

Update: Class Size and Composition Grievances

The following is further to *Grievance & Arbitration Update* No. 2009-02 dated January 20, 2009 regarding the 2006-07, 2007-08, and 2008-09 class size grievances.

2006-07 and 2007-08 Grievances

Representative Schools: The parties have now finalized the list of representative schools. On a without prejudice basis, the BCTF has removed Spencer Middle School in SD No. 62 (Sooke) from their original list of representative schools and the employer has added two elementary schools. The following is a complete list of 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 39 (Vancouver) – Hastings Elementary School (2007-08 school year)
- SD 58 (Nicola-Similkameen) – Merritt Central Elementary School (2007-08 school year)
- 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)

It is hoped that an award on the representative schools will provide guidance to the parties in their attempt to resolve the remaining schools and districts covered by the grievances. However, the initial award would only be binding on the representative schools and not on any other school or district covered by the scope of this grievance or otherwise. 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.

Scope of the Grievances: On January 30, 2009 arbitrator Dorsey issued an award confirming that SD No. 37 (Delta) and SD No. 43 (Coquitlam) were excluded from the scope of this arbitration. The BCTF had argued that SD No. 37 (Delta) and SD No. 43 (Coquitlam) had inadvertently been omitted from the previous list of particulars supplied to the employer. Arbitrator Dorsey ruled that “despite the absence of any evidence of actual prejudice to the employer, this is a period of delay for which it can be presumed the employer has been prejudiced and would be unfairly disadvantaged if the union were permitted to broaden the scope of the grievance.” Therefore, the scope of the grievances is now confirmed to be:

2006-2007 school year: SD 8, 36, 39, 53, 62, 67, 70

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

Dates of Hearings: We have now completed 21 days of hearings with a further 29 days scheduled to be heard:

- SD 63 – 9 days heard, evidence is completed
- SD 69 – 9 days heard, an additional 2 days are scheduled to complete (April 14 & 15)
- SD 82 – 3 days heard, an additional 4 days are scheduled to complete (June 16 – 19)
- SD 5 – 3 days are scheduled to hear the evidence (May 4 – 6)
- SD 58 – 4 days are scheduled to hear the evidence (May 7 & 8, June 8 & 9)
- SD 36 – 8 days are scheduled to hear the evidence (May 11 – 15, 25 – 27)
- SD 39 – 3 days are scheduled to hear the evidence (June 10 – 12)
- Final argument – 5 days are scheduled (July 13 – 17, 2009)

If the parties are able to complete the representative schools as scheduled by July 17, 2009, it is expected that an award would be received from arbitrator Dorsey sometime in mid-August prior to the commencement of the 2009-10 school year.

2008-09 Class Size and Composition Grievance

Arbitrator Appointed: The parties have agreed that arbitrator Dorsey will also be seized of the 2008-09 class size grievance. Fourteen days of arbitration have been scheduled in September and October of 2009.

Scope of the Grievance: The BCTF filed its grievance on June 30, 2008 before the commencement of the 2008-09 school year. The BCTF has refused to file a local grievance or have any local discussions to identify and/or attempt to resolve disputes with their local employers. BCPSEA has repeatedly requested that the union reconsider this position and provide its specific allegations and particulars as soon as possible.

On March 11, 2009 the union provided the employer with two boxes of union documents (consultation sheets) covering 43 districts (SDs 5, 6, 8, 19, 20, 22, 27, 28, 33, 35, 36, 37, 38, 39, 41, 42, 43, 44, 46, 47, 48, 51, 52, 53, 54, 57, 62, 63, 64, 67, 68, 69, 70, 72, 73, 75, 79, 82, 83, 84, 85, 91, and 93). These districts are now in receipt of these documents.

The BCTF takes the position that the documents provided for these districts represent a sample of the breaches across the province. In addition to these samples, the BCTF takes the position that every class listed on the ministry's website that exceeds the numbers set out in the legislation for number of students and number of students with IEPs is covered by this grievance.

BCPSEA is not in agreement. The scope of the grievance is yet to be determined by arbitrator Dorsey. The BCTF has advised BCPSEA that, on a without precedent basis, they will no longer be pursuing the portion of the grievance alleging that:

- a. There has been a systemic and consistent approach by BCPSEA to encourage their member school boards to breach the provisions of the *School Act* and the Class Size Regulations concerning class size and composition
- b. BCPSEA has failed to ensure that school boards comply with the provisions of the *School Act* and Class Size Regulations concerning class size and composition.

Questions

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