encourage a settlement. However, a changing political dynamic, a collective bargaining process confused by a parallel process, and the employers’ rejection of the bargaining structure preferred by CUPE BC and the government resulted in the impasse. The chilling effect of continued third-party involvement and government promises that were unfulfilled paralyzed negotiations.

Is greater centralization the answer? John Anderson, in his 1989 article *The Structure of Collective Bargaining*, observed:

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“The centralization of collective bargaining structures has often been viewed as a solution for many of the ills of the industrial relations system. It is expected to reduce industrial conflict, increase professionalization, eliminate out-of-line settlements, and, as a result, benefit the overall economy. The only cost associated with centralization is related to losses in the ability of union and management representatives to deal with local issues, to resolve internal conflicts, to provide opportunities for input, and to get consensus on priorities, bargaining strategy, and the final settlement. Thus the parties that choose a centralized bargaining structure need to consider the balance between the positive aspects of increased bargaining power and the potential negative consequences to representation of constituent interests.”

Regardless of the bargaining structure, the belief by either party that what can be achieved outside the bargaining process would be better than what can be achieved inside the process leads to paralysis. There must be a reason to negotiate and an incentive for both sides to settle. The Accord process, however, which was an ill-defined process taking place in a politically charged environment, ended the possibility of a settlement as opposed to the original intent of encouraging settlements.

It is observed therefore, that what was termed a problem in bargaining was not due to an unworkable bargaining structure nor a troubled bargaining relationship, nor the fact that school boards would not enter into provincial bargaining at CUPE’s insistence. The problem had its origin with the actions and reactions of those involved, in particular government and the resulting consequence for the effectiveness of the bargaining process and relationships.

If you accept the premise that government balances two objectives – allowing the parties to pursue their objectives through collective bargaining while reducing the costs of industrial conflict and the consequences resulting from out of line settlements, you can conclude how far policy makers in this case were prepared to go in emphasizing one objective over the other.

A Concluding Thought

Labour relations and collective bargaining had its historical origins in the industrial sectors of the 1930s and 40s. The structures and underlying principles were applied to the public sector in the mid 1960s. What essentially was a private sector construct has been modified to accommodate the differences in the structure and operation of the various parts of the public sector.

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The 1999-2000 rounds of bargaining demonstrate the consequences for bargaining both in terms of process – how the parties bargain, and results – the outcomes of bargaining. If, as a matter of policy, collective bargaining is accepted as the appropriate mechanism to determine the terms and conditions of employment, the parties – unions, employers and government – are challenged to ensure that the bargaining system remains in balance such that meaningful bargaining can occur.

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