

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

**Teacher-Public School Employer
Collective Bargaining in BC:
Historical Perspectives**

Resource / Discussion Paper

Teacher-Public School Employer Collective Bargaining in BC:
Historical Perspectives

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Introduction

Public school students in British Columbia deserve to receive an education of the highest quality on an ongoing basis. At the same time, public school teachers deserve working conditions that provide them with the opportunity to use their knowledge, training, and abilities in the most effective and efficient manner. They also deserve to be remunerated appropriately for their services.

A continued challenge in the K-12 public education sector in BC is the development, implementation and maintenance of effective and efficient structures, processes, and procedures for setting teachers' terms and conditions of employment. There have been a number of commissions and studies that have attempted to recommend such a structure, the most recent being the Wright Commission.

The Commission of Inquiry to Review Teacher Collective Bargaining, arising out of Bill 27, the *Education Services Collective Agreement Act* (2002), submitted its final report to the Minister of Skills, Development and Labour in December 2004. Following extensive consultations with the K-12 public education community, Commissioner Don Wright proposed a substantially different model than the model currently in place.

Commissioner Wright's recommendations were not acted upon. However, in October 2005, the Minister of Labour appointed respected mediator/arbitrator Vince Ready as an Industrial Inquiry Commissioner (IIC) to make inquiries, consult with the parties and make recommendations concerning a series of labour relations matters, including the bargaining structure for teachers and public school employers. The IIC was directed to consider the findings and recommendations of Commissioner Wright.

To understand why the negotiations of teachers' terms and conditions of employment occur as they do, with the consequent implications on the working relationships at the district and provincial level, it is essential to understand the history that serves as a backdrop for today's events. The purposes of this resource/discussion paper are to:

- examine the history of public school teachers' right to bargain collectively
- examine recent teacher/employer bargaining experiences in British Columbia
- provide the basis for a continued discussion of alternatives and options for improving collective bargaining practices, procedures, and structures in the province.

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Collective bargaining between public school teachers and public school employers in BC dates back to 1987. Initially, a local school board and local teachers' union (also referred to as a teacher association) conducted bargaining. The British Columbia Teachers' Federation (BCTF), although not the bargaining agent, centrally coordinated bargaining for the locals. Each local association was the certified bargaining agent. No comparable structure or initiative existed to coordinate activities by public school employers. Bargaining experiences were varied. Good faith negotiations occurred at local tables and collective agreements were concluded, some with the assistance of third parties. There were approximately 16 strikes in each of the three rounds of local bargaining and one occasion of legislative intervention.

Provincial teacher bargaining commenced in 1994. At that time, legislation established the British Columbia Public School Employers' Association (BCPSEA) and the BCTF as the provincial bargaining agents for employers and local unions respectively. While the BCTF and BCPSEA have negotiated modifications to collective agreements and other matters outside the collective bargaining cycle since 1994, the parties have been unsuccessful in negotiating a provincial collective agreement. In 1996, BCPSEA and BCTF ratified a Transitional Collective Agreement that extended existing terms and conditions and established the basis for continued negotiations. Bargaining resumed in 1998, but little progress was made and, with a timely agreement unlikely, the government resolved the bargaining impasse through direct negotiation with the BCTF. The agreement was rejected by employers but was subsequently imposed through legislation on July 30, 1998 with the passage of Bill 39, the *Public Education Collective Agreement Act*.

Government acted again in 2002. Although the result was the same — an agreement imposed on teachers and public school employers — the nature of government involvement was very different. On January 25, 2002, the BC government introduced two bills. Bill 27, the *Education Services Collective Agreement Act*, ended the teacher labour dispute and imposed a collective agreement on teachers and public school employers. Section 5 of this Act also provided for the establishment of a commission to make recommendations as to how the collective bargaining of teachers' contracts in British Columbia could be improved. Bill 28, the *Public Education Flexibility and Choice Act* established a new public policy on class size and educational program choice. Bills 27 and 28 became law on January 28, 2002.

At the outset of the 2004-2005 round of negotiations, it was recognized that negotiating a collective agreement would be difficult. When it again became evident that a negotiated agreement would not be reached, government intervened again, passing Bill 12, *Teachers' Collective Agreement Act* which extended the terms of the existing collective

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agreement until June 30, 2006. The provincial government also appointed respected mediator/arbitrator Vince Ready as Industrial Inquiry Commissioner, to “make inquiries, consult with the parties, and make recommendations to the minister concerning the following labour relations matters between the parties...” In response to the legislation, teachers walked off the job and refused to return until an appropriate resolution was reached and voted upon.

The provincial government enlisted Vince Ready to assist the parties in finding a solution to bring about an end to the illegal job action. After meeting with the parties several times, Ready felt that given the circumstances he should make non binding recommendations. These recommendations were ultimately accepted by the parties, allowing students to return to the classroom after a ten day illegal strike.

Phase One: Pre-1987

The first provincial association of educators, the Teachers' Association of Canada West, was established in 1861. Since then, teachers' associations have emerged across the country.

The BC Teachers' Federation (BCTF) was incorporated under the *Benevolent Societies Act* in 1917. School boards, however, were not required to recognize or bargain with the BCTF or with local groups of teachers. Teachers' rights to bargain were implicitly recognized in 1937 with the passage of the *Industrial Conciliation and Arbitration Act*—legislation that provided for compulsory arbitration in the event of an impasse. In 1958, provincial legislation broadened the scope of bargaining through amendments to the *Public Schools Act* to include teacher salaries, which had previously been determined by local boards of school trustees.

The early 1980s were marked by public sector funding restraints and cutbacks. In 1983, the provincial government passed legislation that the BCTF characterized as “attacking the basic rights of unionized workers, the human rights of large numbers of British Columbians...”¹ Teachers and other unionized workers organized what became known as ‘Operation Solidarity’ to protest government initiatives and actions. A broadly-based coalition of community groups, unions and like associations, including the BCTF, participated in a three-day provincial strike from November 7 to November 9, 1983.

Prior to 1987, local teachers' associations were not allowed to organize as trade unions or to bargain collectively. Under labour relations legislation, school boards could only negotiate with local teachers' associations within the limits prescribed by the *School Act*. The scope of bargaining was narrow, limited principally to salary and bonuses. If an agreement could not be negotiated, compulsory binding arbitration with strict timelines was employed. Teachers could not bargain such matters as the way in which schools were organized, the duration of the day, preparation time, or posting and filling provisions.

Some school districts voluntarily entered into either formal or informal agreements with local associations on workload and other issues relating to the

¹ *History of the BCTF*, BC Teachers' Federation <www.bctf.ca>.

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organization of the workplace. The formal agreements became known as *working and learning conditions agreements*. The BCTF encouraged locals to negotiate working and learning conditions agreements in each district. Considerable friction developed between school districts that negotiated these agreements and those that did not.

Unlike most workers in the public sector, teachers were not protected from employer-initiated layoffs with either contractually enforceable seniority rights or layoff/recall language. During this period of government restraint, they were concerned about their lack of protection compared to other public sector employees. Local teachers' associations and the BCTF contended that without the right to bargain collectively, and with the limited scope of agreements with local employers, they were at a disadvantage.

Soon after the three-day *Operation Solidarity* provincial strike, local teacher associations were able to negotiate agreements or understandings on security matters, including layoff and recall provisions. These agreements were incorporated into either existing or new working and learning conditions agreements.

Phase Two: 1987

During the 1980s, the BCTF and local associations actively advocated for the right to organize as a union under the *Labour Code* and to bargain collectively with their employer. On April 17, 1985, the BCTF, together with teachers from various public school boards and members of local associations of teachers, filed a Writ of Summons in BC Supreme Court challenging the constitutionality of certain sections of the *School Act* and the *Labour Code*—the statute governing labour relations in effect at the time.

The Claim

The teachers' claim was based on three sections of the *Canadian Charter of Rights and Freedoms* (the Charter):

- Section 2(d)
Freedom of association
- Section 7
Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice
- Section 15
Equality Rights

Teachers contended that certain BC laws, and particularly the *Labour Code*, which denied teachers the right to bargain collectively, were unconstitutional. The teachers sought a declaration that they were entitled to full rights of collective bargaining and that the exclusion of teachers from the *Labour Code* was of "no force and effect" because it was inconsistent with the Charter.

Their case centred on the definition of employee under section 1(1)(d) of the *Labour Code* and the exclusion of teachers from that definition:

"employee" means a person employed by an employer, and includes a person engaged in police duties or a dependent contractor included in an appropriate bargaining unit under section 48, but does not include a person who, in the board's opinion,...

(d) is a teacher as defined in the School Act;

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With respect to the *School Act*, the teachers cited the following:

(a) Working Conditions

With respect to the terms and conditions of teachers' employment, the School Act, Section 148, specifies teachers' duties including the general duty to perform educational services as required by a Board or the Ministry. The duties of a teacher are given greater specificity in the Regulations, in particular Regulations 3, 88, and 89. By virtue of Section 15, the Lieutenant Governor in Council is given authority to make regulations which determine, inter alia, the hours of service for teachers. The Regulations include specification of the duration of the school day (Regulations 19, 20 and 21), prescribed maximum hours for teacher instruction (Regulation 90), and provision for teacher attendance on school premises (Regulation 85) and at meetings (Regulation 87). The Statute and Regulations do not provide a complete scheme with respect to the determination of the terms and conditions of teachers' employment. Nevertheless, the School Act does not provide for collective bargaining with respect to critical features of employment, including workload and more specifically staffing formula, class size, pupil/teacher ratio, assigned instructional and preparation time. Thus the statutory scheme does not provide for bargaining over the amount of work to be performed for the salary received. Furthermore, the School Act contains no provision for bargaining with respect to factors related to health and safety in the workplace.

(b) Extra-Curricular Supervision

By Regulations 83(6) and 86 teachers can be required to provide supervision for pupils on school premises and at school functions whenever and wherever held and, to be "on duty for special purposes for reasonable periods beyond the prescribed hours of instruction." The Act makes no provision for the negotiation of reasonable, or any limitations, on mandatory extra-curricular activities, or the criteria for the selection of teachers to whom such assignments are made.

(c) Disciplinary Matters

(i) Suspension and dismissal are matters dealt with in Sections 122, 126 and 129 of the School Act and in Regulations 66 to 74. The grounds for suspension are prescribed by the Statute. The statutory scheme makes provision for notifying a teacher of the fact that he or she has been suspended, and for a meeting between the teacher and the District Superintendent of Schools and a Committee of the Board of School Trustees. An appeal to the Minister may be taken in cases involving suspension for periods exceeding ten days and for cases of dismissal. The appeal is heard by a Board of Reference appointed by the Minister. Members of the Board are selected from a list of persons nominated by the Plaintiff Federation and by the British Columbia School Trustees' Association. The Chairperson is selected from members of the Law Society of British Columbia nominated by the Chief Justice. No appeal or review procedure is prescribed for suspensions involving less than ten days.

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- (ii) The School Act is silent with respect to the specification of policies and procedures for discipline of teachers other than by suspension, dismissal or probation and in particular is silent with respect to either the specification of grounds for any such discipline or any form of review of such matters.
 - (iii) The statutory scheme is deficient in that all aspects of discipline are not subject to scrutiny, due process and independent review are not fully specified including, inter alia, a failure to specify a procedure ensuring that the teacher in question is afforded the opportunity to be informed of the nature and extent of allegations against him or her, to examine the evidence upon which these are based; and to have an appropriate opportunity to answer. Notwithstanding these deficiencies, the Act contains no provision for the negotiation of any aspect pertaining to these matters so central to teachers' employment.
- (d) Probation
- By virtue of Section 119(2) of the Act and Regulations 59 to 64, teachers on probation are denied the protection of a "continuing contract." By virtue of Regulation 59, the Board of School Trustees is entitled in its discretion to place a teacher on probationary appointment during the first nine months of a teacher appointment. Regulation 61 entitles the Board to cancel such an appointment by giving notice in writing. By virtue of Regulation 62 a teacher who has received such notice has the right to discuss the reasons for cancellation with the principal of his school and the District Superintendent and, where the Board permits, with the District Superintendent and the Board or a Board Committee but has no right of appeal or independent review. The Act makes no provision for any right to negotiate with respect to probationary conditions.
- (e) Temporary Contract
- By virtue of Section 119(2) of the Act and Regulations 76 to 78, teachers may be hired on temporary contract. However, the Act makes no provision for the negotiation of any provisions relating to security of employment or procedures for the potential renewal of the contracts of this group of teachers.
- (f) Substitute Teachers
- The utilization, selection, process of assignment and qualifications of substitute teachers, including whether work assignments of teachers who are ill will be carried out by substitute or other full-time teachers, are critical aspects of teachers' employment, on which the Act makes no provision for negotiating the rules or terms and conditions of employment.
- (g) Employment Security
- The School Act contains no provision for negotiation with respect to staff reduction or lay-offs. The Public Sector Restraint Act, RSBC 1983, c. 26 permits all employees covered by that statute, including teachers, to negotiate terms and conditions of employment respecting termination of employment in circumstances where there is a reduction in public services. The Public Sector Restraint Act takes precedence over

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the School Act by virtue of Section 2(7) and, as a result, agreements that may be the foundation of an exemption order by the Compensation Stabilization Commissioner (Section 3) are within the scope of permissible employee negotiations. However, neither the Public Sector Restraint Act nor the School Act provide the teachers or their representatives with the right to compel Boards of School Trustees to enter into, or to conduct negotiations on these issues. Furthermore, there is no dispute resolution system in the event of impasses reached in the negotiation of such provisions.

(h) Transfer

A Board of School Trustees has absolute authority to transfer teachers within the School District under Section 120 of the School Act on seven days notice. The teacher's only statutory redress is to meet with the District Superintendent of Schools and the Board or a Committee of the Board or, in the case of a transfer from an assignment referred to in Section 119(3) of the Act or to an assignment in a school other than the one to which the teacher is presently assigned, to request review by the Minister or, to "resign immediately by notice in writing." There is no provision in the School Act or Regulations dealing with requests by teachers for transfers. Similarly there is no requirement in the School Act or Regulations for positions to be posted or for the negotiation of transfer clauses on either a seniority or competitive basis, or indeed on any basis whatsoever. Nevertheless, all such matters are beyond the scope of collective bargaining expressly contemplated by the Act.

