NEWSLink

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British Columbia
Public School Employers' Association

Workers' Compensation Board Revises Claims Policy on Extracurricular Activities

Following receipt of a report from BCPSEA recommending extensive changes to Policy #14.00, *Arising Out of and In the Course of Employment*, #20.20, *Recreational, Sports or Exercise Activities*, and #20.50, *Fund Raising, Charitable or Other Similar Activities*, the Workers' Compensation Board (WCB) has announced significant changes in policy that better reflect the nature of the work done in school districts.

IN THIS ISSUE

School staff now have greater certainty that injuries arising from school sponsored extracurricular activities will be covered. The changes provide a formal recognition that the work of educating students extends beyond the core hours of instruction.

Background

Section 5(1) of the *Workers Compensation Act* is the gateway to entitlement to compensation for a work related injury. This section directs the WCB to pay wage loss compensation and medical benefits "where personal injury…arising out of and in the course of employment is caused to a worker." The key word is employment. What activities or duties does the employment of teaching include?

About 30 years ago, a truck driver, returning to the employer's dispatch yard at the end of the day, stopped by his bank to deposit his pay cheque and get some cash for the weekend. He was injured when struck by a car while crossing the road to get to the bank. The WCB claims officer denied the claim for compensation on the grounds that depositing the cheque was a personal act unrelated to his work duties as a truck driver.

The truck driver appealed and the case was ultimately heard, in accordance with standard practice at that time, by the WCB Board of Commissioners. The Chair observed that the truck driver had a right to be paid. The Chair then reasoned that the truck driver was doing a service for his employer in accepting a cheque. The truck driver was entitled to wages. A cheque was not "coin of the day," the cheque needed to be converted to cash to be of any use

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Update: Collective Bargaining Structure Inquiry

On December 19, 2003, Don Wright was appointed as a one person commission to undertake an inquiry into teacher-public school employer bargaining structures, practices and procedures and to identify options that improve collective bargaining for the Minister of Skills Development and Labour to consider.

Commissioner Wright has had a series of meetings with BCPSEA, the BC Teachers' Federation (BCTF), trustees, teachers, district staff, school boards and union locals.

On March 30, 2004, the Commissioner wrote to the BCTF, BC School Trustees Association (BCSTA), and BCPSEA seeking input into 60 questions he identified that would inform his process of inquiry.

The questions were arranged thematically:

- Funding Public Education
- Principles of Collective Bargaining
- Lessons from History and Elsewhere
- Higher Level Structural Issues
- Dynamics at the Bargaining Table
- Right to Strike/Lockout
- What is Being Bargained
- Transition Issues
- The Effect on the Classroom

A copy of the questions and BCPSEA's response can be found on the teacher issues members only website or by contacting Hugh Finlayson, Executive Director/CEO at hughf@bcpsea.bc.ca or 604-730-4515.

It is expected that Commissioner Wright will file his report with the Minister in the fall.

Status of Bargaining with the BCTF

The collective agreement between the BCTF and BCPSEA expires on June 30, 2004.

In the spring 2004 edition of *NewsLink* (*A Bargaining Environment Like No Other*), we described the challenges arising out of a difficult and complex bargaining context:

- The spillover effect arising out of the legislated end to the last round of bargaining
- Vastly reduced scope of bargaining and the parties' differing interpretation of what can and cannot be bargained
- A compensation mandate of "net zero" for the period 2003-2006
- The inquiry into the bargaining structure and the recognition by the parties that a negotiated settlement under the existing structure is extremely unlikely
- The BCTF's focus on political action in preparation for the next provincial election in May 2005.

We have had preliminary meetings with the BCTF and expect to engage in formal protocol meetings in the Fall. For the latest information on the status of bargaining, visit the teacher issues members only website or contact your BCPSEA staff liaison.

Getting to a "Good" Collective Bargaining System

In order to design a collective bargaining structure, there first has to be an understanding of the process of collective bargaining itself – what it is and what components lead to effective outcomes.

Collective bargaining is defined as: *"A process whereby a union and an employer seek to negotiate a collective agreement, or the renewal or revision of an existing collective agreement; labour relations legislation generally requires the parties to bargain in good faith with a view to concluding a collective agreement."*[1]

Beyond this basic definition, collective bargaining is also a process of "applied politics, a means to reach a result, namely, the resolution or suspension of competing interests for the length of time covered by the collective agreement. It is an opportunity for an employer and a union to discuss mutual problems, issues, concerns and priorities, and to fashion appropriate compromises and solutions."[2]

Although collective bargaining originated in the private sector, it was adopted in the public sector with some modifications. For example, in some jurisdictions there are limitations on what can be bargained, the right to strike/lockout, and compensation settlement guidelines.

If the purpose of collective bargaining is to negotiate terms and conditions of employment, then what is a good collective bargaining system that will lead to successful collective bargaining? How would we recognize a good system if we had one?

Through work with member employers, BCPSEA has begun to develop criteria that can assist in establishing a definition of a good collective bargaining system. The following six themes emerged from our discussions:

Theme	Proposition
1. Balance The parties are permitted to pursue their goals through collective bargaining but this pursuit is be balanced against the costs of bargaining: • Consequences of industrial conflict • Costs associated with resolving the conflict ($'s, relationship, public confidence) • Out of line settlements and the implications for other public sector employers of these settlements.	It is recognized that bargaining in the public sector context requires that certain interests, often seen as external to the negotiating parties, must be balanced. This recognition leads to certain structural choices related to authority, responsibility and accountability.
2. Consequences The effects of labour disputes on persons not directly involved in those disputes are minimized.	Collective bargaining in the public sector has implications for the general public. Processes and structures to manage workplace disruption arising out of a labour dispute must be structured in a way that minimizes the impact on the public and, as a result, the impetus for government involvement.
3. Incentive There are incentives and pressures that encourage negotiated settlements. Sufficient uncertainty exists in the outcome of bargaining such that the parties are encouraged to negotiate.	The parties will not negotiate if they can predict the outcome both in terms of substance – the deal itself – and process – how the deal will be concluded. What can be characterized as institutionalized uncertainty has the potential of encouraging negotiated agreements.

1. Sack, J. and Poskanzer. E. *Labour Law Terms: A Dictionary of Canadian Labour Law*. Toronto: Lancaster House, 1984.
2. Sanderson, John P. *The Art of Collective Bargaining*. 2nd ed. Aurora: Canada Law Book, 1989, p. 1.

4. Time	
All parties face significant pressure if an agreement is not reached in a reasonable time.	Participants and observers of the negotiation process will lose faith in it if it is perceived to be protracted and unproductive. These perceptions can lead to intervention by government.
5. Resolution	
The process for achieving resolution is found within the bargaining structure. • No alternative processes external to the structure exist or can be accessed.	A bargaining system that can be characterized as a closed system builds faith in both the parties and the process – the parties can resolve their differences. Alternative processes external to the structure – ad hoc legislative intervention, for example – undermine the structure and erode the bargaining relationship.
6. Role Recognition	
Participants understand and respect, as legitimate, the roles of the parties to the bargaining process.	Collective bargaining requires that the parties meet, recognize one another as legitimate representatives of their principals and engage in informed discussions with the intention of concluding a collective agreement.

