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British Columbia
Public School Employers'
Association

Wright Report Released
Recommendations for Teacher Collective Bargaining Structure

As reported extensively in previous issues of *NewsLink*, Minister of Skills Development and Labour Graham Bruce announced on September 8, 2003, that he was proceeding with a review of the teacher collective bargaining structure, as per Section 5 of the *Education Services Collective Agreement Act*.

IN THIS ISSUE

As the first step, the Minister appointed Don Wright, a respected senior civil servant, to assist in developing the terms of reference for this review. Specifically, he was asked to:

- Review the history of collective bargaining in BC
- Consult with the key stakeholders and seek their recommendations concerning the development of terms of reference
- Establish draft terms of reference for a commission of inquiry.

On December 19, 2003, the Minister appointed Wright as a one-person commission to review and recommend improvements to the structures, practices and procedures for collective bargaining.

Wright consulted with the key stakeholders in the sector. The organizations consulted covered a broad spectrum of stakeholders including organized labour, trustees, parents, government, and employers.

On December 16, 2004, Wright released his final report, entitled *Voice, Accountability and Dialogue: Recommendations for an Improved Collective Bargaining System for Teacher Contracts in BC*. Following is a summary of the report and Wright's recommendations.

A copy of the full report can be accessed on the BCPSEA website at www.bcpsea.bc.ca (http://www.bcpsea.bc.ca/public/emplgroups/teacher/teacherintro.html)

Economic and Political Context

Wright prefaces his recommendations with a detailed analysis of the political and economic environment within which teacher collective bargaining occurs. At page 4, he distinguishes between the economic marketplace where private sector collective bargaining occurs and the

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political marketplace where public sector bargaining occurs. In discussing the political context, he notes that labour relations in the public education system are different and distinct from labour relations in the private sector and in other public sectors. These distinctions include the monopoly or near monopoly arrangement of education services, the importance society attaches to the public education system, and the custodial function of the education system.

> *"The reality is that there will be intense political pressure on the provincial government to prevent, or to intervene in, any dispute that carries on for any length of time… Rather than wish away the political context and reality, we would be better advised to ask ourselves some hard-headed questions about their implications for a workable collective bargaining regime."* (p. 6-7)

With respect to the economic context, the underlying message in Wright's analysis and review is that collective bargaining in the public sector is, and must, be guided by the state of the provincial economy and financial resources.

> *"It is natural for any group of public sector employees to want to see the activities they deliver well funded. Their motivation for this is an understandable mixture of commitment and self interest…Accordingly, a level of disappointment among teachers about funding levels over the last dozen years or so is understandable…It is necessary, however, to put this disappointment in context. The unhappy fact is that British Columbia has had, in economic terms, a disappointing quarter of a century. We have gone from a "rich" or a "have" province at the start of the 1980's to a "poor" or "have not" province by the start of the twenty first century."* (p. 9)

Necessary Conditions for Mature Collective Bargaining

Throughout his report, Wright refers to "mature collective bargaining." He defines this as:

> *"…a state where parties go to the bargaining table with an expectation that a settlement will be reached, are prepared to make the compromises that will be required to achieve that settlement and generally prefer making the necessary compromises to avoid the consequences of an impasse…"* (p. 13)

He identifies five criteria that he believes are necessary to reach a state of mature collective bargaining between teachers and their employers in British Columbia:

1. Government recognizes that teachers must have an effective voice in determining the terms and conditions under which they teach
2. Teachers must recognize government's interests in funding the K-12 system
3. Both parties must bring genuine desire to avoid legislative intervention
4. Both bargaining agents must be governed effectively so that they can come to the table with the ability to make a deal
5. The public must be able to hold the appropriate agency accountable for the adequacy of funding, the effectiveness of how that funding is utilized and the outcome of the collective bargaining process.

Where Will Issues be Bargained?

From the outset, Wright has stressed the importance of alignment of accountability for funding the public education system and the collective bargaining structure. He also recognizes that the direct employer-employee relationship is between teachers and local school boards and acknowledges the importance of this relationship. Wright recommends maintaining the current two-tiered bargaining structure. However, he also recommends amending the provincial-local split of issues. Under his recommendations, major cost drivers would continue to be negotiated provincially as would matters that are generally common to most collective agreements regardless of industry. Issues which are primarily what he terms "relational" would be negotiated at the local level. In addition to those issues currently negotiated locally, the following matters would be added to the local table:

- Unpaid leaves of absence
- Leaves of absence paid or subsidized by the employer
- Discipline and dismissal for misconduct

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cover story

Wright's Proposed Dispute Resolution Mechanism: Is it Déjà vu All Over Again?

A particular focus of conflict and debate is Wright's proposed dispute resolution mechanism.

Wright proposes a multi-phase impasse resolution process which incorporates several different forms of assistance and intervention, noting that the terms of reference for the Commissioner under this process must carefully balance the interests of teachers, employers and the funder of the public education system, the provincial government.

Some believe that the new system doesn't in fact represent a new method of dispute resolution but rather, represents a return to a system in place in the 1970s and 1980s. In a *Victoria Times-Colonist* article, "Back to the Future," author Geoff Johnson, a retired superintendent of schools, comments that, *"referring bargaining deadlocks to an arbitrator operating within fixed timelines is the way teacher bargaining was conducted in the '70s and early '80s, before full unionization of the province's 42,000 teachers…."*

Is this the case? Does the system of dispute resolution proposed by Commissioner Wright represent a return to the past?

In short, the answer is no.

Forms of compulsory arbitration have existed before in the K-12 public education sector, but not in the form as proposed by Commissioner Wright. In 1919, the provincial government amended the Public Schools Act to enable a school board to enter into an agreement with its teachers, essentially creating a weak form of voluntary arbitration. In the event of a disagreement over salary, the matter was referred to arbitration. There were, however, no provisions for compulsory arbitration, no recognition of the local teachers' association or the BC Teachers' Federation as the exclusive representative of teachers, and no provision compelling the board to pay additional salaries awarded by the arbitration board.

In 1937, legislation was enacted which provided for compulsory arbitration in teacher salary disputes, making arbitration for teachers a right rather than a matter of a school board's discretion. Many school boards opposed the legislation, either refusing to send a salary dispute to arbitration or refusing to recognize the outcome of the arbitration. In the 1939-1940 school year, Langley teachers and the Langley school board were unable to reach an agreement on salaries. Teachers asked to have the matter submitted to arbitration, but the board refused to cooperate. The board did not make a presentation to the arbitration board and then refused to pay the arbitrated award. The Langley school board even went so far as to fire all the teachers on the arbitration list. In the end, the provincial government stepped in, fired the school board, and appointed a single trustee administrator. In the end, the teachers were all reinstated and paid the arbitrated award.

In 1958, reacting to legislation which gave trustees the right to fix salaries, the BCTF forced 58 districts into salary arbitration. This was sufficient to persuade the provincial government to amend the legislation to provide teachers the right to negotiate salaries. Later that year, the Public Schools Act was amended to reflect this right.

The dispute resolution process under the Public Schools Act in 1958 remained largely unchanged through the '60s, '70s and early '80s. The parties were able to negotiate salary and where they were unable to reach an agreement, the parties would proceed to interest arbitration. Only salaries and bonuses could proceed to arbitration. In 1987, teachers were granted the right to organize under the labour relations code of the day and bargain collectively with their employer. With that right came the right to strike under the code.

The salary and bonus arbitration process of old and Wright's recommended process are quite different in both scope and operation. Under Wright's proposed dispute resolution mechanism, all issues subject to collective bargaining would be arbitrable: salaries, benefits,

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insight

leaves, supervision, preparation time, evaluation, etc.

This arbitration process is very different in both nature and complexity than the processes that existed historically in the sector. The proposed arbitration process includes terms of reference for the arbitration process, unlike the system in place pre-1987, where arbitrators had no specific criteria or guidelines.

Another key difference is the form of arbitration used. Prior to 1987, if the parties were unable to reach an agreement they would proceed to interest arbitration on the narrow issue of salaries as associated bonuses. In general, to arrive at the terms, this form of arbitration attempts to replicate what the parties would have negotiated had they bargained collectively, taking into consideration similar settlements or arbitration awards of this nature. Under Wright's proposed structure, disputes would progress to Final Offer Selection (FOS). While there are a variety of forms of FOS, Wright's proposal has the arbitrator choose either the employer's final offer or the union's – what is sometimes referred to as strict or true FOS.