(i) Leaves of Absence

Section 125 of the School Act, together with Regulation 57 provide for leaves of absence:

- i) In accord with the Regulations for purposes acceptable to the Board, with or without pay, in the Board's discretion;
- ii) For sick leave in accordance with a formula set out in Section 125(2)(3) of the Act.

The Act contains no provision for collective bargaining with respect to leaves.

(j) Technological Change

Sections 74 to 76 of the Labour Code provide for the right of employees to participate in decisions on the consequence of technological change, including the right to refer to independent arbitration a matter in which an employer intends to introduce or does introduce as a technological change one that affects the terms, conditions or security of employment of a significant number of employees and alters significantly the basis on which a collective agreement was negotiated. The School Act fails to include any such issues within the scope of collective bargaining.

(k) Picket Lines

While non-teaching employees of Boards of School Trustees are typically represented by trade unions, with full collective bargaining rights, the negotiation by teachers or their representatives of terms of employment concerning a teacher's duties or

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response when non-teaching employees exercise their right to strike and picket is beyond the scope of the School Act provisions dealing with collective bargaining.

Supreme Court of BC

Given the nature and subject of the action, the Chief Justice of the Supreme Court of BC directed that the following question be determined before the trial:

Could (not does) s.(1)(d) of the Labour Code of British Columbia, which classifies on the basis that a person is a teacher as defined in the School Act of British Columbia, discriminate contrary to s.15 of the Canadian Charter of Rights and Freedoms?

The Chief Justice accepted the submission of the respondent, the Attorney General of BC, that the question be determined without a trial and evidence. Given the anticipated time and cost of a trial, the Chief Justice directed that the applicability of section 15 of the Charter be determined as a preliminary matter. At issue was whether the *Labour Code*, requiring teachers to be treated differently from other workers, falls under section 15 of the Charter, or whether it falls within an excluded category and section 15 has no application.

BC Court of Appeal

The teachers appealed the direction of the Chief Justice to the BC Court of Appeal. They took the position that the question should not be determined as a preliminary matter because evidence was necessary for the determination.

In a November 7, 1986 decision, the Court of Appeal upheld the direction of the Chief Justice but reworded the question:

- 1) Does s.15 apply to differentiation which is not “based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability?”
- 2) If s.15 applies to differentiation based on other characteristics, does it apply to the differentiation based on occupation made by s.1(1)(d) of the Labour Code by excluding teachers from the definition of employee?

The Court of Appeal noted that regardless of the disposition of these two questions, the action would still proceed based on the claims advanced under section 2 and section 7 of the Charter. The issue, however, was never referred to nor heard by the Supreme Court of Canada.

The Resolution

In the face of the demand for expanded bargaining rights and the Charter challenge, the Social Credit government under Premier Bill Vander Zalm crafted legislation that allowed for voluntary membership in the BCTF and gave local teachers' associations the choice of forming a professional association or certifying as a trade union under the existing labour relations legislation.

On April 2, 1987, two pieces of legislation were introduced—Bill 19, the *Industrial Relations Reform Act*, and Bill 20, the *Teaching Profession Act*—that structurally changed the relationship between teachers, principals, and their employers. The *Industrial Relations Reform Act* became law on May 26, 1987, and the *Teaching Profession Act* became law on June 26, 1987.

Bill 19 amended and replaced the *Labour Code* with the *Industrial Relations Act* (IRA). The IRA included teachers under the definition of “employees.” Bill 20 made membership in the BCTF voluntary. It also excluded principals and vice-principals, renamed as *administrative officers*, from teacher bargaining units. Principals and vice-principals were considered to be part of management in the traditional labour relations sense.

Given the choice of being a member of a union with collective bargaining rights or a member of a professional association, government representatives predicted that teachers would choose the professional association option and that the influence of the BCTF would diminish. Within months of the enactment of the legislation, however, the BCTF organized local associations of teachers in each of the 75 school districts, and these associations were certified as trade unions under the IRA. Full scope collective bargaining began with local school boards shortly after the local unions were certified. Technically, under section 27 of the *School Act*, there were restrictions on what could be bargained. In practice, the nature of these matters and the fact that the parties treated them as negotiable resulted in no restriction on the scope of bargaining. The shorthand expression, ‘full scope collective bargaining,’ is used in this context.

Terms and conditions of teachers' employment

27 (1) Despite any agreement to the contrary, the terms and conditions of a contract of employment between a board and a teacher are

- (a) the provisions of this Act and the regulations,

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- (b) the terms and conditions, not inconsistent with this Act and the regulations, of a collective agreement under the Public Education Labour Relations Act, and
 - (c) the terms and conditions, not inconsistent with paragraphs (a) and (b), agreed between the board and the teacher.
- (2) A provision of an agreement referred to in subsection (1) (b) excluding or purporting to exclude the provisions of this Act or the regulations is void.
- (3) There must not be included in a collective agreement any provision
- (a) regulating the selection and appointment of teachers under this Act, the courses of study, the program of studies or the professional methods and techniques employed by a teacher,
 - (b) restricting or regulating the assignment by a board of teaching duties to administrative officers, or
 - (c) limiting a board's power to employ persons other than teachers to assist teachers in the carrying out of their responsibilities under this Act and the regulations.
- (4) Subsection (3) does not prevent a collective agreement from containing a provision respecting hiring preferences for teachers who have previously been employed by the board.

*Section 27, School Act (Prior to amendments flowing
from Bill 28, Public Education Flexibility and Choice Act)*

This structure, with full scope bargaining rights, was achieved through the successful BCTF organization of local associations in an environment where there was pent-up demand for the perceived benefits of collective bargaining. This set the stage for the next phase of teacher collective bargaining.

Phase Three: Broad Scope Collective Bargaining, 1988–1994

With the organization of teachers' union locals in each BC school district, teachers and school boards entered the next phase: broad scope or what commonly became known as full scope collective bargaining. The local teachers' unions began this new phase with high expectations. They were well coordinated, well trained, and well prepared through the work and organization of the BCTF.

In general, school boards entered this phase believing that their prior relationship with teachers and their common interests in educating children

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would allow them to negotiate amicably and achieve the first collective agreements.

Some school boards engaged consultants and lawyers from the labour relations field to act as bargaining spokespersons and negotiators. Most had little or no previous exposure or ongoing relationship with the public education sector. Other districts relied on administrative staff, often with little experience with these issues or with limited collective bargaining experience. A few others used human resource practitioners or senior district staff with experience in collective bargaining and considerable familiarity with education and bargaining issues.

Over the six years from 1988 to 1994 (three rounds of bargaining in most school districts), employers found that the negotiated collective agreements covered a wide range of provisions:

- Agreements prescribed class size, staffing levels, and mainstreaming/integration provisions for students with special needs. Decision-making authority for the delivery of education services and the consequent service levels were no longer at the sole discretion of school boards. Service levels were now determined by the collective agreements.
- Agreements now prescribed the parameters for the organization of the learning environment. Preparation time, duration of the school year, duration of the school day, and selection and assignment of staff were now set by the collective agreements.
- Agreements were not limited to the employer's ability to pay the resulting costs. Typically, negotiated provisions in teacher collective agreements exceeded the funding available and required other areas of expenditure to be reduced to fund the collective agreement.

During these three rounds of bargaining, the BCTF was very effective in coordinating the activities of its local unions. It coordinated the negotiation process and the timing of settlements to effectively play one employer off against another—referred to as a 'whipsaw' strategy. The gains made by one teacher local were then moved to other local negotiations. It was not uncommon for employer bargaining committees to hear union negotiators say, "Why not here? In school district 'X,' they have..."

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During each round of local bargaining over these years, there was an average of 16 strikes, with working days/instructional days lost. Union locals could strike with the knowledge that their local was only seeking something that had already been achieved in another district. When third parties were called in to resolve strikes, they too would look at what other locals had negotiated and use this as the rationale for their recommendations.

Although some took such a view, employers were not at a structural disadvantage in these negotiations. They were simply outmanoeuvred by the BCTF with its effective organizational, training, and coordinating abilities. Local teachers' unions had a common interest in working together to achieve improvements in employment provisions for all teachers. In contrast, school boards valued local autonomy and saw themselves as accountable only to their community's electorate. School boards, by their composition and mandate, had little provincial perspective and sought to resolve local bargaining matters on their own terms. The consequences of their settlements on others was not of paramount concern.

Throughout this period, school boards attempted to coordinate and organize their bargaining activities, but the desire to act independently and solve problems on their own terms prevailed, regardless of the effect on others. Boards often succumbed to the pressure brought by local unions. In the interest of local relationships and community harmony, employer efforts to coordinate negotiations to withstand the strategic pressures brought by coordinated local unions were limited and generally fell apart.

As a result, the cycle of whipsawing continued and extensive collective agreements emerged in most parts of the province. To some, these collective agreements limited school boards' ability to manage public education and diminished their role. Others took the position that the agreements were the subject of good faith collective bargaining and represented a balanced agreement freely negotiated between the parties.

Unions that represent public school teachers usually frame their bargaining objectives not in terms of improvements to compensation or working conditions, but rather in terms of improvements to the quality of education. As a union with a commitment to public education advocacy, the BCTF successfully portrayed itself as the party most interested in the quality of education and best able to

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provide for that quality through the negotiated provisions of its collective agreements.

The public appeared to largely accept this notion, likely because they knew and trusted their children's teachers but knew little of the school board's operations and priorities. Many saw the successful BCTF negotiation of class size as evidence of the role of the collective agreement in their child's education. The BCTF argued that the collective agreements protected students from the adverse consequences of funding reductions by the provincial government and school boards. With resources for a public media campaign, the BCTF was able to reinforce this message through successive rounds of bargaining.

It is important to remember that during this period, more resources in relation to the demands for services were available for public education than is available now. In spite of the financial obligations imposed by certain contractual provisions, school boards had greater discretionary spending ability. School boards had enough money to absorb the costs of new collective agreement provisions, as well as to finance other projects or expenditures of interest to the school board or community.

School boards had local taxation authority until 1990. When the provincial government removed local taxation and 'equalized' the distribution of tax monies, certain districts faced new funding pressures. With funding constraints and the increasing cost pressures of the 1990s, most school districts lost their discretionary spending ability.

School boards' experiences with local bargaining, particularly the associated costs and in many cases strikes, prompted calls for a different bargaining structure. The strikes in large urban communities during the 1993–1994 school year focused attention on the shortcomings of the bargaining structure and highlighted the need for change.

In an April 2000 article in the BCTF *Teacher* newsmagazine, former BCTF President Ken Novakowski described the 1987–1994 period as follows:

When the dust settled and the legislation was turned into law, the BCTF faced a number of challenges. First, the legislation provided teacher locals with the option of choosing to be an "association" with limited scope and binding arbitration for resolving disputes or a "union" with full scope and the right to strike/lock out. As well, with the removal of statutory membership, we were

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faced with having to voluntarily sign up teachers into the local and the BCTF. And the new College of Teachers loomed as a potential rival for the loyalty of teachers.

In the most significant mobilization of BCTF resources toward a single objective, the BCTF organized and co-ordinated its 76 locals to sign up teachers into the BCTF and to opt for, in every local, the “union” model for bargaining. Teachers signed up into the BCTF in the range of 98%. The campaign was successful beyond belief. And when elections for the College of Teachers were held, BCTF-endorsed candidates won all 15 of the elected spots on the 20 person board. Teachers were in charge of the college, and ensured that its mandate would remain limited to the certification, recertification, and decertification of teachers and that the realm of professional development would remain within the purview of the BCTF.

Faced with an outside threat to the profession and their organization, teachers re-shaped and reformed their “union of professionals” into a new organization that would continue to represent all of the economic, social, and professional interests of teachers. As well, the public profile of the BCTF and its president, Elsie McMurphy, were raised to new heights through the campaign of opposition and mobilization. And we further strengthened our relationship with the labour movement through participation in the general strike. We then turned our minds to preparing for our first effort at full collective bargaining with the right to strike.

What emerged was a system of co-ordinated local bargaining. Locals were the bargaining unit charged with the responsibility of negotiating a collective agreement with their school board. The BCTF developed the Collective Bargaining Handbook, with model clause language on every conceivable provision that teachers might wish to negotiate. Local bargaining teams were trained by the BCTF and supported by staff assigned to work with locals.

Additional staff were hired to assist and new policies and procedures were put in place to support the new bargaining regime, including strike pay and assistance.

The first round of full collective bargaining for teachers in 1988 continued to mobilize the excitement and energy of teachers that was generated in the sign-up certification campaign the year before. On November 28, 1988, Kitimat teachers began a 10-day strike before successfully concluding an agreement that included class-size maximums. Eleven other locals struck in the first round and others mobilized to achieve their objectives that became identified in the slogan, “WHY NOT HERE?” The important aspect of the experience of co-ordinated local bargaining was not that we did well—we did. What was so very important about local bargaining was the high degree of democracy and member participation in decisions and the process of achieving local collective agreements. As a Federation officer in the first two rounds of local bargaining, I well remember my visits to locals and the high percentage of members who attended meetings, took

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part in activities, and supported their bargaining teams in their efforts to achieve improvements in teacher salaries, working conditions, and professional rights.

The stories of local bargaining in the three rounds before provincial bargaining was imposed in 1994 constitute an exciting and dramatic period in the history of the BCTF.

Commission of Inquiry into the Public Service and Public Sector

On March 6, 1992, the provincial government established the Commission of Inquiry into the Public Service and Public Sector with mediator/arbitrator Judi Korbin as Commissioner. Known as the Korbin Commission, its mandate was to:

- examine the human resource practices of the public sector
- propose a new framework of human resource management that would allow government to meet the public's demand for services within fiscal limitations

Human resources, with specific emphasis on labour relations in the public education sector, was among the areas of inquiry and recommendation by the commission. The commission made the following observations about teacher collective bargaining based on employer submissions:²

The Commission also received numerous submissions concerning the need to establish a method of balancing the power of the parties for collective bargaining purposes. Put another way, there is a perception of a power imbalance. It is believed by many that there are powerful local teachers' associations acting in concert with a more powerful central teachers' federation, whipsawing individual school boards into accepting teachers' bargaining demands because, on a district-by-district basis, they are not able to resist those demands. Consequently, it is perceived that school boards are forced to agree to teachers' settlements beyond the funding ability of a particular district.