A Good Collective Bargaining System Leads to Good Agreements

A good collective bargaining system will result in good agreements. In their book, *Breaking the Impasse*,[3] dispute resolution experts Lawrence Susskind and Jeffrey Cruikshank identified four characteristics of what can be termed a good negotiated settlement or agreement:

- fairness
- efficiency
- wisdom
- stability.

Fairness: Fairness is a general concept that implies treating both sides alike, without reference to one's own feelings or interests. In applying the notion of fairness, Susskind and Cruikshank say that the perceptions of the participants are most important in evaluating the fairness of a negotiated outcome. The key question is, *"Were the people who managed the process responsive to the concerns of those affected by the final decision or outcome?"* Unfortunately, the issue of fairness is situational and subjective. What one side perceives as a fair settlement may be abhorrent to the other.

Susskind and Cruikshank observe:

> *"In our view, it is more important that an agreement be perceived as fair by the parties involved than by an independent analyst who applies an abstract decision rule. If the involved parties think a given process has been fair, they are more likely to abide by its outcome; if they do not, they will seek to undermine it."*

Efficiency: An agreement should also be evaluated by testing its efficiency – it is efficient if it directly produces the desired result with a minimum of effort, expense or waste. Efficiency is established by asking two questions:

- Could one or all of the parties to the agreement be made better off without making the others worse off? If the answer is no, then the agreement is inefficient.
- Did it take an inordinately long time and a great deal of effort to reach the agreement? If so, do the benefits of the agreement outweigh the costs associated with achieving the agreement? If the answer is no, the agreement cannot be considered a good one.

3. Susskind, L. and J. Cruikshank. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York: Basic Books, 1987.

Wisdom: Something is considered wise if it is informed, sound and prompted by a considered judgment of the relevant aspects and circumstances concerning the matter or matters at issue. In a sense, wisdom is only obvious in hindsight. Negotiations involve forecasts or predictions concerning areas of settlement and potential consequences of particular courses of action.

It is virtually impossible to have complete confidence in a forecast and have that forecast come to bear, or stand up to the test of time. Agreements are concluded at a particular time, under particular circumstances, and govern the relations between the parties over a considerable period of time. During this time, substantial changes may take place – changes not contemplated when the agreement was reached. It may also take an indeterminate amount of time for the forecast to be tested. We only realize that what we have done was an incorrect approach when it is too late.

A key to a wise agreement must be based on what Susskind and Cruikshank term "prospective hindsight" – an assessment and forecast based on past experiences and knowledge. Unfortunately, in some areas, even our past experiences tell us very little, because the end result of previous actions has not yet been realized. It is also very difficult to remain constantly objective when assessing a problem. A wise agreement contains all the relevant information to minimize the risk of being wrong.

The search for a wise solution requires a collaborative inquiry into the problem. This inquiry breaks down a complex problem into a series of mutually agreed pieces that can be examined individually. By looking at the smaller pieces, a wise solution can be reached that satisfies all of the underlying interests, without having to rely solely on our predictions of future consequences. Remember, we are free to choose a course of action, interests we seek to satisfy, and strategies to employ, but we are not free to choose the results or consequences, intended or otherwise, of our choices. The concepts of wisdom and the consequences of our choices are closely linked to the fourth characteristic – stability.

Stability: Stability is the final element of a good agreement. Something is stable if it's not easily moved or thrown off balance, or is not likely to break down, fall apart or give way. A settlement that is perceived by all parties as fair, that was reached efficiently, and that seems technically wise is unsatisfactory if it does not endure. A good agreement will stand the test of time and remain unchallenged by the parties and/or their respective constituents. That is, none of the parties to the agreement will have any motivation to break the agreement before it expires naturally.

Instability can be caused in several ways:

- Is the overall agreement feasible?
  A negotiator may reach an agreement in a labour dispute, but if the negotiator is unable to sell it to his/her constituency, the efficiency, wisdom and fairness of the agreement are irrelevant, and the agreement is not stable.
- Can the agreement be implemented by both parties?
  If the agreement contains provisions that are not realistic, the agreement will not be stable. It is not helpful to extract unrealistic commitments that cannot be relied upon, even if such promises seem like victories at the time they are secured.
- Is the agreement based on mistaken assumptions?
  In framing the agreement, negotiators should make a commitment that if the agreement has been based on a mistaken assumption, then the parties will reconvene and correct that mistake. It is also important to remember that one side may grant a large concession, not realizing the potential impact. Once that impact is felt, however, it may be used in an attempt to destroy the entire agreement, or used as a weapon in future negotiations. As a result, the agreement and the relationship are now unstable. By drawing only on realistic commitments, stability can be maintained through the long-term.
- Is the agreement legal?
  It is of little use to enter into an agreement that is not enforceable. Knowledge of the limitations on all parties is necessary. Further, you must know what you are legally able to commit

to, and verify the legal position of the other side.

In contrast, the characteristics of a bad negotiation are:

- No settlement is reached because of destructive interpersonal dynamics or failure by the parties to discover technical solutions that address each side's needs.
- Settlement is reached but the solutions are not optimal, full compliance by both sides is problematic, or the relationship is damaged in the process.
- Settlement is reached but the parties have different interpretations of what they agreed to, or the matters at issue (either in terms of substance or relationship) have not been adequately canvassed or addressed, setting the stage for ongoing conflict during the term of the agreement.

Given the modified form of collective bargaining in the public sector, the themes we have identified, and the nature of what constitutes a good agreement, we believe the general requirements of successful collective bargaining include:

- Acceptance by all parties with an interest in the bargaining process that collective bargaining is the appropriate method to determine terms and conditions of employment.
- Acceptance that each of the parties to the negotiation has a legitimate role to play and interests to represent.
- A degree of trust between the parties as to each other's honesty, reliability and competence.
- A prevailing attitude held by the parties that they will work together to resolve issues or problems identified as a concern to either party and they will do so within the bargaining structure.
- A structure that serves to facilitate negotiated resolutions, not encourage resolutions through means external to the bargaining process.

For more information, please contact Hugh Finlayson at hughf@bcpsea.bc.ca or 604.730.4515 or John Calder at johnc@bcpsea.bc.ca or 604.730.4508.

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to the employee. Consequently, in going to the bank, the truck driver was doing a service for the employer. The decision, known as *Reporter Decision #2*, concluded that the injury arose out of and in the course of employment. The standard contained within Section 5(1) of the *Workers Compensation Act* had been met. The truck driver, therefore, "made it through the gate."

Working with that case, the Chair then set down eight guidelines that WCB claims officers would use to determine if a worker was in the scope of their employment at the time of injury. The Chair stipulated that these eight guidelines were not exhaustive and that other factors relevant to the case under review could be considered. He also stipulated that no single criterion could be used to decide the merits of a case – that all factors must be considered and weighed in reaching a decision to accept or deny a claim.

Reporter Decision #2 became policy #14.00, "*Arising Out of and In the Course of Employment*" in the *Rehabilitation Services and Claims Manual* (RSCM). It became the principal policy to determine the acceptability of a claim and remained unchanged until this year.

Two or three years later, a teacher claim for injuries arising out of a student-staff challenge game of floor hockey was denied by a WCB claims officer. The claims officer ruled that the teacher had volunteered to participate in the game and the activity could not reasonably be related to the responsibilities associated with teaching.

