



British Columbia Teachers' Federation

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October 18, 2006

By Courier

Irene Holden
Suite 202 – 856 Homer Street
Vancouver, BC V6B 2W5

Dear Ms. Holden:

Enclosed please find the submission of the BC Teachers' Federation regarding the issues in dispute with regard to the framework agreement.

Yours truly,

Jinny Sims
President

Enclosure

pc: Jacque Griffiths, Managing Consultant, Collective Bargaining Services, BCPSEA

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A Union of Professionals





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Issues in Dispute with Regard to the Framework Agreement

Submission to Irene Holden on behalf of the BC Teachers' Federation, October 18, 2006

1. Signing Incentive Issues

There are many issues outstanding between the parties with regard to the payment of the signing incentive. First of all, we believe a context must be provided to this incentive. We were first promised that upon the recommendation of the BCTF Executive Committee to ratify the framework agreement, teachers would be paid the incentive in July. We were then informed at a meeting in Victoria on July 8, 2006, with BCPSEA and PSEC present, that ratification must first occur and the payment would be mid-September. We arranged to rush what is usually a more thoughtful and participatory process so that ratification would occur the earliest possible date, the first week of September. Next we were told that the incentive would not be paid until the end of September due to payroll difficulties. Abruptly last week, BCPSEA put out a message advising school boards not to pay the incentive, as the money had not yet been released by PSEC. This series of delays has angered our members a great deal, especially since some have already received the incentive and others have yet to hear a date by which they will receive theirs. The incentive is just that: an incentive to ratify a collective agreement. All of our members in the bargaining unit should receive the incentive because by law all of them got a vote on whether to ratify or not. The restrictions on who receives the incentive should be minimal, if at all.

The questions to be answered are as follows:

- a. Are teachers who were on Long Term Disability prior to 2005-2006 and who remain on LTD entitled to the incentive?

Although the language signed appears to support the position of BCPSEA, Ms. Sims has a specific and very clear memory of an agreement and understanding between Mr. Doney and herself with the mediator present that the list was going to be "worked out later," that it was not the actual list of who would receive the incentive. The teachers on Long Term Disability are too ill to work, in many cases seriously ill. To deny them the incentive would be a violation of their human rights on the basis of health and/or disability. It would be discriminatory. The Federation never agreed at any time to exclude these people and in fact made it very clear that we would never agree to such an exclusion.

These teachers are being paid their salary out of the Salary Indemnity Fund of the BCTF. For decades, the employers and government have benefited financially and in other ways because teachers fund their own disability plan. It would be very unfair to deny them the incentive simply because their pay came out of a Federation fund. Other public sector union employees on disability did receive the incentive. BCPSEA's argument, by extension, means that if teachers were on an employer-funded plan they would get the incentive. All other public sector unions have negotiated employer-funded disability plans. Arguably, since 40 million dollars was placed

by government into our Salary Indemnity Fund, and teachers were reimbursed, our fund was employer-funded.

- b. Does a teacher who was on Salary Indemnity (short term) in the 2004-2005 year and returned to accumulated paid sick leave in her district at the beginning of 2005-2006 before going back on SIP receive the incentive?

We believe the answer to this one has to be in the affirmative, given the language that stipulates that anyone on paid leave and anyone who goes on Salary Indemnity in the 2005-2006 year receives the incentive. This case is exactly that: a teacher began the year on paid leave and then went on Salary Indemnity. A teacher in this situation has to apply again and begin a new claim under the procedures of the plan.

- c. Are teachers who retired or resigned from one district to work in another district entitled to the full incentive (as calculated for their circumstances) for all the time worked?

We fail to understand on what basis these teachers are being denied the incentive. They are in the provincial bargaining unit at all times, or with minor breaks which would not be counted, and they were being paid. Many teachers are receiving incentives from more than one district because they are teachers on call, for example, or part-time teachers in more than one district. There is no basis to exclude these people – this was a provincial, not a local, framework settlement.

- d. If women on maternity leave, to accommodate the employer and the organizational needs of a school, are due to return near the end of a school year or term and delay return until an appropriate time, is that time without pay deducted from the incentive?

We understand that BCPSEA will address these anomalies so we are not putting forward a submission in this regard at this time, but if there remain difficulties we retain the right to submit those to you at a later time.

- e. Does a TOC on pregnancy leave under the *Employment Standards Act* receive the incentive?

The answer to this must be in the affirmative. These teachers are in receipt of benefits or on pregnancy leave under the *Employment Standards Act*. It would be discriminatory to deny them the incentive on the basis of pregnancy. Maternity Leave is specified in the incentive language of the employer to be a leave that is covered, regardless of whether it is paid or not.

- f. Is union leave to be deducted from the incentive? Does a teacher who is a TOC and who does not require a leave of absence to do union work but who reports in as not available that day have the incentive deducted for each of these days of union work?

