

IN THE MATTER OF IMPLEMENTATION OF THE
OCTOBER 25, 2005 INDUSTRIAL INQUIRY COMMISSION
RECOMMENDATIONS TO
RESOLVE A COLLECTIVE BARGAINING DISPUTE

BETWEEN:

BC PUBLIC SCHOOL EMPLOYERS' ASSOCIATION
(“BCPSEA” or the “Employer”)

AND:

BRITISH COLUMBIA TEACHERS' FEDERATION
(“BCTF” or the “Union”)
(Re Teachers On Call)

INDUSTRIAL INQUIRY COMMISSION:	Vincent L. Ready
COUNSEL:	Michael Hancock for the Employer
	Jinny Sims for the Union
DATE OF WRITTEN SUBMISSIONS:	January 20 and 26, 2006
PUBLISHED:	April 3, 2006

INTRODUCTION

This Award results from the Industrial Inquiry Commission Recommendations I issued on October 20, 2005. Those Recommendations were issued to end the collective bargaining dispute between the British Columbia Teachers Federation (“BCTF or the “Union”) and the BC Public School Employers’ Association (“BCPSEA” or the “Employer”).

Specifically, this Award deals with the following aspect of the Recommendations: the “Recruitment and Retention of Teachers on Call” or “TOCs” as they are known in the sector. That particular section of my Recommendations reads as follows:

There is an acknowledged labour market issue with respect to TOCs. In recognition of this, I recommend that Government commit to fund \$5.2 million towards the placement of TOCs on a uniform daily base rate of \$190, and for the placement of TOCs on the provincial salary grid after three continuous days on any assignment. In addition, I recommend that TOCs accumulate seniority while being paid on the provincial salary grid. The parties will meet within 20 days of the return to work, in order to determine any issues with respect to the implementation of this recommendation. In the event that any matters remain outstanding as of December 31, 2005, either party may refer the difference to the IIC for a binding resolution. The effective date of implementation of this recommendation is April 1, 2006.

Following the issuance of the October 25, 2005 Recommendations, the parties met a couple of times to discuss the Recommendations on TOCs.

However, they were unable to resolve the two major issues and referred them to me for a binding resolution. There were some minor agreements reached with regard to these outstanding issues, and these agreements should remain.

THE ISSUES

For ease of reference, I will refer to the two major issues as compensation and seniority.

Compensation

This issue relates to the daily base rate of pay of \$190 for TOCs and the timing of the placement on the provincial salary grid referenced in the Industrial Inquiry Commission ("IIC") Recommendations:

...I recommend that Government commit to fund \$5.2 million towards the placement of TOCs on a uniform daily base rate of \$190, and for the placement of TOCs on the provincial salary grid after three continuous days on any assignment.

As I understand the parties' submissions, there are some local Collective Agreements which have superior daily rates of pay and other provincial Collective Agreement provisions which relate to compensation for TOCs. BCTF argues that the superior provisions should prevail, that the \$190 should be prorated in a certain fashion to account for all school calendars and that the provincial provisions such as those which relate to general increases and

payment in lieu of benefits should remain in tact. BCTF further submits that the TOCs should be placed on the provincial salary grid after three days on any assignment, not on a single assignment as per past practice. BCPSEA argues that TOC compensation provisions should be amalgamated and that any individuals on superior provisions should be red-circled, but that newly hired TOCs would be on the provincial rate of \$190 per day. BCPSEA further argues that the placement on the provincial salary grid should only take place after three days on the same or single assignment, as per current practice.

Superior Provisions

Currently there are numerous local Collective Agreements where the daily rate of pay for TOCs is greater than \$190 or the daily rates are based on a formula which could lead to a daily rate of pay greater than \$190. BCTF argues that these superior provisions should prevail since their removal would represent a significant loss for the TOCs and would impair certain school districts' ability to attract and retain qualified TOCs.

BCPSEA argues that the IIC Recommendations should not impose an unfunded liability on school districts, and that the Recommendations should represent a further step in standardizing TOC pay and harmonizing Collective Agreement provisions – hence the use of the word “uniform” in the Recommendations. If differing rates of pay are allowed to exist, then the daily rate of \$190 will not be “uniform”, according to BCPSEA. Consequently, the

Employer argues for red-circling those TOCs who currently enjoy a higher daily rate of pay than \$190.