The Board of Commissioners reversed this decision in *Reporter Decision #273* and intro-

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duced the concept that activities undertaken by teachers to foster good relationships between students and staff were part of the general duties of teachers. The decision also stated that the voluntary participation of the teacher in school sponsored extracurricular activity should not be a primary consideration in considering the merits of the case. Unfortunately, these concepts were not integrated into RSCM #14.00. The points dealing with building or enhancing relationships became part of a new policy, RSCM #20.20, "*Recreational, Sports or Exercise Activities*." However, the guideline on the voluntary assumption of extracurricular activities was not incorporated into policy.

RSCM #20.20 evolved from the need to provide guidelines to assist WCB staff in adjudicating injuries arising from sports and other physical activities among workers who were employed in occupations such as police officers, firefighters, corrections officers, and ski instructors. These occupations contain some requirement for physical fitness or participation in physical activity or games. Inasmuch as there is no occupational requirement for teachers to achieve or maintain a required standard of physical fitness or to participate in games, the gains achieved by *Reporter Decision #273* were offset by the inclusion of teachers into an occupational group where this was an expectation, if not a requirement. If a claim for injury to a teacher was considered only on the basis of this policy, most injuries to school staff occurring during extracurricular activities would be denied. However, claims from school staff were continuing to be adjudicated in accordance with RSCM #14.00, and problems were rare.

In the early 1990s, the WCB introduced a third policy, which stated that fundraising was not part of employment unless a person was employed by or attached to a charitable organization. Some of the language was specifically directed at teachers, and required WCB claims staff to routinely deny claims to "…school teachers participating in a bake sale, a car wash, a walkathon, etc. with a view to raising funds for field trips, or other similar peripheral activities not covered by school funding." This policy was developed without any consideration of a specific claim – it was simply inserted into the RSCM. An explanation of why this was done was not made available. Even though this language was completely restrictive and contrary to the principles established in RSCM Item #14.00, there were few problems because claims were continuing to be considered and decided under RSCM #14.00.

Legislation Changes the Landscape

In 2003, all of this changed – very suddenly and very completely.

On March 3, 2003, Bill 63, *Workers Compensation Amendment Act*, (No. 2), 2002 came into effect. Bill 63 dramatically changed the appeal structure on WCB claims and other issues. It reduced the number of appeal levels, introduced strict timelines on when appeals must be decided and placed restrictions on the freedom of WCB claims officers and appeals personnel to make decisions. This last change placed a requirement on WCB and appeals personnel to apply policy where policy relevant to the issues under consideration existed. The change was introduced to force greater discipline into the claims adjudication process and to encourage greater uniformity in decisions reached when the same facts were being considered. However, it also forced everyone to realize that not all policy was well written or well considered. There was now an urgency to deal with policy that was not well considered.

Early this year, in response to input from several sources, the WCB began a process to reconsider RSCM policies #14.00 and #20.20. After beginning a public consultation process, and in response to submissions that included problems with RSCM #20.50, the WCB quietly added this policy to the consideration as well. BCPSEA submitted a 20-page report with extensive recommendations for change.

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In late May, the WCB announced the following changes to the three policies, to take effect June 1, 2004:

RSCM Item #20.50 *Fundraising, Charitable or Other Similar Activities*

A recognition that employers, including school districts, may engage in fundraising; it is now recognized as part of the employment when the fundraising is at the direction of the employer and for the employer's business.

A direction to WCB claims officers and appeal personnel to consider, in their entirety, the factors listed in RSCM #14.00 when fundraising is a factor.

The removal of all language directed at school districts that arbitrarily excludes fundraising from being considered part of the employment.

RSCM Item #20.20 *Recreational, Exercise or Sport Activities*

A direction to WCB claims officers and appeal personnel to consider, in their entirety, the factors listed in RSCM Item #14.00 when a claim for injuries arising from sports or games is considered.

References to physical education teachers and to language that favoured the acceptance of claims from this group but, in doing so, disadvantaged other teachers were deleted.

Language was added to clarify that teachers engaged in coaching or supervising during the lunch break or after the hours of instruction are in the course of their employment.

Language was added that specifically mentions coverage for teachers injured while supervising students off school grounds.

RSCM Item #14.00 *Arising Out of and In the Course of Employment*

To overcome the problem of salaried employees who have no fixed hours of work, language was added to require consideration of whether or not the activity at the time of the accident was part of the employee's normal work duties. This wording should address both the voluntary nature of participation and the absence of additional pay.

Language to assess whether or not there was employer direction in the activity was added by asking if supervision was present.

At the present time, there are only three claims that are under appeal for issues related to involvement in extracurricular activities. In each of these cases, the revised policies as now adopted would have directed the claims officer to reach a different decision.

Assessment of the Implications

It will be a year or two before we have certainty that all identified problems have been addressed. However, there is certainty that the changes better reflect the nature of the work done in school districts. School staff now have greater certainty that injuries arising from school-sponsored extracurricular activities will be covered. The changes provide a formal recognition that the work of educating students extends beyond the core hours of instruction.

To complement these significant changes in policy, the WCB, in a follow up to independent discussions with BCPSEA, has agreed to establish school district claims centers. This will enable the WCB to train staff in specific school district issues and enable school district representatives to meet with WCB claims staff to resolve issues of concern to both school districts and WCB.

There is also notice in these changes that direction provided to staff should be done with recognition that there are limits to the bounds of employment. The policy changes also include a provision that, "Coverage under the Act cannot be extended by an employer simply by labeling an off duty recreational, exercise or sports activity as mandatory."

For more information, please contact John Bonnet at johnb@bcpsea.bc.ca or 604.730.4509.

Costing and Ratification of Support Staff Collective Agreements

Under our delegated authority model, BCPSEA is responsible for final ratification of support staff collective agreements.

In the past, we have asked that you complete the BCPSEA Support Staff Compensation Costing Form as part of our ratification process. The Public Sector Employers' Council (PSEC) Secretariat now has a form that they require be completed.

In order to avoid duplication, BCPSEA will no longer require completion of our form. Instead, we will use the PSEC form. Accordingly, the process after you have achieved an Agreement in Committee is:

1. Complete the PSEC costing (not required for rollover agreements)

   PSEC prefers that you complete the form online at: https://pseclrrs.gov.bc.ca/

   All Secretary Treasurers have a password to access this site. If you have misplaced your password, contact Stephanie Tassin (contact information below).

   If online completion is not possible, contact Stephanie for an electronic or hard copy of the form; once completed, forward the form to BCPSEA along with the information in #2 below.

2. Send a letter and the Memorandum of Agreement to BCPSEA confirming that the school board and the union have ratified the Agreement in Committee.

   Once all relevant material is received, the agreement will be submitted to the BCPSEA Board of Directors for ratification within 72 hours.

If you have any questions regarding this change in process, please contact Stephanie Tassin at stephaniet@bcpsea.bc.ca or 604.730.4507;
or Bonda Bitzer at bondab@bcpsea.bc.ca or 604.730.4505.

Support Staff Bargaining Snapshot

66 collective agreements have expired in 59 school districts

Two agreements have been ratified locally and provincially:

- School District No. 58 (Nicola-Similkameen)
- School District No. 74 (Gold Trail)

One agreement has been ratified locally; BCPSEA ratification is pending:

- School District No. 39 (Vancouver) (CUPE Local 15)

Negotiations have commenced in most districts.

"The world is moving so fast these days that anyone who says it can't be done is generally interrupted by someone doing it."