FOS is a form of interest arbitration. The goal of FOS is to refashion interest arbitration so it is comparable to a strike. Both parties put their final offers on the table and if they can't agree, the arbitrator selects one of the two offers. In Wright's proposal, the arbitrator is not allowed to put together a new package; one of the two packages must be selected.

The purpose is to force both parties to make reasonable demands, by considering the needs and demands of the other party. If one party chooses to make unreasonable demands, that party faces the risk of losing it all. That risk is intended to make the negotiations and the bargaining atmosphere more conducive to reaching a voluntary settlement.

Finally, Wright has included an element of public disclosure (Phase 2). A Commissioner will be required to issue a public report outlining the issues at the table, which issues remain unresolved, positions of the parties and the implications of those positions.

Clearly, the Wright Commission's recommended dispute resolution mechanism represents a departure from past structures and an opportunity for the parties "*to find the compromises necessary to get negotiated agreements.*"

If you have any questions or require further resources/information, please contact Hugh Finlayson, Executive Director/CEO, at 604.730.4515 or hughf@bcpsea.bc.ca

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- Evaluation
- Posting, filling and assignment
- Layoff and recall
- Supervision and duty-free lunch.

To ensure that the split of issues is real; i.e., that *"…the local tables…have the autonomy to negotiate whatever agreement makes sense to the local board and the local teachers' association…"* (p. 20), Wright recommends that local issues negotiated by the local parties not be subject to the approval of either of the provincial bargaining agents.

Who Should be the Bargaining Agent?

Wright recommends the maintenance of both the BC Teachers' Federation and the BC Public School Employers' Association as the bargaining agents for employees and employers, respectively. He observes that the changes to the provincial-local split of bargaining issues and the greater delegation of authority to the local level can be addressed, if necessary, through amendments to the *Public Education Labour Relations Act* (PELRA).

How Will Impasses at the Bargaining Table be Resolved?

Commissioner Wright proposes two dispute resolution alternatives that have as a basis the same multi-phase process. The multi-phase process incorporates several different forms of assistance and intervention. The proposed collective bargaining process would start with collective bargaining for a finite period of time (Phase 1: April 1 to September 30). If the parties are unable to reach an agreement during

that time, they would progress through a series of time-bound interventions (p. 34-35):

- Phase 2 (October 1 to October 31): A Commissioner would be appointed to investigate the status of negotiations. The Commissioner would issue a public report outlining issues at the table, the positions of the parties and the implications of those positions.
- Phase 3 (November 1 to January 31): If the parties remain at impasse, the Commissioner would be appointed as Mediator/Arbitrator and would attempt to mediate an agreement between the parties.
- Phase 4 (February 1 to February 28): If the parties are still unable to reach an agreement, each party would propose a final offer and present it to the Mediator/Arbitrator. The Mediator/Arbitrator will select one of the final offers to be the "Default Contract."
- Phase 5 (March 1 to March 15): The parties have two additional weeks to continue negotiations to negotiate an alternative agreement. If the parties are able to reach an agreement in that period, the alternative agreement becomes the contract. If not, the "default contract" developed in Phase 4 becomes the contract (dispute resolution option 1.)

(See chart on page 23)

"…these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides."

Wright notes that the terms of reference for the Commissioner under this process must carefully balance the interests of teachers, employers and the provincial government as the funder of the public education system.

With respect to Phases 4 and 5 at page 37 of his report, Wright makes the following observations which form the basis of the second of the two options:

"If I am wrong in my judgement about the feasibility of a right to strike, the arbitration at the end would not be necessary. I would still, however, recommend maintaining the basic process proposed here. The only modification is that the final offer selection at the end of Phase 4 would be a "recommended contract." After that recommendation the parties would remain free to pursue their options unencumbered by arbitration." (p. 6-7)

What is to be Bargained? The Scope of Bargaining

Initially Wright did not intend to address the issue of scope and thought it would be better dealt with at a later time. At page 30 of *Towards a Better Teacher Bargaining Model*, November 2003, when recommending terms of reference for the inquiry Wright observed:

"In recommending that the commission stay away from scope issues, there may appear to be a bit of a contradiction with the direction to consider whether there should be different "tiers" of bargaining. Such consideration will involve what should be bargained by who – which might lead us into the scope issue. What I have in mind in this context, however, is more of a focus on clarifying where responsibility is best located than on the bigger "what is to be bargained" question."

Through his consultations, Wright made the determination that some changes were required to improve labour relations in the sector and *"to find the fair middle ground sooner, rather than later"* (p. 42). He recommends that the government establish a process for policy discussions, parallel to the collective bargaining table. These collaborative and interest-based policy discussions would serve to seek agreement on cost effective approaches to improving working and learning conditions. The sessions would be facilitated by an individual acceptable to both teachers and school boards. The facilitator would be required to report out on the efficacy of the discussions for dealing with these issues, participation of the parties, and recommend an approach for dealing with these issues in the future.

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Transition

Wright highlights the need for one master provincial agreement for matters deemed provincial. He observes that the current structure – one master agreement with sixty sub-agreements remaining from the 1994 change to provincial bargaining – makes progress at the bargaining table difficult. Negotiations are about tradeoffs; however, the internal politics of making these tradeoffs becomes more difficult for the bargaining agents to manage, especially in terms of the internal dynamics, including internal politics.

> *"…support from BCPSEA should be a core part of the bargaining infrastructure needed"*

Wright is of the view that transitioning the sector to one provincial agreement will put the parties in a position where mature collective bargaining is more probable. Wright recommends that an Industrial Inquiry Commissioner be appointed to supervise the creation of a first "provincial agreement." The Commissioner would first attempt to mediate a provincial agreement between the parties. If mediation is not successful, then the Commissioner would arbitrate the agreement. To make the process as fair as possible, Wright recommends that the process have a notional net cost of $30 million – the amount dedicated to the implementation of the salary structure – and notes that no teacher should suffer a reduction in salary as a result of this process.

With respect to the transition of local collective bargaining, Wright proposes that local and provincial agreements expire in different years. This would allow local school boards and local teachers' associations to have greater access to the provincial collective bargaining expertise available via their respective bargaining agents. With respect to employers, he notes that *"…support from BCPSEA should be a core part of the bargaining infrastructure needed"* (p. 53). Wright also recommends that local school boards consider cooperating regionally for the negotiation of local matters. At present two voluntary multi-employer associations exist in the sector for bargaining purposes.

The Need for Dialogue

Wright reiterates that the parties are a long way from being able to engage in mature collective bargaining. He believes he is proposing a process that will motivate and encourage the parties to develop this capacity and to make the necessary changes/compromises to be able to negotiate good collective agreements. However, Wright cautions that, *"…these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides"* (p. 55).

BCTF Reaction to the Report

The BC Teachers' Federation reaction to the report was swift and negative. In a BCTF news release dated December 16, 2004, the following comments were attributed to BCTF President Jinny Sims:

> *"…implementing the recommendations in the Wright report would enshrine government intervention and further jeopardize any possibility of fruitful negotiations."*

In a *School Staff Alert* (2004-05, #14) issued later the same day, the BCTF stated:

> *"There are no solutions in the document. It takes a system which all parties agreed was dysfunctional and adds further dysfunction. If these recommendations are legislated by the government, they will lead to further chaos in the public education system."*

Next Steps

BCPSEA is reviewing Wright's report further to identify whether the structural recommendations are consistent with the criteria or themes developed as the basis for the BCPSEA submission to the Commission.

BCPSEA will also reflect on the capacity, capability and willingness of the parties, as evidenced by their reaction to the report, and attempt to answer the question: If the recommendations are adopted, will they lead to improved collective bargaining practices, procedures and outcomes for teachers and public school employers?

AGEISM IN THE WORKPLACE

Where does the law stand? *By Graeme McFarlane and David Yule*

Reprinted with permission from the BC Human Resources Management Association's *PeopleTalk* magazine, Winter 2004 issue

Ageism – an attitudinal barrier that often causes age discrimination – affects the law because attitudes about age often form the basis for policy and decisions.