The BCTF, speaking for local teachers' associations, observed:³

Centralization is often seen as having negative consequences for the bargaining and representation process. These consequences include a reduction in the local flexibility and autonomy of both management and workers and a restriction of the scope of worker

² Judi Korbin, *The Report of the Commission of Inquiry into the Public Service and the Public Sector*. Volume Two, Final Report (June 1993), F-20.

³ *Ibid.*, F-17.

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participation. As a result, the workers may become alienated and frustrated, and hence less productive and more prone to both official and unofficial strike action.

Given the importance of negotiations with the district's teachers on matters that are critical to good school programs and practices, the heart of the trustees' mandate would be taken away by centralization. It's not just bargaining. Proposals for centralization of this critical function really raise the question as to whether any meaningful role remains for trustees, or even for local boards as institutions.

The BCTF, in its first recommendation to the commission, recommended a continuation of local bargaining:⁴

Collective Bargaining for teachers—a right long withheld from them—must be upheld and continued on the basis of direct negotiations with their employers, the school board in each district.

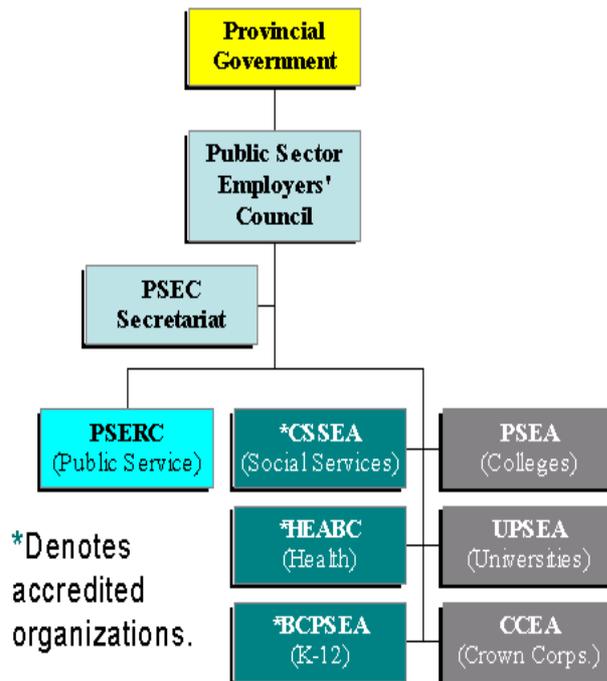
Stakeholders in the employer community, however, recommended a form of centralized bargaining, although no particular model was proposed.

On July 9, 1993, the *Final Report of the Commission of Inquiry into the Public Service and Public Sector* (Korbin Commission) was released, establishing the basis for legislative initiatives to change the structure of the public sector. Soon after, on July 27, Bill 78, the *Public Sector Employers Act* (PSEA), was passed. It established the Public Sector Employers' Council (PSEC) and employers' associations in six sectors of the public sector:

- health
- social services
- K–12 public education
- colleges and institutes
- universities
- crown corporations, agencies, and commissions

⁴ Ibid., F-18.

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The *Public Sector Employers Act* established the following mandate for the associations:

- (2) *The purposes of an employers' association are to coordinate the following with respect to a sector:*
 - (a) *compensation for employees who are not subject to collective agreements;*
 - (b) *benefits administration;*
 - (c) *human resource practices;*
 - (d) *collective bargaining objectives.*

- (3) *In addition, it is a purpose of an employers' association*
 - (a) *to foster consultation between the association and representatives of employees in the sector, and*

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- (b) *to assist the council in carrying out any objectives and strategic directions established by the council for the employers' association.*

As a result, BC's K–12 public education sector changed considerably. In May 1994, BCPSEA was formed. On June 7, 1994, Bill 52, the *Public Education Labour Relations Act* (PELRA), was passed. It established BCPSEA as the accredited bargaining agent for all public school boards and the BCTF as the certified bargaining agent for all public school teachers in the province:

Employer bargaining agent

- 4 The employers' association
 - (a) is deemed to be the accredited bargaining agent for every school board in British Columbia, and
 - (b) has exclusive authority to bargain collectively for the school boards and to bind the school boards by collective agreement.

Employee bargaining agent

- 6 (1) The British Columbia Teachers' Federation
 - (a) is deemed to be the certified bargaining agent for the employees in the bargaining unit,

Section 7 of the *Public Education Labour Relations Act* established, in general, the scope of bargaining:

- 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 and benefits,
 - (b) workload, including, without limitation, class size restrictions, and
 - (c) time worked and paid leavethat affect the cost of the collective agreement.

Phase Four: Provincial Collective Bargaining, 1994–2005

With few exceptions, local school boards and local teachers' associations negotiated three full scope collective agreements between 1987 and 1994. By coincidence, most of the collective agreements were set to expire on June 30, 1994, when the legislation was created to facilitate provincial bargaining. No provisions existed, however, to guide the transition from 75 local agreements to a single province-wide agreement or a form of master agreement contemplated by PELRA.

The *Public Education Labour Relations Act* required that the parties negotiate which matters would be dealt with at local bargaining tables and which matters would be negotiated provincially. In April 1995, the BCTF and BCPSEA completed the 'split of issues,' and all substantive issues, including monetary provisions, were placed at the provincial table. Local matters were those with limited importance to working conditions and with no monetary impact.

The employer and the union bargaining agents approached both the process and content of the negotiations differently. BCPSEA adopted and employed what they termed an 'interest-based' approach, which was loosely based on the principles articulated in the best-selling book on the subject, *Getting to Yes*.

Interest-based or 'mutual gains' bargaining is supposed to improve the relationship between the parties because the resulting framework is based largely on how each cultivates their mutual relationship. The approach should also yield more judicious agreements because the parties are encouraged to openly discuss their needs and fundamental interests, as well as basing their agreement on objective criteria.⁵

Many school districts felt that since this was the first provincial agreement, the parties would sit down and explore their respective interests and craft a collective agreement that was in the interests of individual teachers, school boards, and most importantly, public school students.

⁵ Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, ed. Bruce Patton (New York: Penguin USA, 1991).

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The BCPSEA bargaining committee invited the BCTF bargaining committee to participate in joint interest-based bargaining training, but the BCTF declined. BCPSEA based its approach on the belief that, technically, no collective agreement existed and the parties were essentially creating a first collective agreement. This became known as the 'blank slate' approach.

There also was a general feeling in the public education employer community that employers had been the victim of a power imbalance and, as employers testified in the Korbin Commission proceedings, there was a need to balance the power between employers and the union. This led to the conclusion that the gains made by teachers in this unbalanced system needed to be redressed, and this 'first agreement' was viewed as the opportunity to do so.

The BCTF had a different view. It believed that the system of bargaining between local unions and local school boards was appropriate, and they rejected outright the concept of a 'blank slate.' The BCTF saw the 75 collective agreements as the product of much hard work and sacrifice, and saw them as the base from which to negotiate. The BCTF would later describe the BCPSEA approach as nothing more than 'contract stripping' — an attempt to take away the rights of teachers that had been achieved through collective bargaining.

The BCTF, therefore, entered negotiations with a 'no concessions' position. Any change to any existing provision that, in its view, was worse than the status quo represented a concession.

The parties began negotiations in May 1995. As was the practice at local bargaining tables, the BCTF submitted an extensive set of proposals in collective agreement form. The BCPSEA bargaining committee, however, had no such proposals, consistent with its version of an interest-based approach. Rather, when issues were discussed, the committee distributed so-called 'interest statements' in an attempt to engage the BCTF bargaining team in a discussion.

While the approach taken by BCPSEA had many of the trappings of true interest-based bargaining, arguably it had none of the theoretical or strategic rigor. The approach gave no weight to the absence of a pre-existing bargaining relationship between the BCTF and BCPSEA, nor did it allow for proper treatment of the integrative (problem solving) and distributive principles underlying the interest-based bargaining model.

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In his 1994 article, *Bargaining Over How to Bargain in Labor-Management Negotiations*, J.E. Cutcher-Gershenfeld, a leading scholar in negotiation theory and practice, made instructive comments that can be applied to this interest-based experience:

A close look at the interest based experiments in labour relations reveals that adversarial institutional patterns have often been rejected in favor of more collaborative, problem solving techniques without a full appreciation of the underlying reasons for the establishment of the original institutional patterns.

The Transitional Collective Agreement

Between May 1995 and April 1996, little progress was made and, with an election expected, the provincial government called the parties to Victoria in an attempt to facilitate a transitional agreement. On April 28, Bill 21, the *Education and Health Collective Bargaining Assistance Act*, was passed, establishing a process to ensure that education and health services would not be disrupted in the event of a labour dispute during an anticipated provincial election. The passage of this legislation set the stage for an imposed agreement should the government deem it necessary.

With the government heading into an election, and even before a bargaining impasse was reached, the *Transitional Collective Agreement (TCA)* was concluded under the direction of the province in May 1996. As well as a few provincial items already agreed to, the TCA simply called a 'time out' during the election. It essentially rolled over the existing language of the 1993–1994 local agreements, increased compensation by a small amount, and added some provincially negotiated provisions that dealt predominantly with standard collective agreement issues, such as the grievance procedure and union membership.

The agreement also established the basis for continued negotiations. The TCA expired on June 30, 1998, and required the parties to resume negotiations in March 1997. School board ratification was on a weighted vote basis, and 54% of the total school board votes were cast in favour of the TCA.

The Provincial Collective Agreement

Bargaining reconvened in earnest in September 1997. The parties exchanged extensive sets of proposals. BCPSEA, continuing its commitment to the blank slate approach, brought proposals for changes in almost all areas of the existing collective agreements. Interest statements were replaced with bargaining proposals in a traditional form. The BCTF, true to its approach of no concessions and improving what already existed, brought proposals touching on a comprehensive range of issues.

By February 1998, with no progress evident, BCPSEA accepted the offer of assistance from the government to facilitate the negotiations. BCPSEA representatives believed that the government's role would be one of facilitation. They subsequently discovered that government representatives went beyond 'facilitation' and negotiated directly with the BCTF in a series of private meetings.

As one of the government representatives, Russ Pratt, CEO of the Public Sector Employers' Council Secretariat, reported in a subsequent agreement implementation meeting, "I took the microphone and did not give it back until we had a deal." BCPSEA representatives were not involved in these negotiations and only learned of the contents of the *Agreement in Committee* (AiC) after it was signed by the BCTF and the provincial government.

The principal issues addressed in the AiC were:

- a 0%, 0%, and 2% wage increase consistent with the government's monetary mandate framework for the public service and the public sector
- ratios that set the number of non-enrolling teachers that each district was required to employ
- K-3 class size maximums, which reduced primary class sizes for all districts
- agreement that all other terms and provisions of previous local agreements bargained during the 1988-1994 period were now part of the provincial collective agreement.

The approach and actions of government representatives suggest that they believed the provisions of the AiC were so beneficial for school boards that the agreement would be widely accepted in spite of how the agreement was reached. Government representatives argued that given the bargaining stance and extensive proposals of BCPSEA, both the resulting process of private negotiations between government and the BCTF and the outcome of those negotiations were inevitable. School boards, however, were outraged and, when forced to vote on ratification of the AiC, turned it down by an 86% margin.

In July 1998, the government passed Bill 39, the *Public Education Collective Agreement Act*, which established the AiC as the collective agreement for the term July 1, 1998 to June 30, 2001.

Provincial Collective Bargaining: Round Two

The collective agreement between BCPSEA and the BCTF expired on June 30, 2001, and a new round of collective bargaining began. The second round was different from the first round, which had led to the TCA in 1996 and the AiC in 1998. In this round, with the initiation of the BCPSEA *Teacher Collective Bargaining Project* in January 2000, BCPSEA made a concerted effort within the employer community to raise the level of understanding about why teacher-public school employer collective bargaining in BC is the way it is, and sought to have employers adopt a focused, defensible bargaining agenda based on a defined set of objectives. This meant connecting all parts of the K–12 employer community, including school boards, management partners, and government, and getting consensus on what needed to be achieved in this round of bargaining.

This round of bargaining also occurred in a context considerably different than before. For example:

- Local bargaining commenced while the Social Credit Party (Premier Vander Zalm) formed the provincial government, with a majority of agreements negotiated and concluded during Social Credit administrations. The last rounds of local bargaining and the first round of provincial bargaining occurred under New Democratic Party (NDP) administrations (Premiers Harcourt and Clark), with its traditional ties to organized labour. The bargaining objectives for the second round of

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provincial bargaining were set while the NDP (Premiers Miller and Dosanjh) was in the final months of its administration.

- While each government said that funds were in limited supply, the record of the governments from 1991 to 1998 was that funds were available to ‘grease the wheels’ of public sector collective agreements. Even the 0%, 0%, and 2% offered to the BCTF during the 1998 AiC was accompanied by a significant infusion of new teaching jobs and other areas not directly related to compensation.
- Arguably, governments in the 1990s largely accepted the BCTF contention that it was well placed to improve and protect public education, and that collective bargaining and collective agreements were the appropriate vehicles.

The context of public sector collective bargaining changed dramatically with the election of the Liberal government under Premier Gordon Campbell in May 2001. The win was decisive. The new government was characterized as management oriented and businesslike.

The economy, widely believed to be faltering when the Liberals took office, worsened as the global economy stalled. If the economic environment made a collective agreement with the BCTF difficult when bargaining began in March 2001, it became more difficult as the state of the economy began to deteriorate. In response to fiscal challenges, in late 2001 the government announced substantial cuts to all provincial ministries except health and education. Funding for health and education was frozen.

Between March and November, the parties also watched as the political context in which bargaining was occurring started to change. The Liberal government’s *New Era* agenda began to take shape. Just as previous provincial governments had, the government demonstrated a willingness to enter the public sector collective bargaining arena, although the process for resolving the disputes was quite different.

In two cases where a negotiated settlement appeared unlikely, the government legislated an end to the disputes. When the Coast Mountain Bus Company could not reach agreement with the Canadian Auto Workers Union Local 111 and the Office and Professional Employees’ International Union Local 378, the

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government introduced Bill 13, and on August 1, 2001, passed the *Greater Vancouver Transit Services Settlement Act*.

When the Health Employers' Association of BC could not reach agreement with the BC Nurses' Union and the Paramedical Professional Bargaining Association, the government introduced Bill 15 and then passed the *Healthcare Services Collective Agreements Act*, effectively imposing the employers' last offer.

