

# Responsibilities

## ❖ Overview

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The British Columbia Public School Employers' Association (BCPSEA) is the employers' association and accredited bargaining agent for all public boards of education in BC as established by the [Public Education Labour Relations Act](#) (PELRA).

## ❖ Responsibilities

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BCPSEA is responsible for negotiating provincially with the British Columbia Teachers' Federation (BCTF), which is the certified bargaining agent for the province's public school teachers, and for coordinating local bargaining between public boards of education and their local teachers' associations on local matters.

In our role as the employers' association and accredited bargaining agent for all public school districts in the province, BCPSEA's mandate includes:

- Acting as the employer representative of record for all Labour Relations Board (LRB) matters.
- Negotiating or directing the negotiation of terms and conditions of employment for positions added to the teacher bargaining unit.
- Negotiating or approving in advance:
  - Any compensatory change in allowances for department heads, head teachers, mileage, housing, isolation, etc.
  - Any letter of understanding/memorandum of agreement relating to any provincial matter. These include agreements arising directly from the terms of the collective agreement, including all the terms of Previous Local Agreements (PLAs) and subsequent amendments.
- Negotiating or directing the negotiation of terms and conditions of employment that apply in amalgamated districts.
- Consulting in advance on the qualifications, duties, terms, and conditions of work for an anticipated new position that may be included in the bargaining unit.
- Consulting on each "provincial matters" grievance before it proceeds to the final grievance step before arbitration.

These responsibilities are described in more detail below.

### **School Districts' Representative**

As BCPSEA is the bargaining agent for all public school districts, the LRB will notify BCPSEA when any matter about a school district is raised at the LRB.

If the matter affects only one district, BCPSEA will consult with the district before determining the appropriate response to the LRB. When the issue affects several districts, BCPSEA will seek the input of affected districts where appropriate before responding to the LRB.

### **School District Application for LRB Order or Service**

From time to time, districts may seek an order from the LRB to stop, prevent, or curtail actions of the union; e.g., illegal job action or illegal picketing. The LRB may also be asked to appoint a mediator or provide a declaratory opinion.

Since BCPSEA represents all school districts for all matters covered by the *BC Labour Relations Code*, BCPSEA must make any application or provide a district with written authorization to make an application on BCPSEA's behalf.

### **Request for Voluntary Recognition**

A local teachers' association may inform a district that some of its employees not currently represented by the local association and the BCTF have become members and want to be represented. The local association may ask the district to voluntarily accept this request for recognition and representation. According to BCPSEA policy, no district may agree to the voluntary recognition of an employee or group of employees.

### **LRB Process for New Inclusions**

If the BCTF seeks to represent any employees it does not currently represent, the normal LRB procedure for obtaining representational rights must be followed. The normal procedure involves submitting an application to the LRB.

If the application is accepted, the LRB will notify BCPSEA, the district, and any other union certified to that district. The LRB will require the district to post a notice of the application on district notice boards. The LRB will also schedule a hearing date at which any objection to the inclusion may be presented.

If a school district has a labour relations reason to object to an inclusion, a representative of the employer will be required to attend the hearing and present its argument. BCPSEA, in consultation with the district, will determine whether the reason for objection is valid and how to proceed.

If it is determined that there is a valid reason for objection, BCPSEA will arrange and authorize representation at the hearing. If BCPSEA intends to raise any objection to an application for inclusion, the BCTF will be notified in advance.

### **Terms and Conditions for Added Positions**

When employees are added to the bargaining unit, it is not automatic that all provisions of the collective agreement will apply as written. Rather, the pre-inclusion terms and conditions remain in place until the parties have negotiated and/or arbitrated appropriate conditions as outlined in Article A.1.4 of the collective agreement.

If both parties agree that the current agreement provides appropriate terms and conditions of employment, these terms and conditions are implemented and the previous terms and conditions of employment no longer apply.

