NEWSLink

SPRING 2004

British Columbia
Public School Employers' Association

# A Bargaining Environment Like No Other

The collective agreement between the British Columbia Teachers' Federation (BCTF), representing the province's public school teachers, and the BC Public School Employers' Association (BCPSEA), representing the province's 60 public school boards, expires on June 30, 2004.

**Section 46 of the *Labour Relations Code* requires that if notice to commence collective bargaining has been given, the parties must commence to bargain collectively in good faith[1], and make every reasonable effort to conclude a collective agreement. The BCTF provided BCPSEA with notice on February 13, 2004.**

**IN THIS ISSUE**



This round of collective bargaining will occur within a challenging environment and context:

- the spill over effect[2] arising out of the legislated conclusion to the last round
- vastly reduced bargaining scope
- court challenges
- a compensation mandate of "net zero" for the period 2003-2006
- an inquiry into the bargaining structure
- the BCTF's focus on political action in preparation for the next provincial election in May 2005.

The context was summed up by Don Wright, a senior civil servant and former Deputy Minister of Education appointed by the Minister of Skills Development and Labour to conduct the collective bargaining structure inquiry. Although his comments did not specifically address the challenging bargaining environment, in his report to the Minister concerning recommended terms of reference for the bargaining inquiry, Mr. Wright observed:

> *"In summary, the past sixteen years of teacher collective bargaining have not resulted in a happy legacy…No party seems to believe that the existing structure, unchanged can lead to successful collective bargaining in the future.*[3]
>
> *…the parties believe it is extremely unlikely that a collective agreement can be reached without major changes to the existing structure, and it would be useless to even consider trying before those changes are made.*[4]*"*

## COLLECTIVE BARGAINING PREPARATION

BCPSEA's approach to teacher collective bargaining in 2004 builds upon the processes and strate-

*continued on page 7*

1. Bargaining in good faith is the obligation under the *Labour Relations Code* to recognize the other party, to meet and engage in rational discussion of the matters at issue, and to bargain with an intention to enter into a collective agreement.
2. Spill over effect refers to the implications for the current round of bargaining resulting from the actions and reactions to the last round of bargaining – how the collective agreement was negotiated (the process) and the result, including the parties' acceptance of the result.
3. Wright, D. *Towards a Better Teacher Bargaining Model in British Columbia*. Report to Graham Bruce, Minister of Skills, Development and Labour. November 10, 2003, page 7.
4. Ibid, page 33.

# Styles of Bargaining: How We Bargain What We Bargain

Excerpt from *A Guide to Support Staff Bargaining Preparation,* BCPSEA, 2004

**The foundation of how we bargain is the relationship between the union and the employer.**

As you read through this section, bear in mind the following:

- union-employer relationships emerge over time – the relationship of today is a product of the past
- the collective bargaining approach and practice adopted by the parties is affected by the relationship between them
- initiatives to change the manner and approach of collective bargaining require a full appreciation of the underlying reasons of why the relationship is the way it is today.

The foundation of how we bargain is the relationship between the union and the employer – the state of the relationship has a significant effect on the bargaining process and outcome.

## HOW DOES A RELATIONSHIP EVOLVE?

The union-employer relationship develops over time. It takes time, understanding, commitment and effort to maintain a positive and productive working relationship, but it can be done.

Four factors combine to shape any union-employer (management) relationship[1]:

- the acceptance of the legitimacy of the other party and their respective roles in the workplace
- the degree of trust between the parties
- the degree of friendliness or hostility in the relationship, and
- the degree of competitiveness, individualism or cooperation between the parties.

All of these factors interact with each other to build the foundation of the union-employer (management) relationship.

The relationship is also a product of various pre-determined factors. These include:

- the personalities of the key individuals in the relationship
- the union-management ideologies of the parties
- the economy and the labour supply, and
- union politics.

Events and circumstances experienced by both parties will also affect the nature of the relationship. These include the actions and reactions of the parties to workplace issues, how the parties resolve issues and disputes, and collective bargaining experiences, both what was achieved – the outcomes of bargaining – and how the outcomes were achieved – the process of bargaining. Experiences such as strikes or lockouts, legislatively imposed agreements, and the parties' reaction to them also contribute to shaping the relationship.

## HOW YOU CATEGORIZE YOUR RELATIONSHIP: FIVE MODELS

Walton and McKersie, in their leading book on the subject, *A Behavioral Theory of Labor Negotiation*, identify the following five models of union-employer (management) relationships, all based on the four main factors – legitimacy, trust, friendliness and competitiveness – and the four pre-determined factors.

1. **Conflict**
   The *conflict* model is characterized as one where the parties are in constant competition. The union vilifies the employer as a way of building itself up and the employer competes for the hearts and minds of its employees by disparaging or undermining the union. Each party denies the legitimacy of the other party – the union's role as the exclusive representative of its members and the employer's responsibility for the management of the enterprise. The relationship is typified by distrust and, in some cases, even hatred. Management refuses to deal with the union whenever possible and the union sees management as the enemy.

2. **Containment/Aggression**
   In the *containment/aggression* model, management grudgingly accepts the presence of the union and its legitimacy – the law permits unionization and we accept it, but don't necessarily like it! The parties have little respect for each other, and are suspicious and mutually antagonistic. The union is determined to extend its scope of influence and the employer is determined to limit the union's scope of influence.

1. Walton, R. and R. McKersie. *A Behavioral Theory of Labor Negotiation*. 2nd ed. Ithaca, New York: ILR Press, 1991.

perspectives

**3. Accommodation**

In the *accommodation* model, while each party fully recognizes the legitimacy of the other party, they are still individualistic in their orientation in that they pursue their own goals, giving no thought or consideration to the goals of the other party. The parties have adjusted to each other and go about their business in a courteous but informal manner.

In the K-12 public education sector, it is not uncommon to see the use of "relationship" as leverage in model 3 and to varying degrees in models 1 and 2. Given a school district's desire to foster and maintain a sense of community and collegiality between and among its various employee groups, the union will often use the relationship as a lever to achieve its bargaining goals. This tactic is most often directed not at the district/union organizational level, but at the relationships that exist between teachers, administrators, and the workforce in general.

Leveraging the relationship: seeking to compel one party to an act or choice by holding out the possibility of improvement to something that party values and the other party characterizes as at risk; use of the relationship between the parties (or between individuals) and the apparent desire to maintain a productive working relationship as a tactical advantage so as to serve one's own purpose.

For example, the union takes the position that the relationship between the parties is poor or in jeopardy unless the employer accedes to its demands – whether in an attempt to secure changes in a negotiation or to resolve a grievance on their terms. Using the relationship and their characterization of it, the union attempts to pursuade the employer to yield with the general assurance that this action will "improve the relationship."

This is a power-oriented approach in which the union uses whatever power or leverage it deems appropriate in the circumstances – in this case, the employer's desire for a "good" relationship and the union's characterization that it is at risk – to achieve the outcomes they are seeking.

While one should not underestimate the value of the relationship between the union and the employer, one must question the value of a relationship built on one party abandoning or being compelled to abandon its interests for those of the other under the guise that it will improve the relationship. Positive, productive and ongoing relationships are best established on a foundation of respect, integrity, maturity and a high degree of professionalism.

In a union-employer relationship each party has a role to play and interests to represent. The roles are different and often, so too are some of the interests. Mature parties acknowledge and accept these differences and work to find common ground where possible. They do not use "relationship" as a form of currency to achieve their own goals or purposes at the expense of the other party. Like currency, what one side can accede to the other eventually will run out. Where does that leave the relationship?

**4. Cooperation**

In the *cooperation* model, both parties completely accept the other's legitimacy, and have developed a mutual trust and respect. While some interests of the parties are different, many are not. When faced with a problem or negotiation, the parties engage in discussions in an attempt to focus the discussions, clarify the matters at issue, and then enlarge the range of alternatives so that the needs of both parties are addressed and met to the greatest extent possible. Discussions extend beyond typical issues such as wages and working conditions to issues such as productivity, organizational efficiency and use of technology.

**5. Collusion**

In the *collusion* model, the parties form a coalition to pursue common often illegitimate goals, inconsistent with their true mandate. At times, the union will conspire with management in violation of the rights of their members.

The union-employer relationship is a result of a complex mix of factors and circumstances. Maintaining and/or improving this fundamental relationship should be a primary goal of every employer and union. To do this, the employer and the union must:

- ☐ Understand why the relationship is the way it is and the factors (identified earlier in this section) that contributed to it getting that way.
- ☐ Be conscious of day to day interactions and workplace practices; they are the basis for building and sustaining a productive relationship.
- ☐ Establish common goals as a basis of mutual cooperation.
- ☐ Develop processes for the continuous improvement of the interactions between the

parties, with a goal of sustaining the relationship and fostering a more productive and effective workplace.

## BARGAINING STYLE AND IMPLICATIONS FOR A CONTINUING RELATIONSHIP

School districts have bargained terms and conditions of employment for unionized staff for many years. In recent years, the concepts of "mutual gains" bargaining and "interest-based" bargaining have been the subject of discussion as employers and unions seek ways to improve collective bargaining processes and outcomes. These concepts are to be distinguished from what has become known as traditional labour-management negotiations[2].

Traditional labour-management negotiations as found in relationship models 1, 2 and 3, involve each side preparing lists of proposals or demands, firm in the knowledge that a portion of those demands will be withdrawn during negotiations. In some environments, this leads to unnecessarily lengthy lists of proposals and counterproposals, occupying extended periods of bargaining.

The practice of interest-based or mutual gains bargaining seeks to improve the process and outcome of negotiating an agreement. It is also intended to improve the relationship between the parties. This approach should also yield a more judicious agreement because the parties are encouraged to openly discuss their needs and fundamental interests, as well as basing their agreement on objective criteria[3].

Interest-based negotiations are distinguished from traditional labour-management negotiations through the use of methods that promote problem solving. Instead of the traditional setting of target and resistance points, interest-based bargainers are taught to analyze the interests that motivate the parties – the needs, desires, concerns and fears that underlie positions. Instead of extreme opening positions, the interest-based bargainer begins with issue clarification and investigation. During bargaining, progress toward achieving an agreement will vary between gradual and rapid in both styles of bargaining, but with very different driving forces. Interest-based bargainers are taught to use communications techniques as an aid to problem solving, as distinguished from traditional bargaining, in which communication is used for tactical advantage. Both traditional and interest-based bargaining may involve an eleventh hour rush to agreement, and both may extend negotiations past the contract expiration date, but for very different reasons.