The Teacher Collective Bargaining Project: Bargaining 2001

At the BCPSEA Annual General Meeting in January 2000, the *Teacher Collective Bargaining Project Plan* was outlined. This represented a new approach to teacher bargaining. An internal review of the association's strategies and processes with respect to collective bargaining was undertaken in mid-December and early January. This review identified the need for a new approach both in terms of *how* BCPSEA prepared for bargaining and bargained, and *what* was ultimately proposed. The plan was designed to take the BCPSEA membership through a period of reflection on past experiences with teacher collective bargaining towards a set of bargaining objectives that would guide BCPSEA staff in developing bargaining proposals.

The plan sharpened the focus of the membership and led to the development of the *General Negotiation Framework*—the four principles of negotiation that would form the basis for BCPSEA bargaining objectives, bargaining proposals and serve as the filter to assess proposals and counter-proposals during negotiations. These principles were:

- The costs of employment must be compatible with the government's funding priorities and school boards' ability to pay.
- The orderly introduction of change and the ability of school boards to adapt to evolving educational priorities and needs are necessary to maintain a responsive public education system.
- The enhancement of relations between union and management, both locally and provincially, is essential for continued industrial stability and effective workplaces.

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- With respect to the terms and conditions of teachers' employment, the sector is moving from a series of local agreements to a provincial collective agreement. This reduces the number of local agreements and the variety of provisions now in effect in those agreements.

Bargaining issues were systematically explored and examined.

Spring to Fall 2000 – Meeting with individual school boards to reflect on past experience, discuss roles and responsibilities of members and government, and hear their views on bargaining priorities.

Fall 2000 – Development of a *Teacher Collective Bargaining Discussion Paper*, providing direction for teacher bargaining and a focus of discussion among members of BCPSEA.

Fall 2000 – Regional meetings to refine issues within the *Teacher Collective Bargaining Discussion Paper* and move towards a statement of consensus embodied in a *Teacher Collective Bargaining Position Paper*.

January 2001 – The *Teacher Collective Bargaining Position Paper* is circulated to members. This represents the consensus on a number of matters relating to teacher bargaining and points the direction towards bargaining objectives.

February 2001 – The Teacher Collective Bargaining Conference is held. Collective bargaining objectives arising from the consensus of members' views are placed before the conference for approval.

March 2001 – Bargaining objectives approved by members are transformed into bargaining proposals and approved by the Board of Directors.

March 2001 – Collective bargaining with the BCTF begins.

At the Table

Both the BCTF and BCPSEA tabled their bargaining proposals in the spring of 2001.

The BCTF took its traditional approach — one that had worked for local teachers' associations and the BCTF since collective bargaining began in 1987. The BCTF came to the bargaining table with a comprehensive set of demands, seeking costly improvements in compensation and extensive changes to working conditions. From the employers' perspective, the proposed working conditions further limited the ability to adapt to changing educational needs and represented further constraints on employers' discretion in the operation and organization of schools. The BCTF developed its bargaining agenda through broad consultation with its 45,000 members and through a decision-making process characteristic of this large union. Given the nature of the development process, once the agenda was established, arguably it was very difficult to vary or reduce.

BCPSEA also set its bargaining objectives through broad consultation with its members (the province's 60 public school boards), albeit differently than the BCTF. Through individual school board meetings, regional meetings, and consultation with district staff representatives, a general negotiation framework was codified and a *general agreement on what needed to be accomplished* in the round of bargaining was developed. This led to the establishment of broad bargaining objectives and a series of specific objectives. Specific proposals and language that were eventually exchanged at the bargaining table were not subject to approval by the BCPSEA membership. This allowed the Board of Directors and the Bargaining Team to make the necessary strategic decisions or course corrections within the agreed-upon direction during bargaining, seeking input and direction where necessary through established processes and consultative structures. This approach differed considerably from the first round and was based on an internal review of the structures, processes, and strategic decisions of the first round.

The employers' objectives focused on what became known as the 'rocket ship' model a schematic that illustrated GNF principle #4. This model categorized the terms and conditions of employment by the degree of standardization or local discretion seen by employers as necessary to operate the school system. For

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example, employers sought standardization of compensation matters, provisions typical to most collective agreements, and some working conditions, while permitting what can be characterized as a form of ‘deregulation’ of the existing collective agreement provisions that prescribed how schools were organized and instruction delivered. The foundation of the bargaining objectives, the rocket ship model envisioned standard provincial clauses in areas of collective agreements such as those affecting the union/management relationship and compensation matters. The model did not seek to standardize conditions that affected local decisions on program service levels or the organization of services within schools.

The BCTF agenda had a firm philosophical foundation. Whether in local bargaining or in provincial bargaining, the BCTF generally framed its bargaining demands not in terms of improved compensation and working conditions, but rather in terms of improvements to the quality of education. BCTF representatives have articulated that the best way to guarantee the level of services offered in public education is to enshrine those service levels in collective agreements. Further, the argument goes, the collective agreement is best suited to codify the specifications for the size and cost of the public school ‘enterprise.’ Once these provisions are codified in a collective agreement, government and its managers are obligated to fund and maintain this level of operation regardless of changing circumstances. Collective bargaining was the mechanism to *bargain* what in the first instance were working conditions and by extension were also students’ learning conditions.

While permitting others with interest in public education to express their views on the organization and size of public education, clearly the BCTF also takes the view that it is best placed to articulate and codify the way in which public education should function. Arguably, from the BCTF vantage point, teachers, through the BCTF, know what is required for a viable and healthy public education system, and it is the duty of government to provide for these requirements.

Simply put, the bargaining objectives pursued by the BCTF were:

- no change, and particularly no concessions—that is, no agreement would be reached that resulted in the BCTF, any local of the BCTF, or any member of the BCTF losing any provision, term, or benefit that

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existed in any of the 69 versions of the provincial collective agreement

- a significant pay increase
- improvements to working conditions for teachers in terms of fewer students taught by each teacher and less time teaching for each teacher.

BCPSEA took a different approach than it did during the first round of bargaining in terms of how it prepared to bargain, what it tabled, and the strategy it adopted at the table. The public school employers, through BCPSEA, came to the table with a narrow agenda. Modest resources were available to address compensation issues. For the first time, BCPSEA acknowledged a role for class size maximums in collective agreements, proposing that existing maximums be used to establish staff for schools. School administration, in consultation with teachers, would determine the staff deployment. BCPSEA was, however, resolute in its bargaining demands that the provisions that teacher unions had negotiated prior to 1994 and in the legislated agreement of 1998 had to be changed. As a result of the many changes to public education since 1994, employers needed greater flexibility to manage and greater discretion in the use of the available resources to provide the best services to students.

Employers took exception to the BCTF view that teachers through their union were the sole defenders of public education through the collective agreement. Trustees contended that they were elected to provide education programs to students in their communities. Trustees and the community, not a labour union through its collective agreement, should be determining the structure and size of public education.

At the root of the differences in the bargaining agenda was this philosophical chasm. These differences played out at the bargaining table in an economic and political context that changed rapidly from the time negotiations began in March 2001. As Alan Crawford, bargaining spokesperson for the BCTF, said, “Bargaining for us is about *getting or not getting*.” The BCPSEA bargaining team took the view that bargaining was about *giving and getting*—a balanced exchange was required such that there were benefits for both parties to the

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negotiation. This necessitated change to previously negotiated or legislatively imposed provisions.

The BCTF demands, both monetary and non-monetary, were extensive. When the costs of the BCTF demands became known, these costs were widely viewed by the public as irresponsible and, in some cases, ridiculous. The BCTF, unable to retreat nimbly from these excessive demands, paid a high price in public confidence that undermined its traditional “all in the children’s best interests” contention. The employer community, composed of trustees, district administrators, and principals, were joined by parents and if the general commentary of the public is any indication, the public to stand, for the first time, in general agreement with objectives of the employer.

At the bargaining table, the BCTF and BCPSEA bargaining teams worked to find any common ground that would allow some measure of progress. The demands were extensively explored in the hope that constant scrutiny would result in a retreat, modification, or understanding of interests, leading to agreement. Early in negotiations, the BCPSEA bargaining team told the BCTF team that it held out hope for a negotiated agreement. The BCTF stood behind its new demands and rejected the BCPSEA proposals for change to existing provisions. Later, BCPSEA stated more strongly that, while a negotiated collective agreement was preferable, the bargaining paralysis in the changed political/economic environment posed a risk of intervention.

In mid-December, bargaining entered what would turn out to be the final phase—facilitation assisted by the highly respected mediator/arbitrator, Stephen Kelleher. Arguably, this phase served to emphasize the inability of the BCTF to revise its opening position or move from its stated ideological stance. The BCPSEA bargaining team observed that minor issues, almost agreed, were set aside as too painful to agree upon, as if this was the crack through which all the provisions previously negotiated and considered achievements by the BCTF would pour and be lost. Even packages of proposed changes to existing provisions, heavily weighted in favour of the BCTF from a cost perspective, failed to result in agreement or, at the very least, movement.

On January 15, 2002, BCTF President David Chudnovsky reported in the media that the BCTF was to make a “dramatic new proposal” and present what he termed a framework for settlement to BCPSEA. When it was finally presented on January 22, it included a continuation of proposals already rejected earlier in

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negotiations, as well as a reduced wage demand of 18%, which was still far in excess of the well-known compensation mandate available to employers and of prevailing public sector settlements.

The BCTF had established benchmarks with its opening positions—specifically, no changes to existing provisions, a double-digit wage increase, and other class size improvements. Given the stated views of employers and the changing circumstances as negotiations progressed, these benchmarks were unrealistic and served as key contributing factors to negotiation paralysis. Arguably, the inability of the BCTF to react quickly and dramatically to the changing context and economic environment prevented a negotiated agreement and set the stage for government intervention.

The BCTF opening position was crafted in a different time and context. Their opening position never fundamentally varied over nine months of bargaining in spite of considerable changes in the political and economic context of the province. A question naturally arises: *Well, then, why didn't the employer make a move with a series of counter-offers on the key issues of money and working conditions?* In the view of the BCPSEA bargaining team, the BCTF bargaining team gave no indication that it was prepared to make any move to address the employers' underlying interests. The money available for compensation was clearly limited and on the table; a counter-offer that involved more money was not an option. BCPSEA did offer to discuss the allocation of the money—the structure of the wage package—but given that the BCTF was seeking a double-digit increase, discussions were limited. Matters such as the organization of schools should have been discussed in detail and interests explored. The no-change position, the proposals as written, and the resulting discussions provided evidence that the BCTF proposals were not within the employers' zone of agreement and that the BCTF would not be deviating in any meaningful way from its opening positions. Further, there was no indication that the BCTF had the ability to move within the employer's range of settlement.

The Legislation

Education Services Collective Agreement Act

When it appeared that the parties could not reach a timely settlement, the government intervened. On January 27, 2002, Bill 27, the *Education Services*

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Collective Agreement Act, was passed, establishing the terms of the collective agreement between teachers and public school employers and ending teacher job action. The Act provided for:

Salary Increases – Increases of 2.5% effective July 1, 2001; 2.5% effective July 1, 2002; and 2.5% effective July 1, 2003.

Article A.1 – Amendments to Article A.1 proposed by the employers' association on November 21, 2001.

Signed-off Provisions – The terms included:

- provisions contained in the existing collective agreement as amended by the legislation
- provisions negotiated and agreed to during bargaining (legislative change, letter of understanding about school district housing, and the application of standard harassment language to School District Number 50, Haida Gwaii/Queen Charlotte)

Amalgamation – On December 1, 1996, the provincial government amalgamated school districts in several areas of the province to reduce the number from 75 to 59. In addition, the Francophone Education Authority was established, bringing the number of school boards to 60. Following the amalgamation, many affected school districts consolidated their teachers' collective agreements.

As part of the *Education Services Collective Agreement Act*, effective July 1, 2002, school districts that amalgamated in 1996, which continued to have more than one agreement, would now have only one local teachers' agreement forming part of the provincial collective agreement. Before the legislation was passed, the following districts continued to have more than one local teachers' agreement:

- 5 (Southeast Kootenay)
- 6 (Rocky Mountain)
- 8 (Kootenay Lake)
- 53 (Okanagan Similkameen)
- 58 (Nicola-Similkameen)

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- 79 (Cowichan Valley)
- 82 (Coast Mountain)
- 83 (North Okanagan-Shuswap)
- 91 (Nechako Lakes)

Review of Teacher Bargaining Structures, Processes, and Procedures
– Section 5 of the *Education Services Collective Agreement Act* provides for a review of the teacher bargaining structure:

Review of collective bargaining structures, practices and procedures

- 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.
- (2) The commission must consider the following factors:
- (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 educational 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.

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- (3) The commission may not recommend the expiry or extinguishment of the collective agreement constituted under this Act before the expiry date set out in that collective agreement.
- (4) For the purposes of an inquiry under this section, a person appointed to the commission has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the Inquiry Act.
- (5) A person appointed to the commission may be paid remuneration and expenses set by the minister.

Public Education Flexibility and Choice Act

On January 27, 2002, the government also passed Bill 28, the *Public Education Flexibility and Choice Act*. Among its provisions this Act narrowed the scope of teacher collective bargaining. Agreement terms that defined the teachers' working conditions, such as class size and composition, were removed from the collective agreement and codified in legislation. Class size limits were placed in the *School Act* with an accompanying *Class Size Regulation*. The intention of the amendments was for the planning of schools to be accomplished through a new framework consisting of parents, teachers, principals, school boards, and the newly created school planning councils. This had the effect of moving school organization matters from the collective agreement and collective bargaining into public policy.

The following summarizes the key aspects of this legislation:

Class Size – Effective July 1, 2002, collective agreements may no longer contain provisions on class size. Provisions in effect at the time the legislation was passed are void on July 1, 2002. An arbitrator will be appointed by the Minister of Labour to determine whether provisions in the collective agreement are in conflict or inconsistent with the legislation and to resolve all issues before May 11, 2002.

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Class size provisions are included in the *School Act*. A new provision (section 76.1) provides for the following average class sizes:

- for kindergarten, 19 students, provided no class contains more than 22 students
- for grades 1 to 3, 21 students, provided no class contains more than 24 students
- for grades 4 to 12, 30 students.

Regulations for applying the legislation will be established to provide further details. The Minister of Education established a consultation process to seek stakeholder input into the operation of the regulation.

