



Bargaining, Options, and Moving Forward

Representative Council
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Executive Summary

Bargaining in the K-12 public education sector is never a stand alone exercise. Collective bargaining in our sector has yielded mixed results in terms of the bargaining process. There has been a variety of circumstances that have influenced bargaining outcomes. This round of bargaining is particularly unique in that it has occurred and is affected by several converging events:

Agreement expires (June 30); initial meetings (March); bargaining process issue, the provincial–local split of issues; BC Supreme Court ruling (April 13) and a government–BCTF consultation/reconciliation timeline (referred to as the Bill 28 matter); themes and objectives (May 24) to the first set of proposals (May 31); early talk of a strike (April-May); 90% strike vote (June 24-28); essential service designation for Phase 1 of the BCTF multi-phase strike plan (July 26, August 5); strike notice (August 31) Labour Relations Board; the provincial–local split of issues and the three decisions of Arbitrator Jackson (August 28, September 2, September 17); BCTF withdraws from the Bill 28 discussions (September 13).

Regardless of the bargaining environment and the converging events identified above, the goal must always remain a negotiated collective agreement. The purpose of this paper is to identify processes that, when actioned, can create the necessary reason for movement on the parties' respective bargaining agendas.

Bargaining and a Strike: Where We Are

We are now in week four of Phase 1 of the BCTF strike. Phase 1 has resulted in many services no longer being provided.

A strike is defined as a cessation of work, a refusal to work or a slowdown in work of employees acting in concert that is designed to or does restrict or limit production of services. While some use the more nuanced term *job action*, it is nevertheless a strike, albeit a multi-phase one. The BCTF messaging around what it is striking for is different than what it has on the bargaining table. This is a labour dispute over bargaining

matters — not the other issues that are pulled together in BCTF and local teachers' association messaging to legitimize their strike position.

A recent newspaper advertisement by a local teachers' association characterized the underlying reason for the strike in support of their demands this way: *Yes, we would like a salary and benefits increase, but our first priority is our students...teachers...are doing this job action to bring attention to underfunded education and what is still needed for students to reach their full potential.*

BCTF President Susan Lambert put it this way: "Collective agreements were stripped of class size and student support provisions in 2002. Since then, conditions for BC students, and especially students with special needs, have deteriorated to a point that teachers are not prepared to see continue. Teachers are determined to improve services so that each student in the public school has the support she or he needs. Restoring provisions for class size, provisions for teachers who support students with special needs, and for other learning specialists such as English-as-a-second-language teachers and teacher-librarians is a priority for teachers in this round of bargaining."

The BCTF and certain local teachers' associations have stated that the purpose of the strike is to reduce class size, improve classroom conditions, and find additional resources for public education. The reality is that the purpose of the strike, the basis upon which the LRB assessed the BCTF's Phase 1 strike, is improved salary, benefits, leaves, retirement bonuses, and class preparation time.

A Strike Under Essential Services

The purpose of the *Labour Relations Code* essential service provisions is to permit a union to strike while at the same time maintaining what are deemed essential public services. The LRB is required to review each phase and issue orders to ensure the appropriate balance is maintained between this right and the maintenance of services deemed essential.

The BCTF has characterized Phase 1 as its "teach only" campaign. The BCTF claims that it is designed to put pressure on the employer while causing minimal disruption to

students and parents. The struck activities predominantly include communication between teachers and administrators, and the preparation of formal documents for the school office (such as report cards).

The actions by the BCTF and reactions by employers demonstrate a degree of incongruity, as observed by the LRB:

“As it now stands [referring to current Phase 1 BCTF strike activity] bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and the Employers are impacted, the bargaining unit members continue to receive full salary.”

At the October 3 Representative Council, the employer community will explore the available options — the choice of options will be grounded in the following principles:

- **Bargaining and a Strike:** A strike and an employer’s response to a strike are intended to induce the other negotiating party to agree to specific terms and conditions of employment. To achieve a collective agreement the parties must negotiate such that they fall within each other’s zone of agreement and engage in a productive dialogue to craft a tentative agreement.
- **Courses of Action and Consequences:** When students, the public and employers are impacted by the withdrawal of some or all of bargaining unit members full range of duties bargaining unit members should be similarly impacted.
- **Bargaining, Strikes and Motivations:** Depending on a variety of contextual factors unions seek to avail themselves of the strike option to further their objectives in response to bargaining progress.

Such actions and employer’s reaction to them should not be construed as directly or inferentially, questioning the quality of the public system, or the efforts of the dedicated individuals who work as teachers, administrators, or in other capacities. To do so for strategic messaging and constituent influencing purposes is

nothing more than positioning and posturing that, as a consequence, undermine productive workplace relations.

What's Really on the Bargaining Table

The BCTF is on strike for improved compensation and related provisions. For messaging purposes, they continue to state that the strike's purpose is much broader. They are not, as previously noted, *doing this job action to bring attention to underfunded education and what is still needed for students to reach their full potential*. Strikes under the *Labour Relations Code* are for matters at the bargaining table.

Class size is not at the bargaining table but is the subject of a different process. The BCTF's priorities focus on salary and health and welfare benefits. Many of their proposals are related to leaves, including discretionary leave, compassionate care leave, and sick leave. They are also seeking retirement bonuses and increased preparation time.

BCPSEA has put forth its proposals which centre on health and welfare benefits, maternity leave, professional growth and engagement, hours of work, posting and filling, and employee assignment and transfer. Our proposals reflect an interest in developing and maintaining a professional and engaged workforce while using the resources available as efficiently and effectively as possible.

Local Solutions to Local Issues by Local Parties — The Unilateral Tabling of Issues and Arbitrator Jackson

The issue of what matters should be bargained at the provincial table and what could be bargained at 60 local tables re-emerged as an issue when BCPSEA and the BCTF first started talking about the 2011 round of bargaining in March. The BCTF took the position that all matters with the exception of compensation and paid leaves — what would later become known as the “PELRA Four” — should be dealt with at local tables. Recognizing the current split of provincial–local matters, BCPSEA proposed a series of alternatives to identify those matters which may be truly local by nature. The

BCTF maintained its opening position and in March had local teachers' associations unilaterally table matters designated provincial on the 60 local tables.

As previously referenced, Arbitrator Jackson has clearly decided this matter. No parties can unilaterally change where issues are bargained. They must be consistent with the original Letter of Understanding (LOU) that was agreed to before the parties started bargaining.