Governments have tended to use age as an easy and efficient criterion, as a substitute for "vulnerability," "ability," and as a tool to redistribute a scarce resource.

Ageism occurs when planning and design choices do not reflect the circumstances of all age groups to the greatest extent possible.

Canadian workplaces tend (though this is changing with demographics) to perceive older people as less enthusiastic, less productive, less committed, more difficult to train, unreceptive, and undynamic compared to younger workers.

However, the Ontario Human Rights Commission has recently published its *Policy on Discrimination Against Older Persons Because of Age*. This document describes aging as a "highly individual experience" and provides examples whereby older workers are highly productive, offer considerable on-the-job experience, are creative, flexible, can learn well and be trained, and do not fear change.

HIRING PRACTICES CAN HIDE AGEIST ATTITUDES

Older people do face significant barriers in finding employment; these can result from explicit discrimination, such as not hiring a person simply because of his/her age, but also from more subtle or systemic discrimination, based on ageist attitudes. For example, an applicant might be told that he or she lacks "career potential." The Ontario Human Rights Commission reports in its above-mentioned policy that employers rarely state age as the reason for not giving an applicant the job; it lists several examples of neutral statements which might have a disproportionate impact on older persons, such as refusing an applicant with "too much experience," who is "overqualified," who has "too diversified" a background or "too specialized" a set of skills and would have trouble learning new skills.

These statements have a disproportionate effect on older people. Since human rights law is based on the principle that employment decisions should be based on the applicant's ability to do the job, cloaking ageist attitudes with these neutral statements can give rise to human rights claims.

When recruiting employees in BC, an employer can ask an applicant only if he or she has reached BC's legal working age, but nothing that would reveal any more about a person's age. However, the BC Ministry of the Attorney General explains that once an employer has decided to offer the position to the applicant, they can ask about the person's age, but only for enrolment in pension and benefits plans. Statements in advertisements should not directly or indirectly relate to age, and application forms should ask no questions other than: "Are you 18 years or older and less than 65 years of age?"

This does not mean that an employer can never disqualify someone because of age. In law, an employer can justify a practice that has a discriminatory effect if it is shown to be a bona fide requirement in the workplace. For example, bus drivers must be able to see. However, even in this instance, the Supreme Court of Canada has held that the employer still has a duty to accommodate the adversely affected employee to the point of undue hardship. The trend in the courts, however, is that it is very hard to justify turning someone away solely because of their age, especially if the concern for the employee's capacity is largely based on cost.

SENIORITY RIGHTS NOT "RIGHTS OF SENIORS"

Although seniority can serve as an important safeguard against overt ageism, the seniority system itself is a form of constructive discrimination. Often, layoffs are made for financial reasons, according to seniority; the more junior employees are often disproportionately female or members of a racial minority. However, the trend is to respect seniority rights, and seniority is likely accepted as a reasonable factor in layoffs or promotion cases. The Supreme Court of Canada has validated the

importance of seniority rights and their ongoing protection.

Protecting seniority rights seems a departure from ageist attitudes. It respects the experience of more senior employees and places great value on retaining older employees within the workforce. However, seniority rights should not be read as "rights of seniors." Seniority rights last only as long as the employee remains in the workplace; while protecting an older worker's employment, they might be balanced with early or mandatory retirement policies.

Seniority rights, like any other workplace right, must also be balanced with other protected rights. While important to the ongoing protection of seniority rights, it is clear that non-discrimination and the duty to accommodate require a balancing of competing interests. Many seniority rights will not be discriminatory, but in some circumstances, seniority must be modified. For example, an accommodation plan might place an employee in a position out of seniority order. The pursuit of a more equal workplace should lead unions and employers to discuss ways to reduce the detrimental impact of seniority systems on all groups, such as job-sharing alternatives, or early retirement incentives (see Katherine Swinton, *Accommodating Equality in the Unionized Workplace*, (1995) 22 Osgoode Hall L.J. 703-747).

Mandatory retirement can reinforce negative stereotypes

No policy lies more rooted in ageism than mandatory retirement, which chooses a particular age limit that employees are not welcome to surpass. Often cited in support of mandatory retirement are classic ageist assumptions about older workers that their productivity declines with age, that they cannot learn new skills, or that it is less cost effective to retain them.

Companies often offer early retirement packages as an incentive to promote voluntary exit from the workforce. These might have many benefits to all workers, young and old. They can be designed appropriately without raising human rights concerns. However, as early retirement schemes, by definition, target older workers, they must be sensitively created. The Supreme Court of Canada has upheld mandatory retirement schemes as valid, but a current trend within arbitrations insists that employers justify these policies (see "Mandatory retirement: Can you defend your policy?" in this issue.)

However, early mandatory retirement has a disproportionate impact on diverse groups of older adults. Women might have more interruptions regarding work outside the home because of child-rearing responsibilities. Recent immigrants might also have a relatively short amount of time to contribute to a pension plan, and it might take them longer to build a sufficient pension fund, since many of them face lower wages than their Canadian counterparts. Mandatory retirement can reinforce negative stereotypes of older workers and eliminate a potential role for mentorship in an organization. Forcing older adults out of the workforce can create their greater need for financial support.

Make employment decisions based on individual merit

An overall goal of human rights law, as it relates to the workplace, is to have the individual judged on merit, without unfairly bearing the social baggage of assumptions about membership in a particular group whenever possible. This approach has given rise to a duty on the person responsible for a discriminatory decision to take "reasonable steps" to accommodate the protected group, if this can be done without undue interference in the operation of the business.

The corollary of this duty to accommodate is that a policy that discriminates on the basis of age might be justified if it is a reasonable or bona fide requirement (see previous reference under hiring section). However, the Supreme Court of Canada has made it clear that it is no longer acceptable to structure systems in a way that assumes that everyone is young, and then try to accommodate those who do not fit this assumption. Rather, age diversity, as it exists in society, should be reflected in the design stages, so that physical, attitudinal, and systemic barriers do not result.

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spotlight

MANDATORY RETIREMENT

Can you defend your policy? *By Muriel Henry*

Reprinted with permission from the BC Human Resources Management Association's *PeopleTalk* magazine, Winter 2004 issue

Mandatory retirement remains legal in B.C., although changing demographics and views on aging have created today's trend toward its abolition. Within this climate, private and public sector employers in this province must be prepared to defend a policy of mandatory retirement.

Under provincial human rights legislation, people over the age of 65 in BC and in Ontario enjoy no protection against age discrimination.

Hence, employers in those provinces can provide for mandatory retirement at age 65 with no fear that their policy is discriminatory. However, the Ontario government has recently announced that it will introduce legislation to end mandatory retirement.

With this move, Ontario joins Prince Edward Island, Quebec, Manitoba, Alberta, and the three territories, as well as the United States, Australia, and New Zealand, all of which prohibit mandatory retirement with limited exceptions. Why this stance? The Ontario government and those who favour ending mandatory retirement, including 66-year-old Prime Minister Paul Martin, cite factors such as longer life expectancy and an aging population. Some consider mandatory retirement an outdated concept in a country with a shrinking workforce, shortages of skilled workers in certain occupations, and large pension liabilities looming. Forced retirement can also prove a financial hardship to some people, particularly recent immigrants and women who have taken time off from employment.

The BC government has not indicated that it is considering a similar change. However, two recent arbitration awards suggest that employers in BC might not be entitled to require employees to retire at age 65 simply because mandatory retirement does not contravene the *Human Rights Code*. Different considerations apply, depending on whether the employer is in the public or private sector.

WHERE DOES MANDATORY RETIREMENT STAND IN THE PUBLIC SECTOR?

In the case *Greater Vancouver Regional District* (2000), 90 L.A.C. (4th) 93 (Germaine), the arbitrator held that there is an onus on a government employer, whose mandatory retirement policy has been found to violate the *Charter's* equality rights provision, to justify its policy as a reasonable limit under section one of the *Charter*. The GVRD policy of mandatory retirement was struck down on the basis that the employer offered no evidence in support of its policy.

The Supreme Court of Canada had previously held, in a trilogy of cases, that the restricted definitions of age in the BC and Ontario human rights statutes contravened the *Charter* guarantee of equality. The legislation was found, however, to be a reasonable limit under section one. Since that time, most observers considered the constitutionality of mandatory retirement a settled issue. The award in the GVRD case indicates that the mandatory retirement policies of public sector employers will not be presumed constitutional but will require justification on a case-by-case basis.