I should state at the outset that it was not my intent to delete Collective Agreement provisions or superior practices currently in place in certain school districts, when I issued my Recommendations. The primary issue with the TOCs was not one of harmonizing Collective Agreement provisions; it was a recognition of a recruitment and retention problem. Further, according to the Employer, there are very few school districts (six) which enjoy such superior rates of pay. In my view, placing the other 54 school districts on a uniform daily rate of pay inadvertently goes a long way to harmonizing the Collective Agreements. More importantly, these school districts will already have budgeted for these superior TOC rates of pay so they will not be faced with an unfunded liability in this regard. These superior provisions which result in a higher daily base rate of pay of \$190 should therefore remain in place.

Placement on Provincial Salary Grid

Article B.2.6 of the provincial Collective Agreement outlines the current practices as to when a TOC is paid in accordance with the provincial salary grid:

Effective July 1, 2000, employees who are employed as Teachers on Call shall be paid in accordance with the provisions of the previous Collective Agreement for the first three (3) days of an assignment. On the

fourth consecutive and subsequent days in an assignment, an employee shall be paid 1/189 of their category classification and experience or at Category 4 Step (0), whichever is the greater amount, for each full day worked. Such payment on scale shall be retroactive to the first day of the assignment.

The IIC Recommendations in October, 2005 referred to the placement on the provincial salary grid as follows:

...and for the placement of TOCs on the provincial salary grid after three continuous days on any assignment.

The BCTF argues that the IIC wording provides for TOCs to be placed on the provincial salary grid after working three consecutive days in any assignment, not in the same assignment, as provided for in Article B.2.6.

BCPSEA argues that the status quo must prevail since to do otherwise would ignore the requirement for increased responsibilities before a TOC is placed on the provincial scale. The Employer argues that such increased responsibility does not occur if a TOC is merely being called in for a different assignment. BCPSEA is also concerned that such placement would also not be in keeping with part-time teachers who are only placed on the provincial scale when they accept TOC assignments in their own classrooms, but not when they accept a different assignment. Finally, BCPSEA is concerned about going beyond the \$5.2 million allotted for the IIC Recommendation on TOCs and that

the districts are going to incur more unfunded liability if the BCTF argument prevails.

The intent of the Recommendations on TOCs was to enhance the Collective Agreement provisions which pertained to them so as to allow the school districts to more easily attract and retain teachers to act in the TOC role. The intent was not to maintain the status quo, as the Employer argues. Consequently a TOC should be placed on the provincial salary grid after three consecutive days of work in any assignment, not in the same assignment which is currently the application. Article B.2.6 of the provincial Collective Agreement should be amended to reflect that change.

Payments in Lieu

Article B.2.5 of the provincial Collective Agreement between the parties reads as follows:

Effective July 1, 2000, Teachers on Call shall be paid an additional compensation of \$3 over daily rate in lieu of benefits. This benefit will be pro-rated for part days worked but in no case will be less than \$1.50. Any and all provisions in the previous collective agreement that provide additional or superior provisions in respect of payment in lieu of benefits shall remain part of this agreement.

Payment in lieu of benefits varies from one Collective Agreement to another. For example, School District 59 (or Peace River South) pays an

additional \$5 a day in lieu of benefits. According to the BCTF, prior to 1998 when the above provision was implemented in the provincial Collective Agreement, there were at least eight local agreements which provided for amounts greater than \$3 a day in lieu of benefits. In the view of BCPSEA, standardization of pay must involve standardization of total compensation. Consequently, in the Employer's view, such local provisions for payments in lieu of benefits should not continue to exist. The Employer asserts that to maintain these provisions would not only be contrary to the concept of standardizing pay, but there is no funding to support these provisions. It is the Employer's position, therefore, that TOCs should be paid the greater of \$190 plus \$3 (or \$193) per day or the employee's current rate plus any pay in lieu – whichever is greater. According to the Employer's calculations, \$193 will exceed the current daily compensation in all but five school districts.

Conversely, just as it argued that a superior rate of pay should prevail, BCTF argues that the provisions found in Article B.2.5 should remain. To do otherwise, says the Union, would be antithetical to the objective of recruitment and retention of TOCs which was the IIC's objective when it came to this category of teachers.

There was no mention in the October IIC Recommendations regarding payment in lieu of benefits or in lieu of any other provisions. As I stipulated earlier regarding superior provisions found in the local Collective Agreements,

it was not the intent of the IIC to eliminate provisions which currently existed, but to enhance such provisions in such a way as to provide for some uniformity, but more importantly to attract TOCs in certain school districts and to allow those districts to retain these teachers. There shall be no changes to Article B.2.5 of the provincial Collective Agreement as a result of the IIC Recommendations.