Striking at the Pace of Change: Change, Concessions, and Contract Stripping

The charges of *contract stripping* and *concessions* have been used extensively by the BCTF and local teachers' associations. More recently, BCTF President Susan Lambert, in a September letter to members, stated, "As you know, we have been bargaining since March 1 for improvement to working and learning conditions, salary and benefits on par with our colleagues across the country, and for the ability to negotiate local solutions to local problems. Government, on the other hand, continues to refuse to adequately fund the public education system. It has set a "sub-zero" mandate as a strategy to prevent us from bargaining any improvements to our rights, our salary and benefits package, and our working and our students' learning conditions. Not only that, they are demanding radical concessions at the bargaining table."

The BCTF stance in previous rounds of bargaining, and also in this round, can be summarized as *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*. As it has been in previous rounds, this is an impediment to progress. Development of options and crafting of solutions invariably involves changes.

Moving Forward

It has been acknowledged in the media and by both BCPSEA and the BCTF that bargaining is progressing slowly. The BCTF is on strike and the lack of progress is concerning. The BCTF has claimed that the strike will not have an impact, but of course it does.

The purpose of a strike is to compel bargaining movement. The employer's response is designed to do the same such that a collective agreement can be expeditiously concluded. Should the continuing Phase 1 job action necessitate an employer response? In considering this question, what is the underlying rationale for your answer?

You will see that this paper describes a range of available options. The answer to the first question is the central decision. A selection of one or more of the options cannot be made in the abstract. If the answer to the first question is yes, the choice of approach will depend on timing, the nature/progress of bargaining, and the overall context in the sector.

Introduction

Put simply, this round of bargaining is a convergence of events that has resulted in one of the most complex rounds of bargaining in recent years. Consider:

The expiry of the agreement (June 30) necessitates initial meetings (March); initial meetings see the first matters at issue identified; a bargaining process issue (the provincial–local split of issues); a ruling of the BC Supreme Court (April 13) sees the issue of class size, composition and the *School Act* placed on a consultation/reconciliation timeline (referred to as the Bill 28 matter) and, while not a bargaining table matter, it influences the climate and tenor of bargaining; themes and objectives (May 24) lead to the first set of proposals (May 31); early talk of a strike (April-May); strike vote (June 24-28) with 90% of those who voted in favour of authorizing strike action; essential services designation on Phase 1 of the BCTF multi-phase strike plan (July 26, August 5); strike notice (August 31) to the Labour Relations Board; the provincial–local split of issues and the three decisions of Arbitrator Jackson (August 28, September 2, September 17); BCTF withdraws from the Bill 28 discussions (September 13).

BCTF–BCPSEA Bargaining 2011: Getting Started

In March 2011 collective bargaining between the BCTF and BCPSEA began both at the provincial table and 60 local tables. It was recognized in the sector that this round of bargaining would be difficult. This paper provides an update for the K-12 public education employer community on bargaining to date and provides a foundation for the articulation of next steps.

BCPSEA is a multi-employer association and accredited bargaining agent for the province's 60 public boards of education. With respect to collective bargaining and developing a bargaining mandate, BCPSEA has to balance two sets of interests — the interests of the 60 boards of education as employers with the interests of government as the funder and maker of public policy to the extent that public policy directions/initiatives have employment implications.

The bargaining approach of BCPSEA was guided by the work of the January 28, 2011 Representative Council — *Teacher–Public School Employer Collective Bargaining Conference 2011: K-12 Public Education and Employment, a Future Focused Dialogue* — held to discuss bargaining issues, set direction, and provide the basis for the development of broad and specific bargaining objectives. The broad and specific bargaining objectives became the foundation for the bargaining objectives that were exchanged at the table in March 2011. The dialogue at the January 2011 Representative Council provided the basis for a review of the General Negotiation Framework (GNF), the organizer introduced in previous rounds. The GNF is central to the employers’ approach to bargaining. The GNF articulates the *general agreement on what needs to be done* in a particular round of bargaining and provides a filter to assess the union’s proposals.

It was recognized that given the last agreement concluded in 2006 and the current realities and challenges within our system, teacher collective bargaining in 2011 would be quite different from previous rounds. Further, it was important to understand what had changed since the last round. The Representative Council unanimously passed the following motion after the day’s work on the matters at issue (see Appendix A for a list of the bargaining objectives):

“To accept the direction of the Representative Council as established through the working sessions and input initiatives and move to the establishment of broad/specific bargaining objectives for Teacher Bargaining 2011”

Carried

Preliminary Planning

BCPSEA met with the BCTF on June 14, 2010 to discuss the upcoming round of bargaining. In preparation for this meeting, we canvassed the employer community with a preliminary survey and conducted focus groups on the desired format for bargaining.

The feedback received was overwhelmingly in favour of provincial bargaining (over any return to local teacher bargaining). In addition, new items were identified as requiring provincial coordination to be addressed — for example, post and fill and evaluation — in order to ensure broad issues such as teacher quality can be addressed across the province.

Determining the Bargaining Process

In December 2009, the BCTF informed BCPSEA that it intended to negotiate significant changes to bargaining structure and process. That led to a series of letters and discussions between BCPSEA and the BCTF prior to the 2011 round of negotiations. By November 2010, BCPSEA had clearly articulated its position that the decades old system of local board of education–local teachers’ union bargaining and the resulting degree of duplication of effort did not provide the most efficient means possible in a time when districts sought to streamline processes to ensure the greatest possible resources were available at the school level.

On January 26, 2011 BCPSEA and the BCTF representatives met to discuss the process for this round of bargaining and on January 28, Susan Lambert, President of the BCTF, addressed the BCPSEA Representative Council. Ms. Lambert outlined for delegates the union’s bargaining plan, including an overview of key objectives and an explanation of why the BCTF is seeking expanded local bargaining.

Arising from Ms. Lambert’s remarks and the January 26 meeting between representatives of the BCTF and BCPSEA, BCPSEA sent a letter to the BCTF on February 4, which proposed an approach to the 2011 round of collective bargaining.

On February 4, pursuant to section 46 of the *Labour Relations Code*, the BCTF sent a letter to BCPSEA Chair Melanie Joy providing formal notice of intent to commence collective bargaining on March 1, 2011.

Formal bargaining began on March 1, 2011. On March 31, the BCTF presented their proposal on the re-designation of the split of issues, moving everything except for what they see as the “PELRA 4” issues (salary, benefits, hours of work, paid leaves) to local bargaining tables. BCPSEA presented a counter proposal to the BCTF on the split of issues. With the rejection of the proposals, it was decided to move from this protocol matter to bargaining, with the parties exchanging themes and objectives packages on May 24.