In traditional negotiations, ratification is a measure of who won (a low vote may be viewed as a victory for management and a high vote may be viewed as a victory for the union). In contrast, ratification of

The following table outlines some specific behaviours and methods that are used in traditional bargaining, contrasted with those used in interest-based bargaining[4].

| | Traditional Labour Negotiations | Interest-based Negotiations |
|---|---|---|
| **Key Concepts** | Position: An attitude toward, opinion on, or statement on a subject; a particular stand or stance on an issue or subject. Positions are developed to represent a party's demands. *A position is focused on "what" or "how."* | Interests: Why a party takes a particular stance on an issue, the reasons a party is demanding something; a party's needs, concerns, hopes or fears. *An interest is focused on "why."* |
| **Preparation for Bargaining** | Prepare a target (reasonable) and a resistance point (backup) for each issue that you and the other side are likely to raise. | Identify your core interests and those of the other side; then develop potential solutions that are likely to be mutually satisfactory. |
| **Opening Negotiations** | Take opening positions that are high/low enough so that you will have room to move; emphasize forces that make it difficult for you to move from the opening position. | Avoid taking initial positions; clarify your core interests and your understanding of the other side's core interests; emphasize flexibility and creativity in addressing these interests. |
| **Movement on Issues During Bargaining** | Gradual movement on the basis of reciprocity and delay tactics; occasional rapid movement as a result of logrolling[5] and power tactics. | Gradual building of shared understandings on the basis of logic, research, analysis and persuasion; occasional rapid movement as a result of brainstorming. |

2. Traditional labour-management negotiations are also referred to as positional bargaining or traditional bargaining.
3. Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement Without Giving In*. Bruce Patton, ed. New York: Penguin USA, 1991.
4. Adapted from J.E. Kutcher-Gershenfeld. "*Bargaining Over How to Bargain*," Negotiation Journal. New York: Plenum Publishing, 1994.
5. Logrolling: the parties establish or find more than one negotiating issue and then agree to trade off among these issues so that one party achieves a highly preferred outcome on the first issue and the other party achieves a highly preferred outcome on the second issue.

| | Traditional Labour Negotiations | Interest-based Negotiations |
|---|---|---|
| **Interpersonal Communication** | Take careful notes on everything that is said; only restate points where you agree with what the other side said; use confrontation to press key points and destabilize the other side. | Use paraphrasing and active listening skills to ensure that you have accurately heard what was said; use confrontation to surface underlying feelings and interests. |
| **Coming to Agreement** | Either increased openness and problem solving at the eleventh hour when final offers are made and the full agreement is assembled or the parties come to impasse, followed by a strike, lockout, or implemented agreement. | Either the problem solving tone continues until all issues are resolved (possibly extending past contract expiration deadlines) or the problem solving tone is set aside for any distributive offers necessary to reach agreement. |
| **Ratifying the Contract** | The union must persuade the membership that this is the best possible agreement under the circumstances; ratification is a measure of which side "won." | Both sides must persuade all of their constituents that the agreement is mutually beneficial; ratification is a vote of confidence for both sides. |

an agreement reached through interest-based bargaining is a source of joint validation for both sides.

All too often, employers and sometimes unions become enamoured with the "buzz words" of concepts such as interest-based bargaining but are not yet prepared for an actual change in their approach to bargaining or their day to day union-management interactions. In his 1994 article, *Bargaining Over How to Bargain in Labor-Management Negotiations*[6], J.E. Kutcher-Gershenfeld, a leading scholar in negotiation theory and practice, made instructive comments concerning attempts at interest-based negotiations:

> *A close look at the interest-based experiments in labour relations reveals that adversarial institutional patterns have often been rejected in favor of more collaborative, problem solving techniques without a full appreciation of the underlying reasons for the establishment of the original institutional patterns.*

A departure from traditional labour-management negotiations requires essentially years of preparation and cultivation of a higher level of trust and candid communication between the parties.

Parties should avoid setting unrealistic targets and raising expectations unduly. In the absence of a crisis or other circumstance that necessitates change, it is unlikely that parties will immediately depart from entrenched practices and beliefs about each other. There is a very real danger of the workforce and the union becoming cynical over nice sounding statements and principles when they do not see those same principles being put into daily practice. Moreover, some naively believe that this new found method of bargaining is a panacea for all previous ills. By inflating the expectations of employees, bargaining team members, unions, managers, executives, board members and others, the parties may be setting themselves up for failure.

It may be tempting to set lofty goals and stake the organization's reputation on implementing a new bargaining approach only to find that the times are not right, the current circumstances don't provide the necessary impetus for change, or the players are not yet ready.

## COLLECTIVE BARGAINING AND CONTINUOUS IMPROVEMENT

Employers should adopt a continuous improvement philosophy if they wish to move from a traditional labour relations approach to a problem solving orientation typified by successful interest-based bargaining initiatives. Attempt to engage in traditional bargaining in a more effective manner, as a first step that does not risk credibility, and allow the parties to thereafter continue to work toward a more productive, open and trusting relationship. The best time to start this change is during the term of the agreement, not during collective bargaining when the employer may be seeking, for example, an unpopular change. The approach during bargaining should mirror the nature of the ongoing day-to-day relationship. Do not expect collaborative dialogue at the bargaining table if you choose not to engage in meaningful consultation during the life of the collective agreement.

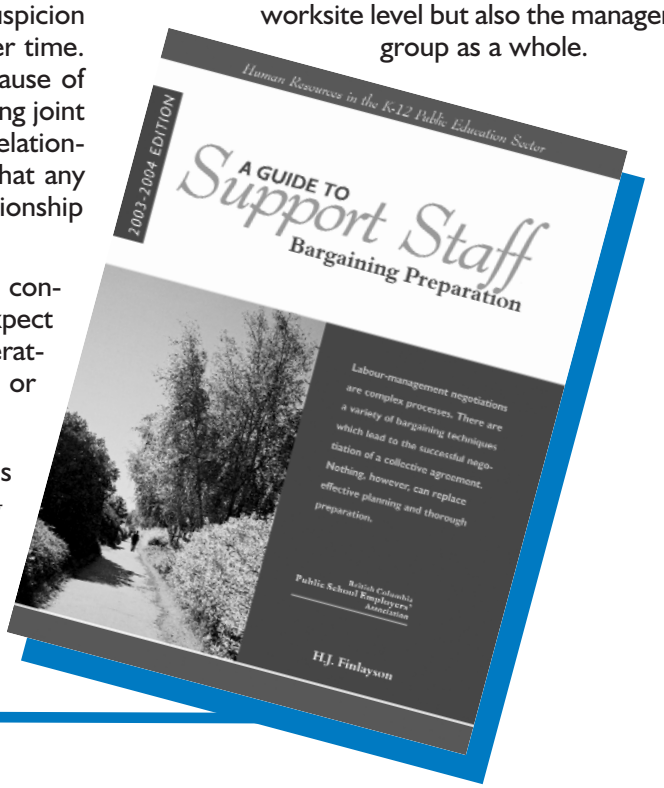


6. J.E. Kutcher-Gershenfeld. "Bargaining Over How to Bargain," *Negotiation Journal*. New York: Plenum Publishing, 1994.

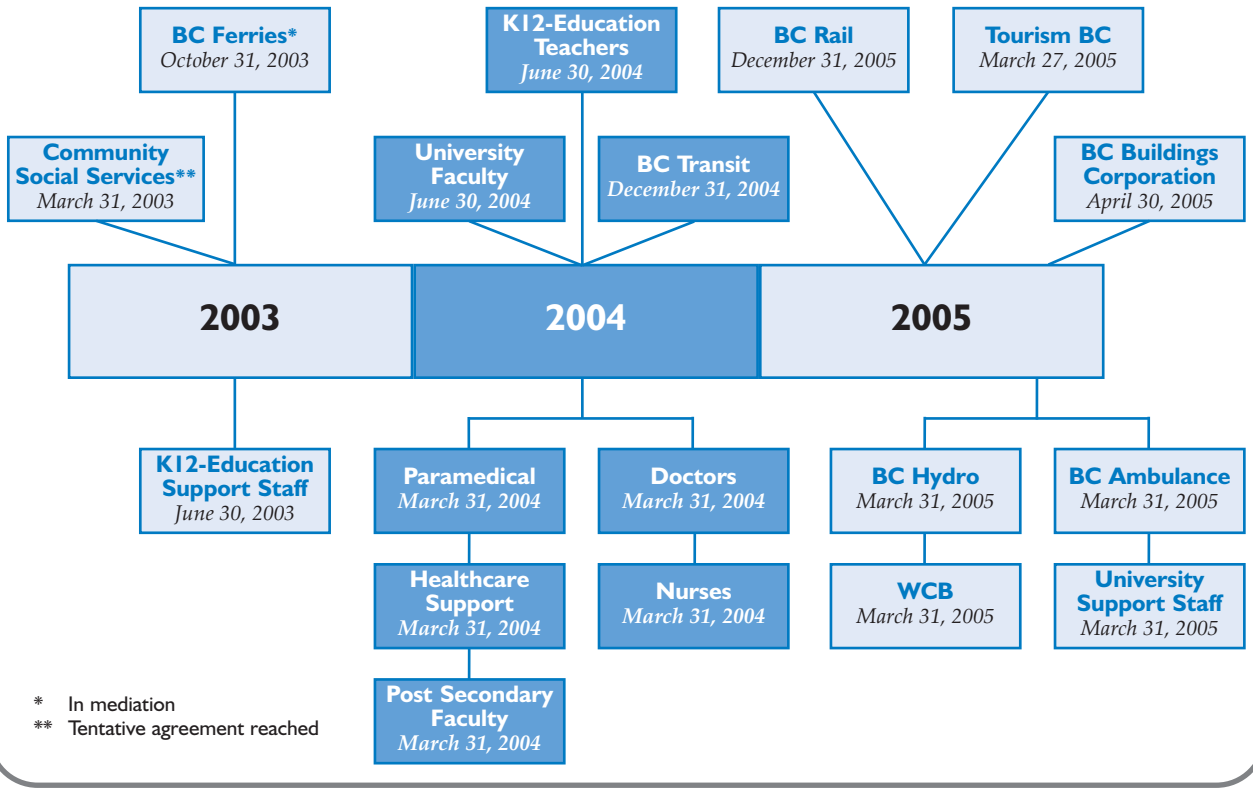
The character of union-employer relationships is a product of actions and reactions to problems, organizational change and a host of workplace events. Antagonistic relationships or high levels of suspicion are not created overnight, they emerge over time. Similarly, they do not disappear simply because of words on paper or commitments made during joint training initiatives. If it is self-evident that relationships evolve over time, then it holds true that any desired changes to the union-employer relationship will take time to effect.