When a newly included employee has a position that is significantly different from the positions for which the agreement was negotiated, the parties may disagree that one or more articles should apply to the newly included employee. Alternatively, the parties may agree that some articles should apply if they are modified through negotiations. In these cases, the parties are obliged to attempt to negotiate a resolution to the differences.

### **Resolution of Differences**

If employees are added to the bargaining unit during the term of the collective agreement, strike and lockout are not available options to resolve disagreements. Instead, under the *Labour Relations Code*, any unresolved issues arising from a new inclusion must be resolved through negotiations and/or binding arbitration. If negotiations break down, an arbitrator will be appointed, submissions will be made by the two parties, and a binding decision rendered.

Generally, the differences arbitrated refer to wage or salary levels and specific conditions of employment, such as the length of the work day. In the public education sector, differences will usually involve non-teaching staff inclusion — for example, associated professionals — on such matters as the salary grid and increment patterns, the hours of work, and the appropriateness of preparation time.

### **BCPSEA Procedures**

As the bargaining agents, BCPSEA and the BCTF have the responsibility and authority to address new inclusions.

When an employee is included in the bargaining unit, BCPSEA will require a copy of the job description, or if one is not available, a written description of the position's duties. BCPSEA also requires a copy of the employment contract. If a written contract is not in place or if it does not identify all the terms and conditions of employment, BCPSEA requires a written description of the terms and conditions.

### **Anticipated New Positions**

To ensure consistency, a district intending to create a new position that might be included in the teacher bargaining unit must consult with its BCPSEA labour relations liaison before creating the position or notifying the local teachers' association of its creation.

## **Mid-Contract Modifications**

During the term of the collective agreement, the parties may want to negotiate a variation to the existing terms and conditions.

As outlined below, the provincial bargaining agents (BCPSEA and the BCTF) must be involved and cannot delegate their bargaining authority. The approval of amendments to provincial matters provisions resides with the provincial bargaining authorities.

### **Mid-Contract Modification Process**

#### **A. Modification Includes**

1. Any amendment to the collective agreement that alters an existing term and condition through addition, omission, or correction.
2. Any agreement to waive the provisions of the agreement for the term of the agreement or another specified period.
3. Any variation to an established existing term and condition of employment that provides an exception to the rule.
4. Letters of understanding (LoU) or memoranda of agreement (MoA) dealing with procedural or interpretive issues relating to the collective agreement (see Format for Documentation of Mid-Contract Modifications on the following page).

A grievance settlement may constitute a modification if it includes any of the above.

#### **B. Modifications to Local Matters**

*(See Appendix 2 in Letter of Understanding No. 1 Re: Designation of Local and Provincial Matters)*

1. Districts must verify with BCPSEA that the matter is a local matter under LoU No. 1.
2. Districts should obtain BCPSEA advice prior to beginning the negotiation of any amendment to a local matter.
3. BCPSEA must approve such amendments following approval by the local and the district.

#### **C. Modification to Provincial Matters**

*(See Appendix 1 in Letter of Understanding No. 1 Re: Designation of Local and Provincial Matters)*

1. Central provision(s) negotiated by the provincial parties at the provincial table:
  - a. Modification is by the provincial parties.
  - b. Amendments shall be framed in a LoU/MoA signed by BCPSEA and the BCTF.
2. Modification to provincial matters previously negotiated at the district level and continued as per Article A.1.3 of the collective agreement:

- a. Requests to open specific provisions are to be made to BCPSEA in writing, outlining the rationale for the proposed change(s).
- b. Authority for a district to negotiate the proposed change(s) will be given provided that:
  - There is an operational imperative for making a change
  - The request presents no additional cost to the board of education, unless it meets an operational need for the board that will offset the cost.
  - The request does not undermine the position of other school districts generally or a provincial bargaining objective.
  - The local has or obtains BCTF approval to proceed.
  - The district's agreement is conditional on BCPSEA approval of the agreement.
3. BCPSEA must be kept fully informed of the terms of any proposed modification prior to reaching agreement with the local.
4. The legal form of any modification on provincial matters shall be framed in a LoU/MoA, signed by the local teachers' association as applicable, the school district, BCPSEA, and the BCTF.