Elbert Hubbard, 19th century American editor, lecturer, and essayist.

Updated Exempt Staff Compensation Plan to be Released

When Bill 66, *Public Sector Employers Amendment Act*, was enacted in October 2002 the Minister of Finance subsequently approved BCPSEA's exempt compensation management plan for the K-12 sector (*BCPSEA Policy 95-06, Compensation and Employment Standards for School District Employees Not Subject to a Collective Agreement*) as an approved compensation plan under the *Public Sector Employers Act* (as reported in the *Exempt Staff Issues* bulletin of January 16, 2003).

BCPSEA also reported at that time that we were working on revisions to the plan to reflect the provisions of the legislation; in addition, we advised that we were reviewing the salary ranges for the positions of superintendent and secretary treasurer as contained in the plan.

The salary ranges were initially developed and incorporated into the exempt compensation plan in 1999, utilizing the data from the 1998 sectoral survey of total compensation. The ranges were reviewed again following the 2001 sectoral survey, which also included data from Alberta and Ontario. At that time, it was determined that there was not sufficient rationale to go forward to the Public Sector Employers' Council (PSEC) to request an upward adjustment to the ranges – the British Columbia data did not support a revision to the ranges, nor did the data from Alberta and Ontario which indicated that, although the compensation packages were structured somewhat differently, the salary ranges remained competitive with these external comparator markets.

BCPSEA reviewed the salary ranges again in the summer/fall of 2003, refreshing the data from both the internal (BC) and external (Alberta and Ontario) markets in order to ascertain whether there had been sufficient movement in compensation to support a rationale for upward adjustment to the ranges. Data was collected and analyzed – as a result, as part of the revisions to the plan, BCPSEA included increases to the salary ranges for the positions of superintendent and secretary treasurer.

The revised draft of the plan was submitted to the PSEC Secretariat in December 2003 for review by their staff – we wanted to ensure that the draft fulfilled its objectives and that it met the technical requirements established by PSEC for executive/ exempt compensation.

Upon receipt of the Secretariat's approval, we arranged to meet with Minister of Finance Gary Collins to obtain his approval of the plan, as required under the *Public Sector Employers Act*. BCPSEA and PSEC Secretariat staff met with the Minister on June 8, 2004. The Minister acknowledged that BCPSEA has prudently managed exempt staff compensation in the K-12 sector, and indicated that he would advise of his decision.

Dates set for BCPSEA Labour Relations Symposium

Mark your calendars!

The annual BCPSEA Labour Relations Symposium will be held October 29-30, 2004, at the Marriott Vancouver Pinnacle Hotel in Vancouver.

The purpose of the symposium is, "To provide a forum for the exchange of ideas, strategies and insights concerning the critical labour relations issues facing the K-12 public education sector."

Teacher bargaining – its progress to date as well as future direction – will be central to the symposium. The preliminary program will be provided early in September – check it out on BCPSEA's public website under "Events."

Exempt Staff Compensation Administration

The process for administration of exempt staff compensation operates within the statutory framework of the *Public Sector Employers Act*, established by amendments to that legislation enacted in October 2002.

The BCPSEA plan incorporates the compensation mandates established by PSEC ("Compensation Mandates adopted by PSEC from time to time are the official policy of BCPSEA").

The current compensation mandate, which applies across all employee groups in the public sector, is net 0% through 2005-06. The compensation mandate does provide, however, that where there are critical skills shortages, or where other legitimate labour market issues such as recruitment, retention and/or compression can be demonstrated, targeted compensation increases within the approved sectoral compensation plan may be considered by the employers' association.

In that context, if a board believes that it is necessary to consider an increase to an existing salary grid or single rate salary for its exempt and/or executive staff, then the district may make a submission to the employers' association for consideration of the increase.

If you have any questions with respect to exempt staff compensation, please contact Deborah Stewart at deborahs@bcpsea.bc.ca or 604.730.4506;
or Joe Strain at joes@bcpsea.bc.ca or 604.730.4507.

Total Compensation Survey Distributed to School Districts

The fourth sector-wide survey of exempt staff compensation arrived in Secretary Treasurers' e-mail boxes in mid-June.

The survey, which ties in to the BCPSEA exempt staff compensation plan (*BCPSEA Policy 95-06, Compensation and Employment Standards for School District Employees Not Subject to a Collective Agreement*), is part of a cyclical process:

1. BCPSEA surveys British Columbia, Alberta and Ontario school districts to obtain total compensation data for exempt benchmark positions.
2. The BCPSEA exempt staff compensation plan (BCPSEA Policy 95-06) is reviewed and updated as indicated/required.
3. The compensation data is refreshed to maintain currency.
4. The survey cycle commences again.

We are working with Western Compensation & Benefits Consultants again on this year's survey.

School districts in BC, Alberta and Ontario are asked to complete a comprehensive questionnaire; the data is then costed for each benchmark position and a final report (*Report on Total Compensation Paid to Exempt Employees*, also known as the "Western" Report), will be distributed to BC school districts early in the new year.

Arbitrator Agrees With BCTF that Teachers' Right to Freedom of Expression Violated

Arbitrator Don Munroe, in his award of May 7, 2004, has agreed with the BC Teachers' Federation (BCTF) that teachers' freedom of expression was violated when school boards directed that they not distribute on school property materials critical of the provincial government.

Arising from job action during the last round of collective bargaining in 2001-02, the BC Teachers' Federation (BCTF) developed an Action Plan.

The Action Plan's activities in the Fall of 2002 included distribution of "report cards" at parent-teacher interviews, which compared class size and/or the number of non-enrolling teachers employed before and after the legislation of the current collective agreement. Teachers also posted bulletins with titles such as, "Our Children's Education is Threatened" and "What's at Stake for BC Students," on public bulletin boards within schools.

In a number of districts, teachers were asked/directed not to distribute cards and/or post the bulletins. The BCTF filed a policy grievance alleging that this violated their right to freedom of expression as guaranteed under section 2(b) the *Charter of Rights and Freedoms* (the Charter). In addition, the BCTF claimed that the employer violated section 8 of the *Labour Relations Code*, which provides an employee *"the freedom to express his or her views on any matter, including matters relating to an employer…provided that the person does not use intimidation or coercion."*

BCPSEA's position was that the BCTF and teachers should not be prohibited from disseminating such political information but that they should do so outside of the work day and away from the work site.

However, Arbitrator Don Munroe agreed with the BCTF, stating that:

- The Charter applies to BC school boards
- The actions by the school boards or their representatives violated the teachers' freedom of expression as guaranteed by section 2(b) of the Charter
- Such actions are not saved by section 1 of the Charter.

He declined, at this stage, to make a determination regarding alleged violations of the *Labour Relations Code*.

Arbitrator Munroe made an additional point that, "The common law duty of fidelity owed by a teacher, and arising from his or her employment, is a duty owed to the School Board employing that teacher. A teacher does not owe a duty of fidelity arising from employment to the provincial government. To the extent the expressive content of the materials intended by the teachers to be posted or otherwise communicated was aimed at the provincial government, the duty of loyalty or fidelity has no application."