Employers should always consider more constructive approaches to bargaining but not expect to achieve an immediate relationship or operating culture change. In the absence of a crisis or other issues that create a different focus, one must be prepared to commit time and resources over an extended period – and not simply those at the worksite level but also the management group as a whole.

Do you have your copy of BCPSEA's *Guide to Support Staff Bargaining Preparation?* Just send an e-mail to publications@bcpsea.bc.ca and we will mail a copy to you.




## British Columbia Bargaining Calendar



*continued from page 1*

gies developed in late 1999 and initiated in the last round of bargaining. At that time, BCPSEA made a concerted effort within the employer community to raise the understanding about why teacher bargaining is the way it is[5], and sought to have employers adopt a focused, defensible bargaining agenda based on a defined set of objectives. This meant connecting all parts of the K-12 employer community, including school boards, management partners, and government, and getting consensus on what needed to be achieved in the 2001 round of bargaining. The final stage of the project was to conduct a post-mortem of the plan and the outcomes. This was completed with member boards in April 2002, in anticipation of initiating the plan for the 2004 round of bargaining.

The schematic below illustrates the conceptual framework that supports the Teacher Collective Bargaining (TCB) Project:

- **General Negotiation Framework:** The foundation for the negotiation of terms and conditions of employment – in general terms, the critical areas of focus. The GNF is the framework within which objectives are set and proposals and counter-proposals are considered.
- **Bargaining Objectives:** What the employer is seeking to achieve in this round of negotiations. Objectives are divided into *Broad Bargaining Objectives* and *Specific Bargaining Objectives*. The broad objectives set out in general terms what an employer is seeking to achieve while the specific objectives are what the employer is seeking to achieve on an issue by issue basis. Specific objectives have varying degrees of importance and priority. These objectives provide the basis upon which Bargaining Proposals to be exchanged at the bargaining table are developed.

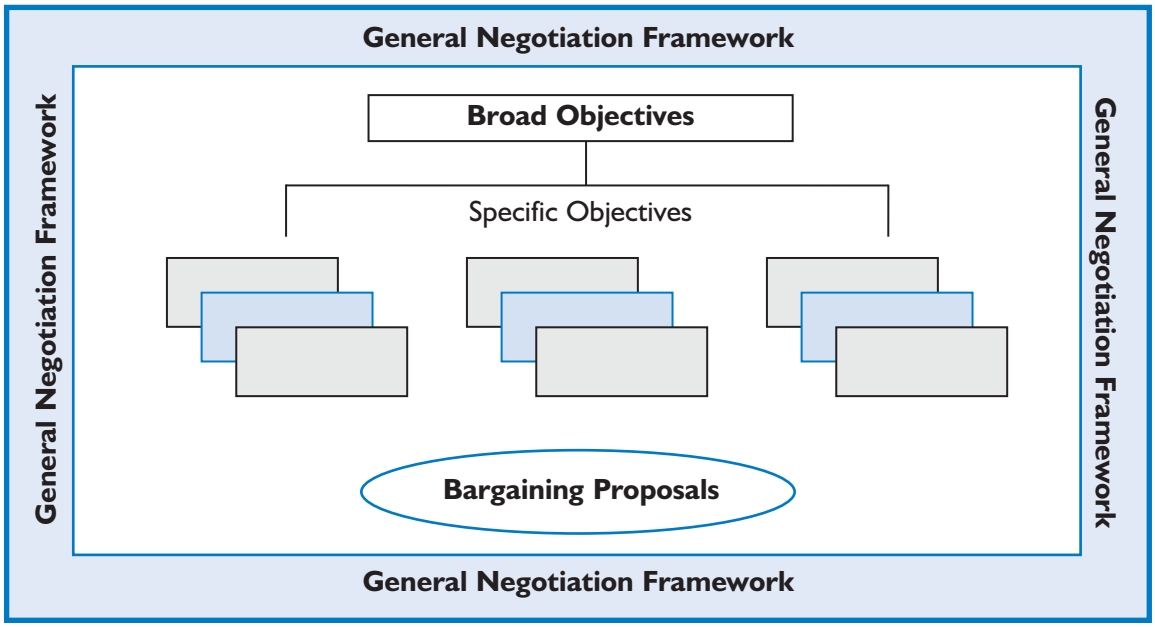
## THE GENERAL NEGOTIATION FRAMEWORK

As part of the preparation phase, BCPSEA met with trustees and district staff through individual board or group meetings – aka TCB Road Shows – between January and April 2004 to:

> *…begin a dialogue that informs the preparation phase and establishes a sound foundation for the development of bargaining objectives.*

This dialogue began with a review of the foundation for bargaining – the *General Negotiation Framework* or GNF. The GNF was established in 2000-2001 and is subject to review and, where necessary, revision for this round of bargaining. It has four principles:

- The costs of employment must be compatible with the government's funding priorities and, given school boards' obligations, a school board's ability to pay.
- The orderly introduction of change and the ability of school boards to adapt to evolving educational priorities and needs are necessary to maintain a responsive public education system.
- The enhancement of relations between union




5. For an analysis of teacher collective bargaining in British Columbia, including the last round of bargaining, please refer to BCPSEA Resource/Discussion Paper *Teacher Collective Bargaining in BC: Exploring Alternatives, Assessing Options* (January 2003).

cover story

and management, both locally and provincially, is essential for continued industrial stability and effective workplaces.

- With respect to the terms and conditions of teachers' employment, the sector is transitioning from a series of local agreements to a provincial collective agreement. This reduces the number of local agreements and the variety of provisions in those agreements.

## THE GNF AND THE COLLECTIVE AGREEMENT

### Approaches and the Scope of Change

Review of the GNF is followed by establishment of broad bargaining objectives. The collective agreement is then reviewed for potential areas of focus, with matters categorized as those that either facilitate:

- Efficient resource allocation, or
- Effective service delivery.

*Efficient resource allocation* arises from the current fiscal climate, the provincial nature of public sector collective bargaining, the government's interest in public education costs, and the need to ensure that resources are directed to the provision of educational programs.

*Effective service delivery* recognizes that there are increasing service delivery expectations despite diminishing resources.

These two elements provide the analytical framework to assist in determining the nature and degree of change. The GNF and these two areas of focus will be used for assessing union proposals, and for conducting the negotiations from the employers' perspective.

While the GNF is the foundation for bargaining, BCPSEA, in consultation with school boards, will ask the question: "How much change will we pursue in this round of bargaining?" The following scope and impact categories are used to assist in determining the pace of change pursued in any given round of bargaining.

Approaches and the scope of change are strategic choices given the:

- Relative importance or weight given to each of the four principles of the GNF – what is important and why.
- Collective bargaining environment and context.
- Relationship between the parties.
- Nature of the bargaining objectives.
- Relationship to BCPSEA proposals from TCB 2001 and whether any of these proposals will be advanced in 2004.
- Future focus. This collective agreement will cover a number of years. What processes and provisions need to be added, changed or eliminated to ensure we are able to meet changing or evolving educational and workplace priorities?

BCPSEA is holding its Collective Bargaining Forum on April 2 and 3 to discuss bargaining objectives. It is expected initial protocol discussions with the BCTF will take place in late April. These discussions will be particularly important given the "known unknowns" – the bargaining structure and potential changes to the structure; the implications and resolution to the quashing of the Rice award – and their implications on the parties' respective bargaining agendas.

## Welcome Aboard!

BCPSEA is pleased to welcome John Calder to the BCPSEA team in the position of Seconded Superintendent, Field Liaison. John has been the BC School Superintendents' Association representative to the BCPSEA Board of Directors for several years.

His extensive background in the public education sector includes Superintendent in School District No. 37 (Delta) for the past five years, Director of Human Resources in Delta, and Assistant Superintendent in School District No. 45 (West Vancouver).

John has begun to transition out of the school district, with the intent of joining us full time for the 2004-2005 school year. He can be contacted by telephone at 604-730-4508, or by e-mail at johnc@bcpsea.bc.ca.

# Managing Absence Versus Eliminating its Causes *By Wendy Poirier*

There is large and growing body of research extolling the virtues of creating a healthy workplace with happy, engaged employees as a means of reducing absenteeism and increasing productivity.

**Researchers such as Linda Duxbury, Graham Lowe and Chris Higgins say managing employee absence is not as basic as it sometimes appears.**

The underlying reasons for employee illness are often due to complicated interactions between employees, workplace practices and corporate values.

Yet, many organizations are still looking for simple ways to reduce absenteeism. The most common absence management techniques being used in many Canadian organizations are still fairly basic – what you might call the "carrot and stick" approach.

## FIRST THE CARROT

Some employers use simple incentive systems to reduce absences by giving bonuses to employees for good attendance. Employers with this type of program typically establish a set number of allowable sick days per year. If employees are under the limit, they, or their teams, are rewarded with a bonus. Some employers make this a monetary bonus, a flat dollar amount or an additional percentage added to something like a profit-sharing payout. Others provide non-monetary rewards such as a company-sponsored event, like a picnic or Christmas holiday party, or a corporate gift.

While there is legitimate concern that such schemes result in employees going to work when they are really too sick to be there, typically the result is also a decrease in the total number of absence days with the use of such programs – at least upon the program's introduction.

In one high-profile Canadian example, an employer that recently offered a bonus to every employee who didn't miss a day of work for the rest of the year was blindsided by the union's public outcry against the plan. Other employers have heard similar complaints.

One problem with offering carrots is that this type of absence management tactic may actually lead to "presenteeism" – when employees are still physically coming to work, but not actually functioning at a very high level mentally.

Although this phenomenon is typically associated with anxiety and depression-type illnesses, it can be true of the employee with a bad cold or flu who shows up just to get that added bonus. Employers should consider the effect of this tactic more seriously in light of the recent SARS outbreak where encouraging employees with cold or flu-like symptoms to come into work may result in a more widespread and potentially devastating outcome.