BC Supreme Court Issues Decision in Bills 27 and 28

On April 13, 2011 the British Columbia Supreme Court issued its decision in response to the BCTF court challenge regarding the constitutionality of the 2002 legislation enacted by the provincial government — Bill 27, the *Education Services Collective Agreement Act*, and Bill 28, the *Public Education Flexibility and Choice Act*. The Court found that the class size/composition provisions had been changed by the legislation in a manner that rendered them unconstitutional and invalid, although the declaration of invalidity was suspended for one year to allow the government time to address the repercussions of the decision, including determining whether to revert to the pre-2002 legislative provisions or to enact new legislation to address the deficiencies which were the basis of the Court’s finding of unconstitutionality. On May 20, 2011 government commenced the initial phase of the consultation process with the BCTF in relation to these policy objectives.

While this consultation is not a bargaining table matter, it influences the climate and tenor of bargaining. For example, in response to this decision, local teachers’ associations sent school districts a letter requesting that “...*the Board immediately begin to plan for the reinstatement of our district class size and composition language.*” The BCTF has continually made reference to the court decision and has attempted to integrate class size issues into bargaining.

There were five meetings led by the provincial government held between May and September 2011. The purpose of the meetings was engagement and consultation between the provincial government and the BCTF. Paul Straszak, President and CEO of the Public Sector Employers' Council, appointed by government to coordinate the consultation process, stated that government wants to fully meet its obligations arising from the Court's decision, noting that government had been through a similar process following the decision in the healthcare sector re Bill 29, the *Health and Social Services Delivery Improvement Act*.

In those meetings, Mr. Straszak reviewed the steps that led to the successful negotiation of a resolution with the union impacted by the healthcare decision. He indicated that government intends to outline in detail its policy objectives and negotiate in good faith with the BCTF on how it can achieve those objectives, being mindful of teachers' working conditions.

The BCTF representatives indicated they are not prepared to engage in consultation unless certain preconditions are met:

1. That government immediately repeal the legislation and reinstate the collective agreement language
2. That government inject at least \$275 million in funding, which the BCTF said would allow restoration of class size and composition guarantees
3. That government negotiate compensation with the union.

The BCTF reiterated that only when these pre-conditions are met would it engage in policy discussions with the government representatives.

A following meeting was scheduled for substantive discussions between the BCTF and government. Mr. Straszak outlined the government's policy objectives and shared a presentation outlining those objectives with the BCTF. The BCTF stated that it has a different interpretation than government of the decision of the BC Supreme Court issued by Justice Griffin and indicated they would be writing to the government

representatives to ask that they make a joint request to Justice Griffin to provide an interpretation of her decision. The government representatives indicated they would consider such a request; however, they noted they believe they have a clear understanding of the Court's decision.

This consultation meeting began with a presentation on the potential impact of a reinstatement of all previous collective agreement language for the current system and included a case study of these impacts featuring School District No. 36 (Surrey). The presentation was intended to provide the BCTF with the context for government's initial proposal to be tabled at the next meeting. The BCTF stated its view that the primary issue in education is underfunding and that they believe any challenges surrounding public education can be solved with increased funding, reinstatement of the previous language, and local discussions.

Government responded by reiterating it has a responsibility to ensure the most efficient allocation of resources towards continuing the best public education system possible, and that these principles need to continue to guide the discussions. Government also invited the BCTF to provide them with their principles to inform the discussions on a go-forward basis.

On September 9, 2011 the government representatives tabled a framework proposal based on their policy objectives as previously presented to the BCTF. The focus of discussions and the presentation of the framework were made as part of the good faith consultation process and were intended to receive feedback from the BCTF before the approach can be finalized.

The framework proposal is based on the themes identified as being fundamental to this process, including additional resources to classrooms (distinct from the operating grant) to address class composition issues, the involvement of teachers and union representatives in the organization of classes and the distribution of resources, and the need for school districts to have flexibility to efficiently allocate resources to enhance students' educational outcomes.

The proposed process would be an alternative to the return of class size, composition, and teacher ratio provisions to the collective agreement (provincially or locally). The government representatives ended this consultative meeting by reiterating that they are seeking input and perspectives from the BCTF on how they might jointly design the process in a manner that addresses the interests of the union and the teachers they represent, keeping in mind the principles that guide government interests in the discussions.

On September 13, 2011 the BCTF announced that it was making application to Madam Justice Susan Griffin to seek clarification on her April 2011 ruling on Bill 28. Further consultation between the BCTF and the provincial government will likely be delayed until after the court hearing on October 11, 2011.

Presentation of Proposals and Preliminary Costing

On May 24, 2011 the BCTF and BCPSEA bargaining teams introduced their respective themes and objectives.

The BCTF and its local teachers' associations then engaged in a media campaign that set the stage for the initiation of a province-wide strike action plan. The backdrop against which this plan was set included:

- the demand that only **salary and benefits, time worked, and paid leave** be bargained at the provincial table and all other matters locally
- alarm expressed at the employer's bargaining objectives, characterizing the underlying motivation as undemocratic
- "... the need to send a message to government" concerning the progress of negotiations to address the recent BC Supreme Court decision regarding Bills 27/28.

During the month of June several bargaining sessions were held and proposals were made:

- June 1 – BCPSEA presented proposals on Leave for Provincial Contract Negotiations, President/Officer Leave, and Leave for Local, BCTF, CTF, and BC College of Teachers, Sick Leave, and Pregnancy/Parental Leave. The BCTF presented proposals on Compassionate Care Leave (refined), Discretionary Leave, Pregnancy, Parental, and SEB Plans, Leave for Professional Activities, Leave for Third Party Care; and Leave for Union Business
- June 2 – The BCTF presented its Benefits proposal
- June 7 – The BCTF presented proposals on Alternate School Calendar; Regular Work Year for Employees; Release Time for Meetings' and Preparation Time
- June 8 – BCPSEA presented proposals on Alternate School Calendar; Preparation Time; and baseline data for proposal costing. BCTF presents proposal on Duration of the Instructional Day
- June 21 – BCPSEA presented proposals on Professional Growth and Posting and Filling. The BCTF tables its proposal for the improvement of wages.

A complete list of both the [BCTF's and BCPSEA's proposals](#) are available on our public website.

Many of the proposals put forward by the BCTF have cost implications. Accordingly, on June 23, BCPSEA completed a preliminary costing of many of them (E.25 Preliminary Costing). These preliminary costings were done to support BCPSEA in our understanding of the BCTF proposals and their implications. We provided the BCTF with our baseline costing information as well as the costing of each proposal and invited dialogue. The BCTF indicated that it does not agree with our costing but has yet to provide any response or alternate costing.

In our costing estimates, the BCTF's proposals costs are as follows:

Total preliminary cost estimate: \$2,184,000,000

Total payroll 2009/2010 (salary + benefits): \$2,913,000,000

Total preliminary cost as a % of payroll: 75%

The BCTF Strike Vote and Local Bargaining

The BCTF strike planning was beginning to take shape as the school year came to a close with a province-wide strike vote on June 24, 27 and 28. The BCTF was successful, with 90% of the ballots cast in favour of job action. The BCTF commentary, including their news release, *School Staff Alert*, and media campaign, appeared to be more about political and public positioning than it was about issue exploration and engaging in meaningful dialogue at the bargaining table.