The arbitrator's decision has attracted considerable commentary, including the following comments of Brian Peckford, former Premier of Newfoundland and Labrador, who stated in a letter to the editor published in *The Vancouver Sun*:

"…as one of those who participated in the constitutional reform and assisted in the creation of the *Charter of Rights and Freedoms*, I never thought in my wildest dreams that such a determination could be possible in this nation."[4]

Upon review of the decision, BCPSEA has decided to appeal the award. As BCPSEA Chair Ron Christensen noted, "We are concerned about the implications of the arbitrator's award on students in the classroom. As we said before, BCPSEA takes no issue with teachers' right to become involved in political debate, but we believe that political campaigning should be kept out of the classroom and out of parent-teacher interactions when parents and teachers are meeting to discuss a student's progress."

We will provide updates as this matter unfolds. In the meantime, if you require further information, please contact Bonda Bitzer at bondab@bcpsea.bc.ca or 604.730.4505.

4. *The Vancouver Sun*, Saturday May 15, 2004, Page C7

Public Sector Collective Bargaining in a Net Zero Environment

To date, over 40 public sector collective agreements have been settled within the provincial government's net zero fiscal mandate. Only one of those settlements, between the Health Employers' Association of BC (HEABC) and the Hospital Employees' Union (HEU), in the Facilities subsector, has been legislated.

While the settlements to date represent a significant number of total public sector full-time equivalent employees, one significant collective agreement – between the BC Teachers' Federation (BCTF) and the BC Public School Employers' Association (BCPSEA) – must still be settled. The BCTF and BCPSEA are preparing to engage in collective bargaining.

Healthcare Sector Settlements

HEABC & Community Subsector Association

The healthcare sector has seen tremendous change in the collective bargaining environment in recent months. In March, the HEABC and the Community Subsector Association reached agreement on a 4.05% general wage decrease, applicable to all employees. The settlement, while not limiting an employer's right to contract out, does allow for 1,100 full-time equivalent positions to be contracted out across the province. Should an employer choose to contract out more than the allocated number, the previous collective agreement's wage and benefit levels for the remaining employees would be reinstated. The contract term is to March 31, 2006.

HEABC & HEU (Facilities Subsector)

The only negotiations to be concluded by legislation were finally settled in early May. After the introduction of back to work legislation and defiance of that legislation by the union, an agreement was reached between the BC Government, the BC Federation of Labour, the Facilities Bargaining Association (FBA) representing support workers employed in healthcare facilities in BC, and the HEABC representing healthcare employers. The agreement ended a labour dispute, which began with a four day legal strike by the FBA, but escalated to include illegal strike action and "protest" picketing after the back to work legislation, Bill 37, *Health Sector (Facilities Subsector) Collective Agreement Act* was introduced by the provincial government on April 28, 2004. The original legislation provided for what proved to be two very contentious provisions: a retroactive compensation reduction to April 1 and no cap on contracting out. The amended agreement rectified those two provisions:

- The retroactive provisions of the legislation were repealed and instead provide for the compensation reductions to take effect May 1, 2004
- The Government agreed to limit the number of jobs eliminated due to contracting out between April 1, 2004 and March 30, 2006 to a maximum of 600 full-time positions, with no more than 400 full-time positions reduced between April 1, 2004 and March 1, 2005

and also provided for:

- A $25 million severance pay package for current regular employees who leave health sector employment as a result of contracting out
- Agreement by HEABC on its own behalf and on behalf of its members not to take any sanctions against FBA members provided they return to work for their regular shifts as of May 3, 2004.

The parties also agreed that any issues not resolved by May 31, 2004 will be submitted to arbitrator Vince Ready.

Other provisions of the settlement, contained in the first draft of the back to work legislation, include:

- An 11% compensation reduction applied across the board.
- An increase in the work week from 36 hours to 37.5 hours, with no increase in compensation, resulting in 4% wage savings.

• A two year term to March 31, 2006.

HEU Illegal Strike: Reactions and Consequences

On May 2, 2004, the British Columbia Supreme Court found the Hospital Employees' Union (HEU) in contempt of the April 30, 2004 BC Labour Relations Board Order, which had been filed as an order of the Supreme Court. The Court Order required that the HEU cease engaging in illegal strike action and not prevent or impede, or attempt to prevent or impede, its members from returning to work.

The Court found that the HEU had breached the Court Order by preventing or impeding HEU members from resuming their duties and regular work schedules of employment with member facilities of the HEABC. In addition, the Court found that the HEU had breached the Court Order by counselling or encouraging HEU members who had resumed their duties and work schedules to cease work.

The Court reconvened the hearing on May 17, 2004 to address the issue of what penalty may be imposed on the HEU for its contempt of the Court Order.

In his decision of June 11, 2004, Justice Bauman characterized the matter before him as follows:

"While the matter before me is one of civil contempt, I do not overlook the very public nature of the HEU's defiance of the order and the fact that the damage engendered thereby, far from being confined to the parties, has extended to the public at large.... I must choose an amount that is significant, so that it serves the principles of deterrence and denunciation, but which is also restrained, so that the justice of it will be accepted by all."

In making his determination, Justice Bauman considered similar civil contempt cases in other provinces, the financial information filed by the union, the nature of the HEU's contempt and the impacts of it. He also noted that there was evidence, "indicating not only very open defiance of the order but, as well, instances of intimidation of workers by representatives of the Union." In mitigation of the penalty, he considered that the HEU did endeavour to maintain essential service levels and did direct its workers back to work shortly after the court order.

Taking this into consideration, Justice Bauman imposed a fine of $150,000. The fine is suspended for a period of 30 days to allow the HEU the option of paying the monies, in equal installments of $25,0000, to six hospital foundations instead:

- Kelowna General Hospital Foundation
- Royal Victoria Hospital Foundation
- Spirit of the North Healthcare Foundation
- St. Paul's Hospital Foundation
- Surrey Memorial Hospital Foundation; and
- VGH and UBC Hospital Foundation.

Healthcare Sector Framework Agreements

HEABC & Nurses' Bargaining Association

In late May, the Nurses' Bargaining Association reached a framework agreement with the HEABC, under which the parties will approach negotiations to renew the collective agreement.

Under the Framework Agreement, HEABC has agreed not to seek rollbacks of hourly wages, benefits or time off provisions. In return, the Nurses' Bargaining Association has agreed to work within the provincial government's net zero mandate.

The Agreement also serves to limit the scope of issues to be discussed at the bargaining table. The parties have agreed to form discussion groups to address specific health policy issues such as increasing the number of regular full-time positions for nurses, shift scheduling, hours of work, employment of new graduates, and phased retirement. Recommendations from the discussion groups will then be referred to the respective bargaining committees.

The bargaining committees, in addition to discussing the specific health policy issues, will also discuss the Occupational Health and

Safety Agency for Healthcare, long-term disability supplementary benefit, mileage for community nurses and displacements, placement in vacancies and bumping. Bargaining on this limited scope is scheduled to conclude by the end of July, unless the timeline is extended by mutual agreement.

If agreement on a revised collective agreement is not reached at the scheduled end of bargaining, the parties will recommend that the current collective agreement be rolled over until March 31, 2006. Agreements on any issues on the table will either form separate letters of understanding to the agreement or will be recommended as amendments to the rolled-over collective agreement.

This Framework Agreement and process for negotiating a new collective agreement has been received as a substantial achievement for the Nurses' Bargaining Association, given the bargaining climate in British Columbia. Indeed, the BC Nurses' Union anticipated HEABC tabling a substantial number of concessionary proposals, as it had with the Paramedical Bargaining Association in January.