## THEN THE STICK

Another tactic for decreasing absenteeism is the standard absence management program which requires employees to complete forms and provide medical evidence to qualify for sick days. This too, should lead to a reduction in absenteeism.

These programs are often put in place with the help of an outside third party that has qualified medical practitioners to adjudicate and manage the employee's claim for sickness benefits.

Aside from verifying the legitimacy of sick time claims, these programs make it possible to identify patterns of employee absence over a period of time. So it's easier to catch the chronic "long weekender" (absent many Mondays or Fridays), or the seasonal absentee, who takes a few extra days off during fishing season or the first day the golf course opens.

Absence management programs of this nature have a remarkable "watchdog" effect on employees, usually resulting in an immediate decrease in absenteeism upon introduction, and a lasting effect on managing culpable absenteeism. Such programs typically have better results than incentive systems, and don't result in the employer encouraging presenteeism. One retail employer that introduced such a program several years ago saw a decrease of more than 30 per cent in its absence statistics within months of launching the program.

However, employers should understand there is an important distinction between people who take a day off to go fishing or golfing and an employee who simply doesn't feel like coming to work. Neither of these tactics address this problem.

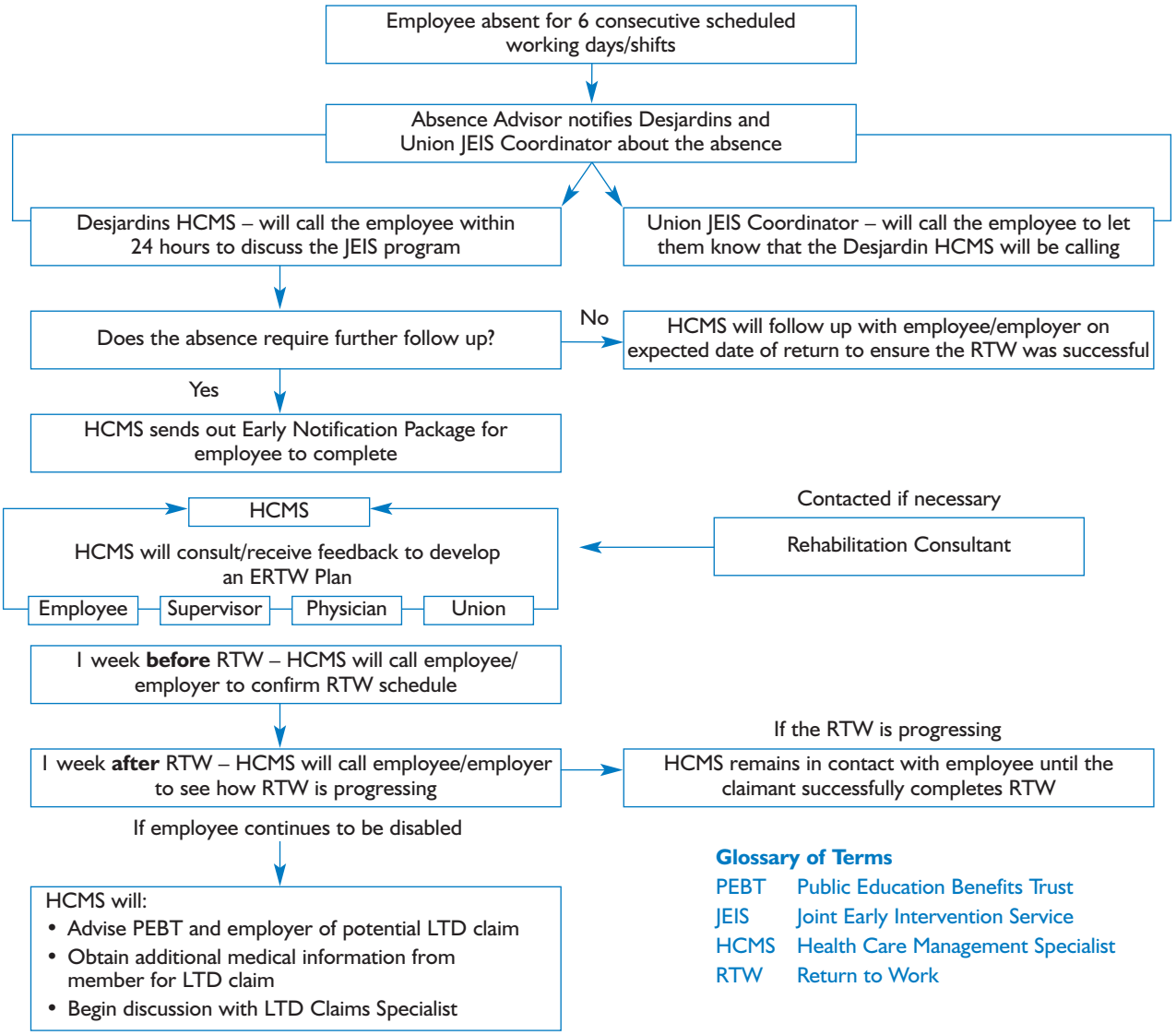
## GO BEYOND ABSENCE MANAGEMENT TO ROOT CAUSES

Statistics show an ever-increasing proportion of the days employees are absent from work are for mental health reasons – stress, anxiety, depression.

## K-12 PEBT Joint Early Intervention Service

The K-12 Public Education Benefits Trust has contracted with Desjardins to provide the K-12 return to work (JEIS) program, which complements the core and supplemental Long-term Disability plans.

The purpose of the JEIS is to provide a proactive and timely service to an employee to facilitate his/her return to work in a caring, safe, and timely manner. Following is a schematic illustrating the JEIS.




**Glossary of Terms**

| | |
|---|---|
| PEBT | Public Education Benefits Trust |
| JEIS | Joint Early Intervention Service |
| HCMS | Health Care Management Specialist |
| RTW | Return to Work |

Even in cases where the diagnosis does not include a psychological illness as the primary reason for the absence, the psychosocial factors relating to an employee's absence – for example, the work environment – strongly influence the duration of the absence and the possibility of a speedy recovery.

The rise in mental health claims is clearly linked to the ever-increasing challenges of everyday life. Business is tough, and getting tougher all the time. Organizations push to accomplish more (revenues, profits, productivity) with less (money, time, people). This simply leads to work overload. Canadians are also doing more outside of work (elder care, child care) with less time to do it. The resulting strain on employees is leading to greater absence from work.

Employees who are suffering from excessive strain have legitimate reasons for absences. The best way to address their illness is not to coax them into work with bonuses, but uncover and treat the root causes of the problem.

*continued on page 12*

spotlight

# Runaway drug costs make benefit upgrades impractical *By David Brown*

Employers will find it very difficult to improve benefit packages unless fundamental changes are made to Canada's prescription drug system, says a Canadian benefits expert.

**People may be looking for better benefits but employers simply won't have the money to do it, said Richard Leberge, managing director of the Ottawa office of Buck Consultants.**

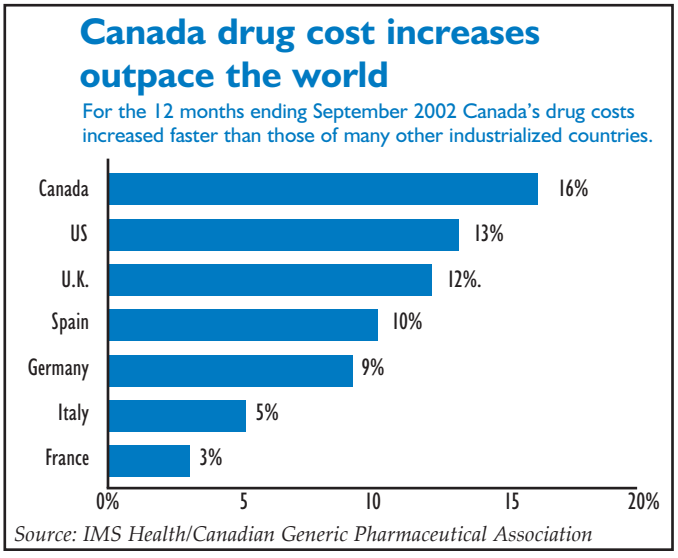
Benefits costs are increasing mainly because drug costs have been rising at an unsustainable rate, he says. Costs have been rising by about 16 per cent annually and drug costs represent as much as 70 per cent of health-care benefit expenditures, excluding dental and vision-care costs.

Many Canadian businesses are too busy addressing solvency issues and funding pension shortfalls to improve benefits. Employees may grumble that benefit plans are not improving, "but they also want a job," said Leberge.

"I think right now the private enterprise will be hard-pressed to come up with additional money to pour into additional benefits."

A study from Statistics Canada released last month said benefits now represent one-third of total labour costs, up from about 15 per cent in the 1950s. In recent years, increases have also been driven by two-income families with aging parents looking for benefits like on-site day care, extended parental leave, leave for parental care, on-site fitness centres and employee assistance programs (see chart 2).

*Chart 1*




The problem of runaway drug costs is uniquely bad in Canada, said Leberge (see chart 1).

Some people may say that is because Canada has a better system and therefore it costs more, but that doesn't explain why the costs are increasing at a rate higher than that of comparable industrialized nations. If the system is more expensive it should cost more but costs shouldn't increase at these rates, he said.

Simply put, Canadians are taking too many pills, he said. He blames the overly exuberant marketing of big drug companies, the willingness of doctors to prescribe drugs unnecessarily and the Canadian custom of running to the emergency room for even trivial problems.

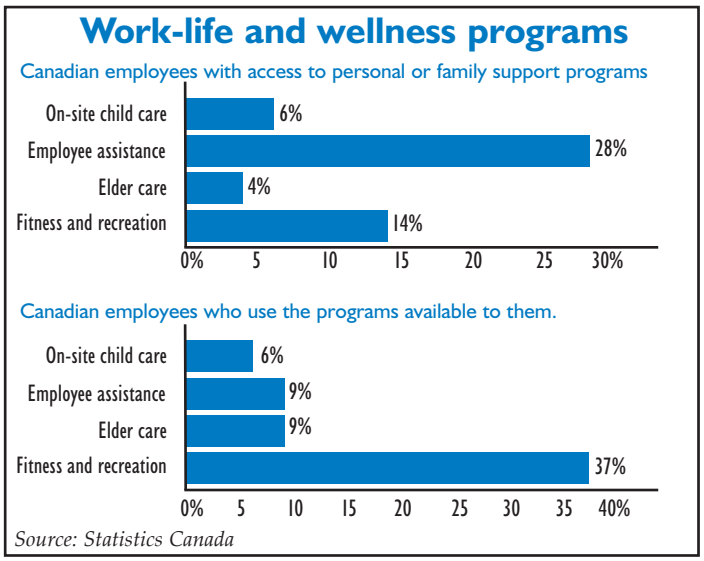
This is a big problem for employers but they aren't saying much about it, he said. Leberge participated in an International Foundation of Employee Benefit Plans conference on the Canadian benefits industry in early May, and few employers were complaining about the systemic problems in the drug system or irresponsible behaviours of the pharmaceutical companies.