In late 2001, the BC Court of Appeal upheld the arbitration award in GVRD (*GVRD Employees' Union v. GVRD*, 2001 BCCA 435). The majority of the Court agreed that the employer needed to demonstrate that its mandatory retirement policy was a reasonable limit on the right of its employees to be free from unequal treatment on the basis of age. The majority was not persuaded that the previous Supreme Court decisions meant that any government mandatory retirement policy would be justified under section 1 of the *Charter*. The Court also "respectfully suggested" that it was time to revisit the issue of mandatory retirement. The Supreme

Court of Canada did not have the opportunity to do so as the GVRD did not seek leave to appeal.

Mandatory retirement has been held constitutionally permissible for employees of the BC provincial government and other entities to which the *Public Service Act* applies. In the case *Government of British Columbia* (Wybert Grievance), [2002] BCCAAA No. 294 (Glass), the mandatory retirement provision in the Act was found to be a reasonable limit on the *Charter* rights of the grievor, a Liquor Distribution Branch clerk forced to retire at age 65. To justify its policy, the employer led evidence of a need for succession planning, and a commitment to an employment equity program.

The "how" counts with mandatory retirement in the private sector

Mandatory retirement policies in the private sector continue to be lawful under the *Human Rights Code*, but a recent arbitration award serves as a reminder that, as with other policies, the manner of implementation, communication, and application of a mandatory retirement policy might render it invalid.

In the case *Pacific Newspaper Group*, [2003] BCCAAA No. 225 (Germaine), the arbitrator struck down the employer's mandatory retirement policy on the grounds that it was discriminatory and arbitrary. The union had grieved the forced retirement of four employees under the policy. Each of the four employees had turned 65 prior to receiving their notice of retirement. Labour relations between the employer and union were complicated: seven previously separate bargaining units had each retained special terms under the current collective agreement; not all of these groups were subject to mandatory retirement under the collective agreement, and some employees had historical lifetime guarantees against layoffs. The employer's evidence at the hearing was that an employee would normally work until the end of the month in which he or she turned 65, but could be allowed to work for up to a year beyond his or her sixty-fifth birthday.

The union argued that the policy was arbitrary, discriminatory, and an unreasonable exercise of management rights. The employer argued that mandatory retirement was legal both in regards to the law and under the collective agreement, and that the only reason the grievors were allowed to work past the age of 65 was human resources' mistaken belief that they had lifetime job guarantees. The employer also led evidence of employees' retirement over the previous 16 years, which showed that, excluding those who took early retirement or who had lifetime guarantees, only 14 of 198 employees worked more than a month beyond their sixty-fifth birthdays.

The arbitrator found that the employer's policy was not valid under the test for a policy of mandatory retirement. Such a policy must meet four conditions to be valid: it must not contravene human rights legislation; it must comply with any restrictions in the collective agreement; management must not exercise rights under the policy in an arbitrary, discriminatory, or unreasonable manner; and employees must have adequate notice of the policy.

In this case, the policy met the first two conditions, but failed to meet the second two. The employer's practice of allowing employees to retire at an undefined point between their sixty-fifth and sixty-sixth birthdays resulted in an uneven pattern of retirement. This pattern demonstrated unequal treatment of employees under the policy, which was held to be both discriminatory and arbitrary. Furthermore, the employer could not provide evidence that the policy was ever written down or communicated to the employees and union; therefore, neither understood the employer's policy. This inadequate notice also rendered the policy arbitrary. The arbitrator stated that the employer must communicate the content of the policy and should provide for a minimum of six months' notice of retirement to an affected employee.

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spotlight

Medical Forms

At issue: How much baseline medical information is the employer entitled to with respect to all sick leave applications that are over one month in duration or are of a partial leave nature?

The BCTF grieved new medical forms developed by BCPSEA for districts' use in assessing employees' requests for extended (one month or more) and partial sick leave.

These forms are intended for use on a routine basis as a minimum prerequisite for evaluating sick leave requests. The forms include questions sanctioned in previous arbitration awards issued by arbitrators Donald Munroe, QC, and Judi Korbin, plus new questions considered to be reasonable and necessary.

In applying the test of balancing the privacy interests of the teacher with the legitimate business interests of school districts, Arbitrator Colin Taylor reaffirmed the questions sanctioned by Munroe and Korbin. With respect to the questions concerning functional abilities and non medical barriers, he indicated that the first line of inquiry as to whether a teacher is capable of reduced, modified or alternative duties or whether there are any non medical barriers should be made directly with the teacher. He also agreed that both employees and their physicians should be made aware of the availability of EAP programs and services.

Arbitrator Taylor then went on to say that additional medical information may be required in some instances based on specific individual facts and circumstances. "It bears repeating that employers have other means of requiring employees to account for their absences where the information in hand is, reasonably speaking, insufficient. They may particularize their concerns to the employee and request that his or her physician respond or they may ask the physician to complete a supplementary report."

The issue of who should pay (employer or employee) for medical forms where physicians charge a fee was addressed. Arbitrator Taylor ruled that unless the collective agreement specifically states otherwise, the employee is responsible for such payment.

Implementation of the Award

Revised partial and extended medical leave forms in accordance with the Taylor award, as well as draft guidelines for managing employee medical information, have been e-mailed to district contacts. These forms can be used by districts on a blanket routine basis for all applications for partial sick leave and extended sick leave of one month or more. Before using such forms, please ensure that your district has a policy and procedure in place in line with the guidelines provided to ensure that strict confidentiality protocols are adhered to by the employer.

Should your district choose to use these forms, you can be assured that the information requested meets the arbitration test of reasonableness and your district should not face legal challenge.

Although the award found certain questions to the physician with respect to functional abilities and non-medical barriers were not appropriate to be included on initial baseline forms, the award affirms that such questions may be appropriately asked of employees. Based on these findings, we are presently in the process of developing further guidelines for the administration of sick leave requests and accommodation that will complement the medical forms and also deal with situations where further medical clarification is required based on the individual circumstances of a particular case.

Should you have any questions, comments or concerns on this topic, please contact Brian Chutter at 604.730.4520 or brianc@bcpsea.bc.ca

Definition of Strike: Appeal

At issue: Does a day of protest during the term of a collective agreement constitute a strike under the *Labour Relations Code* (the Code)? If it does constitute a strike, does the Code violate the *Charter* protected rights of freedom of speech and association? (LRB, Saunders, February 24, 2004; March 19, 2004)

In response to Bill 27, the *Education Services Collective Agreement Act* that imposed a collective agreement on teachers and public school employers, and Bill 28, the *Public Education Flexibility and Choice Act* that amended the *School Act* and removed school organization matters from the scope of collective bargaining and into public policy, the BCTF held a day of political protest.

BCPSEA took the position that this action constituted a strike under the Code. The BCTF asserted that it is unconstitutional for the Code to define strike to include political protests.

The Code defines a strike as follows:

> *"strike" includes a cessation of work, a refusal to perform work or to continue work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services…*

As we reported in the Spring 2004 issue of *NewsLink*, in March 2004 the LRB found that the Code's prohibition against mid-contract political strikes does not violate employees' right to freedom of association or freedom of assembly under the *Charter.*

The BCTF filed an application for reconsideration of the decision with the LRB. In a related LRB decision (LRB, O'Brien, February 24, 2004), the LRB found that the definition of strike did violate the *Charter*. For the purposes of reconsideration the two applications – Health Employers' Association of BC (HEABC)-Hospital Employees' Union (HEU) and BCTF-BCPSEA – were combined and heard by a three person panel of the LRB, chaired by Brent Mullin, on September 29, 2004.

The Decision

The LRB issued its decision on December 17, 2004. While differing analyses were provided by each of the three reconsideration panel members, the effect of the award is that the definition of strike remains constitutionally valid and applicable, unless and until a court decides otherwise (BCLRB Reference No. B395/2004). Following is a brief summary of the three panel members' decisions.

