GRIEVANCE & ARBITRATION UPDATE

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

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Class Size Grievance Update

Please find below an update on the 2006-07 and 2007-08 class size grievance presently being heard by Arbitrator Dorsey, as well as the more recent 2008-09 class size grievance that has yet to be scheduled for arbitration.

Grievances: 2006-07 and 2007-08 School Years

On September 24, 2008, Arbitrator Dorsey dismissed the employers' preliminary objections concerning the timeliness, procedural requirements of the grievance procedure, and requirement of the union to provide particulars during the grievance procedure. Further, Arbitrator Dorsey confirmed that the union is not required to grieve at the local level or provide the local parties with an opportunity to identify and attempt to resolve the alleged violations.

In this award, Mr. Dorsey agreed with the union that they are permitted to file a provincial placeholder grievance of general application and then provide particulars at step 3 of the grievance procedure or at a later date in the arbitration process during pre-hearing disclosure.

Mr. Dorsey indicated that any prejudice to the employer may be argued for redress purposes. He ordered that the two grievances proceed on their merits commencing November 24, 2008.

The issues in dispute are as follows:

1. Grades 8 – 12: In classes that exceeded 30 students, did consultation occur and, if so, was it meaningful? Further, the union will be challenging the opinion of the superintendent and the principal that the organization of the class was appropriate for student learning.
2. In classes that exceeded three students with IEPs, did consultation occur and, if so, was it meaningful? Further, the union will be challenging the opinion of the superintendent and the principal that the organization of the class was appropriate for student learning.
3. Does section 76.1(2.3) apply to all classes, including dedicated special needs classes, modified classes, and elective classes?
4. If a student has an IEP but it only applies to certain classes, does section 76.1(2.3) apply to the classes that are not related to the student's IEP?
5. Can students be placed on an interim basis pending the consultation and finalization of the class configurations?
6. In order for there to be meaningful consultation, must the principal provide the teacher in writing their rationale for the proposed class make-up?

The following districts will be covered by these grievances:

2006-2007 school year: SD 8, 36, 39, 53, 62, 67, 70
2007-2008 school year: SD 5, 8, 20, 28, 36, 37*, 39, 43*, 44, 58, 61, 62, 63, 68, 69, 70, 73, 82

* A ruling from Arbitrator Dorsey is expected shortly on whether SD 37 and 43 are in fact included in the scope of this grievance.

As the scope of the grievance covered over a hundred different schools in the above noted districts, a case management meeting was held between the parties and Arbitrator Dorsey to determine how best to proceed. Following this case management meeting, it was agreed that the grievances would first proceed as follows:

- Evidence would be heard on six representative schools chosen by the BCTF.
- Following this, the employer would then have the opportunity to choose and have evidence heard on a further list of representative schools.
- Arbitrator Dorsey would then provide the parties with a ruling (arbitration award) with respect to these representative schools.
- It is hoped that this award will provide guidance to the parties in their attempt to resolve the remaining schools and districts covered by this grievance. However, these decisions would not be binding on any other school or district nor would the initial decision be determinative of issues pertaining to the other schools or districts covered by the scope of this grievance. If at the conclusion there continue to be issues that require arbitration, further hearing dates will be set. In other words, the process that has been chosen is an attempt to streamline the process to reduce the number of referrals to arbitration. The initial decision, however, will not be binding on any other school or district.

The BCTF has chosen the following six representative schools:

- SD 5 (Southeast Kootenay) – Frank Mitchell Elementary School (2007-08 school year)
- SD 36 (Surrey) – Guildford Park Secondary School (2006-07 and 2007-08 school years)
- SD 62 (Sooke) – Spencer Middle School (2006-07 and 2007-08 school years)
- SD 63 (Saanich) – Claremont Secondary School (2007-08 school year)
- SD 69 (Qualicum) – Qualicum Beach Middle School (2007-08 school year)
- SD 82 (Terrace) – Thornhill Elementary School (2007-08 school year)

Forty days of arbitration have been scheduled between November 24, 2008 and June 19, 2009 to hear the evidence of the representative schools. To date, ten days of evidence has been heard in SD 63 and SD 69 with a further six days scheduled to complete these two schools. The employer will be in a position in the near future to confirm its representative schools.