If the same amount of money that pharmaceutical companies spend on marketing their latest drugs was spent on education and increasing awareness, costs would come down and people would still be healthier, he said.

The government should intervene to establish some guidelines about what is reasonable drug usage, he said. There has to be a concerted effort to raise the awareness about the costs of drugs and what current habits mean to the system.

People shouldn't be running to the doctor or asking for pills every time they feel slightly unwell, he said. "Just because your kid has a cold it doesn't mean he needs penicillin right away."

*Chart 2*




The Statistics Canada report, *Benefits of the Job,* also said one-half of all Canadians now have access to extended medical, dental and life/disability insurance. But 38 per cent of all workers still have no extended employer-sponsored medical coverage.



*continued from page 10*

Employees have borne the brunt of the tough business climate. Managers are often the most affected by the competing demands of both the executive ranks, as well as their employees. It is more critical than ever for managers to ensure high levels of productivity, yet all the while making sure that they create a healthy work environment of trust and respect, with open communication and fair treatment of all employees.

One vice-president of HR at a large Canadian corporation recently sent a rallying cry to her HR managers to curb the unprecedented levels of absenteeism at the organization.

At the same time, the mandate was given to determine the root causes of the absences. After mining the data from the absence management program, the organization knew that the root causes were predominantly mental health-related. The challenge issued to HR and line management was to uncover the workplace contributors to absenteeism. Not an easy feat, but one that recognizes the broader perspective on managing employee absence that is taking hold in a number of Canadian organizations. The complicated process of uncovering and addressing the real causes of absence is still underway – and it will take some time and attention from various stakeholders across the company to arrive at an acceptable result.

The traditional "carrot or stick" tactical approaches to absence management have run their course. Organizations have reaped as much benefit as they are going to get from chasing down employees with non-justified absences.

More long-term, strategic courses are being set to address employee health and productivity. These approaches are not usually fast or easy. They tend to start with a review and solid understanding of the overall people strategy, and consequent HR program alignment. They tend to involve multiple stakeholders – from employees to line management, to various HR players and senior management. They tend to take time, focus and management priority. But they will produce results.

*Wendy Poirier is a principal, unit leader of health and welfare for Western Canada, with consulting firm Towers Perrin. She may be contacted at (403) 261-4518, wendy.poirier@towers.com.*

# Creating an Effective Collective Bargaining Structure

As reported in the Fall 2003 issue of *NewsLink*, the inquiry into the structure, practices and procedures for collective bargaining between public school employers and teachers is underway.

**Pursuant to section 5 of the *Education Services Collective Agreement Act*, Minister of Skills Development and Labour Graham Bruce announced the inquiry on September 8, 2003, and appointed Don Wright, a respected senior civil servant, to assist in developing the terms of reference for the inquiry.**

Specifically, Mr. Wright 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.

Mr. Wright consulted with the key stakeholders in the sector, including organized labour, trustees, parents, government, and employers. His report was delivered to the Minister on November 10; it was provided to the organizations representing stakeholders and released to the public on November 13.

One consistent theme that emerged from Mr. Wright's consultations was that no party believes that the existing structure, unchanged, can lead to successful collective bargaining in the future. All the parties agreed that changes need to occur. Beyond this, consensus breaks down.

Mr. Wright noted that common themes emerged from the recommendations and observations of the various parties:

### THEME 1

*There is no simple answer. The commission needs to take into account that there are a number of dimensions to the problem – e.g., bargaining structure, scope, dispute settlement, accountability – that interact in complex ways. Solutions to the problem that focus primarily on one of the dimensions are likely to result in unintended, unhappy consequences.*

### THEME 2

*The second theme, related to the first, is that the commission should pay particular attention to the British Columbia reality that is a legacy of our history. While there is value in examining different approaches used elsewhere in the world, it should always be kept in mind that what works elsewhere might not work here.*

### THEME 3

*There is a need for an alignment of responsibility, accountability and authority.*

### THEME 4

*Maintain focus – we should not lose sight of the basic goal – a quality education for our children.*

### OTHER THEMES

*Beyond these four themes, most organizations have the same general set of questions that they believe the commission has to grapple with:*

- *Who [bargaining agents] should bargain what [scope]?*
- *What should be bargained by whom? [Where bargaining occurs]*
- *How should disputes be settled? [Dispute resolution mechanisms in the event of an impasse.]*

On December 19, 2003 Don Wright was appointed as a one person commissioner to undertake the inquiry. The Terms of Reference for the Commission are to:

1. Inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
2. Review structures, practices and procedures used for teacher collective bargaining in other jurisdictions within Canada and elsewhere in the world;
3. Propose options for improved teacher collective bargaining in British Columbia. The elements of each option must include:
   a. The definition of the bargaining relationship:
      i. The geographic definition of bargaining agents (i.e. provincial, regional or local);

ii. Governance (i.e., Who is at the table? How do they bargain? Who sets the bargaining mandate?) of the employer bargaining agent(s); and

iii. Whether there should be different "tiers" of bargaining (e.g. some issues at the provincial level, some issues at the regional or local levels);

b. The school financing and accountability system that would be aligned with the proposed structure for the employer bargaining agent in any single option;

c. The process for facilitating the achievement of a negotiated collective agreement at the bargaining table;

d. The procedure(s) to be followed in the event of an impasse at the bargaining table, including facilitative measures such as mediation and a mechanism for objective reporting to the public on the issues behind the impasse;

e. The constraints, if any, to be placed on the right to strike or lockout in the event of an impasse at the bargaining table;

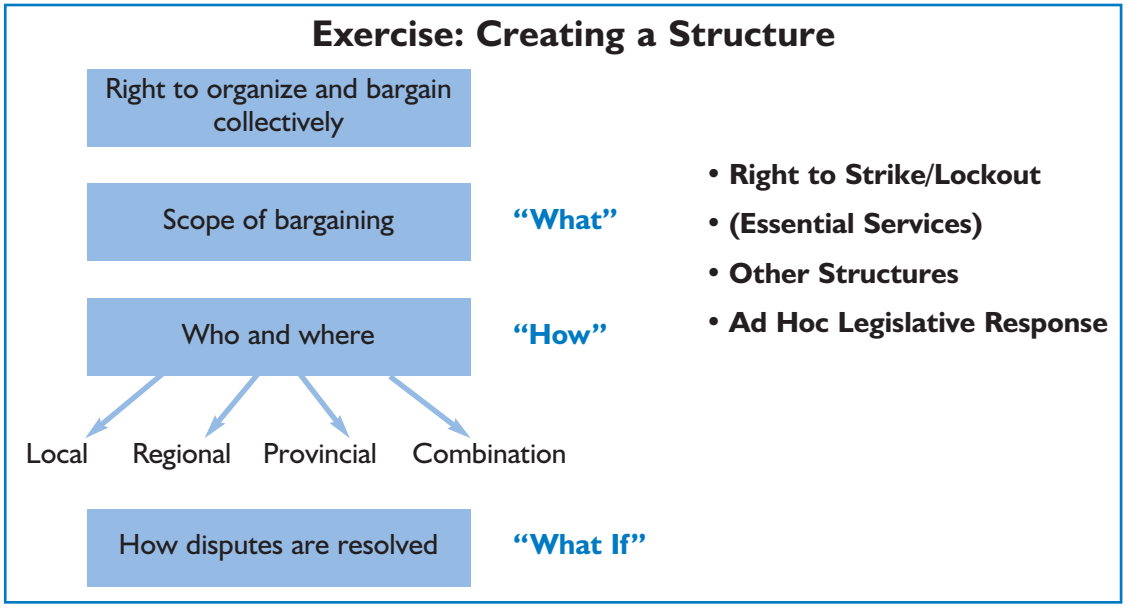
f. What, if any, dispute settlement mechanism would be prescribed as an alternative to strike/lockouts.

In considering and proposing options, the Commission must balance the following factors:

1. The public's interest in minimizing disruptions in the provision of education programs to students;
2. The right of employees to be fairly compensated for their services;
3. The value of maintaining and enhancing a positive atmosphere at all levels of the school system (i.e., classroom, school, school district and provincial);
4. The value of a well-functioning collective bargaining system with appropriate incentives and pressures to encourage settlements at the bargaining table;
5. The value of effective, efficient and expeditious collective bargaining and dispute settlement;
6. The views of school boards, the BCTF, the employers' association, the provincial government and other key stakeholders in the public education system;
7. Any other factor that the commission considers relevant or that the Minister may direct.

BCPSEA has been on the road meeting with school trustees and district staff exploring options and ideas to create an effective bargaining structure. This work will assist in drafting options for the commission's consideration as it completes this challenging task.

In early April Mr. Wright provided to the parties his proposed timeline and process. He expects to have a report to the Minister of Skills Development and Labour by the end of August 2004.



# Section 27.1, Rice Award, and Judicial Review

To facilitate government's public education policy goals of improving student achievement, increasing local autonomy, providing enhanced program choices for students and ensuring system accountability, Bill 28, *Public Education Flexibility and Choice Act* (PEFCA) was enacted in January 2002 and the *School Amendment Act* (Bill 34) in May 2002.

**The three main elements of these Acts relate to funding, organization of schools and roles and structures within the public education community**.

PEFCA, broadly speaking, made various amendments to the *School Act* and, in particular, amended section 27 of the *School Act* by expanding the list of matters which could no longer be the subject of collective bargaining. In place of collective agreement class size and composition provisions, the PEFCA added school district-wide average class size limits and individual class size limits to the *School Act* under section 76.1.