HEABC and Paramedicals

In mid-June, HEABC and the Paramedical Professional Bargaining Association (PPBA) reached a Letter of Agreement (LoA) on a framework under which both parties will approach negotiations to renew a collective agreement. The LoA:

- Sets a two-year term (expiry March 31, 2006)
- Establishes a net zero mandate with respect to total compensation
- Allows for discussions on a limited number of issues including posting, hours of work, LTD, mileage, classification, recruitment and retention.

Community Social Services Settlements

In April, the Community Social Services Employers' Association reached agreement with the Community Social Service Union Bargaining Association, representing Community Living Services, General Services and Aboriginal Services. The three-year agreement, expiring on March 31, 2006, provides for approximately 7% savings for employers.

Wages for current employees, while in their current classification, are protected. A reduced wage increment grid will be implemented for employees hired after March 31, 2004 and for current employees who post into a new classification. Wages will be set at 85% of current wages, increasing by 5% of current wages for every 2000 hours of work. Employees will reach 100% of current wages after 6000 hours of work – approximately three years. Laid-off employees will receive preferential hiring on any re-tendered contract, as those new companies must accept applications from laid-off employees of the previous contracted agency, and must hire in accordance with the collective agreement. Other provisions include benefits cost savings and reduced sick leave accrual and payment.

University Sector Settlements

Seventeen university collective agreements have been settled within the net zero mandate. A variety of innovative solutions have been created to satisfy the needs of both the unions and employers:

- UBC, UVIC, SFU, & UNBC, with six bargaining units, converted existing health and welfare benefits into wages
- UBC and UVIC, with their faculty associations, achieved agreement on productivity goalsharing.
- UBC, with one of its CUPE locals, achieved concessions allowing contracting out of bargaining unit work.
- UVIC, with two bargaining units, achieved concessions on banking sick leave payout, providing savings to the employer.
- UBC, UVIC, SFU, with eight bargaining units, negotiated targeted labour market adjustments (not funded by government).
- UBC, UVIC, and Royal Roads rolled over a collective total of five collective agreements.

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Legislative Update

The spring session of the provincial legislature saw the enactment of two significant pieces of legislation.

Bill 19 – Education Services Collective Agreement Amendment Act

Bill 19, *Education Services Collective Agreement Amendment Act* (Amendment Act), introduced April 20, 2004, received Royal Assent and became law on April 29, 2004.

The Amendment Act effectively reinstates the decision of Arbitrator Eric Rice, QC, under section 27.1 of the *School Act*.

In January 2002, Bill 28, *Public Education Flexibility and Choice Act* (PEFCA) was enacted. Among its provisions, the PEFCA narrowed the scope of matters that could be the subject of collective bargaining or contained in a collective agreement. The PEFCA also amended the *School Act* by codifying section 27.1 – the legislative vehicle to resolve conflicts and inconsistencies between amendments to the *School Act* and the collective agreement. As per the terms of the PEFCA, an arbitrator was appointed to review the collective agreement, determine which provisions needed to be removed, and remove them.

Arbitrator Rice released his decision on August 30, 2002. On November 20, 2002 the BC Teachers' Federation (BCTF) filed a petition in BC Supreme Court for a judicial review of the Rice award. Mr. Justice Shaw released his decision on January 22, 2004, quashing the Rice award. Both BCPSEA and the BCTF filed appeals of that decision, albeit citing different grounds.

In considering the alternatives available to reconcile this matter, the provincial government chose the legislative option.

The primary operative provisions of the Amendment Act are section 1 and section 4.

Section 1: Collective Agreement Deletions

Section 1 of the Amendment Act amends the provisions of the *Education Services Collective Agreement Act* (ESCA). The ESCA deemed section 27.1(5) of the *School Act* to form part of the collective agreement. Section 27.1(5) provided for the arbitrator to delete from the collective agreement those provisions which he had found to be in conflict with or inconsistent with the amendments to the *School Act*.

Section 1 of the Amendment Act repeals Section 27.1(5) from the collective agreement. In its place, rather than establishing a process for determining what is to be deleted, it specifically identifies the provisions of the collective agreement that are to be removed, and deems them removed effective July 1, 2002. The provisions that are removed by the Amendment Act are the same as Arbitrator Rice determined ought to be deleted.

Section 4: Amendment to School Act Section 28, Scope of Bargaining

This amendment provides further clarity as to the scope of bargaining. A new section is added:

> *(3) For certainty and despite any decision of a court to the contrary made before or after the coming into force of this subsection, nothing in this section is to be construed as authorizing a board or the Provincial union to enter into a collective agreement that includes a provision that is prohibited under section 27(3) or void under section 27(2), (5) or (6).*

A preliminary reading of section 28(3) makes clear that while the parties may bargain the manner in which a school board will exercise certain powers or discretions, or the consequences flowing therefrom, they may not do so in respect of the subject matter contained within section 27(3).

The remainder of the Amendment Act is simply procedural. Section 2 is a consequential amendment to the schedule attached to ESCA to make clear that the terms of the collective agreement do not include provisions that were deleted in accordance with the collective agreement or ESCA.

As the arbitration process provided for under section 27.1 of the *School Act* was a transitional process and is no longer necessary, section 3 of the Amendment Act repeals section 27.1.

Finally, section 5 expressly makes the Act retroactive. The amendments to section 1 are deemed to come into force on January 28, 2002 (the date the PEFCA received Royal Assent), and to amend the collective agreement effective July 1, 2002. Section 5(2) makes clear that for the purposes of any lawsuit or arbitration, commenced before or after the Act was enacted, the collective agreement is deemed, as of July 1, 2002, not to contain any of the provisions deleted by the Amendment Act. As a result, to the extent that grievances have been filed in various school districts alleging that the judgment of Justice Shaw "restored" certain provisions to the collective agreement, section 5 of the Amendment Act conclusively establishes that not to be the case.

On Appeal

Both the BCTF and BCPSEA appealed the January 22, 2004 decision of Justice Shaw. Given that the Amendment Act repeals the transitional arbitration process and, in its place, rather than establishing a process for determining what is to be deleted, specifically identifies the provisions of the collective agreement, it is our view that the appeals serve no purpose. BCPSEA advised the Court of Appeal that we do not intend to proceed. The BCTF subsequently advised the court that they also will not proceed.

Bill 55 – Teaching Profession Amendment Act, 2004

Bill 55, *Teaching Profession Amendment Act*, 2004 (the Amendment Act), was introduced in the legislature on May 13, 2004.

History of the *Teaching Profession Act*

On May 12, 2003, the provincial government introduced Bill 51, *Teaching Profession Amendment Act*, which received Royal Assent on May 29, 2003. This Act dissolved the former BC College of Teachers council and replaced it with an interim, government-appointed council, which reports to the Minister of Education. The BCTF opposed the changes to the College as set out in the Act and developed strategies to respond.

Ultimately, the BCTF decided to pay all College of Teachers fees into a trust fund and boycott the College until it is a "self-regulatory and democratic organization that represents teachers and the teaching profession."[5] The BCTF demanded, as their main objection to the legislation, an elected teacher majority to the College council.

On December 10, 2003, government approved a proposal to introduce legislation to amend the *Teaching Profession Act*. Under the amendments the College would be comprised of twelve elected members, seven appointed members, and one member chosen by the Deans of Education. According to the Minister of Education, the proposed changes would improve the ability of the College to operate in the public interest and enhance the teaching profession, while respecting the wishes of teachers to have majority representation on the College Council. However, these amendments were not legislated until now, with the introduction of Bill 55.