Workload/Staffing Ratios – Effective July 1, 2002, collective agreements may no longer contain provisions concerning any of the following:

- staffing levels, ratios, numbers, or minimums of employees employed by a board
- minimum or maximum caseloads, staffing, or teaching loads

Current provisions are void on July 1, 2002.

Class Composition – Collective agreements may no longer contain provisions on class composition. This includes provisions that could regulate a board's power to assign a student to a class, effective July 1, 2002. Provisions in effect at the time the legislation was passed are void on July 1, 2002.

Extended Day and Year-round Schooling – Any collective agreement provisions that restrict or limit a board's power to establish an extended day for providing educational programs and other support services, or to establish year-round schooling, are void to the extent to which they restrict or limit school boards.

Transitional Provisions – Given the nature and scope of the amendments, the Bill contains a series of transitional provisions,

including the appointment of an arbitrator with a specific mandate to amend collective agreements consistent with the change in public policy. These provisions are designed to ensure an orderly transition.

Legislative Change – Given the scope and the nature of the legislative change, the legislative change provision in the collective agreement is void to the extent to which it relates to class size, workload, staffing ratios, class composition, and other matters specified in section 27(3).

Assignment of Special Needs Teachers' Assistants – Regulations may be established to provide for school year continuity for students with special needs.

School Meals Program – Despite any provision of an existing support staff collective agreement, boards may contract with any person to provide meals to students under a School Meals Program.

The *Public Education Flexibility and Choice Act* also amended the *School Act* by codifying in section 27.1 a legislative vehicle to resolve conflicts and inconsistencies between the amendments to the *School Act* and the collective agreement.

Provincial Collective Bargaining: Round Three

Collective bargaining to renew the agreement set to expire in June 2003 occurred in a challenging bargaining environment and context — unfulfilled BCTF objectives from the last round, the spill over effect arising out of the conclusion to the last round, vastly reduced bargaining scope, court challenges, and a compensation mandate of “net zero.” When examining the context, the following considerations are important:

- **Legislative and Policy Changes:** There had been over 15 legislative changes that affected the K-12 public education sector in addition to over 20 policy and procedure changes initiated by the Ministry of Education since May 17, 2001.
- **Court Action:** Two court challenges were initiated by the BCTF:

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- The BCTF sought a declaration that Bill 27, *Education Services Collective Agreement Act* and Bill 28, *Public Education Flexibility and Choice Act*, are inconsistent with the *Charter of Rights and Freedoms* and are “of no force and effect,” constitute a wrongful expropriation of their rights, and violate the rule of law. This matter has yet to be heard by the Court.
- The BCTF filed a petition in BC Supreme Court seeking a judicial review of the arbitration arising out of Bill 28 — referred to as the Section 27.1 Arbitration or Rice Arbitration. It was the transitional process included in the legislation to ensure the collective agreement is consistent with the *School Act* amendments which moved certain school organization matters into the *School Act*. This matter was heard by the court and a judgment rendered on January 22, 2004. The Court struck down the Rice arbitration. The provincial government subsequently passed Bill 19, the *Education Services Collective Agreement Amendment Act*, and implemented through legislation Arbitrator Rice’s award.
- **Changed Scope of Bargaining:** Bill 28, *Public Education Flexibility and Choice Act*, contained a number of amendments to the *School Act*. It also established a new public policy direction for public education in the province. This legislation set out substantive changes to the scope of collective bargaining by adding a number of provisions that placed additional limitations on the content of collective agreements. Those limitations affected class size, workload/staffing ratios and class composition. These items, many of which had been at the heart of teacher bargaining in previous rounds, were now to be determined by public policy rather than the bargaining process. Further, a transitional interpretive process to identify and delete inconsistent provisions was established in the legislation.
- **Bargaining Structure Inquiry:** An inquiry into the structures, practices and procedures for teacher collective bargaining was initiated by the Minister of Skills Development and Labour in fall 2003 under Commissioner Don Wright. Wright, a senior civil servant and former Deputy Minister of Education, was initially appointed by the Minister to recommend terms of reference and later to conduct the collective

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bargaining structure inquiry. Although not a comment specific to the challenging bargaining environment, in his report to the Minister concerning recommended terms of reference for the bargaining inquiry, Mr. Wright observed:

“In summary, the past sixteen years of teacher collective bargaining have not resulted in a happy legacy...No party seems to believe that the existing structure, unchanged can lead to successful collective bargaining in the future.”⁶

...the parties believe it is extremely unlikely that a collective agreement can be reached without major changes to the existing structure, and it would be useless to even consider trying before those changes are made.”⁷

Following extensive consultations, Wright completed his final report entitled *Voice, Accountability and Dialogue — Recommendations for an Improved Collective Bargaining System for Teachers in BC*, December 2004.

- **BCTF Political Action:** The BCTF opposed many of the government’s education initiatives and took the position that they would work for what they characterized as a *government that is supportive of public education and adequate funding* in the May 2005 provincial election.
- **Compensation Mandate:** The mandate for general wage increases in the public sector was net 0% for the period 2003-2006. This meant that, where employers are able to secure trade-offs within the total compensation envelope, they may move compensation; e.g., from benefits to wages (the *net zero* compensation mandate). By September 2005 over 100 settlements had been concluded within the mandate. This included 30 support staff settlements in the K-12 public education sector.

Collective bargaining also commenced with a number of items outstanding from the last round. In the 2001 round, even though the BCPSEA and the BCTF were at the table for over 60 formal bargaining sessions and, in the latter stages of

⁶Wright, D. *Towards a Better Teacher Bargaining Model in British Columbia*. Report to Graham Bruce, Minister of Skills Development and Labour, November 10, 2003, page 7.

⁷ Ibid, page 33.

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bargaining, enlisted the assistance of mediator Stephen Kelleher to facilitate the process in hopes of achieving a settlement, in the end the parties could not reach agreement. When it became clear that a negotiated settlement was not possible, the provincial government intervened and legislatively imposed a collective agreement on the parties.

The General Negotiation Framework

As part of the preparation phase, BCPSEA met with trustees and district staff through individual board or group meetings — aka *TCB Road Shows* — between January and April 2004 to:

...begin a dialogue that informs the preparation phase and establishes a sound foundation for the development of bargaining objectives.

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This dialogue began with a review of the foundation for bargaining — the *General Negotiation Framework* (GNF). The GNF, established in 2000-2001, is subject to review and, where necessary, revision for this round of bargaining. It has four principles:

1. The costs of employment must be compatible with the government's funding priorities and, given school boards' obligations, a school board's ability to pay.
2. The orderly introduction of change and the ability of school boards to adapt to evolving educational priorities and needs are necessary to maintain a responsive public education system.
3. The enhancement of relations between union and management, both locally and provincially, is essential for continued industrial stability and effective workplaces.
4. With respect to the terms and conditions of teachers' employment, the sector is transitioning from a series of local agreements to a provincial collective agreement. This reduces the number of local agreements and the variety of provisions in those agreements.

What Districts Said

As part of the Road Show meetings with school boards prior to commencement of the 2004-2005 round of bargaining, participants were asked to:

- Review and consider each of the GNF statements.
- Are any revisions, additions or deletions required?
- Rate the relative importance and identify the rationale for your rating.
- Debrief:
 - Ratings and rationale.
 - What other groups said and why — other regional Road Shows.
 - What we said last time — has anything changed since TCB 2001?

Participants confirmed that the GNF remained an appropriate base upon which to build broad bargaining objectives.

The GNF and the Collective Agreement: Approaches and the Degree of Change

Based on the review of the GNF, its validation and/or amendment, broad bargaining objectives were set. Following the establishment of broad bargaining objectives, the collective agreement was reviewed for potential areas of focus. These matters were categorized in the following scope and impact categories as those that either facilitate:

- Efficient resource allocation, or
- Effective service delivery.

Efficient resource allocation arises from the current fiscal climate, the provincial nature of public sector collective bargaining, the government's interest in public education costs, and the need to ensure that resources are directed to the provision of educational programs.

Effective service delivery recognizes that there are increasing service delivery expectations despite diminishing resources.

These two elements provided the analytical framework to assist in determining the nature and degree of change.

While the GNF is the foundation for bargaining, BCPSEA, in consultation with school boards, asked the question: "How much change will we pursue in this round of bargaining?" The scope and impact categories — efficient resource allocation and effective service delivery — are used to assist in determining the pace of change pursued in any given round of bargaining.

The Degree of Change: What Districts Said

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Information gathered on the Road Shows indicated that there was a consensus that the four principles of the GNF still provided a strong foundation for the development of objectives. Bargaining proposals, it was felt, must continue to emphasize ability to pay and the ability of school boards to adapt to evolving educational priorities. There was also an acknowledgement of the number of legislative changes already in place that provide districts with greater flexibility than what they had as we entered the last round of bargaining, and an expressed preference for a period of stability to continue to implement this flexibility.

In addition, we heard that some weight must be given to the consequences of bargaining — in particular, the relationship that emerges as a result of what is bargained and how it is bargained. Boards were clear that they did not want this round of bargaining to worsen union-management relations, although they recognized the bargaining context will have a profound effect on those relations. Boards are well into implementing major educational initiatives at the local level and do not want the provincial act of bargaining to interrupt the process of this work. Participants noted, however, that an already complicated bargaining process, given the environment, would be further complicated by the continuing opposition by the BCTF to government initiatives.

The concept of transitioning to a form of master agreement was not given high priority and it was felt the bargaining structure inquiry would address the degree to which common provisions are necessary or appropriate, given the structure that is adopted.

Of greatest concern was the bargaining context and the implications for a successful resolution to the 2004-2005 round of bargaining, given the conclusion the parties had come to and reported to Don Wright — that an agreement under the current system was “extremely unlikely.” Aside from the legal obligation to bargain, some participants asked, why would we go to the table at all?

Given the unknowns — the bargaining structure and potential changes to the structure; the implications and resolution to the quashing of the Rice award — it was felt that although the GNF was confirmed, the development and pursuit of bargaining objectives may have to be adjusted until these two unknowns were known.

Matters at Issue

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It was the general view of school districts that BCPSEA focus on GNF #1 (given the compensation mandate for 2003-2006) and GNF #4 (given the need to continue the sector’s move to a form of common agreement). Although districts recognized that, in a “net zero” compensation mandate environment substantial changes may not be as likely, they also identified the need for a dialogue with the BCTF in order to establish the foundation for structures that would modernize the compensation system and address emerging labour shortage issues.

In support of GNF #2, districts stressed the need to maintain the flexibility achieved through the 2002 legislative changes and allow them an opportunity to work within the new legislative structure, as opposed to considering collective agreement language that may limit a district’s ability to organize schools.

Consistent with the current net zero mandate, BCPSEA committed to seeking economies in the collective agreement. Where economies were achieved, they could be reinvested in the agreement as had occurred in other sectors. While viewed as concessions by the BCTF, there would be no actual loss to the BCTF in that the monies would be re-allocated through negotiations.

In contrast, the BCTF opened this round with a very different view of collective bargaining. First and foremost, the BCTF stressed the importance of re-establishing all collective agreement language related to school organization that was removed as a result of legislation in 2002. In addition, the BCTF was very clear that it was not their intention to recognize the current net zero mandate. They also stressed the importance of achieving compensation parity with their counterparts in other parts of the country such as Alberta and Ontario, as well as other gains in areas such as seniority and Teacher on Call rights.

The following differences formed the basis of the fundamental issues in dispute:

Table: Fundamental Issues in Dispute

BCPSEA	BCTF
<p>Net zero compensation mandate – Achieve changes within the collective agreement that are consistent with the current net zero mandate (until March 2006). This mandate allowed for</p>	<p>Significant improvement in compensation – A general wage increase of 4%, 5%, and 6% over three years in order to, as they characterized it, keep pace with the wage increases for teachers in other provinces such as</p>

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BCPSEA	BCTF
structural changes and trade-offs in costs and savings, provided the net cost of the collective agreement does not increase.	Alberta and Ontario. In addition, the BCTF had other proposals with cost implications on the table, such as benefits improvements, early retirement incentive, professional development, structural changes to salary grids, etc. BCPSEA estimated the cost of these other proposals at approximately 25%.
Movement towards standardization – Standardize terms and conditions such as compensation by establishing a foundation for provisions such as regional or provincial wage grids.	No concessions – Accept no agreement that would result in the BCTF, any local of the BCTF, or any member of the BCTF losing any provision, term, or benefit that existed under the terms of the previous agreement.
Maintenance of the current school organization system – Bargain only matters that are within the scope of bargaining. Matters outside of the scope of bargaining, such as school organization matters removed from the collective agreement by legislation in 2002, by law cannot be the subject of collective bargaining or a collective agreement.	Restore or re-establish school organization provisions – Continue to use collective bargaining as the mechanism to achieve the restoration or re-establishment of school organization matters, regardless of legislation.

BCTF Commences Job Action and Essential Services

The BCTF conducted a strike vote between September 20 and 22. On September 23, the BCTF announced the results of the strike vote – 88.4% of those teachers who voted, voted "yes" in the province-wide strike vote.

On September 23, 2005, the BC Labour Relations Board (LRB) issued its decision on Phase (a) of the BCTF job action, which was set to commence on September 28. Under this initial phase, teachers were permitted to withdraw

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services such as supervision of students at break periods, attendance at staff meetings and participation in district committee meetings.

On October 3, 2005, the provincial government introduced into the legislature Bill 12, the *Teachers' Collective Agreement Act*. This legislation extended the terms of the existing collective agreement to June 30, 2006. On October 6, the government appointed Vince Ready as an Industrial Inquiry Commission to recommend a new collective bargaining structure. The terms of reference were:

To make inquiries, consult with the parties, and make recommendations to the minister concerning the following labour relations matters between the parties:

- i. Determining which matters if any, should be concluded at local bargaining.*
- ii. Methods and costs associated with the harmonization of compensation structures within the financial mandate established by Government from time to time.*
- iii. Establishment of a provincial master collective agreement.*
- iv. Bargaining processes for provincial negotiations that are timely, structured, provide for public accountability, promote settlement at the bargaining table and foster effective and productive union/management relations.*

The report and recommendations of the Industrial Inquiry Commission on these matters must:

- Take into consideration, but not be limited by, the findings and recommendations of the Wright Commission as set out in that commission's December 2004 report.*
- Set out a process that concludes all matters in a timely manner before collective bargaining between the parties for a renewed collective agreement commences in Spring 2006.*
- Comply with section 7(3) of the Public Education Labour Relations Act.*
- Comply with section 27 and 28 of the School Act.*

The Industrial Inquiry Commission shall determine the persons it will consult on any or all of these matters, in addition to the BCPSEA and BCTF. The Industrial Inquiry Commission shall determine its own procedures as it deems necessary and advisable for the proper and efficient carrying out of its mandate and shall make every effort to report its findings to the Minister of Labour and Citizens' Services by no later than December 31, 2005.