On June 30, 2011 the collective agreement between the BCTF and BCPSEA expired.

A primary reason for the BCTF strike and a continual source of disagreement in bargaining is the two parties' understanding of which items should be bargained provincially versus locally. The *Public Education Labour Relations Act (PELRA)* provides for two-tiered bargaining in the K-12 public education sector. Prior to the introduction of PELRA in the 1990s, bargaining was conducted at the local district level. With this local bargaining format, the BCTF was able to coordinate teacher bargaining at the local district level. The result was "whipsawing," which means that local teachers' unions used settlements reached in other districts to press for and achieve bargaining gains.

PELRA mandates provincial bargaining on major issues and cost items, and provides that other items can be bargained at the local district level. The legislation provides a process for designating issues that must be bargained provincially and issues that can be bargained at the local district level. The provincial bargaining agents, BCPSEA and BCTF, are to jointly designate all matters for bargaining at the provincial table and for the local district tables. In the first round of bargaining in 1994, BCPSEA and BCTF did an initial designation of provincial matters and local matters in a letter of understanding, referred to as Letter of Understanding (LOU) No. 1. LOU No. 1 designates all monetary items and the majority of language items as matters for provincial bargaining between BCPSEA and the BCTF.

While LOU No. 1 has remained largely the same since 1994, in this round of bargaining the BCTF has a stated bargaining objective of significantly expanding local bargaining.

The BCTF wants to have many matters currently designated as matters for provincial bargaining under LOU No. 1 designated as matters for local bargaining instead.

PELRA specifically stipulates that “cost provisions,” meaning “all provisions relating to salary and benefits, time worked and paid leave that affect the cost of the collective agreement,” are deemed to be matters for provincial bargaining. The BCTF took an extremely narrow interpretation of “cost provisions” and a position that local bargaining could include matters designated as provincial under LOU No. 1. The BCTF proceeded to improperly table over 1100 matters at local tables inconsistent with LOU No. 1, leading to a series of disputes and adjudications.

Before bargaining broke for the summer, the BCTF and BCPSEA mutually agreed to move beyond the preliminary issue of what is bargained at the provincial level and what is bargained at the local level.

Despite this mutual agreement, and in the absence of any agreement to change the designation of which items are local and which items are provincial, the BCTF counseled its local teachers’ unions to table provincial matters at local tables. This approach was in contravention of both PELRA and LOU No. 1, the existing agreement between the BCTF and BCPSEA that designates which items are to be bargained at local tables and which items are to be bargained at the provincial table.

The BCTF demanded a change to the agreement between the BCTF and BCPSEA on the provincial–local split of issues that would move most matters except wages, benefits, and paid leaves to be bargained at the local level. This change would likely result in provincially coordinated local bargaining and tremendous inefficiencies and costs across the system.

Strike Vote Challenge and the Jackson Process

On July 21, 2011 BCPSEA sent a letter to the BCTF outlining our concerns at the BCTF's failure to table a complete set of proposals at the provincial table and its continued attempts to negotiate provincial matters and matters that are covered by legislation at the local tables. By doing so, the BCTF was in violation of S. 59 of the *Labour Relations Code*, which states that unions must bargain collectively before a strike vote.

BCPSEA requested confirmation from the BCTF that all proposals related to designated provincial matters would be tabled at the provincial table on August 23 and that the BCTF acknowledged the inappropriateness of attempting to present proposals on provincial and legislated matters at the local tables with the intention of advancing them at a later date. The BCTF did not respond positively and BCPSEA challenged their strike vote to the LRB.

In late August the parties reached An Agreement in Principle arising from the dispute on the provincial–local split and the validity of the BCTF's strike vote, and agreed to refer the following foundation questions to a mutually agreed-upon arbitrator:

- What is the authority of the parties to delegate provincial matters to local tables?
- If a party has the authority to delegate provincial matters to the local level, can those matters then be referred to the provincial table when impasse is reached at the local level?
- If a party has the authority to delegate provincial matters and those matters can then be referred to the provincial table when impasse is reached at the local level, would section 59 of the *Labour Relations Code* requirements be met without discussion of these referred matters at the provincial table?
- What are the cost items defined by PELRA?
- Are there any restrictions on the ability of the parties to negotiate a re-designation of the provincial–local split of issues as agreed to by the parties in Letter of Understanding No. 1, including whether the split of issues can be brought to impasse?

BCPSEA and BCTF appointed Arbitrator Marguerite Jackson to determine the questions. Following several days of hearing and numerous written submissions, Arbitrator Jackson issued three decisions.

With these questions scheduled for clarification, BCPSEA intended to move ahead in bargaining and work around the clock to achieve significant progress — one of the requirements set out by Susan Lambert, President of the BCTF, to avoid job action. Ms. Lambert said, “...if there is no significant progress in those contract talks by the time school starts up again in September there will be some kind of job action.”

School Begins With a Strike

Before bargaining re-commenced there were two comprehensive articles in the news about the current negotiations. [Janet Steffenhagen of *The Vancouver Sun*](#) wrote on August 5, 2011 about what potential job action could mean for parents and students, and the difficult position of principals and vice-principals if teachers struck at the beginning of the school year. Steffenhagen also mentioned the wide and varied set of proposals that remained on the table as BCPSEA re-entered negotiations. Shortly after, on August 10, 2011, [Justine Hunter of *The Globe and Mail*](#), reported on some of the difficulties the parties had encountered in bargaining, including the net zero compensation mandate and the provincial–local split of issues. Both journalists touched on some of the many complexities and barriers that occur in bargaining. These barriers were emphasized by Ms. Lambert when she stated at the BCTF Summer Convention that teachers would not sign a deal until all of their needs were met, including improvements to salaries, benefits, class size and composition, and working and learning conditions.

Bargaining is about negotiating — taking a look at the big picture and coming to terms with your priorities; this is especially crucial in our current economic climate. Other public sector employees have successfully settled under the current mandate and BCPSEA hopes to achieve the same success in conjunction with the BCTF. To date, about two-thirds of public sector employees have successfully re-negotiated agreements under the current net zero mandate.

Unfortunately, despite best efforts, little progress has been achieved at the bargaining table. The two parties remain far apart and on September 6, the 2011-2012 school year started with a teacher strike, while both parties anticipated the results of Arbitrator Jackson's decision on the split of issues.