On December 30, 2003, the province provided advance payment on behalf of individual members of the BC College of Teachers who had not paid their annual membership fees. This advance was made to prevent cancelled memberships and ensure teachers remain in their classrooms with students.

In the meantime, the interim council passed a variety of bylaws intended to establish the Council's responsibility to maintain written standards of competence and conduct for College members.

Despite the government's intentions to return a majority governance of the College to teachers, the BCTF continued to withhold payment of the College fees. The following

5. BCTF School Staff Alert, June 2, 2003.

issues remained a point of contention, and upon their resolution, the BCTF agreed they would then remit the College fees:

- A democratically elected College must be in place
- There is a guarantee that bylaw changes not come into effect until ratified by the democratically elected Council
- The requirements to report on College members is amended to be similar to those pertaining to other professional bodies.

The Bill 55 Amendments

The primary operative provisions of the Amendment Act are sections 2, 4, 5 and 13.

Section 2 merges certification and membership in the College of Teachers. A teacher must now retain membership in the College to retain teacher certification.

Section 4 of the Amendment Act legislated the government's commitment to return governance of the College council to an elected teacher majority. Twelve members will now be elected to serve on the College council. Seven members will be appointed on the recommendation of the minister, three of whom must be college members, and the remaining members of the council shall continue to be nominated jointly by the deans of the faculties of education in British Columbia.

Section 5 of the Amendment Act increased the term of Council members to three years, from two years.

Section 5 also added a new section, 9.1, to the *Teaching Profession Act*. This section requires all Council members to take an oath of office, placing the public interest above all other interests, before taking office. This oath is intended to create independence from both government and the teachers' union.

Section 13 amends the requirement that members report the misconduct of members, a chief concern of the BCTF. The new provision, instead of requiring all professional misconduct to be reported, now outlines when professional misconduct must be reported:

- Where the misconduct involves physical harm to a student;
- Sexual abuse or sexual exploitation of a student; or
- Significant emotional harm to a student.

Next Steps

The BCTF is in the midst of analyzing this legislation. They acknowledge that the legislation does respond to some of the teachers' concerns. While recognizing that government did restore a majority of teacher elected positions on the council, they note that in their view truly democratic governance has not been restored, as two-thirds of council votes are required to overturn bylaws. According to BCTF President Neil Worboys, "that means a majority of members on a democratic council could still be saddled with all the damaging bylaws passed by the political appointees."

The BCTF also acknowledged that government withdrew the requirement for teachers to report all professional misconduct, and instead identified where reporting is required.

The BCTF expressed concern over merging teachers' certification to membership in the College, and requested a meeting with the Minister of Education to discuss their concerns.

Despite the many ongoing concerns the BCTF has with the legislation, BCTF members will participate in the upcoming election of College councillors. At a special Representative Assembly on June 12, 2004, delegates made the following recommendations:

- BCTF members participate in the election of College councillors
- Locals organize endorsation of a BCTF candidate for the College zone
- Members accept mail from the BC College of Teachers.

The College will be mailing ballots to approximately 85,000 certificate holders on August 14, 2004. The ballots will be counted on September 14.

Mental Health Absenteeism Threatens to Break Disability Bank *by Paula Allen*

Controlling disability costs requires a different approach than that used a generation ago. Costs due to physical disabilities have by and large been effectively curbed by disability management employed at many organizations. What haven't been tamed are costs related to mental suffering. To manage these, organizations need a holistic approach.

There's good news as well as bad news in the field of disability management. The good news is more employers than ever have access to disability management programs.

The bad news is employer costs due to health-related absenteeism are rising rapidly. Disability management programs once had a positive impact on costs, but they are not as effective as they were. Why? And what can be done?

The why is straightforward: Most programs were designed to manage physical problems. However, there's an increasing number of mental health claims and claims that are influenced by non-medical factors such as conflicts between co-workers. Disability management guidelines do not help resolve problems such as performance or personality conflicts.

To alleviate the situation, HR departments should establish an infrastructure for early intervention, and a program to address the unique challenges that may arise for employees returning to work.

The dramatic increase in disability management claims has put a strain on public and corporate resources – we just can't cope anymore. Employers and disability management professionals must reassess their management of claims involving mental health issues. This reassessment must involve each of the three main areas that affect disability management: occupational, psychological and medical issues.

Occupational Factors

Unresolved work-related conflicts can lead to feelings of fear, frustration, anger, hopelessness – all potential precursors to absence. When a conflict is coupled with a demanding and fast-paced environment, the result is often a "flight" response from the employee.

Several studies point to the importance of workplace relationships and employee perceptions as major predictors of how quickly someone returns to work. While such issues are not limited to mental health claims, a disproportionate amount of lengthy stress-related and physical disability absences have workplace issues as a complicating factor.

Negative perceptions are likely to amplify during an absence and affect how quickly the employee returns to work. The usual reasons for delay are the employee's motivation and ability to focus on regaining productivity, and the motivation of the supervisor to facilitate reintegration.

As in all disability management interventions, early response is critical. Occupational interventions focus on workplace relationships, agreements regarding how work will be organized and the expectations of all parties. Critical elements of an occupational intervention should include:

- Support for the workplace relationship by means of open and respectful communication focused on the issues at hand
- Clarification of issues that affect the ability to work productively, such as how work is organized
- Recognition of options and constraints, such as the ability of the employer to modify some non-essential activities of a job
- A problem-solving framework that clarifies alternatives, including different ways to do a job, and provides an action plan so that the best options can be put in place
- A communication structure that includes both the employee and direct supervisor discussing, negotiating and agreeing on how work should be structured to enable the employee to be the most productive.

insight

The challenge is to establish a comprehensive response and a framework that shows respect for both the employee and the workplace.

Psychological Issues

The employee's perceptions, beliefs and patterns of behaviour all affect the response to a disability.

While not limited to these, three common situations suggest the need for psychological intervention:

- An employee who may or may not meet the criteria for disability benefits, but is experiencing a level of stress that's interfering with the ability to function at work.
- An employee who has had a prolonged absence from work due to physical illness and appears to be losing the motivation to return.
- An employee who is in conflict about complying with recommended treatment, and sabotages treatment interventions.

The core principle of disability management is to help the employee return to normalcy, or as close to normalcy as the situation allows, as soon as possible. Unfortunately, the quality of psychological services does not always mesh with these goals. Psychological services may actually advocate for absence without having all the information on the options the workplace can provide.

The first step must be a comprehensive assessment to clarify the psycho-social issues affecting working capacity. Experienced therapists can assist employees in building resiliency in the face of any psychological stress. They can also support the management of depression and anxiety, as well as other work-related concerns. In the best of all worlds, the therapist becomes a part of the disability management intervention team, playing a key role in the communication process.

Many psychological therapists feel their relationship with the employee precludes them from supporting a return-to-work initiative. These therapists should be provided with specific training and clear protocols to ensure they understand that disability management supports recovery, appropriate accommodation and eventually independence and health. Disability management goals are aligned with therapeutic goals.

Medical Issues

In 2001, the Fraser Institute published research indicating that in 2000, Canadians waited 16.2 weeks from a general practitioner referral to appropriate treatment, a figure that's 23.7 per cent higher than in 1999.