On October 5, 2005, the BCTF announced that of those teachers who voted, 90.5% voted in favour of taking a stand in protest against Bill 12. In response to this legislation and consistent with the results of the vote, teachers were to mount picket lines commencing Friday, October 7, and were to remain off the

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job until a resolution had been reached and accepted by a subsequent member vote. Bill 12 received Royal Assent on October 7, 2005.

BCPSEA sought an LRB declaration that the escalation of job action announced by the BCTF scheduled for October 7, 2005 was contrary to the *Labour Relations Code* and represented a violation of the LRB Essential Services Order for Phase (a). The LRB found in favour of the employer and, in their Order issued on October 6, 2005, ordered BCTF members to immediately resume their duties and work schedules of employment, except as authorized by the Essential Services Order.

BCPSEA initiated enforcement proceedings of the LRB Order by filing it with the BC Supreme Court the same day.

Fact Finder

In early September the Minister of Labour met with the representatives of the BCTF and BCPSEA to assess the state of negotiations. The Minister concluded that a further report was needed before any decision respecting a course of action to assist in ensuring a timely settlement could be made. On September 19, 2005, Rick Connolly, Associate Deputy Minister of Labour and Citizens' Services, was appointed as a Fact Finder to inquire into and report by September 30, 2005 on the collective bargaining dispute between the BC Public School Employers' Association (BCPSEA) and the BC Teachers' Federation (BCTF). Specifically, his mandate was to "*examine the positions of the parties in their negotiations, to report on the perspective of each party on the matters of critical importance, and to assess the prospect for re-engagement in collective bargaining.*" The fact finder reported to the Minister on September 30, 2005.

In the concluding comments of his report, Connolly focused on the two key areas of disagreement: (1) compensation and (2) working and learning conditions. With respect to compensation, he noted the parties, despite numerous meetings, had yet to discuss this issue in detail and as a result the costing reflects certain general assumptions. BCPSEA estimates the cost of the BCTF proposal to be approximately \$938 million and BCTF has calculated the cost of their proposals at \$678 million.

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

Regarding the issue of working and learning conditions, Connolly noted:

"...it is clear from this fact finding process that this issue is of great concern to the BCTF."

At issue is where the authority lies for these discussions and decisions to be made. In his concluding comments Connolly noted,

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*“...government has elevated the issues of learning conditions to the status of legislation. However, effective public policy requires involvement of all those affected. It is my opinion that Government should develop an approach to engage with teachers and education stakeholders including parents, trustees, superintendents and principals in an effective and meaningful dialogue regarding this critical issue that is **entirely separate** [emphasis added] from the collective bargaining process.”*

Based on his meetings and discussions with the parties, the Fact Finder concluded, *“because of the positions of the parties on the two major issues, it is my opinion that there is no prospect for a voluntary resolution at the bargaining table in these negotiations.”*

Contempt of Court Order

In response to the escalation of job action by the BCTF, BCPSEA made application to the BC Supreme Court to find the BCTF in contempt of the Order of the Court dated October 6, 2005. The issue before Madame Justice Brown was not whether the legislation was correct or whether the teachers’ response with respect to the legislation was correct. The issue was limited to the consideration of the breach by the BCTF of the Order of October 6.

In her October 9th decision, Madame Justice Brown noted the importance of citizens obeying court orders and referenced Madame Justice McLaughlin quoted in *Canada Human Rights Commission v. The Canadian Civil Liberties Net* (1998), 1 S.C.R. 626:

If people are free to ignore court orders because they believe that their foundation is unconstitutional, anarchy cannot be far behind.

She went on to note that, *“it is the rule of law, in this case obedience to court orders, which permits us to enjoy the rights and liberties of a civilized democratic society...no citizen or group of citizens may choose which orders they will obey.”*

Based on the evidence before Madame Justice Brown, she was satisfied that the BCTF was in contempt of the LRB order of October 6.

With respect to the issue of remedy, Madame Justice Brown chose to defer her decision in the hope that teachers would see the seriousness of the Court's finding. She ordered the parties to return to Court on Thursday, October 13, 2005 in order to establish remedy. She also noted that there would not be any "free days of picketing" if the BCTF did not comply and did not return to work on Tuesday, October 11.

Remedy Related to Contempt of Court

On October 13, 2005, the BC Supreme Court issued its ruling on the penalty phase of the contempt proceedings between the BCTF and the BCPSEA. The Court found that despite the Order of October 9, 2005, the contemptuous conduct of the BCTF had continued. Moreover, the Court found that the BCTF was clearly using its assets as an organization to further its contempt. In response, the Court issued a series of broad restrictions.

The Court prohibited the BCTF and its related entities (which includes local teachers' associations) from using their assets to further, directly or indirectly, an ongoing breach of the Court Order. This prevents the BCTF from expending any funds on matters such as strike pay, signs, direct advertising, etc., or using any other assets such as buildings, phones or fax machines to further this illegal action.

The BCTF is also prohibited from using any of its books, records, or offices to permit third parties (e.g., other unions) to facilitate continuing breach of the Order.

The BCTF is permitted to use its assets in the ordinary course of business (e.g., paying its rent or wages to employees).

In order to ensure compliance with the Order, the Court appointed an independent Monitor. The accounting firm of Ernst and Young has full power and authority to review on a daily basis all books, accounts, and payments of the BCTF and its related entities to ensure compliance with the Order. If the BCTF is not in compliance, the Monitor must report to the court. The Monitor may retain legal counsel, and the BCTF must pay all of the expenses of the Monitor.

The Court adjourned its ruling on the issue of further financial penalties. The Court chose to focus on injunctive relief, and the creation of a mechanism which has the effect of placing the BCTF under independent financial direction from a Court-appointed Monitor.

BC Supreme Court: Continuation of Penalty Phase

On October 21, 2005, the parties again appeared before Madame Justice Brown for the continuation of the penalty phase. In her decision, Madame Justice Brown noted that when determining an appropriate sanction:

The Court must impose a sanction that recognizes the gravity of the contempt, deters this party from continuing the contempt and deters others from similar conduct.

She considered previous fines imposed in such cases, the size of the BCTF membership, and the extent of the BCTF assets. Madame Justice Brown set a fine against the BCTF of \$500,000 covering the period October 7 to 17. In addition, the BCTF will pay for the costs of the monitor and its counsel. The BCTF will also pay the employers' special costs of these proceedings.

On October 28, 2005 Madame Justice Brown ruled as to which charities would be in receipt of the \$500,000, the fine imposed on the BCTF.

Vince Ready Facilitation

In an attempt to bring a resolution to the teachers' dispute, the government enlisted Vince Ready as a facilitator. After meeting several times with the BCTF, BCPSEA, and the provincial government, and immediately following a press conference held by the BCTF at 9:00 am on Friday, October 21, Ready made the following comments:

"Based on the positions of the parties--in particular, the position as stated by the BCTF and their press conference this morning — I've advised the teachers that — and the parties — that they're really stalemated at this point. They're

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just too far apart to come to a facilitated agreement or any kind of a negotiated agreement.

And in the circumstances and given the nature and the impact that this dispute is having on the public, I feel an obligation to make non-binding recommendations to the parties and I intend to do so today — later on today.”

Mr. Ready's recommendations were:

Harmonized salary grids

Government is to commit \$40 million towards the harmonization of salary grids throughout the province. The parties are to meet within 60 days of teachers returning to work in order to determine specific mechanics. If the matter has not been resolved by March 31, 2006, either party may refer it to the Industrial Inquiry Commission (IIC) for resolution. The effective date for harmonization will be between April 1, 2006 and June 30, 2006.

Benefits

Government is to commit one-time funding of \$40 million to the BCTF's LTD trust. In addition, the parties must conduct a study of benefits (i.e., all non-salary monetary provisions) applicable in each school district with a view to harmonizing benefit provisions in the upcoming negotiations. The IIC will assist the parties and the study will be concluded by February 28, 2006.

Recruitment and Retention of Teachers on Call (ToCs)

Government is to fund \$5.25 million to establish a uniform daily base rate of \$190 and for the placement of ToCs on the provincial salary grid after three continuous days in any assignment. In addition, ToCs are to accumulate seniority while being paid on the provincial salary grid. The parties are to meet within 20 days to discuss implementation. If the matter is not resolved by December 31, 2005, either party may refer the matter to the IIC for resolution. The effective date for this recommendation is April 1, 2006.

Learning Roundtable

Ready's recommendation is to increase the number of BCTF nominees to the Learning Roundtable.

Class Size and Composition

Government is to increase its commitment for learning conditions in this fiscal year from \$150 million to \$170 million. The additional money is to be targeted to issues of class size and special needs students. Further, he recommends that government consider incorporating additional money as an increase to base funding. Mr. Ready recommends that the *School Act* be amended to provide an effective mechanism for the enforcement of class size limitations. Finally, he recommends that government consult with the BCTF with respect to potential amendments to the *School Act* with respect to class size limits for Grades 4-12.

Consultation with Teachers

Mr. Ready recommends that the government and the BCTF establish an ongoing process for communication regarding teacher issues.

Return to Work

Upon review of the Vince Ready's report, the provincial government accepted his recommendations unconditionally. The BCPSEA Board of Directors also announced acceptance of the recommendations. The BCTF put Mr. Ready's recommendations to its members for a vote prior to acceptance or rejection. Of those teachers who voted, 77% voted in favour of accepting the Ready recommendations and returning to the classroom on Monday, October 24, 2005.

Provincial Collective Bargaining Round Four

The fourth round of collective bargaining, to renew the agreement set to expire June 30, 2006, transpired in a difficult and tenuous setting given that the 2005 bargaining round resulted in a legislated collective agreement, teacher job action, an illegal strike, court proceedings, and recommendations from Industrial Inquiry Commissioner Vice Ready. The 2006 round of bargaining was guided by two key documents, Vince Ready's further recommendations regarding bargaining structure and the Public Sector Employers' Council's (PSEC) and the Ministry of Finances 2006 Negotiating Framework.

Setting the Stage for the 2006 Round of Bargaining:

2006 Negotiating Framework:

Given that virtually all of the public sector would be bargaining at the same time, the reality being that one employers' or sector's actions would affect others, and the BCTF-BCPSEA legislated agreement expiry of June 30, 2006 was looming, PSEC and the Ministry of Finance adopted a more structured approach to public sector bargaining. In December 2005, PSEC circulated the 2006 Negotiating Framework to all public sector employers' associations. The guide established government's compensation framework for the 2006 rounds of bargaining. The framework allowed for:

- An agreement term of four years or more
- A one-time signing bonus calculated on a full time equivalent employee basis (pro-rated for part time employees), typically ranging from \$3,300 to \$4,000, if an agreement was agreed to prior to expiry of the existing agreement, is ratified in a timely manner, and is for at least a four year term
- General wage increases of 2% per year from July 1, 2006 through July 1, 2009

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- Monies set aside to address specific labour market adjustment issues in recognition of the fact that labour market challenge are faced by some but not all employers
- A fiscal dividend – a one-time payment contingent upon the amount of the Government's 2009-2010 fiscal surplus for collective agreements that extend at least through 2009-2010, as determined pursuant to the Fiscal Dividend Policy of the Negotiating Framework.

While the Negotiating Framework set some parameters regarding the agreement term and general wage increases, it also provided for a signing bonus which was a persuasive incentive for the BCTF to sign a deal prior to June 30, 2006.

Pre-Bargaining Discussions:

Prior to the commencement of bargaining, BCPSEA embarked on an inclusive bargaining preparation process. Through a series of regional meetings in January 2006, conference calls, and ongoing consultation, BCPSEA developed a set of negotiations principles (similar to those developed in the Teacher Collective Bargaining Project in 2001) and bargaining proposals consistent with those principles. Engaging discussions took place at the twelve Annual General Meeting held on January 27 and 28, 2006 as many questions were posed and addressed regarding the Public Sector Negotiating framework and its potential impact on the 2006 round of bargaining. As required, BCPSEA proceeded with the feedback received to develop compensation framework plans for application to employee groups in the K-12 public education sector.

Vince Ready's Interim Report #2:

Arising from his appointment as an Industrial Inquiry Commission by the Minister of Labour the preceding October, Vince Ready remained seized of matters arising from his recommendations that resolved the teachers' labour dispute in 2005. One of his tasks was to recommend a collective bargaining structure for public school teacher bargaining.

On April 6, 2006, Vince Ready presented his Interim Report #2 to the Minister of Labour in which he recommended a framework for transitional negotiations between the two organizations. In view of the nature of the

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changes required to adopt a different bargaining system and the time it would take to implement those changes, Ready stated that “...a more prudent course of action is for the parties to enter into meaningful negotiations with the assistance of a mediator with a view of concluding a Collective Agreement prior to June 30, 2006.” Ready’s process recommendations provided for:

- BCPSEA and the BCTF to appoint a bargaining committee with a maximum of five representatives each.
- Irene Holden to be appointed as facilitator/mediator to assist the parties in bargaining.
- Government to appoint a senior representative to act on its behalf for the purposes of conveying the government’s position on mandates and policy issues related to labour relations.

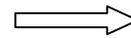
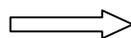
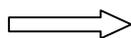
His timeline recommendations were that:

- The parties shall exchange realistic proposals by April 15, 2006.
- BCPSEA, in conjunction with the government representative, shall prepare a serious settlement offer by May 15, 2006.
- If a settlement is not reached by June 1, 2006, the mediator will issue a report to the Minister and the parties outlining the issues resolved and in dispute. If requested, Commissioner Ready, or another third party may become included to provide further assistance in settling matters.
- The parties have the right to strike or lockout under the provisions of the Labour Relations Code.