Local School Calendars

The *School Act* allows school districts to vary the standard school calendar so that operational costs can be reduced. Such variations can include extending the school day to allow four day weeks in a couple of ways (“5/4 fortnight” for example) and/or the abridgment or extension of established holiday periods.

According to the BCTF submission, such local school calendars complicate compensation for TOCs – especially when one talks about daily rates of pay and the timing of the placement of these TOCs on the provincial salary grid. Consequently, the Union argues that conversion to payment on the provincial scale should be at the same point in a four day week as in a standard or five day week. The BCTF further argues that those school districts which operate under local school calendars have reduced the potentially available work days for TOCs by as much as 20% in some cases. Also, there are fewer opportunities for consecutive days of employment in these school

districts which would trigger conversion to payment on scale. Further, there should be additional compensation on a pro rated basis for additional time worked in any extended day.

BCPSEA argues that these cases should be dealt with by the parties on a case by case basis. The Employer submits that the parties should bargain any necessary amendments to the local Collective Agreements via the Mid Contract Modification process which is designed to deal with issues such as these which occur during the life of the Collective Agreement. It should be noted that BCTF is not as confident as to the success of such a process as is BCPSEA.

Since there appears to be a number of variables which need to be addressed with local school calendars which have been compressed into a four day week, I will leave it to the parties to convert my Recommendations to suit the needs of the TOCs in these school districts through the Mid Contract Modification process and, failing agreement through that process, either party may refer the matter back to me.

Seniority

The IIC Recommendation regarding TOC seniority reads as follows:

...I recommend that TOCs accumulate seniority while being paid on the provincial salary grid.

BCPSEA argues that the Recommendation speaks to the accumulation of seniority, not to its application. Consequently, existing local provisions should prevail. In the submission of the Employer, the Union accepted this position when it issued a circular shortly after the IIC issued its Recommendations and stated that:

TOCs will accrue seniority while they receive payment on scale in the same manner as regular employees and will apply that seniority in accordance with the provisions of the local agreement.

BCPSEA argues that the Union should not be allowed to resile from this position since it reflects the mutual understanding of the parties at the time the IIC Recommendations were made and ratified by the parties.

For its part the Union argues that there must be substance to the seniority provision; otherwise it will be a hollow right established under the IIC Recommendations. Consequently, the IIC should not leave the application of seniority, its calculation, nor its definition to the various local agreements. It therefore proposes that the definition of seniority in the Collective Agreement must be modified to indicate that TOCs accumulate seniority as of April 1, 2006; that it is to be calculated in an aggregate fashion with any day or part day deemed as one day, with any 16 full or part days deemed one month and 160 days or part days worked deemed one year. The BCTF further proposes

that daily call-out and assignment of TOCs be completed on the basis of this seniority; and that the accumulated seniority be applied where the local agreement provides that the filling of term/temporary or continuing positions is completed on the basis of seniority, subject to qualifications. Accumulated seniority should also be applicable, according to the BCTF, as a tie breaker where two or more candidates for a vacant position have equal or relatively equal qualifications. In all other instances, the BCTF argues that the local parties should determine the application of accumulated seniority to the filling of vacant positions.

At a minimum, according to the BCTF, TOCs should have priority over outside applicants in the various selection procedures. BCTF suggests that if other issues remain after March 1, 2006 that either party may refer those issues back to the IIC for final and binding resolution. Finally, to give some substance to the IIC October, 2005 Recommendations, BCTF asserts that Teachers on Call who attain the status of term or temporary employees shall retain and accumulate seniority and apply that seniority as do other TOCs. In this way, the Collective Agreement should be modified to ensure that the accumulation and application of seniority for TOCs represents a measurable improvement to their employment status and seniority for TOCs will have an immediate and practical application.

BCPSEA argues that if the BCTF position is accepted by the IIC, it would seriously harm the educational interests of school boards and could only be contemplated by a complete reworking of the evaluation and performance assessment mechanisms which currently exist in Collective Agreements. Not only is the application of seniority outside the jurisdiction of the IIC, according to the Employer, it would represent a fundamental change in industry practice. According to the Employer's statistics, in 55 of 60 Collective Agreements, the application of seniority is linked directly or indirectly to the attainment of a continuing appointment. Of these 55 Collective Agreements, a significant number do not refer to the posting and filling process, and only one-quarter of school districts provide some form of priority to TOCs in the hiring process. Of that one-quarter, only two directly recognize seniority.

Furthermore, according to BCPSEA, there are no Collective Agreement provisions in the province which require that TOCs be called out on the basis of seniority. Not only would this be a significant intrusion into current practice but it would require all districts to change their administrative processes to accommodate the new call out procedures – at significant cost to the school districts.