Michael Fleming *Vice-Chair; Associate Chair*

A complete ban on all forms of political protest strikes is not justified. Political protest strikes that have significant adverse impact on the public interest will not be permitted. It may be difficult for public sector unions and employees – particularly those in health – to engage in a political protest that does not have significant adverse impact. He would have allowed the BCTF action but not that of the HEU.

Mark Brown *Vice-Chair; Registrar; Manager, Mediation Services*

Prohibiting mid-contract political strikes maintains a stable structure but does not eliminate political protests. The LRB needs to establish "bright lines" so that the labour community is faced with clear and practical tests, thus reducing the need for litigation. He agrees with Ken Saunders' earlier decision that the definition of strike is constitutionally valid.

Brent Mullin *Chair*

The Saunders decision would apply in the vast majority of circumstances. An exception would have been granted to the HEU (unique government action that significantly rewrote a collective agreement mid-term) had the HEU not interfered with the public interest. The blockades and violent nature of the HEU actions were not within the form of proper expression and could not be protected. While he indicated that the BCTF action (in response to government legislating a collective agreement to end impasse/strike) was not protected by the *Charter*, Mullin called the BCTF behaviour "exemplary" – away from the worksite, voluntary and no unlawful picketing. Had the HEU acted in this manner, he would have considered their actions protected by the *Charter*.

"No Cuts"

At issue: Is the BCTF able to bring to arbitration matters that were resolved between the parties in a previously signed Letter of Understanding?

Arbitrator John Kinzie has ruled that where the BCTF and BCPSEA signed a Letter of Understanding to address outstanding amalgamation issues, the BCTF cannot bring issues, decided in that letter, to arbitration.

In 1996, 31 British Columbia school districts were amalgamated into 15. Some school districts were able to negotiate a consolidation of the two separate collective agreements into one covering the new amalgamated school districts. By 2001, nine school districts had not been able to do so.

The *Education Services Collective Agreement Act*, enacted in January 2002, addressed the existence of multiple collective agreements in those nine school districts. One existing collective agreement was identified to now cover all teachers in each school district. Those agreements not identified had no further application. In some cases, teachers moving from an eliminated collective agreement received a benefit, as the agreement they were moved to had superior provisions. In other circumstances, the opposite was true.

The BCTF filed a grievance to address those latter circumstances. The union alleged that the employer was in violation of the respective identified, and now solely applicable, collective agreements, by failing or refusing to apply the "no cuts" articles in those agreements. A common "no cuts" provision reads, *"No teacher shall suffer a reduction in salary or benefits as a result of implementation of this contract."*

BCPSEA opposed the grievance on its merits. However, in addition, BCPSEA raised a preliminary objection to the hearing of the grievance. It was argued that the issues raised by the grievance were finally resolved and settled by a Letter of Understanding entered into by the employer and the union in June 2002. As such, BCPSEA argued that the matter was not arbitrable. The Letter of Understanding provided a process for transitioning teachers to the identified, and sole, collective agreement.

Arbitrator Kinzie allowed the employer's preliminary objection and concluded that the parties did reach a settlement on the issues to be decided. Having settled the matter, neither party may back away from it at a later date. The grievance was dismissed on the employer's preliminary objection and the merits of the grievance were not heard.

Arbitrability of Class Size: Appeal

At issue: Was arbitrator Donald Munroe, QC, correct when he decided (January 13, 2004) that class size matters in the *School Act* and Regulations are not arbitrable?

In 2002, the BCTF filed a policy grievance alleging that a number of school boards had violated the *School Act* in exceeding class size maxima and averages contained in the Act and Regulations.

BCPSEA took the position that the issue is not arbitrable, as the dispute arose from the *School Act*, not the collective agreement.

In January 2004, Arbitrator Munroe found in favour of BCPSEA and dismissed the grievance.

The BCTF appealed both to the Labour Relations Board (LRB) and to the Court of Appeal. BCPSEA agreed to hold the LRB application in abeyance until the Court of Appeal determines in which forum the appeal should be heard. Should the appeal be heard at the LRB, it would probably result in a less expeditious resolution of the appeal. The matter is is scheduled to be heard on January 31, 2005 at the BC Court of Appeal.

The *Education Services Collective Agreement Act* and the *Public Education Flexibility and Choice Act* and the *Charter*

At issue: Does the legislation that imposed a collective agreement on the parties and the legislation that removed school organization provisions from the collective agreement violate the *Charter* protected rights of the BCTF?

In January 2002 the *Education Services Collective Agreement Act* and the *Public Education Flexibility and Choice Act* were enacted.

The *Education Services Collective Agreement Act* settled the teachers' dispute and imposed a collective agreement between the parties.

The *Public Education Flexibility and Choice Act* amended the *School Act* to move class size limits and composition and staffing levels into the realm of public policy. The BCTF filed suit in BC Supreme Court alleging the legislation violated their *Charter* protected rights.

A similar suit, filed by unions in the health sector challenging similar legislation that facilitated healthcare restructuring, was heard in BC Supreme Court in April 2003 and dismissed. The decision was appealed to the BC Court of Appeal. Following a three day hearing in May 2004, the Court reserved decision.

Essential Services: Status Update

At issue: What constitutes a serious and immediate disruption to the provision of educational programs resulting from a strike?

The previous round of teacher-employer bargaining occurred under a new essential services regime which added the provision of educational programs to the existing health, safety or welfare provisions.

Hearings were held in the Fall of 2001 and early 2002. Although essential service orders were issued for the first two phases of the BCTF strike plan, no decisions were made regarding a full scale withdrawal of services. With support staff bargaining well underway and teacher-employer collective bargaining anticipated, the LRB reconvened the hearings. The parties engaged in essential service hearings throughout the winter and spring of 2004. The BCTF maintained their position that instruction could be withdrawn for up to three months until there would be such a disruption to the provision of education programs that essential service designations would occur.

The BCPSEA position also remained unchanged. We argued that instruction could be withdrawn for a maximum of 20% of a school week during a labour dispute, and still meet the objective of the essential service provisions of the *Labour Relations Code*.

In June 2004, the hearings were adjourned at the request of the BCTF. In adjourning the hearings the LRB advised that if support staff bargaining reaches an impasse and job action looks imminent, BCPSEA, a support staff union or the LRB can request that the hearing be reconvened on short notice.

Annual General Meeting

BCPSEA's 11th Annual General Meeting will be held January 28-29, 2005 at the Hilton Vancouver Airport Hotel, 5911 Minoru Boulevard, Richmond.

Professional development opportunities will be offered commencing at 9:00 am Friday, January 28 (registration begins at 8:00 am). AGM will open at 7:00 pm Friday evening and continue on Saturday.

Expert Panels

Expert Panels is the name given to a process developed through discussions between the Workers' Compensation Board (WCB) and BCPSEA to address issues related to compensation claims, compliance with the *Workers Compensation Act*, and requirements within the OH&S Regulation.

Both parties felt there was a need to develop a better communications model with school districts that would encourage more consistent and uniform practice among districts with respect to workers' compensation issues and to promote a greater degree of consistency in interpretation of the OH&S Regulation by WCB officers.

One of the benefits of those discussions is a heightened appreciation by the WCB that many of the problems faced by school districts arise from "unregulated areas," and that attention to those problems, rather than concentrating on simple compliance with a large number of prescriptive regulations, should lead to lower claims costs and improved compliance.

The approach utilized by the Expert Panels is unique in that it is based on accessing expertise in school districts and then coupling that expertise with outside topic experts and WCB personnel in focused discussions on problems common to the K-12 public education sector. Topics are selected through discussion with the WCB and the school district representatives who have joined the BC School Safety Association. All participants in a panel are selected on the basis of job responsibility or expertise in a topic area. Funding to support travel costs for school district representatives and the cost of outside experts is provided by the WCB from general revenues, not districts' assessment funds.

Five Expert Panels have been established to this point and reports are available from two. The other three reports are expected within two to three months. Each of the two completed reports has identified areas where school districts can make improvements.

For example, the first Panel identified a link between the organization of custodial work and the frequency and likelihood of the severity of injuries among custodians. The report established that in school districts where custodians are encouraged to work in a team, lower rates of injury are experienced than when the custodians work alone. The change to team work also reduces the time required by school district personnel to assess how individual tasks are accomplished by individual custodians. This is a requirement in the OH&S Regulation. The change to team work also simplifies the consideration of "return to work" programs when an injury does occur. Administrative costs related to working alone issues are also reduced.