Generally, the matters which can no longer be contained in teacher collective agreements include:

- provisions respecting class size limits, which are now specifically established in the legislative amendments
- any provision restricting or regulating a school board's power to determine staffing levels or ratios
- provisions restricting or regulating a school board's power to assign a student to a class.

These amendments also reversed the decision of the previous government which had imposed certain teacher staffing provisions into the teachers' collective agreement with the enactment of Bill 39, *Public Education Collective Agreement Act* in July 1998.

Because the collective agreement in effect at the time PEFCA was passed contained provisions which the legislation now prohibited, PEFCA also included a transitional provision which provided for an arbitrator to review the teachers' collective agreement to determine whether it "conflicts or is inconsistent with" the amendments being made to the *School Act*. The legislation required the arbitrator to render his or her award by May 11, 2002. That date was subsequently extended to September 1, 2002.

The relevant *School Act* provisions are summarized as follows:

*Sections 27(1); (2)*
This section is not relevant to this matter.

*Section 27(3)*
Section 27(3) identifies matters that must not be included in a teachers' collective agreement. Section 27(3) (a) to (c) existed prior to the January 2002 amendments.

*Section 27(3) (d-(j)*
These amendments to Section 27(3) identify the school organization matters that are outside the scope of bargaining and therefore not permitted to be included in a collective agreement.

*Sections 27(4)*
This section is not relevant to this matter.

*Section 27(5)*
Section 27(5) provides that a provision of a teachers' collective agreement that conflicts or is inconsistent with section 27(3) is void "to the extent of the conflict or inconsistency."

*Section 27(6)*
This section is not relevant to this matter.

*Section 27.1*
Section 27.1 is a transitional provision designed to bring the collective agreement in compliance with section 27 (3) (d) to (j) of the *School Act*. It sets out the process for identifying and removing those collective agreement provisions which are in conflict with section 27(3)(d) to (j).

## COLLECTIVE BARGAINING AND PUBLIC POLICY

**What is the purpose of the changes?**

During the Second Reading of PEFCA, Minister of Skills Development and Labour Graham Bruce described the purpose of the class size amendments:

> *This bill, most importantly, enshrines the kindergarten to grade 12 class size through legislation in the School Act. We'll be one of the few jurisdictions in Canada that does that…..*
>
> *In the area of class size, this bill says that class sizes – and we as a government say this – are too important to students to be left as a bargaining chip between the BCTF and employers. This government supports class size limits in our K to 12 systems, and that is why we're placing these limits in legislation into the School Act….*
>
> *Under this bill, class sizes are off the bargaining table, and they are entrenched in legislation in the School Act.*

(Hansard, Saturday, January 26, 2002, Volume 2, Number 29 at pp. 885 - 886)

Matters related to the organization of schools – specifically class size – were replaced with section 76.1 of the *School Act*. This section and the Regulation establish class size parameters consistent with the aim of treating class size as a matter of public policy.

## MAKING THE TRANSITION: FROM COLLECTIVE BARGAINING TO PUBLIC POLICY

Section 27.1 is the transitional provision in the *School Act*. It provides authority for an arbitrator to determine that a provision in the collective agreement conflicts or is inconsistent with section 27(3)(d) to (j) and is therefore deleted.

On July 17, 2002, the Minister of Skills Development and Labour appointed Eric Rice, QC, as the arbitrator under section 27.1. Arbitrator Rice released his decision on August 30, 2002. On November 20, 2002 the BCTF filed a petition in BC Supreme Court for a judicial review[1] of the Arbitrator Rice award. The Court released its decision on January 22, 2004.

## OBSERVATIONS AND CONSIDERATIONS

The January 22, 2004 decision of the BC Supreme Court ("the Decision") may have the effect of undermining the policy objectives of government in a number of ways.

- Based on a review of the Decision, a question arises regarding the interface of sections 27.1, 27(3) and 27(5) of the *School Act*. As indicated earlier, section 27(3) is the section that prohibits certain matters from being included in a collective agreement and the subject of collective bargaining. Section 27.1 is the transitional provision to delete all existing provisions which are inconsistent with section 27(3). Section 27(5) provides that a provision of a teachers' collective agreement that conflicts or is inconsistent with s.27 (3) is void "to the extent of the conflict or inconsistency."

Arbitrator Rice interpreted his task as follows:

> *Section 27.1 demands that I delete any conflicting or inconsistent "provision." That is all that I may do. I may not modify or amend any provision to eliminate a conflict or inconsistency.*

The arbitrator ruled that section 27(5) did not apply to his task of deletion. The arbitrator's interpretation of section 27.1 was that only after he had completed his task of identifying the provisions that conflict with section 27(3) (d)-(j) and issued his decision deleting those provisions, would section 27(5) apply.

The Court disagreed, noting that the deletion task under section 27.1 was broader than the arbitrator had concluded. Where the arbitrator considered his task to be the narrow *identification and deletion* of provisions, the Court ruled that the arbitrator must not only identify and delete provisions but, in the words of the Court, recast or amend (in other words, re-write) the agreement as necessary to conform with the requirements of section 27(5). Although there was no specific provision granting the authority to recast the collective agreement, the Court found:

> *To carry out this mandate, the arbitrator may strike out whole provisions or parts thereof where they solely relate to forbidden matters. However, where provisions relate to matters that are void as well as matters that are valid, and mere excision of words will not suffice, the arbitrator must fulfill the mandate by modifying or recasting the collective agreement provisions. The arbitrator may adopt any reasonable modification that achieves the end of getting rid of the void aspects of a provision while preserving the valid aspects.*

- The Decision advances a concept of harmonization between legislation and collective agreement provisions, and requires consideration of the "manner and consequences" of a board's decision for district organization with respect to matters related to section 27(3)(d) to (j). "Manner" equates to the "process" by which class size/composition is determined; "consequences" equates to the remedy which results when a district's decision is inconsistent with its collective agreement provisions.

The intention of government in its policy is to ensure matters related to the organization of schools are outside collective bargaining and outside the collective agreement, believing the appropriate forum is with schools and districts. The effect of the Decision is to create a different collective bargaining scheme for matters that public policy sought to remove.

- The Decision does not allow the completion of the exercise contemplated by section 27.1. Although not permitted by the *School Act*, it leaves class size, class composition and staffing provisions in the collective agreement with the result that the extent to which any provision applies is subject to arbitration as disputes arise.

1. Judicial review – A review by a court of a decision of an administrative tribunal, such as that of an arbitrator or the Labour Relations Board, to ensure that these bodies properly exercise the jurisdiction or authority conferred upon them by legislation

- Where section 27.1 was a transitional provision to provide certainty and finality to a process designed to reconcile the collective agreement with public policy, the Decision leads to uncertainty, a continuing process and unknown outcomes.
- Through the application of "manner and consequences" and "harmonization" – the process for determining matters such as class size – the Decision leaves for bargaining and inclusion in the collective agreement certain aspects of class size, class composition and other matters, and is potentially inconsistent with the intended public policy.

Arguably, the manner or process by which a board determines which students are grouped, as well as the consequence or remedy of any particular grouping, can be the subject of collective bargaining. This could result in additional pay, time off or additional paid training for teachers enrolling certain classes.

Both the Court and Arbitrator Rice grappled with the provisions that contained matters that were prohibited and those that were permitted. With respect to the deletions pertaining to the Mainstreaming/Integration and School Based Teams language, where the Court concluded the arbitrator should have recast or amended the collective agreement, the arbitrator believed that this was not within his authority and offered the following remedy:

*Clearly with the sweep of section 27(3) there was a lot that had to come out of the Collective Agreement. However, a number of those provisions also related to non-infringing matters which had to be deleted because of links to infringing matters. I'm not sure whether it was expected that Section 27(3) would touch as much of the mainstreaming/integration and School Based Teams language as it did.*

*I appreciate that deletions of important provisions from the Collective Agreement doesn't mean necessarily deletion from School Board Policies. However, the provisions for special needs students, for example, it seemed to me were in some ways worth preserving. It seemed to me that the parties could cooperate and reconstruct parts of the Agreement in ways that would not infringe Section 27(3).*

On September 13, 2002 BCPSEA wrote to the BCTF and asked if they were interested in pursuing such discussions. The BCTF declined to participate until they had exhausted all legal challenges to the legislation and the award. BCPSEA reiterated this offer in our written argument in the judicial review proceedings.

## FOR CONSIDERATION

It is important to recognize that the Decision did not return school organization matters to the collective agreement and the scope of bargaining. The *School Act* is clear as to what is able to be bargained and what is outside the scope of bargaining. At issue is what the mechanism is to reconcile the existing collective agreements with *School Act* section 27(3).

If it is believed the Court erred in its Decision, there are a number of alternatives to be explored. These include, but are not limited to, some or all of the following:

1. Appeal the Decision to the BC Court of Appeal. In order to ensure that there is no confusion in the interim concerning what applies and what does not, it would be necessary to seek a stay of proceedings.
2. The Minister of Skills Development and Labour could appoint another section 27.1 arbitrator. It is likely, however, that the BCTF would adopt the same positions as they did before Arbitrator Rice with respect to their participation. Moreover, this arbitrator would be bound by the Court Decision and interpretation.
3. The provincial government could enact legislation to ensure the intent of the public policy is preserved.

Recent comments from the Minister of Skills Development and Labour indicate that the government remains committed to the public policy as originally intended.

## APPEAL

BCPSEA appealed the judgment of Justice Shaw on February 20, 2004. On February 26, 2003 the BCTF filed a cross appeal seeking an order that Justice Shaw erred in law when he concluded that the effect of section 28(2) precluded collective bargaining concerning the manner in which a school board exercised powers in section 27(3)(d) – provisions related to class size and composition; (f) – provisions related to the assignment of a student to a class, course or program; (g) – provisions providing for staffing levels, ratios and numbers of teachers and other staff; and (i) – provisions related to the number of students assigned to a teacher.

# Alberta Government Charts Course For Teacher Labour Relations

The Alberta government has approved a recommendation by the province's Commission on Learning to expand teachers' professional responsibilities to include participation in the development and testing of new curriculum, and the supervision of student teachers, while permitting teachers to retain the right to strike.