#### **Format for Documentation of Mid-Contract Modifications**

There are two formats for documenting mid-contract modifications:

1. A letter of understanding (LoU) is a document signed by the parties that clarifies or supplements the collective agreement. It ceases to be effective upon expiry of the collective agreement unless the parties specifically agree to continue its application.
2. A memorandum of agreement (MoA) is a document signed by the parties that clarifies or supplements the collective agreement. It continues to be effective through subsequent rounds of bargaining and collective agreements unless the parties specifically agree to discontinue its application.

Either document should include an expiry date or sunset clause that would establish a finite period that the LoU or MoA is effective, if appropriate.

When a local teachers' association and a school district agree to a modification of a provincial matter that is included in the addendum to the collective agreement, those two parties should do the following:

1. Set up the resulting LoU/MoA for the signature of representatives of the local, the school district, BCPSEA, and the BCTF.
2. Ensure the LoU/MoA includes an expiry date if appropriate.
3. Sign one copy of the LoU/MoA and send it to BCPSEA to the attention of the district's BCPSEA labour relations liaison. The appropriate signature will be added, and the LoU/MoA will be sent to the BCTF for signature and distribution to each of the signing parties.

No mid-contract modification is valid or has effect unless authorized and signed by the two provincial parties.

**A reminder: no signatures should appear on the document until BCPSEA has seen and approved the final agreement.**

**Sample Format**

Letter of Understanding/Memorandum of Agreement	
Between	
British Columbia Public School Employers' Association (BCPSEA)	
And	
The Board of Education of School District No. xx (xxxxxxx)	
And	
British Columbia Teachers' Federation (BCTF)	
And	
XXXXX Teachers' Association	
<div style="border: 1px solid black; width: 80%; margin: 0 auto; padding: 5px;">Mid-Contract Modification to: Article X.X: xxxxxxxxxxxxxxxxxxxxxxxxx</div>	
Text	
Date: _____	
_____ For British Columbia Public School Employers' Association	_____ For British Columbia Teachers' Federation
_____ For School District No. xx (xxxxxxx)	_____ For XXXXX Teachers' Association

**Grievance Procedures**

In addition to the provisions of the collective agreement, the provisions of the Previous Local Agreements and any amendments to them resulting from local bargaining are part of the new collective agreement. As a result, each of the Previous Local Agreements is part of the whole for the purposes of collective agreement administration. As the accredited bargaining agent, BCPSEA is responsible for all matters designated as provincial (see Appendix 1 in Letter of Understanding No. 1 Re: Designation of Local and Provincial Matters). Article A.6: Grievance Procedure sets out the processes and obligations of grievance administration.

**Arbitration Procedures**

In September 2015, the Employment Practices Liability Program (EPLP) was launched as a shared services initiative to assist school districts in managing the legal costs associated with arbitrations arising from the collective agreement. To ensure coverage by the program, districts are required to report grievances when they reach the grievance step prior to arbitration (i.e., step three grievance for teachers). There is an online reporting mechanism

accessible here: <http://www.incident-request.org/> (Note: Internet Explorer is the required browser to access the report site.) If a covered incident (such as a collective agreement grievance) is referred to arbitration, BCPSEA will consult with the district and engage legal counsel under the EPLP. Questions about the program can be directed to your BCPSEA labour relations liaison or BCPSEA General Counsel.

### **Amalgamated School Districts**

In December 1996, the government passed legislation reducing the number of school districts in the province from 75 to 59 (the Conseil Scolaire Francophone was established by regulation in 1995, bringing the number of public school districts to 60). This reduction was achieved by eliminating 16 school districts and amalgamating them with 15 existing districts. Between 1996 and 2002, several of these amalgamated districts agreed to adopt one collective agreement covering the new amalgamated school district. However, several districts were unable to agree on the terms of a single collective agreement for the employees in the new district. Consequently, in those districts, employees were covered by two and, in one case, three collective agreements.