The WCB used these results to work with three school districts to investigate and develop generic work practices for school district custodians. This report should be available within two to three months and will further reduce the time required by school districts to conduct ergonomic assessments of custodial work. The two outside topic experts who assisted with the first Expert Panel discussions have applied for a formal research grant from the WCB to continue the investigation of a link between the organization of work and injuries.

The success of the Expert Panels and the resulting reports will depend on the continued ability of personnel in school districts to communicate and collaborate on issues of common concern. The WCB, in responding to the rapid changes in the way organizations are doing business, will continue to gradually move from an inspections model that emphasizes intervention at the district level to a model that emphasizes partnerships at the sector level. The Expert Panels process will allow school districts to influence the nature of the relationship with the WCB on health and safety issues.

For more information, contact John Bonnet at 604.730.4518 or johnb@bcpsea.bc.ca; or Vanessa Wong at 604.730.4509 or vanessaw@bcpsea.bc.ca

Teacher Exchange Programs and WCB Coverage

Some school districts have recently raised questions about workers' compensation benefits for teachers enjoying the benefits of a teacher exchange.

While there may be great rewards professionally for teachers participating in a teacher exchange program, teachers and their employers need to be aware that eligibility for workers' compensation benefits may not be available.

The following table provides a brief outline about what is known so far about the issue and a recommendation for teachers who decide to participate in a teacher exchange program.

ISSUE	COMMENTS
Eligibility for WCB Coverage	• The BC teacher going abroad has no entitlement to BC workers' compensation benefits. Eligibility for benefits arising out of occupational injury and disease will depend on the compensation board in the country where the work is being done. • Eligibility for BC workers' compensation benefits is extended only partially to the teacher working in BC. Inasmuch as wage loss and pension benefits are based on wages paid by the BC employer, the teacher now in BC has no eligibility for such benefits. Benefits are restricted to healthcare costs only.
Financial Security	• All teachers on exchange programs should be advised to consider disability insurance in addition to medical insurance.

In BC, workers' compensation benefits are extended only to workers doing work to the benefit of the BC employer. Consequently, it is the "incoming" teacher who is considered the worker. Because each school district continues to pay their own teacher, the incoming teacher has no reportable earnings and thus cannot claim any loss of earnings.

While participation in teacher exchange programs is an enriching experience, it is not related to the work of BC school districts and the "outgoing" teacher is not considered to be doing work of benefit to the BC district. Consequently, BC workers' compensation benefits for healthcare and wage loss are not available to the outgoing teacher.

Eligibility for workers' compensation benefits will vary from jurisdiction to jurisdiction. Not only are the rules different but the benefits will differ as well. Consequently, teachers leaving on an exchange and arriving for an exchange should be encouraged to make arrangements to protect their financial well being.

BCPSEA is presently in discussions with the WCB on issues related to teacher exchange programs and will advise further on any changes.

Bill C-45: New Legislation for Negligent Supervision in the Workplace

On May 9, 1992, a spark deep in the Westray coal mine in Nova Scotia ignited accumulated methane gas. The resulting explosion trapped and killed 26 miners. The mine had been in operation for only eight months.

A provincial inquiry into this disaster concluded that both company managers and government safety inspectors ignored glaring and obvious safety violations, including the disconnection of methane detectors.

Apparently, the warning signals frequently interrupted coal production.

Senior company officials in Ontario refused to attend the provincial inquiry. The inquiry had no federal powers and subpoenas could not be served outside the province. The company was subsequently charged with 52 safety violations but this came to nothing, as the mine was declared bankrupt several months later. Two mine managers were charged with criminal negligence but the charges were stayed because the *Criminal Code* provisions made a conviction unlikely. These events prompted a federal review of the *Criminal Code*.

The result of that review is a piece of federal legislation, Bill C-45, *An Act to Amend the Criminal Code (Criminal Liability of Organizations)*, which took effect in March 2004. The legislation imposes a legal duty on all those who direct work – both executive and operational employees – to take reasonable measures to protect employees and the public. This duty includes direction of work and responding to knowledge of inadequacies. Reckless disregard of this duty that results in serious injury or death could result in the police or WCB inspectors making a recommendation to the Crown to prosecute for criminal negligence.

The scope of the duty to take reasonable steps or precautions would likely include compliance with requirements in the *Workers Compensation Act*, the OH&S Regulation, and other appropriate codes and standards or other practices, perhaps common to the occupation or activity, considered to be prudent. While the duty is to "take reasonable steps," Bill C-45 contains the requirement that the failure to take such steps must constitute reckless conduct or behaviour. In other words, knowledge of the appropriate safety procedures and the consequences of non compliance must be present for a prosecution to proceed.

Initial experience with this legislation indicates that high risk areas of employment, for example, construction and logging, will be more directly concerned than areas presenting a relatively low risk of injury. However, even in school districts, we need to be aware that previous provisions in the *Criminal Code* that restricted acts constituting criminal negligence to specific direction by an officer have been extended to include actions by more junior employees and include a failure to take action on information.

Support Staff Bargaining

In the past year, 66 support staff collective agreements have expired in 59 school districts. Negotiations have commenced and are ongoing in most school districts.

To date, 7 agreements in 6 districts have been ratified locally and provincially:

- School District No. 5 (Southeast Kootenay)
- School District No. 33 (Chilliwack)
- School District No. 39 (Vancouver) (CUPE Local 15)
- School District No. 39 (Vancouver) (CUPE Local 407)
- School District No. 41 (Burnaby)
- School District No. 58 (Nicola-Similkameen)
- School District No. 74 (Gold Trail)

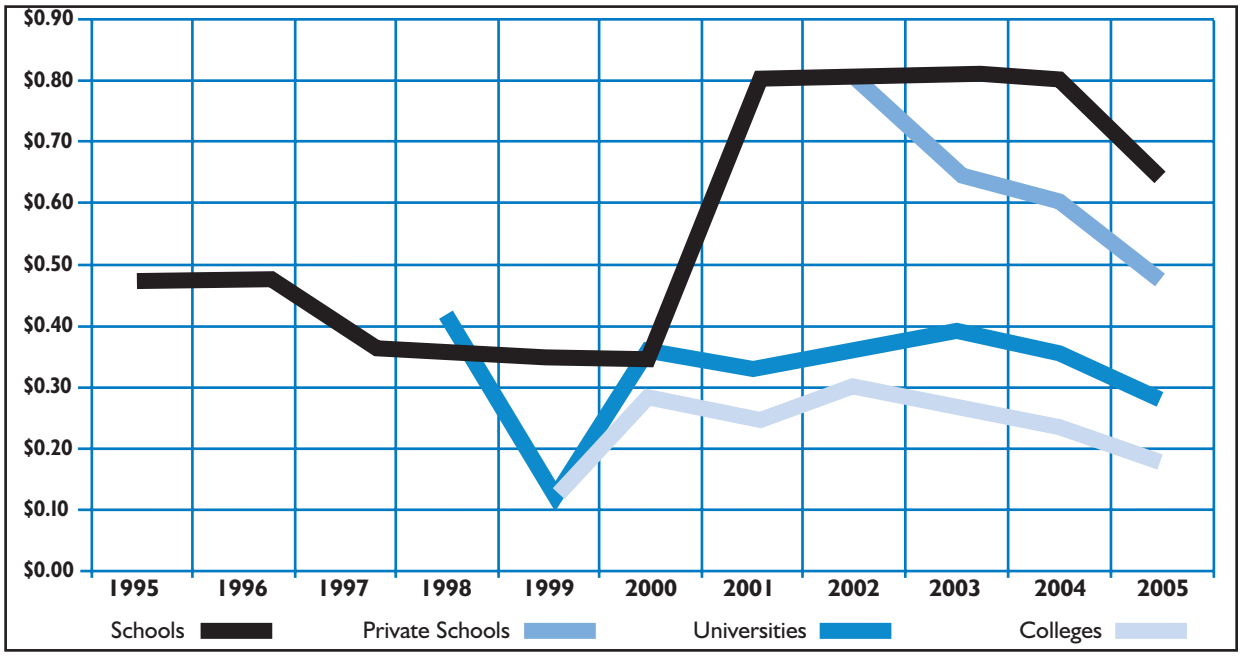
What's Happening to WCB Assessment Rates?