The Jackson Decisions

With this significant foundational dispute over the provincial–local split of bargaining between BCPSEA and the BCTF, bargaining stalled. The dispute continued in the context of the BCTF's implementation of its Phase 1 strike.

Jackson 1: August 28 Decision

Arbitrator Jackson issued her first decision on August 28, 2011 with respect to the five questions that had been referred to her by the parties. She determined in that decision that neither party can unilaterally delegate bargaining authority to local bargaining agents over matters currently listed in LOU No. 1 as matters for provincial bargaining. She decided that renegotiating LOU No. 1 was something that could be the subject of bargaining, and a matter that could be taken to impasse. She found that the meaning of “cost items” in PELRA encompasses all provisions relating to salary and benefits, time worked and paid leave, that affect the cost of the collective agreement.

Arbitrator Jackson directed the BCTF to table any proposals on provincial matters that are key issues in the BCTF's overall bargaining agenda at the provincial bargaining table by September 2. The BCTF was directed to review their proposal to revise LOU No. 1 to ensure consistency with her decision on the scope of the meaning of “cost provisions.” As sought by BCPSEA, Arbitrator Jackson provided specific timelines within which the parties were to implement the decision and during which she would be available to assist the parties with implementation.

Jackson 2: September 2 Decision

The parties sought further assistance from Arbitrator Jackson regarding implementation of her decision and she issued a second decision on September 2. In this decision, Arbitrator Jackson directed BCTF to remove all proposals on provincial matters from district bargaining tables by September 5 and to table those which the BCTF wished to pursue at the provincial table by September 16. She further directed the BCTF to review its proposal to change LOU No. 1 to ensure compliance with her decision on the meaning of “cost provisions” by September 7. She said that if the parties had a dispute about whether provisions proposed by the BCTF to be bargained locally were “cost provisions” within the meaning of PELRA, those disputed items were to be brought to her by September 9 for a determination.

The BCTF did revise its LOU No. 1 proposal but it remained inconsistent with PELRA. The BCTF took the position in its proposal that for matters related to a “cost provision” as defined by Arbitrator Jackson, provisions relating to that matter “affecting the cost of the collective agreement” should be bargained at the provincial bargaining table but provisions relating to that matter “not affecting the cost of the collective agreement” should be bargained at the local bargaining table. The BCTF proposed approximately 40 collective agreement articles could be bargained both at the provincial bargaining table and the local district tables. BCPSEA strenuously objected to this approach, saying that these matters in their entirety met the definition of “cost provision,” are therefore deemed provincial matters under PELRA, and that splitting the bargaining of one contract provision between multiple bargaining tables is both unworkable and inconsistent with PELRA. The parties had different positions and made submissions to Arbitrator Jackson on numerous specific provisions on what did and did not meet the definition of a “cost provision” pursuant to the arbitrator’s decisions and PELRA.

Jackson 3: September 17 Decision

Arbitrator Jackson issued her third decision September 17. Most significantly, Arbitrator Jackson agreed with BCPSEA's position that the amended BCTF proposal on LOU No. 1 to split matters between the provincial bargaining table and the local bargaining tables was not consistent with PELRA. She decided that all "cost items" identified by the BCTF as matters to be split between provincial and local bargaining tables are "cost provisions" deemed to be provincial matters under PELRA as argued by BCPSEA. She found many of the specific provisions the BCTF asserted were not "cost provisions" met the definition of "cost provision" including seniority, layoff, recall, retraining and pro-d funding. She found some of the provisions BCPSEA argued to be "cost provisions" did not meet the test, and can be bargained at the local level. However, it is important to note that Arbitrator Jackson's decision in this regard is not that such items must be negotiated locally, but rather, that they need not be bargained at the provincial bargaining table. The BCTF must still negotiate its desired changes to LOU No. 1.

Jackson: And Finally...

Since Arbitrator Jackson issued her three decisions, the BCTF has acknowledged at the bargaining table that despite its public comments that the Jackson decisions are a "victory" for the BCTF, its view on the split of issues is a bargaining position. The current split of issues remains in force and cannot be changed without the agreement of both provincial parties. To date, there has been no such agreement. However, it is clear that bargaining will continue to stall due to the BCTF's desire to achieve greater local bargaining as an outcome from this bargaining round. Arbitrator Jackson's decisions require that the BCTF engage in bargaining based on the current split contained in LOU No. 1 and the requirements of PELRA. If necessary, BCPSEA will consider the option of filing the Jackson decisions with the courts in order to ensure compliance.

Strikes and Potential Employer Responses Under the *Labour Relations Code*

A strike under the *Labour Relations Code* involves a cessation of work, a refusal to work or a slowdown in work of employees acting in concert that is designed to or does restrict or limit production of services. A strike brings a collective agreement to an end. However, even when a collective agreement is no longer in force, the terms and conditions of employment contained in the expired collective agreement continue to govern the employment relationship with respect to striking employees who continue to work pursuant to an essential services order, except to the extent they are modified by the order

The purpose of an essential services order is to protect the public, but the LRB will strive, in making designations, to protect meaningful collective bargaining by avoiding upsetting the balance of pressure normally borne by the parties during job action. As Mark Brown noted in his recent decision (BCLRB No. B 161/2011) at paragraph 61 (point 5):

“As it now stands [referring to current Phase 1 BCTF strike activity] bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and the Employers are impacted, the bargaining unit members continue to receive full salary.”

Potential Employer Responses to Strike Activity

In any round of collective bargaining a union may choose to exercise its rights under *Part 5- Strikes, Lockouts, Picketing* of the *Labour Relations Code*. Employers also have rights and obligations under this section of the Code. The purpose of this section is to identify some of these options for discussion purposes. In having such discussions and developing an approach any decision should be grounded in the following foundation principles:

- **Bargaining and a strike:** A strike and an employer's response to a strike are intended to induce the other negotiating party to agree to specific terms and conditions of employment. To achieve a collective agreement the parties must negotiate such that they fall within each other's zone of agreement and engage in a productive dialogue to craft a tentative agreement.
- **Courses of action and consequences:** When students, the public and employers are impacted by the withdrawal of some or all of bargaining unit members' full range of duties, bargaining unit members should be similarly impacted.
- **Bargaining, strikes, and motivations:** Depending on a variety of contextual factors, unions seek to avail themselves of the strike option to further their objectives in response to bargaining progress.

Such actions and employers' reactions to them should not be construed as directly or inferentially questioning the quality of the public system, or the efforts of the dedicated individuals who work as teachers, administrators, or in other capacities. To do so for strategic messaging and constituent influencing purposes is nothing more than positioning and posturing that, as a consequence, undermine productive workplace relations.