April 15, 2006

May 15, 2006

June 1, 2006



*Realistic Proposal
Exchange*

*BCPSEA present
serious settlement offer*

*I. Holden to issue a
report to the Minister*

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These recommendations changed the bargaining progression drastically as in previous bargaining rounds the parties were not restricted in terms of process or timelines. Nonetheless BCPSEA Chair Ron Christensen and CEO Hugh Finlayson, along with representatives from the BCTF, met with the Minister of Labour on April 10, 2006 to discuss the report. Both parties indicated they would be accepting Ready's recommendations for negotiation.

At the Bargaining Table:

Bargaining Begins:

The fourth round of teacher collective bargaining commenced on April 11, 2006 with the bargaining teams from BCPSEA and the BCTF meeting to discuss protocols, broad agendas, and plans to exchange language. Each team consisted of seven members with a notable member on the BCPSEA team, Paul Straszak, who was the government representative present as stipulated in Vince Ready's Report #2. One protocol proposed by BCPSEA which was not agreed to by the BCTF was a media blackout. In attendance during the first bargaining session and for all the subsequent sessions was the mediator/facilitator Irene Holden.

Initial Proposals were exchanged by the parties on April 12 and presented in detail on April 13, 2006; putting them ahead of Vince Ready's timelines. The BCTF presented 17 proposals many of which were similar to the 13 proposals presented in the 2005 round. In addition to significant cost items, the BCTF proposal for the term of the agreement was a three year term rather than the four year term set out in the government's negotiating framework. BCPSEA presented 13 proposals, two of which were largely housekeeping matters.

District response to initial proposals:

Prior to the next planned bargaining session on April 24, BCPSEA's bargaining team met with "focus groups" consisting of Directors or Assistant Superintendents of Human Resources and Secretary-Treasurers and they also held four conference calls with Superintendents, Trustees, BCPSEA board members, and office administrators. During this time of reflection and discussion some themes emerged universally with districts stating that:

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- Local Teachers' associations have presented letters to commence local bargaining but are suggesting delays until Ready tables his report on bargaining structure.
- Local Teachers' associations have presented proposals during the budgeting process that have elements of provincial bargaining in them.
 - Boards have been consistent in suggesting that those proposals are best presented at the provincial table .
- Some trustees were asked to participate in the teacher rally on May 3, 2006.

Counter and Compensation Proposals:

On April 24 the BCTF and BCPSEA met and engaged in very productive discussions around counter proposals to language exchanged earlier. Discussions centered on preamble, term, renegotiation, compassionate care leave, middle schools, pay periods/twelve month pay options, TOC twice monthly pay, sick leave portability, and definitions for benefits. This round has progressed more rapidly than previous rounds and there appears to be an interest in reaching commonality and getting some language signed off.

The parties exchanged initial compensation proposals on April 25. The BCTF was looking for an 8% wage increase in each year of a three year agreement for a total of 24%, and BCPSEA offered 1.5% in each of the first three years and 2% in the fourth year of a four year agreement. In addition BCPSEA proposed a one-time incentive payment envelope of \$129 million that could be allocated to employees or allocated in another way agreed to by the parties provided an agreement was reached no later than June 20, 2006.

The parties met again on May 2, 3, 4, 5, 8, 9, and 10 and continued to present proposals and counter proposals in a positive and constructive matter. On May 10 the parties signed off on a clause agreeing to Twice Monthly Pay between September and June.

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Comprehensive Settlement and Counter Offer:

On May 15, as per Vince Ready's report, BCPSEA tabled a comprehensive offer for settlement. On June 5 the BCTF presented their package of proposals.

BCPSEA Settlement Offer May 15	BCTF Counter Offer June 5
<p>Salary Increase – Offered 8% over four years (1.5%, 2%, 2%, 2.5%). This amounted to the total wage increase allowed for in the Negotiation Framework.</p>	<p>Salary Increase – Increase of 24% over three years. Instead of 8% each year July 1 they proposed two 4% increases per year with the second increase set to come into effect January 1. Despite lack of evidence and contrary to BCPSEA evidence, the BCTF asserted that there was a shortage of teachers due to teacher movement from BC to Alberta.</p>
<p>Allowance – Offered a recruitment/retention allowance for teachers in remote school districts, including allowances for teacher in difficult to fill specialty subjects in order to address the historical shortages in those specific areas.</p>	<p>SIP Allowance – Increase of 2% in each year over three years (wage sensitive).</p>
<p>Benefits – Offered an increase to the lifetime maximum for extended health benefits coverage to \$100,000.</p>	<p>Benefits – Same double digit increases as previous proposed (wage sensitive).</p>
<p>Prep Time standardization – Offered standardized improvements to elementary preparation time to provide a base of 90 minutes per week</p>	<p>Prep Time Increase – Increase from an average of 90 minutes to 200 minutes in elementary; increase from 1 out of 8 blocks to 2 out of 8 blocks in secondary.</p>
<p>Settlement Incentive – Offered an early settlement incentive of \$129</p>	<p>Teacher on Call – Pay on Scale for every day of work; full benefits -</p>

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million if an agreement was reached by June 30, 2006	100% employer paid for every TOC; sick leave accrual and access
	Additional items included a pension adjustment and professional development funding.

BCPSEA’s proposed increases were in addition to the other compensation increases arising out of the Ready report of October 2005 which took effect prior to the first year of the proposed four year agreement. While BCPSEA explained that this was not a final offer but a foundation for further negotiation, the BCTF bargaining team stated that they were “insulted” by the offer.

Negotiations continued on May 24 with the smaller issues at hand and by May 31 the parties had signed off on three articles: pay periods, middle schools, and a Letter of Commitment on Employment Equity for Aboriginal Teachers. On June 1, facilitator/mediator Irene Holden issued a report on the status of negotiations, stating that both sides are committed to reaching a settlement and are working towards such a result. Although bargaining was continuing, the pace was slow and considering the BCTF’s refusal to bargain many proposed days and weekends in May and June BCPSEA was concerned. To further the concern, on June 7 and 8 the BCTF held a strike vote and on June 9 announced that of the votes cast 85.2% of public school teachers were in favour of strike action.

The BCTF’s counter offer did not significantly alter BCPSEA’s costing as it still represented an increase of more than \$2 billion over three years. To put that figure into context, the BCTF’s proposal accounted for approximately 60%, in the first three years, of the total \$4.7 billion financial envelope for employees in the entire public sector, and public school teachers only represent 13% of public sector employees. BCPSEA continued to stress that BC taxpayers could not afford a near \$3 billion increase over three years.

In an attempt to encourage discussion and move negotiations forward the week of June 18, three members of the BCPSEA bargaining team made a

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without prejudice presentation regarding a new concept to address the needs of students identified during the process of school organization. It was called the Skill Enhancement and Support Initiative and included the establishment of a joint committee to attend to those issues.

Proposals Withdrawn:

Also during the week of June 18 the bargaining teams agreed to withdraw a few proposals from the table:

- The BCTF proposals withdrawn included D.5 Duration of the Employee's Instructional Day and D.6 Regular Work year.
- The BCPSEA proposals withdrawn included A.7 Leave for Provincial Contract Negotiations, A.12 President/Officer Leave, A.13 Leave for Local, BCTF, CTF, Education Int'l, and A.14 Leave for BC College of Teachers.

BCTF and BCPSEA counter proposals:

On June 19 the BCTF presented a counter proposal it believed included all the items necessary to achieve a deal. It included a reduced salary demand, from 24% over three years to 19% over three years, but still had a significant package of increases to benefits and other terms and conditions of employment such as preparation time and professional development, which represented another 18% over three years. BCPSEA determined the cost of the new proposal to be \$2 billion.

In response to the BCTF's proposal on June 19, on June 20 BCPSEA tabled a counter offer which included a four year term, a salary increase of 10% over the four years, an annual recruitment allowance of \$1850 for teachers in rural and remote districts, the settlement incentive, as well as other matters to address concerns raised at the table. At that time BCPSEA also asked the BCTF to engage in round the clock bargaining in order to conclude an agreement by June 30, 2006.

“Extended” Bargaining:

Negotiations reconvened on Sunday June 25 and extended well in the hours of the morning. In order to accelerate bargaining BCPSEA and the BCTF established two focused bargaining teams; one to address compensation-related matters and one to deal with consequential matters. Compensation matters as well as media coverage became more of an issue as the June 30 deadline drew closer. As such, BCPSEA reported that they do not believe that it is productive to bargain in the media and will not be doing so.

A Negotiated Collective Agreement:

Shortly after 10:00 pm on June 30, 2006, both parties agreed to the first ever negotiated provincial collective agreement. At approximately 10:45 pm the documents were signed by the representatives of BCPSEA and the BCTF symbolizing an important milestone in the relationship between the two parties.

The Highlights of the agreement include:

- Term: Five Years (July 1, 2006 – June 30, 2011)
- Compensation:
 - Wage increases of 2.5%, 2.5%, 2.5%, 2.5%, 2%
 - One-time early settlement incentive of \$3,700 per FTE
 - One-time Professional Resource Allowance of \$300
 - 1.5% for further harmonization of the top steps of the salary grid on July 2008 (add 2.5 - 3% to grid maximums)
 - In specified remote districts, an annual allowance of \$2,200 for new and returning teachers and 3%
 - Allowance of 2% for eligible employees to offset SIP premiums
 - Fiscal Dividend (same as Support Staff Framework Agreement)
 - July 2006 payment of \$20 million to Teacher Pension Plan (Inflation Adjustment Account)
- Article B.9 Pay Periods: Minimum of twice a month pay periods and new 12 month pay option

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- Article B.10 Reimbursement for Mileage and Insurance:
 - July 2006 – 47 cents/kilometre, annual increase of 1 cent/kilometre
 - 5 cents/kilometre for unpaved roads
 - Premium upgrades for use of private vehicles for business travel

- Article B.__ Reimbursement of Deductible for Personal Property Loss up to \$600

- Article B.11 Increase Extended Health Benefits lifetime limit to unlimited in all school districts

- Article C.2 Seniority: Ability to port up to 10 years' seniority upon obtaining a continuing contract in a new district

- Article D.8 Preparation Time: Increase elementary preparation time to a base level of 90 minutes per week

- Article D.11 Middle Schools
 - Default to secondary instructional day and prep unless otherwise agreed;
 - New process for resolution of differences when implementing middle schools

- Article D. Alternate School Calendar
 - Process for implementing alternate calendar
 - Expedited arbitration if unable to agree on 4 day week/9 day fortnight terms

- Article G.1 Portability of Sick Leave: Teachers port up to 60 days to new district

- Article G._ Compassionate Care Leave: Standard provision consistent with the *Employment Standards Act*

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- Letter of Intent Middle Schools: Process to record current practices if not formalized.
- Letter of Commitment: Re Employment Equity – Aboriginal Teachers Recruitment and retention initiative to address the under-representation of Aboriginal teachers
- Letter of Understanding (LoU): Amended Mid-contract Modification process for collective agreement updates meeting the specific criteria
- LoU Teacher Supply and Demand: committee funding to address supply in unspecified districts/locations (\$3.5 million)
- LoU Benefits Review: Committee to review benefit plans, savings go to improvements
- LoU re amalgamated districts: extend salary protection granted in June 25, 2002 LoU.

Ratification:

On July 6, 2006, representatives from the 60 public school boards convened and ratified the agreement by 98.7% of the total votes cast. The BCTF decided to wait until the beginning of the following school year to hold their ratification vote and on September 8, 2006 they announced that their membership had ratified the agreement by a vote of 93.4%.

Legislation and Court Action:

On May 18, 2006, just over one month into round four of provincial collective bargaining, Bill 33, the *Education (Learning Enhancement) Statutes Amendment Act*, received royal assent. Bill 33 established new class size limits, accountability measures and requirements for consulting with parents and teachers to help improve student achievement. Class size and composition matters had previously (in 2002) been removed from the realm of collective

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bargaining and put into public policy through amendments to the School Act. Bill 33 served to further clarify government's intent and expectations.

On June 5, 2006, the BCTF made an application to the Labour Relations Board (LRB) that BCPSEA had breached the *Labour Relations Code* provision to bargaining in good faith. The BCTF asserted that they are entitled to bargain the manner in which school boards' discretions or powers under the School Act are exercised, and the consequences that flow from the exercise of that power or discretion. This issue dates back to the legislated removal of class size and composition matters from collective bargaining.

On June 15, LRB Vice-Chair Ken Saunders dismissed the BCTF application, determining that, BCPSEA's refusal to bargain "manner and consequences" language does not establish that it is negotiating without a bona fide intention of reaching a collective agreement. The LRB also determined that BCPSEA is entitled to stick firmly to its position that it views "manner and consequences" as legally impermissible and that it refuses to agree to that type of language in any event.

Concluding Comments: Where to From Here?

In December 2003, Don Wright was appointed as a commissioner to review the teacher – employer collective bargaining structure. Wright submitted his recommendations to the Minister of Labour in December 2004.⁸ Whether one agrees with all, some or none of his recommendations for a better collective bargaining system, one of his early observations foretold of the challenges posed by this round:

In summary, the past sixteen years of teacher collective bargaining have not resulted in a happy legacy...No party seems to believe that the existing structure, unchanged, can lead to successful collective bargaining in the future.

Towards a Better Teacher Bargaining Model in British Columbia, November 2003

When you consider his comments, it is not surprising that a dispute between the parties emerged.

As part of the Industrial Inquiry Commission process, Vince Ready has been asked to inquire into and make recommendations concerning the teacher collective bargaining structure. He has asked the parties to make submissions on bargaining structure as well as to reflect on the issue of why the parties have not been able to engage in productive negotiations:

As a starting point, I am asking all the parties on the attached list to provide the Commission with written submissions addressing the Terms of Reference. Additionally, I invite your submissions as to why the parties have been unable to engage in more meaningful and productive negotiations.

⁸ Given that the Wright report was imminent and would potentially affect the bargaining structure in whole or in part, when questioned whether the current round of bargaining would proceed, the then-Minister of Labour indicated that if the parties desired to commence bargaining he had no objection. The BCTF served BCPSEA with notice to bargain and bargaining commenced in November 2004.

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During the Wright Commission process, BCPSEA, through work with member employers, developed criteria to assist in the development of a good collective bargaining system.