The good news is that WCB assessment rates are continuing to fall. The 2005 base rate declined 20% from $0.80 to $0.64. The drop of $0.16 returns about $5 million to school districts.

The WCB collects assessments from school districts to cover the costs of accidents and disease to district employees. The base rate is determined by dividing the cost of all claims in our sector by the total payroll in districts.

Consequently, every district pays a portion of the costs of claims in other districts. When the costs of claims in all districts drop, all districts benefit from a lowered base or average rate. The base rate is adjusted up or down to reflect the cost of claims in each district. This is termed the experience rate and it is based on costs incurred over a three year period. For 2005, the experience rate is based on claims costs from 2003, 2002, and 2001. Districts with above average costs pay more while districts with below average costs pay less. The table at the end of this article provides a three year history of the experience rates paid by each district.

Let's start with the good news. From 2001 to 2003, the injury rate (loosely defined as the number of claims per 100 employees) declined by 19% from 2.6 to 2.1; and duration declined by 25%. This latter figure may show the benefits of the efforts made by many districts in facilitating early return to work programs. Further evidence of this may lie in the cost figures; the cost of claims for temporary disability claims dropped by 40% and the cost of permanent disability claims decreased by 36% over the same period. These cost declines outstrip similar declines in all industries but only match the declines experienced by universities, colleges and private schools.



However, there is a dark cloud on the horizon. Preliminary claims cost data for 2004 show an increase over 2003 costs. If these higher costs hold to year end, it may signal an increase to assessment rates in 2006. One possible cause for this increase may lie in the increased number of temporary disability claims that become permanent disability claims. In 2001, about 3% of temporary disability claims became permanent disability claims. By 2003, this rate had increased to about 6%. This increase may be caused by the backlog of claims that had developed under the previous appeal system. These are now being decided at an accelerated rate under the new claims appeals process. As this backlog is reduced, the costs are added to the base cost for all districts. The impact of these additional costs may be temporary but they will create additional upward pressure on the assessment rate.

How do You Rate?

SCHOOL DISTRICT	ASSESSABLE PAYROLL 2003 $	EXPERIENCE RATE 2005* $	EXPERIENCE RATE 2004 $	EXPERIENCE RATE 2003 $
5 (Southeast Kootenay)	30,781,170	0.55	0.73	0.83
6 (Rocky Mountain)	21,837,624	0.59	0.66	0.65
8 (Kootenay Lake)	34,976,454	0.64	0.75	0.83
10 (Arrow Lakes)	4,594,341	0.50	0.67	0.75
19 (Revelstoke)	7,110,963	0.66	0.88	0.87
20 (Kootenay-Columbia)	25,761,337	0.61	0.90	1.02
22 (Vernon)	43,806,283	0.67	0.88	0.76
23 (Central Okanagan)	96,695,467	0.48	0.67	0.74
27 (Cariboo-Chilcotin)	37,687,886	0.66	0.77	0.72
28 (Quesnel)	23,571,372	0.59	0.78	0.84
33 (Chilliwack)	56,197,569	0.52	0.66	0.77
34 (Abbotsford)	81,640,518	0.61	0.82	0.78
35 (Langley)	92,736,064	0.60	0.70	0.70
36 (Surrey)	276,911,938	0.68	0.88	0.83
37 (Delta)	82,251,201	0.68	0.90	0.77
38 (Richmond)	109,150,914	0.61	0.78	0.90
39 (Vancouver)	300,971,073	0.68	0.86	0.86
40 (New Westminster)	30,149,129	0.61	0.77	0.79
41 (Burnaby)	116,707,384	0.82	0.99	0.98
42 (Maple Ridge-Pitt Meadows)	70,346,278	0.51	0.63	0.62
43 (Coquitlam)	146,783,375	0.64	0.81	0.78
44 (North Vancouver)	83,743,201	0.76	0.80	0.76
45 (West Vancouver)	31,139,534	0.65	0.68	0.66
46 (Sunshine Coast)	20,761,538	0.59	0.66	0.73
47 (Powell River)	14,271,645	0.97	1.17	1.24
48 (Howe Sound)	21,792,000	0.67	0.88	0.94
49 (Central Coast)	2,958,551	0.52	0.69	0.75
50 (Haida Gwaii/QC)	6,181,081	0.78	0.89	0.93
51 (Boundary)	9,454,336	0.51	0.63	0.60
52 (Prince Rupert)	17,076,459	0.57	0.77	0.91

SCHOOL DISTRICT	ASSESSABLE PAYROLL 2003 $	EXPERIENCE RATE 2005* $	EXPERIENCE RATE 2004 $	EXPERIENCE RATE 2003 $
53 (Okanagan Similkameen)	15,276,039	0.62	0.72	0.62
54 (Bulkley Valley)	14,477,781	0.68	0.79	0.66
57 (Prince George)	83,051,762	0.65	0.76	0.72
58 (Nicola-Similkameen)	16,162,373	0.59	0.66	0.68
59 (Peace River South)	25,150,545	0.62	0.72	0.70
60 (Peace River North)	27,853,693	0.59	0.72	0.72
61 (Greater Victoria)	103,855,569	0.64	0.89	0.91
62 (Sooke)	43,811,111	0.65	0.84	0.89
63 (Saanich)	41,986,463	0.73	1.02	1.07
64 (Gulf Islands)	9,883,221	0.71	0.84	0.65
67 (Okanagan Skaha)	34,102,408	0.51	0.68	0.58
68 (Nanaimo-Ladysmith)	75,921,036	0.57	0.66	0.72
69 (Qualicum)	26,240,368	0.49	0.64	0.73
70 (Alberni)	25,658,965	0.60	0.75	0.69
71 (Comox Valley)	45,351,199	0.54	0.69	0.80
72 (Campbell River)	33,570,600	0.69	0.97	1.10
73 (Kamloops/Thompson)	78,620,087	0.54	0.68	0.71
74 (Gold Trail)	13,222,234	0.64	0.71	0.59
75 (Mission)	33,845,010	0.55	0.72	0.78
78 (Fraser-Cascade)	11,832,524	0.53	0.65	0.69
79 (Cowichan Valley)	47,411,095	0.69	0.83	0.84
81 (Fort Nelson)	5,928,996	0.49	0.63	0.68
82 (Coast Mountains)	33,677,632	0.91	1.01	1.11
83 (N. Okanagan-Shuswap)	39,613,024	0.70	0.87	0.76
84 (Vancouver Island W.)	4,132,080	0.56	0.74	0.79
85 (Vancouver Island N.)	12,636,559	0.62	0.80	0.85
87 (Stikine)	3,353,628	0.51	0.67	0.70
91 (Nechako Lakes)	27,848,006	0.57	0.63	0.50
92 (Nisga'a)	4,752,458	0.72	0.93	0.90
93 (CSF)	16,625,525	0.38	0.51	0.62

* Prepared from WCB data as of December 2004.

BC Public Sector Settlements

To date, 59 public sector collective agreements have been settled within the provincial government's net zero 2003-2006 fiscal mandate.

Only one of those settlements, between HEABC and the Hospital Employees' Union (HEU), has been legislated.

Notable settlements include:

HEABC and the HEU

- Bill 37, *Health Sector (Facilities Subsector) Collective Agreement Act, 2004*
- Two year term
- Wage rollback of 15%
- Limited contracting out
- An increased workweek to 37.5 hours

HEABC and the Nurses' Bargaining Association.