Potential labour relations tools that employers may access in strike activity can be divided into two broad categories: those tools that employers have under their control, some of which are designed tactically to induce the other negotiating party to agree to specific terms and conditions of employment, and those tools that can be characterized as bargaining process assistance tools under the *Labour Relations Code* Part 7 Division 1 Mediation and Fact Finding.

Category One

Category One comprises actions that the employer has under their control, some of which are designed tactically to induce the other negotiating party to agree to specific terms and conditions of employment; e.g., reduction in pay or lockout.

- Transfer of payments for benefits

Section 62 of the *Labour Relations Code* provides that when employees are lawfully on strike or lawfully locked out, their health and welfare benefits (other than pension) normally provided by the employer must be continued if the union tenders payment. The majority of teacher collective agreements have no specific language regarding the payment of health and welfare benefit premiums during a strike or lockout. Of the six that do, three require the employee to pay the premium and the other three require the local union to either pay the premium or reimburse the employer.

During past strike activity districts have continued benefits and not requested the union tender payment for benefits. This is similar to the situation in health care strikes.

It is not clear that this section of the Code will automatically be applied by the LRB in the context of an essential services strike, particularly the limited strike action occurring during the teachers' Phase 1 strike, to require payment by the union for the continuation of benefits.

- Reduction of Pay: Generally and Specifically; e.g., Positions of Special Responsibility (POSR), Department Heads

In industrial settings, pay is generally by hourly rate. A strike against certain job functions usually means fewer hours of work and therefore fewer hours of pay. Employees are not paid when they are on strike and not working. The logical proposition is that teachers should be paid only for work actually performed and not for work that is not done due to a strike; i.e., as part of their teachers' strike

activity, less work is done (reduction in supervision duties, no preparation or distribution of report cards, withdrawal from extracurricular activities, refusal to administer or supervise various tests, etc.), therefore, it makes sense that employers would respond with the commensurate reduction to pay.

There are some issues to consider with reducing pay generally or decreasing stipends or allowances, including:

- Establishing that teachers are not in fact performing work and in finding a practical way to accomplish not paying for work that is not done given that there are no set hours of work and that salaries and stipends or allowances are often based on an annual amount.
- The struck tasks are virtually impossible to measure in terms of time and may not be evenly distributed from day to day.
- The BCTF's likely argument (as its President has consistently stated publicly) that teachers are using the time freed up by the struck work duties to perform additional work of value with students or in preparing for classes.
- Teachers have engaged in partial strikes of the same nature on several previous occasions and have continued to receive normal salaries (with the exception of one occasion which was quickly reversed due to the pressure of negative media and other school districts' concerns and voiced opposition). The continuation of full pay in strikes involving withdrawal of duties has also been the typical practice during health care union strikes.
- Employers must also address the risk that a pay reduction will alienate employees who are not following strict union compliance guidelines and/or that in the aftermath of any strike activity the employer's relationship with the employees and/or the union will be significantly damaged at the local level, resulting in reduced cooperation and higher numbers of grievances and associated expenses. On a related point, employees who are not actually withdrawing services may successfully grieve their inclusion in any pay cut.

- Finally, it should be noted that any successful reduction in pay to teachers may prompt the BCTF to augment teachers' pay with an equal amount of "strike pay."

Where position of special responsibility duties are performed outside the instructional day, a teacher is entitled to refuse to perform those duties under the current essential services order. In line with the general proposition that employees are not entitled to be paid for work they do not perform due to a strike, they should also not be entitled to the allowance for position of special responsibility work that is not done. There have been few, if any, reductions in stipends and allowances for position of special responsibility or department head positions in past strikes in education, likely for reasons as discussed above regarding general pay reductions.

These risks may be somewhat reduced and/or the potential impact of a negative finding reduced if, rather than simply implementing some form of pay reduction and inviting a BCTF grievance or complaint, BCPSEA instead first applies to the LRB for approval of some pay reduction. The above-noted health and welfare benefit payments and allowance/stipend withholding matters could be added to any application or treated separately. An application would refer to Mark Brown's comment noted above and seek the LRB's approval for a pay reduction with alternative applications to vary either the Phase 1 essential services order or collective agreement to accomplish a more balanced approach that creates pressure on both sides of the dispute. If such an application fails, boards of education will not face the liability of repaying wages improperly withheld and the "problem" identified by Mark Brown will have been placed before the LRB, which has jurisdiction over the essential services order, rather than addressed in a private labour arbitration concerning only the interpretation of the collective agreement.

- Lockout

Lockouts are the right of employers just as strikes are the right of unions and their members. The *Labour Relations Code* provides that where a strike is occurring, an employer is entitled to lock out striking employees without a lockout vote (s.

59(2)(b)(ii)). Any lockout must accord with the *Labour Relations Code* essential services provisions and the essential services designation order (which would require amendment by BCPSEA). Under this option, the employment of a teacher could possibly be reduced a certain percentage for the duration of the teacher's participation in Phase 1 of the strike with a corresponding salary reduction. The reduction of the position would have to bear a reasonable relationship to the amount of legally struck duties to ensure that it does not encroach on the duties teachers are required to perform under the order. A significant area of concern with respect to this option is the need to manage the public perception of engaging in a lockout and preventing teachers from performing work.

Category Two

These can be characterized as bargaining process assistance tools under the *Labour Relations Code* Part 7 Division 1 Mediation and Fact Finding that can be accessed or utilized where circumstances warrant.

1. Labour Relations Board Mediation Officer

Either the BCTF or BCPSEA can apply for a LRB mediation officer under Section 74 of the Code. There is no binding authority and the mediator will likely find that the parties have not bargained sufficiently and may direct the parties to return to the table. Alternatively, the mediator may conclude that little is to be gained by continued bargaining given the parties positions.

2. Minister of Labour Appoints a Special Mediator

Under Section 76 of the Code the Minister of Labour could appoint a Special Mediator to oversee bargaining. This mediator has no binding authority and similar to the previous circumstance, they could likely find that the parties have not bargained sufficiently or that continued bargaining will provide few results. However, the Minister can "specify terms of reference for the Mediator."

3. Minister of Labour Appoints an Industrial Inquiry Commission

Under Section 79 of the Code the Minister of Labour may appoint an Industrial Inquiry Commission (IIC). Before or after an IIC report is made, the parties can agree to accept the recommendations of the report. The Minister can again set the terms of reference.

The IIC will likely find that the parties have not bargained sufficiently and may direct the parties to return to the table under the commission's direction. The IIC may also conclude that little is to be gained by continued bargaining given the parties positions and suggest a combination of resolution processes such as final offer selection or regular interest arbitration.

4. Minister of Labour Appoints a Third Party

There are a variety of examples in public sector disputes where the Minister of Labour has appointed a third party. The most recent example in the K-12 sector was in 2005 when Vince Ready was appointed.