**However, while accepting the Commission's recommendation to establish a Council of Education Executives consisting of school administrators (i.e., principals and assistant principals), the government has rejected a proposal to exclude them from full membership in the provincial teachers' union.**

In its response to the Commission's report, which was released last October, the government states that the Alberta Teachers' Association (ATA) should be maintained "as a single organization responsible for professional services and collective bargaining for teachers," and that "principals and assistant principals [should] remain within the ATA for collective bargaining purposes." The ATA had opposed the exclusion of administrators from the union, arguing that the Commission's proposal threatened a long-standing culture of cooperation and collegiality between teachers and administrators. Membership in the Council of Education Executives, which will provide certification, support and professional development services, is to be voluntary.

A proposal by the Commission to abolish Boards of Reference, which currently adjudicate appeals from decisions to suspend or dismiss teachers, was also rejected. Instead, cases in which a teacher's competence is called into question will be referred to a new mechanism providing for a practice review, while Boards of Reference will retain authority over other employment disputes.

Recommendations by the Commission to impose limits on the matters which may be the subject of collective bargaining, and to enact legislation establishing an employer bargaining association, are still under review. Lyle Oberg, Alberta's Minister of Learning, promised to consult with stakeholders before arriving at a determination. "There are widely varying opinions on these recommendations," Oberg said. "I want to continue the dialogue with parents, teachers, and education organizations to ensure that any final decisions have the greatest benefit for students and our learning system."

The teachers' union has voiced opposition to any limits on the scope of collective bargaining, arguing that the quality of instruction could be compromised. "Classroom conditions are still a key concern for teachers and how we bargain these working conditions is of vital importance," said ATA president Frank Bruseker. "Bargaining must be open and unrestricted so that teachers can discuss all issues of concern at the bargaining table."

Read an Alberta government press release on the web at http://www.learning.gov.ab.ca/news/2004/March/nr-CommRecommend.asp, a statement by the Alberta Teachers' Association at http://www.teachers.ab.ca/what/media/index.cfm?p_ID=6451&p_Year=2004, and the full text of the Learning Commission's final report at http://www.learning.gov.ab.ca/commission/report.asp.

*Re-printed with permission from the March 12, 2004 issue of The Lancaster Roundup (No. 39)*
*Lancaster House*
*Tel: (416) 977-6618*
*Fax: (416) 977-5873*
*E-mail: Lan@Lancasterhouse.com*
*Web: www.lancasterhouse.com*

## Tribute to a Colleague and Friend

The K-12 sector suffered the tragic loss of colleague and friend, Trustee Shirley Demers, on January 7, 2004. As the Quesnel school district's long time representative to BCPSEA, we always looked forward to working with Shirley at our various meetings. It was a role that she undertook with commitment, dedication, and hard work – she will long be remembered and respected for the invaluable contribution she made to human resource matters in the public education system, both locally and provincially. Shirley is sorely missed and we extend our deepest sympathy to the Quesnel school district trustees and staff, and to Shirley's family and friends.

# Position Assignment After Maternity Leave

## FACTS

In 1988 Ms. Dunnett was appointed to a temporary full-time position to teach French and German at the Penticton Secondary School. Later that year she received a continuing appointment to a full-time position, and her assignment changed to French and Counselling. During her employment, Ms. Dunnett took three maternity leaves; the last was from January to September 2001.

In the spring of 2001 teachers were to complete a form requesting their preferred teaching assignment for the 2001/02 school year. Ms. Dunnett submitted a note to the principal listing her first preference as a return to a part-time assignment of counselling only or, if this was not possible, then Ms. Dunnett suggested a full-time assignment, firstly in counselling and secondly in French immersion 9. The Principal informed Ms. Dunnett that her assignment for the 2001/02 school year would be a part-time assignment consisting of counselling Penticton Secondary Learning Centre ("PSLC") students, supplemented with administrative work. The PSLC was designed to meet the needs of students 26 years of age and older who were unable to continue their education in a traditional classroom setting. It was housed in a separate building from the main building of Penticton Secondary School.

Ms. Dunnett was not pleased with this assignment as it required her to relocate her office from the school's main building to the new setting of the PSLC's building. Because she had never worked with PSLC students before, Ms. Dunnett had to learn the new systems, courses, and skills appropriate for working with severe and moderate behavioural problems. This change in counsellor assignment to the PSLC program caused Ms. Dunnett to feel isolated from her previous associations in the mainstream school's counselling suite where she knew the job, enjoyed her colleagues and was comfortable with her work. Ms. Dunnett approached the Principal to change her intended assignment but he refused. She then consulted the local union President, Don Henry.

## CAUSE OF ACTION

The Union grieved, submitting that the school's intended assignment of Ms. Dunnett, upon her return from maternity leave, did not comply with the employer's obligation under the collective agreement to reassign her to "the same position in the same school."

## DECISION

Although the Principal of the school gave Ms. Dunnett the PSLC counselling assignment, it was nonetheless, a counselling assignment. Therefore her employer had reassigned her to the "same position in the same school. Ms. Dunnett was returned to "the position the employee held before taking leave." Pursuant to the *Employment Standards Act,* s.54(3)(a), the grievance was dismissed.

## REASONS

Was Ms. Dunnett reassigned to the "same position"on her return to work from maternity leave?

Under the collective agreement teachers returning from maternity or parental leave had a right to reassignment in the same school first. If that was not possible then they were entitled to reassignment to a comparable position in the same school or reassignment to a comparable position in the District. The collective agreement did not require the employer to recreate the precise assignment the teacher had before maternity leave. Schools experience inevitable changes such as student enrolment, teacher transfers or departures, and curriculum adjustment. This normal and annual reorganization of teaching assignments was not suspended during the term of leave taken by one or more teachers at a school.

If the collective agreement had intended on exempting teachers returning from maternity leave from annual reorganizations, it would have had to be more explicit and specific in that intention. Teachers returning from maternity leave should get new assignments that have some resemblance to their original assignment. Further, if there had been a reorganization, then the reassignment would not have to be to the same position, but to a comparable one.

Some of the changes in work that Ms. Dunnett experienced on her return from maternity leave were: less opportunity to volunteer for work outside the regular school year; the different student population to counsel; the new work location within the school; the new environment and program at the PSLC; the support work for students with severe and moderate behaviour problems previously done by other counsellors; and the new staff room. These were not found to constitute individually or cumulatively, a change in Ms. Dunnett's

*continued on page 20*

case closeup

# Workers' Knowledge of Retirement Plans

Statistics Canada has released data from a new study titled, Retirement Plan Awareness. The study was released in January 2004.

**Many Canadian workers do not have a clear understanding of their retirement plans, and in particular, the distinction between two key retirement income programs, according to a new study.**

The study showed that in 2001, an estimated 390,000 full-time permanent employees in the private sector, or 4% of the total, thought they had a retirement plan, but in reality did not. They were working in firms that offered neither a registered pension plan (RPP) nor a group registered retirement savings plan (RRSP).

The corresponding proportion was twice as high among immigrants who arrived in 1991 or later. Data from the 2001 Workplace and Employee Survey showed that among these immigrants, 9% reported, contrary to their employer, that they had at least one retirement plan

An RPP is an employer-sponsored pension plan to which the company must contribute by law. A group RRSP is simply a collection of individual accounts set up through the employer. The employer may or may not contribute to it.

The poorer knowledge of retirement plans among recent immigrants can be explained only partially by their lower seniority, and their under-representation in large establishments and in unionized jobs, where the incidence of misinformation appears to be minimal. Even after controlling for these factors, at least 70% of the difference between recent immigrants and Canadian-born workers remains.

In contrast, university graduates, unionized workers, workers in large establishments and those employed in finance and insurance, and communication and other utilities better understood their coverage in an employer-sponsored retirement plan.

Among workers who reported having a group RRSP but were in firms that did not have one, fully two-thirds had an employer that offered a registered pension plan (RPP) to at least part of the workforce. This suggests that many workers confuse group RRSPs with RPPs.

Accurate information about one's employer-sponsored retirement plan is crucial given that group RRSPs, contrary to many RPPs, require workers to decide whether to participate and if so, how much to contribute.

At the end of 2001, about 5.5 million employees, representing 40% of all employees, including those in the public sector, had an RPP in their job. This was down from 45% a decade earlier.

In total, Canadians had accumulated an estimated $1.15 trillion in the three main retirement programs – RPPs, RRSPs, and the Canada and Quebec Pension Plans (C/QPP) – by the end of 2001. This was almost double the level of $593.6 billion in 1990, when measured in constant (inflation-adjusted) dollars. Of the total assets in 2001, 69% were in RPPs, 25% in RRSPs (individual and group), and about 6% in the C/QPP.

*Source: Statistics Canada, The Daily, January 23, 2004*

*continued from page 19*

counselling position; nor did they amount to a demotion in her profession.

In Ms. Dunnett's case, the only significant change that had occurred on her return from leave was due to her own request for a part-time counselling assignment, rather than a full-time assignment, as she had had before she took leave. This request had, in fact, been granted by the Principal of the school.

*Okanagan Skaha School District No. 67 v. British Columbia Teachers' Assn. (Dunnett Grievance), (2003) B.C.C.A.A.A. No. 138*
*(Collective Agreement Arbitration)*

*Re-printed with the permission of Education Law Reporter, Volume 15, No. 4, December 2003. For subscription information, call (403) 640-6242, Fax (403) 640-9911, e-mail edlaw@edlawcanada.com, or visit their website at www.edlawcanada.com.*

bulletin board

# Arbitrator Dismisses BCTF Policy Grievance

Prior to the January 2002 enactment of Bill 28, *Public Education Flexibility and Choice Act*, which radically altered the manner in which class size and composition were to be determined, school boards were free to negotiate provisions regulating class size and composition into the teachers' collective agreement.

**However, the legislative changes removed these provisions from the scope of bargaining.**

Under this new legislative regime, average class sizes are fixed by statute under the *School Act*. Furthermore, the *School Act* does not allow provisions under the collective agreement to restrict or regulate a school board's power to establish class size or class composition – this is clearly stated under sections 27(5) and 27(3) of the *School Act*.

On November 6, 2002, the BC Teachers' Federation (BCTF) filed a policy grievance alleging that a number of school boards had violated section 76.1 of the *School Act*, as well as the *Class Size Regulation*. The BCTF sought arbitral relief and enforcement.

As a preliminary matter, BCPSEA took the position that the class size provisions under the *School Act* do not form part of the collective agreement and therefore are not subject to the grievance procedure. BCPSEA argued that the jurisdiction of an arbitrator stems from the collective agreement and given that the alleged violations are of the *School Act* and the *Class Size Regulation*, not the collective agreement, the arbitrator does not have jurisdiction – the grievance is therefore not arbitrable. Moreover, the legislation giving rise to the collective agreement had specifically directed that all provisions with respect to class size be removed from the collective agreement.