It is the position of the Federation that all members on union leave receive their full incentive entitlement. An incentive by its nature is to encourage members to agree to a deal. In this case our union activists and leaders worked harder than anyone to secure the agreement. The high ratification result is proof of that. We were taken aback to learn on October 4 that BCPSEA's position even extends to our school union representatives who take union leave on occasion for union work or training. Their pay is never deducted and their pay slips show no disruption in terms of salary or employment. One could not know from a pay slip that union leave was taken.

It is always leave on the basis that pay is continued and reimbursement is for the teacher on call who replaces that teacher. In some cases there is no reimbursement if the teacher is not replaced. It would cost more to calculate this than to pay it and makes no sense. It will cause an uproar if these deductions occur. To date, no district to our knowledge has made these deductions.

Teachers on call do not always have access to a union leave nor do they require one, given the nature of their work. They merely submit that they are unavailable for work that day due to union work and other teachers on call are called instead. It would be extremely unfair and discriminatory to deny the incentive to those who need it the most because they make less than anyone else in the bargaining unit. They are engaged in union work in spite of their lack of tenure and it would be very unfair to penalize them simply because of the lack of access or the need for a leave.

We further believe that denial of the incentive to those who participated in their union would be discriminatory on the basis of union activity under the *Labour Code*. The deduction from the incentive of any union work would create a climate wherein many would not volunteer to be active in their union again, especially since it is almost entirely volunteer work.

- g. In districts where there are more than one local president and local, do all the local officers get the full incentive to which they are entitled?

With regard to our local presidents in amalgamated school districts, they are all released full-time and with salary, benefits, sick leave and seniority credit continuing as if they were still teaching. The Federation reimburses the school boards for the salary. They are the highest elected officer in a local and worked harder than anyone to get a positive ratification vote. It would be absurd to deny them the incentive. BCPSEA's position — that it depends on what kind of leave — is arbitrary and unfair. Some presidents have received the incentive in amalgamated districts and some have not. Surely there ought to exist a uniform approach to the payment of the incentive, which is a provincially negotiated provision?

Our position with regard to it being discriminatory under the *Code* also applies here.

2. Seniority

There are two questions with regard to seniority that require answers:

- a. Does a break in service cancel the right to port seniority?
- b. Can an employee who receives a continuing contract port seniority from more than one district?

Question a. Does a break in service cancel the right to port seniority?

The language agreed to contains no provision for a break in service. Clause #1 clearly states that seniority for the article means “an employee’s aggregate length of service with the employer as determined in accordance with the provisions of the previous collective agreement.”

The position of BCPSEA makes little sense with regard to the needs of school boards. Teachers who could, would never resign from a district, but instead would take a leave on an indefinite

basis until they were able to secure a continuing appointment in another district. Districts would, therefore, have to maintain positions for them, not being able to hire new continuing employees. In addition, resignations from teachers would arrive later and later — August, for example — making it very difficult to attract new employees or grant existing employees continuing contracts. In addition, teachers will not be able to exercise their rights to severance unless they have a continuing contract elsewhere or they cancel all their seniority for the purpose of porting. They do not have a position in that district but must remain on the recall list — or is that a break in service, too, under BCPSEA’s position?

The purpose of this article was clear: to port seniority credit from other districts in the province. To now read in a provision that is nowhere in the language, that is “break in service,” would severely restrict the benefit of this article.

To take BCPSEA’s position would mean a teacher who resigns in one district without having a job in another district would not be able to port seniority. This would be an absurd result since the whole intent of the language was to enable those teachers new to a district or on temporary or TOC status to port seniority. Many teachers resign from a district without yet having a position elsewhere. Teachers are often forced to begin their work in a district as a TOC or temporary contract teacher — that is a clear pattern of employment. Many districts will not grant a continuing contract to new hires. Teachers are not always able to get leaves from their districts and have to resign. Many are moving long distances in order to seek employment elsewhere. The interpretation taken by BCPSEA means few would benefit from this article.

We have examined the language carefully and are unable to find anything in the language that means a break in service ends the ability to port seniority. In fact, we believe the language contemplates breaks in service and ensures that no disruption of porting occurs. The use of the word “aggregate” not “continuous” and the reference to porting from more than one district make this clear. We do not recall “break in service” ever being raised at the table by BCPSEA. Furthermore, we believe that their interpretation would create a logistical nightmare for boards, given lack of records in some cases, and faulty memories in others. How much time would then go into determining whether a break in service had occurred somewhere along the line?

Question b. Can an employee who receives a continuing contract port seniority from more than one district?

As stated above, the language in Clause 2 clearly contemplates porting of seniority from more than one district. The language refers to “an employee who achieves continuing status” and “shall be credited with up to ten years of seniority accumulated in other school districts in BC.” The reference is plural and the subject, “an employee,” is singular. It is plural because porting is allowed from more than one district by a single employee.