5. Conclude the Strike and Legislate a Deemed Collective Agreement

There are a variety of examples in the last 20 years as to the construction of such legislation.

Summary

There is an ability to reduce pay and/or prompt the union to pay for health and welfare benefits during a strike, provided that the past collective agreement terms and conditions, which are in effect during an essential services strike or lockout, allow such actions and/or if lockout action is pursued. Along with the public relations and employee and/or union relationship risks inherent in taking such actions, there is a risk that any reduction in teacher pay due to Phase 1 work withdrawal would be successfully grieved under the collective agreement(s) and that the union would refuse to tender payment for benefits unless the collective agreement(s) is altered by the LRB.

These risks may be reduced and/or the potential impact of a negative finding reduced if, rather than simply implementing some form of pay reduction and inviting a BCTF grievance or complaint, BCPSEA instead first applies to the LRB for approval of some pay reduction. The above-noted health and welfare benefit payments and stipend withholding matters could be added to any application or treated separately. Mark Brown's comments in his recent decision provide an opening to make such an application to the LRB on a principled basis. However, this would be a novel application and the outcome is uncertain given that the current LRB jurisprudence to date has repeatedly held that its ability to amend collective agreements is limited to amendments which are necessary to implement the designation of essential services.

There are also a number of bargaining process assistance tools under the *Labour Relations Code* Part 7 Division 1 Mediation and Fact Finding that can be accessed or utilized where circumstances warrant.

Moving Forward

It has been acknowledged in the media and by both BCPSEA and the BCTF that bargaining is progressing slowly. The BCTF is on strike and the lack of progress is concerning. The BCTF has claimed that the strike will not have an impact, but of course it does.

The purpose of a strike is to compel bargaining movement. The employer's response is designed to do the same such that a collective agreement can be expeditiously concluded. Should the continuing Phase 1 job action necessitate an employer response? In considering this question, what is the underlying rationale for your answer?

You will see that this paper describes a range of available options. The answer to the first question is the central decision. A selection of one or more of the options cannot be made in the abstract. If the answer to the first question is yes, the choice of approach will depend on timing, the nature/progress of bargaining, and the overall context in the sector.

Appendix A: Overview of BCPSEA and BCTF Proposals

The BCPSEA proposals include:

- Health and Welfare Benefits

Standardization and modernization of health benefits.

- Maternity Leave

Extend parental leave to birth mothers, birth fathers and adoptive parents in accordance with the time periods provided under the *Employment Standards Act*.

Continued benefit payment coverage.

- Professional Growth and Engagement

Develop with the BCTF a program containing the following elements:

Organizational and Individual Need, Expectations, Supporting Performance and Growth, and Reviewing Performance and Growth.

- Hours of Work

When a school district intends to modify the work day or work week, they will provide written notification to the local no later than 60 working days prior to its implementation.

- Posting and Filling, Employee Assignment and Transfer

The BCTF proposals include:

- Salary
 - A fair and reasonable wage increase for all members.
 - An increase to the allowances and bonuses in the collective agreement that is reflective of the salary increase.
 - Equity in salary for all teachers.
 - Shorten all grids.
 - TTOC wages on scale for every day worked.
- Benefits
 - Continued or increased benefits including extended health and dental plans.
- Leaves
 - Discretionary Leave
A maximum of 8 days of paid discretionary leave per year with a maximum of four unused days carried forward into the subsequent school year.
 - Compassionate Care Leave
Up to 26 weeks paid leave to provide care to a family member.
 - Sick Leave
Two sick days for each month of employment with no maximum to the number of paid sick leave credits that may be accumulated.
- Other
 - Retirement Bonuses
A teacher who is at least 55 years old and who has 10 or more years of service with the district should receive a retirement bonus of five per cent per year of the salary received at retirement for each year of service, up to a maximum of one year's salary.
 - Preparation Time
Increased paid time for class preparation (25% of instructional time per week).

Appendix B: Strikes and Essential Services

If the Minister of Labour considers that a dispute poses a threat to the health, safety or welfare of the residents of the province, or to the provision of primary or secondary educational programs, he or she may direct the Labour Relations Board (LRB) to designate essential services under Section 72 of the *Labour Relations Code*. The Minister of Labour directed the designation of essential services in the 2011 educational dispute under both these provisions.

Designation of essential services involves identifying the facilities and levels of service needed to prevent immediate and serious danger to the public or to prevent immediate and serious disruption to educational programs.

The 2011 Essential Services Designation Order for Phase 1

Following the approach taken in previous disputes in the K-12 public education sector in 2001 and 2005, the 2011 LRB essential services designation order sets out both a list of activities that BCTF members must continue during “Phase 1” job action and those that BCTF members need not perform during that phase.

Phase 1 of the BCTF strike activity plan involves the withdrawal of certain duties and non-participation in voluntary extracurricular activities. Phase 1 does not involve picketing activity.

During Phase 1 BCTF members need not do a number of duties, including participating in certain meetings and interviews; providing or accepting any routine printed, written or electronic communications to or from Administrative Officers, unless it relates to an emergency; participating in any accreditation activity, in-service or professional development that is not teacher-directed; collecting money from students, ordering supplies or textbooks unless needed immediately to effectively maintain ongoing instruction; preparing or distributing report cards; supervising detentions or answering school office phones.

The essential services designation order specifically provides that BCTF members must participate in the normal manner in activities concerning statutory class size procedures; that they continue to hold IEP meetings in the usual manner (although administrators may only attend IEP meeting if they provide direct service to the student under discussion); and that BCTF members continue to communicate with administrators regarding students with special needs as necessary and in the best interest of students.

Supervision of students before school, during lunch hour, and after school has largely been transferred to excluded and management staff who are expected to work at least 60 hours during any strike. Teachers will continue to provide before/after school supervision related only to bus drop off and pick up and recess and noon supervision; however, it is subject to “the Employer utilizing management and excluded staff to the best extent possible.”

Teachers are also permitted to withdraw voluntary extracurricular activities although there are services/activities identified which must be continued, including lesson preparation and planning; assessment, evaluation, and marking; teacher discipline/evaluation/investigation meetings; and certain designated activities that form part of educational programs. Employers are permitted to utilize volunteers or others to replace striking teachers with respect to these voluntary extracurricular activities without contravening the replacement worker provisions in the *Labour Relations Code*.

The LRB has also ordered that teachers will be available in the event of any emergency or disaster situation

The First Two Weeks of the Strike

During the first week of the school year for elementary schools and the first two weeks for secondary schools, the order also provided that BCTF members would participate in the normal manner in the class/program composition and formation activities that are done.