- No rollbacks to wages, benefits or time off provisions
- Changes to bumping and posting processes
- A Phased-in Retiree / Graduate Partnership Program
- Reviewed casual and overtime utilization

HEABC and Paramedicals

- No rollbacks to wages, benefits or time off provisions
- Changes to the bumping process, posting, and electronic statement of wages

HEABC and Community Health Subsector

- Wage rollback of 4.06% for all employees
- Elimination of comparability, resulting in savings of 3% of wages per year
- Deferral of enrolment in the Municipal Pension Plan until April 1, 2006
- Reduction in dental benefits and vacation entitlements

BC Public Service – BCGEU

- A two year term to March 31, 2006
- Agreement on the outsourcing of 16 projects to the private sector, including MSP and PharmaCare claims management
- An expedited workforce reduction of up to 1,000 employees
- Ongoing savings from benefit plan changes including a decrease in sick leave entitlement
- Movement from a three step wage increment to five step

BCGEU Liquour Distribution Subcomponent

- Management and operational flexibilities: optimization of shift scheduling and efficient recall configurations; and the ability to open, close and relocate operations
- A competitive wage structure for new employees: reduction in full-time and auxiliary wages for new employees; the introduction of seasonal employees; and movement from a three-step wage increment to five-step

CSSEA and Community Social Services Union Bargaining Association

- Move from single rated jobs to four incremental steps, with lower rates for all new hires beginning at 85% of current wages
- Reduction in sick leave entitlements and payout, and elimination of paid special leave
- Reduction in dental plan and disability entitlements
- Elimination of superior wages and benefits, resulting in a reduction in the top rate from $16.83 to $16.32.
- Deferral and reduction of equity payments until March 31, 2006

BC Ferry Services

In addition to the above settlements, BC Ferry Services and the Marine Workers' Union gave their special mediator, Vince Ready, full and binding authority to settle all outstanding matters in their bargaining dispute and ultimately conclude a collective agreement between them.

The collective agreement as awarded by Ready on October 15, 2004, provides for:

- Seven year term (November 1, 2003 - October 31, 2010)
- Wage increases:
  - November 1, 2003 - 0%
  - November 1, 2004 - 0%

  - November 1, 2005 - 0% (5% for Senior Officers, 3% for Junior Officers and Trades)
  - November 1, 2006 - 1% (5% for Senior Officers, 3% for Junior Officers and Trades)
  - November 1, 2007 - 1% (5% for Senior Officers, 3% for Junior Officers and Trades)
  - November 1, 2008 - 2% or wage re-opener
  - November 1, 2009 - 2% or wage re-opener
- New wage grid for new employees – 85% of rate for first year, 90% for second year, and 95% for third year
- Seasonal employees paid at 85% of classification rates, no entitlements to benefits or premiums
- Posting and Filling – amends the selection criteria for supervisory and "Grade 9 or above" positions from a purely seniority-based system to a system based on seniority, qualifications and suitability
- Reduction in special differentials from 27% and 29% to 10% (grandfathered for the duration of the collective agreement)
- No payment of overtime for periods of less than five minutes
- Contracting out – establishes a process of consultation with the union prior to any contracting out; disputes to be adjudicated by Vince Ready
- Casual employees no longer entitled to STIIP (grandfathered for the duration of the collective agreement)
- Committees:
  - Workforce Adjustment
  - Workforce Planning Committee*
  - Hours of Work Committee*
  - Committee on Increasing Productivity, Reducing Costs and Increasing Revenue*

  * *Differences to be submitted to Vince Ready for adjudication*

Note that BC Ferries is no longer a Crown Corporation and is no longer subject to the PSEC compensation mandate.

For further information on any of these settlements, please contact Stephanie Tassin at 604.730.4521 or stephaniet@bcpsea.bc.ca; or Laura Parks at 604.730.4522 or laurap@bcpsea.bc.ca

Changes to the *Teaching Profession Act* and Bylaws of the BC College of Teachers

In the Summer (June 2004) issue of *NewsLink*, we provided a summary of Bill 55, *Teaching Profession Amendment Act*, 2004 and an overview of the BCTF response/reaction.

Since then, the members of the BCTF voted in favour of paying their fees to the BC College of Teachers for the 2004-05 school year.

The teachers have agreed, however, to only pay the fee on an interim basis as the BCTF continues to "pursue changes to ensure the professional body's independence."

A summary chart of the legislation, including changes to bylaws and policies that resulted from the legislation and some of the consequences for employers, can be found on the BCPSEA website at www.bcpsea.bc.ca under "Publications" "Legislative Updates."

BCPSEA Client Services Survey Results Presented at AGM

One of the projects incorporated into the BCPSEA Business Plan for the 2003-2004 fiscal year was an initiative to gather data on the extent to which BCPSEA school board members consider the association's services to be relevant and credible.

The online BCPSEA Client Services Survey was distributed to trustees and district staff in June 2004.

The survey response data allows for the evaluation of BCPSEA services and will assist us in identifying areas which may require a greater focus and/or allocation of resources. Over the coming months, BCPSEA staff will undertake this analysis as we seek to keep our commitment to you to continuously improve the quality of services we provide. The analysis may include focus groups of trustees and district staff, as well as targeted inquiries in specific service areas.

If you have any questions on the survey, the survey results, or would like to provide additional perspective, please contact Hugh Finlayson at 604.730.4515 or hughf@bcpsea.bc.ca

Exempt Staff Total Compensation Survey

In mid-June 2004, BCPSEA distributed to school district Secretary Treasurers the triennial BCPSEA survey of total compensation paid to exempt benchmark positions in school districts.

This comprehensive survey is distributed to all BC school districts and a representative group of Alberta and Ontario districts. The data is currently being analyzed; we anticipate that the full survey report will be distributed to districts in late February.

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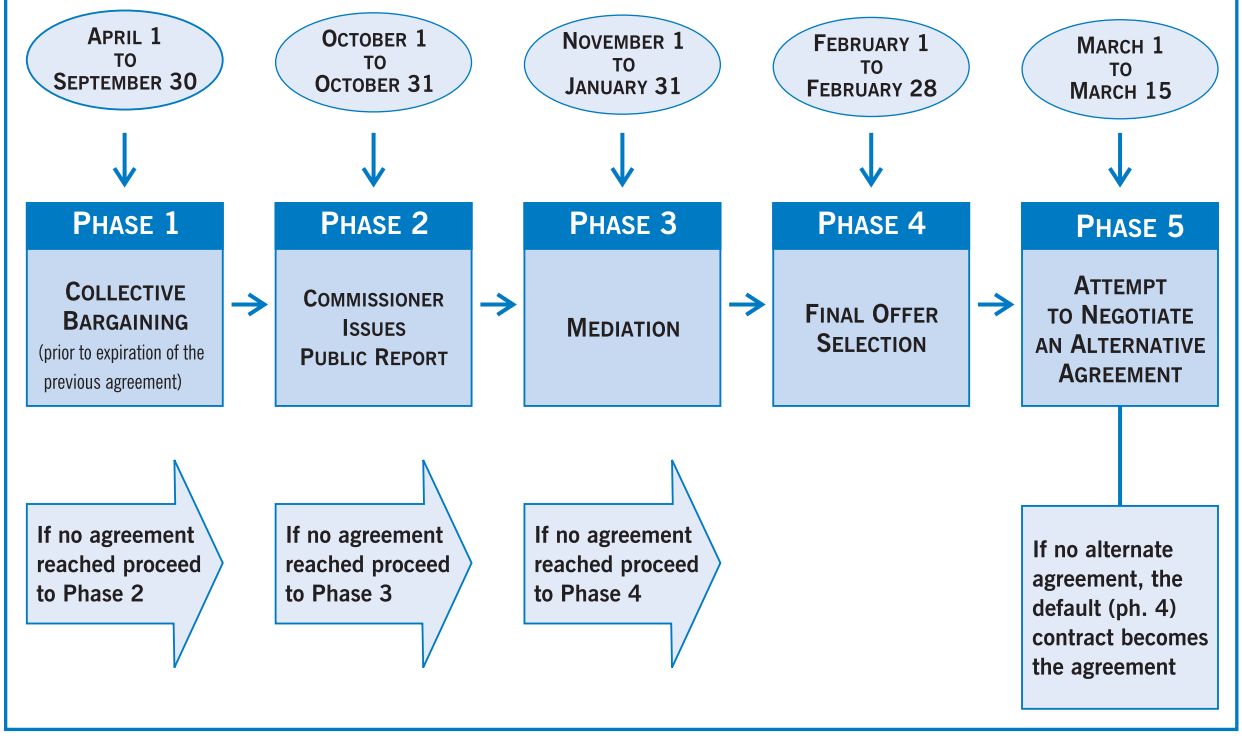
Proposed Bargaining Process *(page 34)*



Our Mission is to develop and maintain human resource practices that maximize the benefit for students in our public education system through the effective use of resources and fair terms of employment.

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