Many school districts enjoy the benefit of teachers on call working in more than one district because there is an existing and increasing shortage of teachers on call. In Metro, the Okanagan, and the Island, for example, teachers on call place themselves on the lists of multiple districts and go to where they are called. Under BCPSEA’s position, we would have to advise teachers on call to choose one district and stick with it so that all their seniority, which they will now accrue, will count when they receive a continuing contract.

3. Sick Leave

There are two questions to be answered about the portability of sick leave language:

- a. Does a break in service cancel the ability to port sick leave?
- b. Can an employee port sick leave earned in more than one district?

The arguments with regard to the seniority dispute stand with regard to this matter. The answer to question a. is clearly “No” and the answer to question b. is clearly “Yes.” A plain reading of the language makes this abundantly clear.

4. Preparation Time

The questions to be answered with regard to preparation time are:

- a. Does the language mean that preparation time is weekly and that preparation time lost due to statutory holidays, for example, must be made up?
- b. Does “weekly preparation time” mean that all teachers’ preparation time in Year 2 must be weekly per above definition?
- c. In the alternative, does the language mean that all teachers are entitled in Year 2 to a minimum of at least 90 minutes of preparation time, which is weekly?

Question a. Does the language mean that preparation time is weekly and that preparation time lost due to statutory holidays, for example, must be made up?

We understand BCPSEA’s position to be that in Year 2 only those employees who currently have less than 90 minutes of preparation time per week will have the 90 minutes scheduled, but that scheduled preparation time lost due to a stat holiday, for example, does not have to be made up. This creates an absurd result wherein teachers would receive more preparation time in Year 1 than in Year 2. In Year 1 a district must ensure that each teacher receive an average of 90 minutes per week. If time is canceled, it must be made up somehow in Year 1 to ensure that the average is met. If a teacher in Year 2 has preparation time that is lost they will receive less than an average of 90 minutes of preparation time per week.

The language states “shall receive 90 minutes of preparation time per week scheduled in accordance with the Previous Collective Agreement.” If the parties had not intended that the preparation time be weekly, it would not have stated that so clearly. A recent arbitration in Mission ruled that preparation time must be received weekly based upon the following language: “The maximum weekly instructional assignment for a full-time elementary teacher shall be 1425 minutes per week less 90 minutes which shall be provided for the purpose of preparation.” With all due respect, the framework language is even clearer. At all material times, BCPSEA was well aware of this issue and the Mission arbitration award and had to have known the effect of including the words “per week” in the language.

The phrase “scheduled in accordance. . .” refers to scheduling only. Many agreements, for example, have language that specifies the scheduling of preparation time must be contiguous with a part-time teacher’s assignment or that it must be scheduled in no less than 30 minute blocks. It does not mean that somehow the words “per week” are erased by the reference to scheduling.

Question b. Does “weekly preparation time” mean that all teachers’ preparation time in Year 2 must be weekly per above definition?

The position of the BCTF is that this agreement attempts to move toward equity within our bargaining unit with regard to salary, and preparation time, to name a few. It is a small step to create a minimum standard that addresses the disparity between some teachers with regard to significant working conditions.

If BCPSEA’s interpretation is accepted, that only those teachers who currently have less than 90 minutes of preparation time are affected by this article, greater disparity will occur, not less. Weekly preparation time is a huge issue for teachers as currently some do not have preparation time on that basis and time lost due to stats, for example, is lost. We believe it would be counter to the clear intent of this agreement to allow weekly preparation time for some teachers in some districts, but not others. The irony is that those teachers who had less preparation time than others would somehow end up with more than what others will have.

Question c. In the alternative, does the language mean that all teachers are entitled in Year 2 to a minimum of at least 90 minutes of preparation time which is weekly?

If you accept that the language requires only that 90 minutes of preparation time be weekly, then does it mean that a teacher who currently has 100 minutes of preparation time, for example, would in Year 2 be able to have at least 90 of those minutes scheduled weekly and made up if lost? We believe that at a minimum this is the intent. To do otherwise, would create inequity. Ironically, those teachers who currently have more preparation time would end up with less preparation time than those whom the agreement attempts to bring closer to the provincial norm.

5. Optional 12-Month Pay Plan

The question with regard to this item is:

- a. In districts where no interest, or less interest than required under the new language, is provided to teachers currently on a 12-month pay option, are they now required to pay a minimum of the interest to teachers per this article?

BCPSEA takes the position that only teachers who currently have no option to choose a 12-month pay plan can benefit from this article. We disagree on the basis that we are attempting in this agreement to create a minimum standard as much as possible. In this case, teachers who bargained locally the option of a 12-month pay plan are disadvantaged by being excluded from a benefit bargained provincially. Since the inception of provincial bargaining, all mid-contract modifications agreed to between the provincial and local parties have included payment of interest to teachers.