Finally BCPSEA argues that call out by seniority would not improve recruitment and retention of teachers. Such a system would result in a re-distribution of work such that senior TOCs will get more work and less work

will be available to newer TOCs, resulting in insufficient hours to retain new teachers, according to the Employer.

In reply, BCTF argues that there are very few local Collective Agreements which recognize TOC service as a tie breaker in selection procedures between two or more continuing contract teachers. The IIC Recommendations are a fundamental shift in that practice, but in order to give meaning to the Recommendations there has to be a uniform method of calculating this seniority on a daily, monthly and yearly basis as the Union has proposed. This will not give TOCs an advantage over contract teachers, asserts the Union, but at least applicability when it comes to call out and selection procedures.

It was not my intent to provide seniority to TOCs if it would have no meaningful application nor did I intend it to be an intangible benefit or a hollow right. However, I left it to the parties to determine what application was best. They have been unsuccessful in doing so.

In my view, there is an immediate benefit to TOCs now accumulating seniority. For example, when a TOC had achieved a continuing position, the teacher would now be able to claim all of his or her accumulated TOC seniority. Such seniority would not therefore be wasted in the event of layoff and recall, or any selection procedures in which seniority had been utilized.

It is useful to explain why I feel that the application of seniority to TOCs is most appropriately determined at the bargaining table. As I understand it, there are three general categories of teachers. The first are teachers on continuing appointments which is the equivalent of regular full or part-time teachers (“continuing teachers”). The second category is teachers holding a temporary assignment which may be full-time or part-time for a full or partial part of the school year. The final category is TOCs.

The various Collective Agreements give certain enhanced rights to continuing teachers based on their accumulated seniority. Seniority accumulated by a TOC in accordance with my Recommendations would give TOCs enhanced seniority standing if they became a continuing teacher.

Collective Agreements may also give teachers on temporary appointments certain enhanced rights based either on their status as a temporary teacher and/or any seniority rights granted to them based on the particular Collective Agreement. My Recommendations did not deal with teachers on temporary appointments. I must be careful in this Award not to create an unworkable or impractical Collective Agreement provision related to TOCs that is not in harmony with the rights the particular Collective Agreements grant to teachers in either continuing or temporary appointments. For example, I would not want to award a provision on the application of a TOCs’ seniority which may be

superior to the rights of a teacher on a temporary appointment which is an enhanced employment status.

A number of Collective Agreements grant superior rights to teachers on temporary appointments based on employment status and/or seniority which TOCs did not receive. TOCs now accumulate seniority for any assignment exceeding three continuous days.

Therefore, in my view, for me to delineate in my Award how the accumulated seniority of TOCs is to be applied without being able to fully assess the impact of such a ruling would not be a sound adjudicative judgment. It is the parties who know how to best give application to the TOCs' accumulated seniority (which they now have) and how to harmonize such rights in the various Collective Agreements. This is particularly so with the parties presently entering into negotiations for the renewal of their Collective Agreement.

The utilization and/or application of TOCs' accumulated seniority will be in accordance with the current Collective Agreements. Any specific application of TOC accumulated seniority or future improvements is left to the parties to negotiate.

SUMMARY OF BINDING RECOMMENDATIONS

In summary, I award the following binding recommendations:

1. All Teachers on Call receive a minimum daily base rate of \$190 per day;
2. Where a Collective Agreement provides for a daily base rate which is greater than \$190 per day for Teachers on Call for the first three days of an assignment, those superior provisions will prevail in those schools and/or school districts;
3. Teachers on Call be paid in accordance with the provincial salary grid after three consecutive days of work in any assignment and that Article B.2.6 of the provincial Collective Agreement be amended to reflect that change in practice;
4. Payments in lieu of benefits continue to be paid to Teachers on Call in accordance with local agreements and that Article B.2.5 of the provincial Collective Agreement remains in tact;
5. The parties meet under the Mid Contract Modification process to discuss how they can convert recommendations 1 through 3 to suit the needs of Teachers on Call in those school districts which have a local school calendar which is different than the standard school calendar and, failing

agreement, either party may refer these matters back to the Commission for a binding resolution;

6. Teachers on Call accumulate seniority while being paid on the provincial salary grid;
7. Such Teacher On Call seniority will be applied as per this Award, or in the case where existing provisions apply that exceed either the October Recommendations or this Award, those conditions shall remain in effect until changed by agreement of the parties;
8. Vince Ready remains seized of any issues related to the implementation of these binding Recommendations.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 3rd day of April, 2006.

Vincent L. Ready

Vincent L. Ready