In January 2002, the government passed Bill 27, the *Education Services Collective Agreement Act*. Among other provisions, Section 4 of this Act dealt with the issue of different terms and conditions of employment covering teachers working in one school district by identifying the collective agreement that would apply and indicating that the other agreement(s) were void and would cease to have any effect.

BCPSEA and the BCTF were successful in signing a letter of understanding on how to transition from a situation where employees of the same district were covered by differing terms and conditions of employment, to one where all employees were covered by a single collective agreement. Through arbitration and the signing of a memorandum of settlement, it is now understood that while the union is free to organize internally as it sees fit, a school district employer must only recognize and conduct its business with one local teachers' union/association. In addition, the terms and conditions of employment of the collective agreement that is recognized as the applicable agreement apply to all employees of the district.

### **Local Bargaining**

#### **BCPSEA Delegation of Authority Policy**

1. BCPSEA delegates to each board of education or to a group of boards of education the authority to enter into a local matters agreement with the local teachers' union for those items which have been designated as local items by BCPSEA and BCTF pursuant to Section 8 of PELRA. This agreement is subject to ratification by BCPSEA.
2. Pursuant to the BCPSEA Bylaws, these policies set out the following responsibilities for each board of education or group of boards of education:

- 2.1 To inform BCPSEA of its bargaining proposals;
  - 2.2 To inform BCPSEA of the bargaining proposals of the local teachers' association/union;
  - 2.3 To inform BCPSEA of developments in the negotiations process;
  - 2.4 To adhere to direction from the BCPSEA Board of Directors with respect to the conduct of local bargaining;
  - 2.5 To keep current on provincial developments communicated to the boards of education by BCPSEA.
3. Boards of education should note the provisions of Section 8 (4) of PELRA:
- The provincial union and the employers' association must not delegate authority to declare or authorize a strike or lockout, and no teachers' union or board of education may declare or authorize a strike or lockout.
- Note in this section from PELRA that the phrase "teachers' union" refers to the local teachers' association; provincial union refers to the BCTF.

### **Local Bargaining Procedures**

1. Boards should be aware of the following procedures to be used in the local bargaining process.
  - 1.1 Upon receiving the proposals from the local teachers' union, the board of education should determine which items, if any, are in Appendix 1 and which items are in Appendix 2 of the approved Provincial–Local Split.

If the item is in Appendix 1 (Provincial items), the board of education should inform the local teachers' association/union that it is a provincial matter for negotiation at the provincial table. The board of education should also notify the BCPSEA of this item.

If the item is in Appendix 2 (Local items), it is properly dealt with at the local table.

If it is a new item (neither in Appendix 1 or Appendix 2), the board of education should immediately contact the BCPSEA teacher bargaining team before discussing the matter with the local teachers' association/union. BCPSEA will advise the board of education of the proper action with respect to any new items.
  - 1.2 Boards of education should advise their local union that they will only bargain the items in the initial package tabled by both parties. There are three possible exceptions to this:
    - First, new items may be tabled if they arise out of events occurring subsequent to the start of bargaining (e.g., a proposed change in legislation or regulation).
    - Second, BCPSEA and BCTF may jointly ask the local level to address certain matters that are provincial (List #2 items).

In this case, the local level will try to reach an agreement that they would recommend for acceptance by the provincial table. If they cannot reach an acceptable solution, the matter will be resolved at the provincial table.

- Third, if the parties agree that it is in order for a new item to be discussed, it may come to the table. Please refer to [BCPSEA Policy 95-05](#) for the full text of the policy.

If you are in doubt about whether or not an item is provincial or local, please contact your BCPSEA labour relations liaison.