Grievance: 2008-09 School Year

On June 30, 2008, over two months prior to the commencement of the 2008-09 school year, the BCTF filed a grievance of general application that covers all classes in every school in the province: “all school boards governed by the collective agreement intend to and/or will violate the requirements of the *School Act* and Class Size Regulations concerning class size and composition for all classes in all school districts.”

In addition, the BCTF is alleging that “there has been a systemic and consistent approach by BCPSEA to encourage their member boards to breach the provisions of the *School Act* and the Class Size Regulations concerning class size and composition” and that “BCPSEA has failed to ensure that school

boards comply with the provisions of the *School Act* and the Class Size Regulations concerning class size and composition."

The BCTF has indicated as follows:

- They will not be grieving at the local level nor having discussions with their local employer to identify alleged disputes or attempt to resolve.
- Instead, the local union will collect information from local teachers on BCTF forms filled out at the time of the consultation and send them to the BCTF for processing.
- The BCTF will then provide BCPSEA with particulars at a later date or during the arbitration pre-hearing discovery process.
- Further, the BCTF takes the position that all classes in the province are in violation until the employer can prove that they are not. If BCPSEA can demonstrate that each class in the province is not in violation, the BCTF will then remove those classes one at a time from the grievance.

On October 1, 2008 BCPSEA responded as follows:

- Asked the BCTF to confirm our understanding of their position.
- Asked the BCTF to reconsider filing grievances at the local level and providing the local parties an opportunity to discuss and resolve.
- As an alternative to grieving at the local level, at a minimum, we have asked the BCTF to consider having their local unions meet with their employers to raise any alleged violations/concerns and provide an opportunity to resolve.
- In a further alternative, provide BCPSEA immediately upon receipt with the particulars received by their local unions. BCPSEA will, in turn, engage in discussions with the affected school districts, which may then request a meeting with the local union to discuss and attempt to resolve.
- Any issues that remain would then proceed to arbitration in a timely fashion so that these matters can be resolved as early as possible.

On November 5, 2008 the BCTF confirmed the following:

- The 2008-09 grievance is one of general application that the BCTF will pursue at the provincial level.
- Their position that all classes in the province are in violation is unchanged at this time.
- Rejected BCPSEA's request for the BCTF to reconsider its position that grievances would not be filed at the local level and/or discussions to resolve be held at the local level.
- With respect to providing the employer with particulars, the BCTF responded:

> "Boards of education around the province have had ample opportunity to address teachers' concerns in the months prior to and beginning the present school year. They should be aware of those classes which exceed the limits and we would hope they are doing everything within their power to bring the situation within the limits set out in the School Act. However, during our discussion we undertook to provide you with a list of those classes which to the best of our knowledge were in violation of the School Act and Class Size Regulations in the hope that

> boards of education would be further motivated to bring all classes under the limits set out in the School Act and Class Size regulations. We are now beginning to receive that information from our locals around the province and will forward lists of classes which exceed the limits as soon as possible.
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> Please understand, however, that boards should not look upon this as an opportunity to badger our members to now agree to excessive conditions, nor should they take this as a chance for belated development of new or "improved" rationales for exceeding the limits."

On January 13, 2009, following further correspondence between the parties, the BCTF referred the matter to arbitration. The parties will be meeting in the near future to select an arbitrator, make further requests for particulars and discuss how best to proceed with the matter. To date, no particulars have been provided by the BCTF to the employer.

Questions

If you have any questions or would like more information, please do not hesitate to contact Brian Chutter (brianc@bcpsea.bc.ca; 604.730.4520) or Stephanie Tassin (stephaniet@bcpsea.bc.ca; 604.730.4521).