Lack of timely care adversely affects the employee's quality of life, level of anxiety and recovery potential. For mental health problems, this is compounded by the relative shortage of psychiatrists and the under-treatment of depression in general.

The fact is that depression and many other mental health conditions are treatable. Understanding an employee's symptoms is critical for comprehensive disability case management.

Once clear, the objective is care that both follows evidence-based guidelines and considers the potential impact of any medication on the employee's ability to function during working hours.

There are, however, challenges. For example, physician's reports are typically less precise for mental health conditions than they are for physical conditions, and secondary mental health conditions (dual diagnoses) increase complexity and prolong recovery.

Employers need to take a more active role in at least two key areas. First of all, they need to lobby, as a group, for improved access to care in the public system. Health affects productivity and ultimately the competitiveness of Canadian business.

Second, employers need to take some individual responsibility and not expect such change to be the solution. They must improve the management of disability issues by treating employees as individuals, not

claims. Employers must address each situation comprehensively rather than relying on a one-dimensional approach.

Where to Start?

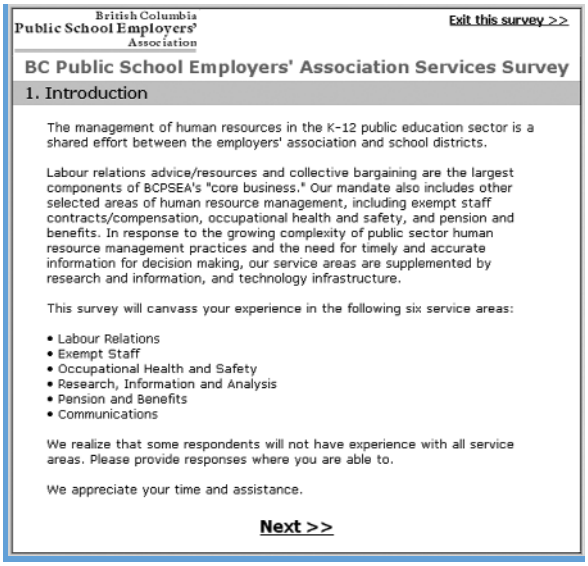
Any delay in developing an infrastructure to comprehensively manage disability puts an organization at risk. Begin by considering the following:

- Consider how your organization responds to claims where multiple issues (psychological, workplace, and medical) exist.
- Determine where the approach to managing disability claims is strong and where it is not.
- For the areas where the approach falls short, determine whether you can fill the gap. For example, additional services from an employee assistance plan or disability management provider may be one option.
- Once resources are in place, make sure that processes are streamlined and efficient. Complex cases must be identified quickly and accurately to ensure the appropriate early intervention.

Disability management for mental health claims needs to be managed in a way that deals with all potential challenges. A comprehensive approach to address mental health issues ensures better management of the personal, organizational and financial risks for a corporate disability plan. Ultimately, it results in a positive employment culture and significant return on investment.

Paula Allen is business leader, disability management, for FGI, a leading provider of international employee and employer support services, based in Toronto. She can be reached at pallen@fgiworld.com.

BCPSEA Member Services Survey


British Columbia Public School Employers' Association

Exit this survey >>

BC Public School Employers' Association Services Survey

1. Introduction

The management of human resources in the K-12 public education sector is a shared effort between the employers' association and school districts.

Labour relations advice/resources and collective bargaining are the largest components of BCPSEA's "core business." Our mandate also includes other selected areas of human resource management, including exempt staff contracts/compensation, occupational health and safety, and pension and benefits. In response to the growing complexity of public sector human resource management practices and the need for timely and accurate information for decision making, our service areas are supplemented by research and information, and technology infrastructure.

This survey will canvass your experience in the following six service areas:

- Labour Relations
- Exempt Staff
- Occupational Health and Safety
- Research, Information and Analysis
- Pension and Benefits
- Communications

We realize that some respondents will not have experience with all service areas. Please provide responses where you are able to.

We appreciate your time and assistance.

Next >>

How are we doing? What could we do better? Those are essentially the questions that BCPSEA's member services survey is asking of senior management staff and school trustees.

On June 6, 2004, BCPSEA distributed by e-mail a link to a user-friendly online survey for completion by staff and trustees.

In our efforts to continuously improve our services, the responses, comments and observations on this survey will allow us to evaluate our services and assist us in identifying areas which may require greater focus and/or allocation of resources.

Responses are requested by June 21, 2004. If you have not already done so, please take a few minutes to provide your input. The survey results will be utilized in our business planning process for 2004-2005. In addition, we will review the results at our next Annual General Meeting in January 2005.

If you have any comments or questions on the process, please contact Hugh Finlayson, Executive Director/CEO, at hughf@bcpsea.bc.ca or 604.730.4515.

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The terms of the settlements range from one one-year rollover to one four-year agreement. Two agreements will expire in 2004, twelve will expire in 2005, and three will expire in 2006.

College Sector Settlements

Five support staff collective agreements have been settled in the colleges and institutes sector:

- Both the Nicola Valley Institute of Technology and the University College of the Fraser Valley achieved one-year contract extensions, to March 31, 2004, with targeted labour market increases not funded by government.
- Camosun College achieved a three-year agreement, to June 30, 2005, with conversion of sick leave and health and welfare benefits into wages.
- The College of the Rockies achieved a three-year rollover to June 30, 2005.
- The College of New Caledonia achieved a two-year rollover to May 31, 2005.

Negotiations are ongoing throughout the province. Support staff agreements still to be settled include twelve agreements expired in 2002 and five expired in June 2004. Twenty-one college and institute faculty agreements expired in 2004. Nine institutions, representing eleven collective agreements, are set to bargain at the Multi-Institutional Discussions table. Protocol discussions concluded in May, and bargaining dates are set for early June.

Public Service Sector Settlements

The BC Public Service Agency and the BC Government and Service Employees' Union achieved a two-year contract extension to March 31, 2006. Benefits concessions were used to fund pension plan changes, and time limited employment security was provided for regular employees for the term of the contract. All new Liquor Distribution Branch employees will start at a lower retail compensation rate, and flexibility in shift scheduling will allow more management flexibility in store operations.

The Province of BC and the BC Crown Counsel Association also reached agreement on two-year extensions for two different bargaining units.

Crown Corporations Sector Settlements

Ten crown corporation collective agreements have been settled:

- BC Hydro achieved two three-year agreements to March 31, 2005, with targeted labour market increases not funded by government, and a continuation of a goalsharing agreement.
- BC Transit achieved two two-year contract rollovers to March 31, 2006.
- The Workers' Compensation Board achieved two three-year agreements to March 31, 2005. Provisions include the elimination of scheduled days off converted into wages, and targeted labour market increases not funded by government.
- BC Rail achieved a three-year agreement to December 31, 2005. The agreement provides for flexibility to implement new technology and work arrangements.
- Tourism BC achieved a three-year agreement to March 28, 2006, with health and welfare benefits being converted into $500 lump sum signing bonuses.
- BC Buildings Corporation achieved a three-year agreement to April 30, 2005, with cost savings from reduced compensation for some groups and targeted labour market increases not funded by government, for other groups.
- BC Assessment Authority achieved a two-year agreement to December 31, 2005, with conversion of a transportation allowance into health and welfare benefits and savings from moving to twelve month increments, from six month increments.

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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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