The first two weeks of strike activity involved a fair amount of confusion among teachers and their union representatives regarding the terms of the order, and many districts saw very little out of the ordinary at several of their schools. Initially there were challenges in developing the supervision schedules, which included the cancellation of recess in some districts, collecting fees, distributing textbooks and dealing with the myriad of instructions and documents which accompany the beginning of school. During the second week, issues around the completion of 1701 forms and referrals, safety training, and IEP meetings were the central concerns.

Beyond the Start-up Weeks

With the completion of the “leeway” period experienced in the first two weeks, many districts noticed the union representatives becoming much more positional about issues and increasingly directing their members to withdraw duties and extracurricular activities. Issues that are currently arising in districts include the provision or adjustments for professional development/implementation days; the cancellation or rescheduling of parent/teacher conferences; school-based team meetings; and the duties of non-enrolling teachers and associated professionals.

Beyond Phase 1

The BCTF has announced that any strike activity beyond Phase 1, such as a withdrawal of teaching duties at one or more schools with or without pickets, is something that they will present to their Representative Assembly prior to undertaking such action. Additionally, the current essential services designation order specifically provides that should the BCTF contemplate any strike activity beyond Phase 1, they must notify the LRB and the LRB must issue a further order before any strike activity beyond what is contemplated in Phase 1 can occur.

On September 2, 2011 the LRB issued a decision on whether teachers may withdraw services from the classroom. This decision is further to a hearing before the LRB in the fall of 2005 between BCPSEA and the BCTF; however, a decision was not issued before terms of a new collective agreement were imposed.

This decision relates to the previous dispute and it is anticipated that it will provide guidance to the LRB with respect to the current labour dispute with the BCTF, should the BCTF strike action proceed beyond Phase 1 to a withdrawal of classroom services.

The issue argued by the parties before Adjudicator Mark Brown was the application of Section 72 of the *Labour Relations Code* in the context of the withdrawal of classroom services by teachers — specifically, the determination of “when does the teacher’s absence from the classroom result in a ‘serious and immediate disruption to the provision of educational programs.’” In his decision, Adjudicator Brown concluded that teachers can withdraw from the classroom for “at least” two weeks without any services designated as essential.

Of interest is his recommendation under point 5 on hours of work and compensation where he provides the following:

“...compensation should be based on the percentage of days worked compared to the norm.

As it stands now [during the current BCTF Phase 1 strike activity], bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and the Employers are impacted, the bargaining unit members continue to receive full salary.”

Recommendations in the decision include the following:

- Given that the current dispute is at the beginning of the school year, teachers can withdraw from the classroom for at least two weeks without any services designated as essential.
- Before that withdrawal can occur, the LRB needs to consider whether any services provided by the support staff unions fall within the scope of Section 72. Because students would not be in class, the likelihood of any essential service designation for the support staff unions would be minimal, possibly physical plant issues.

- After the two week or longer period referenced above, any further withdrawal of services may be impacted by grade and time of year (factors which the parties refused to contemplate in the case before Brown). A process needs to be developed to give the parties the opportunity to specifically address those issues.
- While the process identified above is being conducted, in order to continue some pressure on the parties to encourage a resolution to the collective bargaining dispute while at the same time erring on the side of caution, Brown recommends imposing an interim order of one day withdrawal in five days of instruction (i.e., 20% weekly), although in his view that reduction does not meet the test under the Code as a long term order, as such a reduction could see the dispute last a lengthy period of time as the pressure exerted is limited. He notes that the purpose of the controlled strike is to exert as much pressure on both sides without having a serious and immediate disruption to the provision of education programs.
- Finally, Brown notes that he would amend the structure of the essential services designation order in education to be consistent with essential service orders in other sectors. The order should set out the days of work for the bargaining unit members. The employer would continue to direct the workforce as per current collective agreement terms. In this way the order would establish what the bargaining unit members are doing, not what they are not doing. In addition, he recommends that compensation should be based on the percentage of days worked compared to the norm.

This decision is not a formal decision with immediate application but rather anticipates further issues to be adjudicated with a full withdrawal of services and is intended to provide guidance to the parties and the LRB.

Appendix C: Strikes in BC K-12 Education

Teacher–Public School Employer Collective Bargaining Dispute Milestones

Public sector bargaining in British Columbia takes place in a political context — compensation guidelines/mandates as established by the provincial government, areas of policy priority, and the general state of politics in the province, including the electoral cycle. While a negotiated agreement is clearly preferable — as achieved in 2006 and the goal of negotiating parties — ad hoc legislative intervention also features prominently. It is interesting to note that between 1950 and 1990 there were eight pieces of ad hoc legislation to address bargaining impasses — three in the public sector and five in the private sector, mostly in the forest sector. Between 1990 and today, 13 pieces of legislation have been used to end labour disputes — one in the private sector and 13 in the public sector, six of which were in K-12 public education.

Since the advent of collective bargaining for teachers and their employers, there have been 53 strikes/lockouts during the local bargaining period (1987-1994), two strikes during the provincial bargaining period (1994-present), and three occasions of ad hoc legislative intervention to resolve labour disputes. A summary follows.

1987-1994	Local teacher association/union – local school board bargaining	50 strikes (one province-wide) and 3 lockouts
July 1993	Final Report of the Commission of Inquiry into the Public Service and Public Sector (Korbin Commission) was released	Move to provincial bargaining
May 1996	First round of provincial bargaining	Transitional Collective Agreement (TCA) was reached and ratified by both parties.
June 25, 1998	Provincial negotiations continued – parties were unable to reach negotiated agreement. (July 1, 1998 – June 30, 2001)	Bill 39, the <i>Public Education Collective Agreement Act</i> , legislated the terms of the first provincial collective agreement
January 28, 2002	Legislated Collective Agreement (July 1, 2001- June 30, 2004)	Bill 27, <i>Education Services Collective Agreement Act</i>
January 28, 2002	BCTF – one day political protest (strike)	Teachers walk out in a one-day political protest strike.
October 7, 2005	Legislated Collective Agreement (July 1, 2004 - June 30, 2006)	Bill 12, <i>Teachers' Collective Agreement Act</i>
October 7, 2005	BCTF illegal two-week strike	
June 30, 2006	Negotiation of 2006-2011 Collective Agreement	On June 30, 2006, at 10:45 pm, for the first time since the introduction of provincial collective bargaining, the BCTF and BCPSEA conclude and sign a freely negotiated provincial collective agreement.
March 1, 2011	BCPSEA and the BCTF meet for the first negotiation session of the 2011 round of bargaining	Negotiations ongoing
June 29, 2011	BCTF release results of strike vote. Of the 70% of teachers who voted, 90% voted in favour of a strike.	
August 31, 2011	BCTF issues 72-hour strike notice for all school districts	Negotiations ongoing