Theme	Proposition
<p>1. Balance The parties are permitted to pursue their goals through collective bargaining but this pursuit must be balanced against the costs of bargaining:</p> <ul style="list-style-type: none"> ▪ Consequences of industrial conflict ▪ Costs associated with resolving the conflict (dollars, relationship, public confidence) ▪ Out of line settlements and the implications for other public sector employers of these settlements. 	<p>It is recognized that bargaining in the public sector context requires that certain interests often seen as external to the negotiating parties must be balanced. This recognition leads to certain structural choices related to authority, responsibility and accountability.</p>
<p>2. Consequences The effects of labour disputes on persons not directly involved in those disputes are minimized.</p>	<p>Collective bargaining in the public sector has implications for the general public. Processes and structures to manage workplace disruption arising out of a labour dispute must be structured in a way that minimizes the impact on the public and, as a result, the impetus for government involvement.</p>
<p>3. Incentive There are incentives and pressures that encourage negotiated settlements.</p> <p>Sufficient uncertainty exists in the outcome of bargaining such that the parties are encouraged to negotiate.</p>	<p>The parties will not negotiate if they can predict the outcome both in terms of substance — the deal itself — and process — how the deal will be concluded. What can be characterized as institutionalized uncertainty has the potential of encouraging negotiated agreements.</p>

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Theme	Proposition
<p>4. Time All parties face significant pressure if an agreement is not reached in a reasonable time.</p>	<p>Participants and observers of the negotiation process will lose faith in it if it is perceived to be protracted and unproductive. These perceptions can lead to intervention by government.</p>
<p>5. Resolution The process for achieving resolution is found within the bargaining structure.</p> <ul style="list-style-type: none"> ▪ No alternative processes external to the structure exist or can be accessed. 	<p>A bargaining system that can be characterized as a closed system builds faith in both the parties and the process — the parties can resolve their differences. Alternative processes external to the structure — ad hoc legislative intervention, for example — undermine the structure and erode the bargaining relationship.</p>
<p>6. Role Recognition Participants understand and respect, as legitimate, the roles of the parties to the bargaining process.</p>	<p>Collective bargaining requires that the parties meet, recognize one another as legitimate representatives of their principals and engage in informed discussions with the intention of concluding a collective agreement.</p>

The Challenge Remains

Is the answer to dissatisfaction with bargaining, whether at the local level or the provincial level, a solely a structural one? With the BCTF advocating local bargaining with full scope and an unfettered strike/lockout, while employers in general and government in particular remain unprepared to return to local bargaining, can a structure be developed and implemented that enjoys the support of all participants? And if not, is there any hope for meaningful bargaining?

Success will depend on the capacity, capability and willingness of the parties to accept and implement the recommended structures and processes, whatever those recommendations may be. This alone, however, may not be enough. As Don Wright observed in the recommendations contained in his final report, observations that can be applied to any recommendations:

“...these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides.”

Appendix

Final Report Released on Recommendations for Teacher Collective Bargaining Structure

On September 8, 2003 the Minister of Skills Development and Labour Graham Bruce announced that he was proceeding with a review of the teacher collective bargaining structure, as per Section 5 of the *Education Services Collective Agreement Act*. As the first step, the Minister appointed Don Wright, a respected senior civil servant, to assist in developing the terms of reference for this review. Specifically, he was asked to:

- Review the history of collective bargaining in BC
- Consult with the key stakeholders and seek their recommendations concerning the development of terms of reference
- Establish draft terms of reference for a commission of inquiry.

On December 19, 2003, the Minister appointed Wright as a one-person commission to review and recommend improvements to the structures, practices and procedures for collective bargaining.

Wright consulted with the key stakeholders in the sector. The organizations consulted covered a broad spectrum of stakeholders including organized labour, trustees, parents, government, and employers.

On December 16, 2004, Wright released *Voice, Accountability and Dialogue: Recommendations for an Improved Collective Bargaining System for Teacher Contracts in BC*, the Final Report of the Commission to Review Teacher Collective Bargaining. Following is a summary of the report and Wright's recommendations.

Economic and Political Context

Wright prefaced his recommendations with a detailed analysis of the political and economic environment within which teacher collective bargaining occurs. In discussing the political context, he noted that labour

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relations in the public education system are different and distinct from labour relations in the private sector and in other public sectors. These distinctions include the monopoly or near monopoly arrangement of education services, the importance society attaches to the public education system, and the custodial function of the education system.

“The reality is that there will be intense political pressure on the provincial government to prevent, or to intervene in, any dispute that carries on for any length of time...Rather than wish away the political context and reality, we would be better advised to ask ourselves some hard-headed questions about their implications for a workable collective bargaining regime.” (p. 6-7)

With respect to the economic context, the underlying message in Wright’s analysis and review was that collective bargaining in the public sector is, and must, be guided by the state of the provincial economy and financial resources.

“It is natural for any group of public sector employees to want to see the activities they deliver well funded. Their motivation for this is an understandable mixture of commitment and self-interest...Accordingly, a level of disappointment among teachers about funding levels over the last dozen years or so is understandable...It is necessary, however, to put this disappointment in context. The unhappy fact is that British Columbia has had, in economic terms, a disappointing quarter of a century. We have gone from a “rich” or a “have” province at the start of the 1980’s to a “poor” or “have not” province by the start of the twenty first century.” (p. 9)

Necessary Conditions for Mature Collective Bargaining

Throughout his report, Wright referred to “mature collective bargaining.” He defines this as:

“...a state where parties go to the bargaining table with an expectation that a settlement will be reached, are prepared to make the compromises that will be required to achieve that settlement and generally prefer making the necessary compromises to avoid the consequences of an impasse...” (p. 13)

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He identified five criteria that he believed were necessary to reach a state of mature collective bargaining between teachers and their employers in British Columbia:

1. Government recognizes that teachers must have an effective voice in determining the terms and conditions under which they teach
2. Teachers must recognize government's interests in funding the K-12 system
3. Both parties must bring genuine desire to avoid legislative intervention
4. Both bargaining agents must be governed effectively so that they can come to the table with the ability to make a deal
5. The public must be able to hold the appropriate agency accountable for the adequacy of funding, the effectiveness of how that funding is utilized and the outcome of the collective bargaining process.

Where Will Issues be Bargained?

From the outset, Wright stressed the importance of alignment of accountability for funding the public education system and the collective bargaining structure. He also recognized that the direct employer-employee relationship is between teachers and local school boards and acknowledges the importance of this relationship. Wright recommended maintaining the current two-tiered bargaining structure. However, he also recommended amending the provincial-local split of issues. Under his proposal, major cost drivers would continue to be negotiated provincially and those issues which are primarily what he terms "relational" would be negotiated at the local level. In addition to those issues currently negotiated locally⁹, the following matters would be added to the local table:

- Unpaid leaves of absence
- Leaves of absence paid or subsidized by the employer
- Discipline and dismissal for misconduct
- Evaluation

⁹ Provincial Teachers' Collective Agreement. Letter of Understanding 1 (Designation of Provincial and Local Matters).

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- Posting, filling and assignment
- Layoff and recall
- Supervision and duty-free lunch.

To ensure that the split of issues is real; i.e., that “...*the local tables...have the autonomy to negotiate whatever agreement makes sense to the local board and the local teachers’ association...*” (p. 20), Wright recommended that local issues negotiated by the local parties not be subject to the approval of either of the provincial bargaining agents.

Who Should be the Bargaining Agent?

Wright recommended the maintenance of both the BC Teachers’ Federation and the BC Public School Employers’ Association as the bargaining agents for employees and employers, respectively. The changes to the provincial-local split of issues and the greater delegation of authority to the local level can be addressed, if necessary, through amendments to the *Public Education Labour Relations Act* (PELRA).

How Will Impasses at the Bargaining Table be Resolved?

The recommended impasse resolution mechanism is a multi-phase process which incorporates several different forms of intervention and assistance. The proposed collective bargaining process would start with collective bargaining for a finite period of time (Phase 1: April 1 to September 30). If the parties are unable to reach an agreement during that time, they would progress through a series of time-bound interventions (p. 34-35):

- Phase 2 (October 1 to October 31): A Commissioner would be appointed to investigate the status of negotiations. The Commissioner would issue a public report outlining issues at the table, the positions of the parties and the implications of those positions.
- Phase 3 (November 1 to January 31): If the parties remain at impasse, the Commissioner would be appointed as Mediator/Arbitrator and would attempt to mediate an agreement between the parties.
- Phase 4 (February 1 to February 28): If the parties are still unable to reach an agreement, each party would propose a final offer and present it to the

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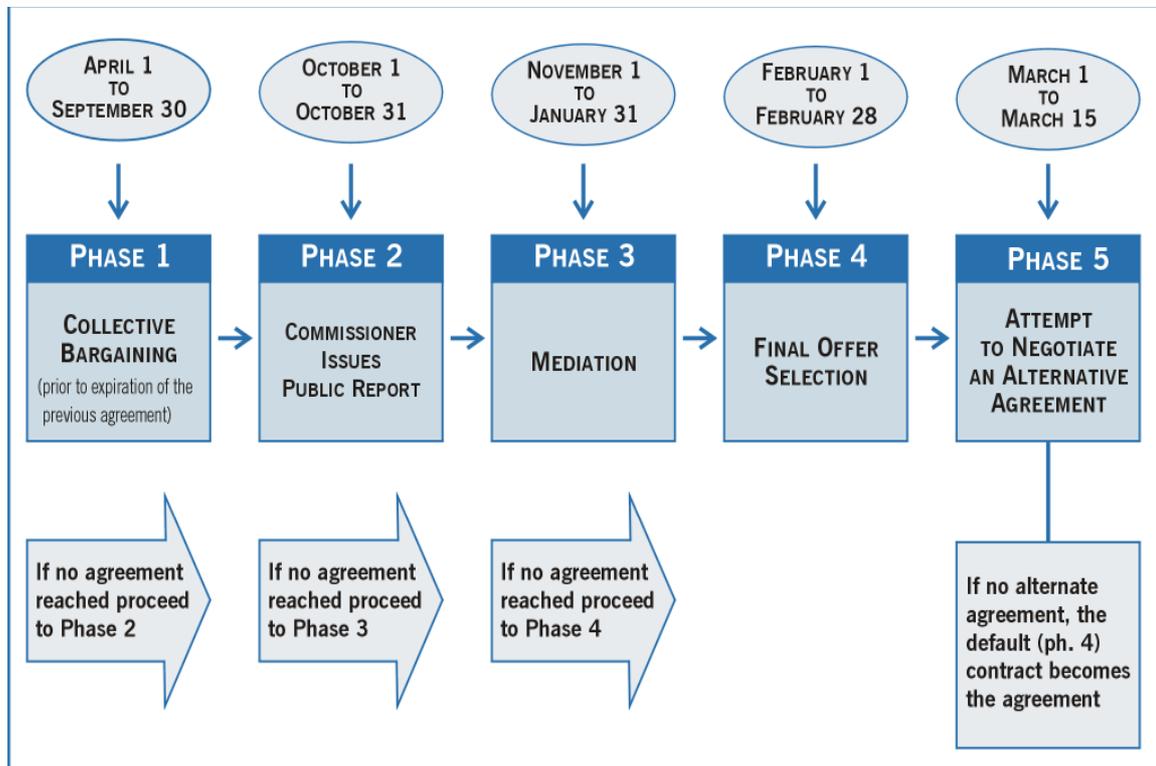
Mediator/Arbitrator. The Mediator/Arbitrator will select one of the final offers to be the “Default Contract.”

- Phase 5 (March 1 to March 15): The parties have two additional weeks to continue negotiations to negotiate an alternative agreement. If the parties are able to reach an agreement in that period, the alternative agreement becomes the contract. If not, the “default contract” becomes the contract.

Wright noted that the terms of reference for the Commissioner under this process must carefully balance the interests of teachers, employers and the provincial government as the funder of the public education system.

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Proposed Teacher Collective Bargaining Process



What is to be Bargained? The Scope of Bargaining

Although initially Wright did not intend to address the issue of scope and thought it would be better dealt with at a later time, he made the determination that some changes were required to improve labour relations in the sector and “to find the fair middle ground sooner, rather than later” (p. 42). He recommended that the government establish a process for policy discussions, parallel to the collective bargaining table. These collaborative and interest-based policy discussions would serve to seek agreement on cost effective approaches to improving working and learning conditions. The sessions would be facilitated by an individual acceptable to both sides. The facilitator would be required to report out on the efficacy of the discussions for dealing with these issues, participation of the parties, and recommend an approach for dealing with these issues in the future.

Transition

Wright highlighted the need for one master provincial agreement. The current structure — one master agreement with sixty local agreements — makes progress at the bargaining table difficult. Negotiations are about tradeoffs; however, the internal politics of making these tradeoffs becomes more difficult for the bargaining agents to manage, especially in terms of the internal politics.

Wright was of the view that transitioning the parties to one provincial agreement will put the parties in a position where mature collective bargaining is more probable. Wright recommended that an Industrial Inquiry Commissioner be appointed to supervise the creation of a first “provincial agreement.” The Commissioner would first attempt to mediate a provincial agreement between the parties. If mediation is not successful, then the Commissioner would arbitrate the agreement. To make the process as fair as possible, Wright recommended that the process have a notional net cost of \$30 million and noted that no teacher should suffer a reduction in salary as a result of this process.

With respect to the transition of local collective bargaining, Wright proposed that local and provincial agreements expire in different years. This would allow local school boards and local teachers’ associations to have greater access to the provincial collective bargaining expertise available via their respective bargaining agents. He notes that, “...support from BCPSEA should be a core part of the bargaining infrastructure needed” (p. 53). Wright also recommended that local school boards consider cooperating regionally for the negotiation of local matters.

The Need for Dialogue

Wright reiterated that the parties are a long way from being able to engage in mature collective bargaining. He believed he was proposing a process that will motivate and encourage the parties to develop this capacity and to make the necessary changes/compromises to be able to negotiate good collective agreements. However, Wright cautioned that,

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“...these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides” (p. 55).

BCTF Reaction to the Report

The BC Teachers’ Federation reaction to the report was swift and negative. In a news release dated December 16, 2004, the following comments were attributed to BCTF President Jinny Sims:

“...implementing the recommendations in the Wright report would enshrine government intervention and further jeopardize any possibility of fruitful negotiations.”

In a *School Staff Alert* (2004-05, #14) issued later the same day, the BCTF stated:

“There are no solutions in the document. It takes a system which all parties agreed was dysfunctional and adds further dysfunction. If these recommendations are legislated by the government, they will lead to further chaos in the public education system.”