In his award issued January 13, 2004, Arbitrator Donald Munroe, QC, found in favour of the employer and dismissed the BCTF grievance. Several leading arbitral authorities clearly support the finding that an arbitrator has the jurisdiction to hear and decide disputes which either expressly or inferentially arise from the collective agreement. However, the arbitrator went on to note that where legislative provisions clearly and deliberately exclude specific matters from the collective bargaining regime, implying these provisions back into the collective agreement "would directly collide with the clearly-stated intention of the Legislative Assembly, and for that reason it would be incorrect in adjudicative principle."

# Definition of Strike – LRB Dismisses BCTF Constitutional Challenge

The Labour Relations Board (LRB) has found that the *Labour Relations Code's* prohibition against mid-contract political strikes does not violate employees' right to freedom of association or freedom of assembly under the *Charter of Rights and Freedoms*.

## BACKGROUND

On January 25, 2002, the BC government introduced Bill 27, *Education Services Collective Agreement Act*, which ended the teacher labour dispute and imposed a collective agreement on teachers and public school employers; and Bill 28, *Public Education Flexibility and Choice Act*, which established a new public policy on class size and educational program choice. Bills 27 and 28 became law on January 27 and 28, respectively.

In response to the legislation, on January 28, 2002, members of the BCTF held a day of political protest and withdrew their services. BCPSEA took the position that this action constituted a strike under the *Labour Relations Code* (the "Code"). The BCTF asserted that it is unconstitutional for the Code to define "strike" to include political protests.

This issue has since progressed through the courts:

- On January 30, 2002 the BCTF withdrew its constitutional challenge, under the *Charter of Rights and Freedoms* (the "Charter"), before the Labour Relations Board (LRB), opting instead to refer the matter to the BC Supreme Court.
- On May 7, 2002, the BCTF filed a petition in BC Supreme Court seeking to have the definition of "strike" in the *Labour Relations Code* struck down.

The petition asserted that the definition violates the freedom of expression and freedom of association provisions of the Charter.

- This matter was heard by the BC Supreme Court April 3-4, 2003. The Court declined jurisdiction, referring the matter back to the LRB.
- LRB Vice Chair Ken Saunders heard the case on August 27, 28 and 29, 2003.
- The decision was issued on February 24, 2004, with reasons to follow.
- On March 19, 2004, Vice Chair Saunders issued his reasons.

## SUMMARY OF DECISION

The issue before Vice Chair Saunders was whether the Code's prohibition of what he termed mid-contract political strikes is constitutionally valid. The parties relied on sections 1 and 2 under the Charter.

Section 2 of the Charter provides:

2. *Everyone has the following fundamental freedoms:*
   - *(a) freedom of conscience and religion*
   - *(b) freedom of thought, belief, opinion and expression, including the freedom of the press and other media communication*
   - *(c) freedom of peaceful assembly*
   - *(d) freedom of association*

Section 1 of the Charter qualifies these rights:

1. *The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

The BCTF sought a declaration that the definition of strike under section 1 of the Code infringes on their right to freedom of expression, freedom of assembly and freedom of association guaranteed by Section 2 of the Charter and is not saved by section 1 of the Charter.

In addition, the BCTF sought a declaration that the definition of strike in section 1 of the Code is *ultra vires*[1] the provincial legislature because its purpose is to regulate political protest activity by unions.

BCPSEA argued that the definition of strike is constitutionally valid and that the freedom of association and expression do not include the right to strike. Furthermore, BCPSEA relied on the Ontario Labour Relations Board decision which held that while strikes do engage the right to freedom of expression, a ban on mid-contract strikes can be justified under section 1. Finally, BCPSEA relied on several court decisions which hold that such a ban is within the provincial jurisdiction.

Vice Chair Saunders found in favour of BCPSEA. He found that the Code's prohibition against mid-contract political strikes is not *ultra vires* and does not violate employees' right to freedom of association or freedom of assembly. The definition of strike was found to infringe on individuals' freedom of expression; however, Vice Chair Saunders found that this infringement could be justified under section 1 of the Charter. He justified the infringement on the basis of the "effect of the strikes on others, the fact that they are a breach of employees' employment obligations, and the availability of other means of expression that do not have these effects."

The BCTF has indicated that it will appeal the decision. Interestingly, on the same day, the Labour Relations Board issued a decision with reasons emanating from the health care sector, finding that the definition of strike does violate the Charter (*Health Employers Association of BC and the Attorney General of BC -and- Hospital Employees' Union*, BCLRB No. B64/04). HEABC subsequently applied for a stay of the decision. The LRB decided to hold the stay application in abeyance, considering that as the parties are currently engaged in collective bargaining, and the union may be in a legal strike position in a matter of weeks, a stay decision may not serve any practical purpose. The LRB also based its decision not to grant the stay application on the unsettled nature of the law given the two conflicting decisions. We will provide an update on the ramifications of these divergent decisions as events unfold.

1. Beyond the scope or in excess of legal power and authority

# BC Supreme Court Dismisses BCTF Constitutional Challenge

The BC Supreme Court has dismissed claims by the BCTF that the province is violating teachers' rights by forcing them to be members of the BC College of Teachers.

**The BCTF claimed that they were being forced to belong to an undemocratic organization and said that violates teachers' constitutional right to freedom of association.**

The Honourable Mr. Justice Stewart, in his decision of March 19, 2004, rejected the BCTF's assertion.

On May 29, 2003, the BC government enacted Bill 51, *Teaching Profession Amendment Act* (the "Act"), which alters the representation on the governing council of the BC College of Teachers. The Act also contains provisions allowing members of the public to file complaints about the conduct of a College Member, as well as requiring members to report the professional misconduct of other members.

On July 14, 2003, the BCTF filed a constitutional challenge to the Act in BC Supreme Court, on the grounds that it violates teachers' rights of freedom of association. The BCTF sought a declaration that the requirement for teachers to be members of the College infringes on their rights under Section 2(d) Freedom of Association of the *Charter of Rights and Freedoms*.

The case was heard on March 11 and 12, 2004. Although Justice Stewart agreed that the Charter does grant the fundamental freedom to associate, as well as the freedom not to associate, he dismissed the BCTF's claims that the Act violates teachers' freedom of association.

Justice Stewart relied on two decisions of the Supreme Court of Canada: *Lavigne v. Ontario Public Service Employees Union* [1991] 2S.C.R. 211 and R. v. *Advanced Cutting & Coring Ltd.*[2001] 3 S.C.R. 209.

In these decisions, the Supreme Court found that "in a case of forced association Charter s. 2(d) is irrelevant absent a finding by the court that the association entails pressure to conform ideologically or breach of another liberty interest such as unwanted association with a cause or faction operating in the political and social debate that lies at the heart of any democracy."

The BCTF had the onus to demonstrate that there is, or will be, pressure on members of the College to conform ideologically. In the opinion of Justice Stewart, the BCTF was unable to demonstrate this and he found that s.2(d) of the *Charter* is not engaged in the case at bar.

Justice Stewart stated that the underlying issue of this case *"is the spawn of a turf war between the provincial government and the teachers' union. The prize in that war is control of the College of Teachers."*

He offered a further characterization of the case:

*"The stench of power politics is a miasma that emanates from the mound of materials placed before me."*

In a news release dated March 19, 2004, the BCTF indicated its intention to appeal the decision.

We will report further as events unfold.

For copies of arbitration and court cases, please contact Stephanie Tassin, Coordinator, Human Resources Research and Information at 604-730-4521 or stephaniet@bcpsea.bc.ca

# Essential Services Hearings

On January 14, 2004, BCPSEA and the BCTF began the essential service designation process for teachers in the event of a support staff strike.

**These hearings are a continuation of the hearings held throughout the fall of 2001 and January 2002 arising from BCTF job action during the last round of collective bargaining.**

The decisions of the Labour Relations Board (LRB) resulting from those hearings addressed the various phases of the BCTF Action Plan. The most recent decision was issued December 19, 2001, and established essential service levels for the withdrawal of extracurricular activities. The parties returned to the LRB in January 2002 to adjudicate Phase 3 of the BCTF's Action Plan – a full withdrawal of services by teachers. However, this adjudication was never completed, as the provincial government legislated both an end to the dispute and a collective agreement.

In the January 2002 LRB hearings, BCPSEA stated that instruction could be withdrawn for a maximum of 20% of a school week during a dispute, and still meet the objective of essential service legislation. The BCTF, on the other hand, stated that instruction could be withdrawn for a period of three months until there would be such a disruption to the provision of educational programs that essential service designations would occur.

At the hearings commenced in January 2004, neither party altered their position.

BCPSEA maintained that the intent of the essential service legislation, section 72 (2.1) of the *Labour Relations Code*, is to ensure that, notwithstanding labour disputes, learning and educational programs continue uninterrupted.

In fact, BCPSEA argued, interpretation of the *Labour Relations Code* provisions is aided by the Code's predecessor, the former *Industrial Relations Act*. Under the former legislation, the threshold was "an immediate and serious danger to the provision of educational services." Currently, the threshold is, "an immediate and serious disruption to the provision of educational programs." By deliberately choosing this new language, as opposed to reverting to the previous model, the legislature lowered the standard for the designation of essential service levels in education.

As it is "the provision" of educational programs that must not be immediately and seriously disrupted, BCPSEA has stated that the focus should not be solely on the impact of job action on marks and student achievement. Instead, the Legislature, through this current language, served to shift the focus to ensuring that the substantial delivery of educational programs continues.

In sharp contrast, the BCTF stated that the effect of a strike is the most important aspect to consider when determining essential service levels. In response to BCPSEA's argument, the BCTF asserted that there is no reference to continuous learning in the legislation. In fact, they argued, the legislation actually allows for a disruption to the provision of educational programs, up to the point where it is a serious disruption. They stated that the only way to measure a serious disruption is the effect on students. In essence, the BCTF is asking the LRB to designate essential service levels not on the basis of the continued provision of education programs, but on the educational impact of a full scale strike of significant duration.

In calling on the LRB to exercise its discretion in allowing a full scale significant strike, the BCTF argues this would facilitate teachers having the necessary bargaining power to resolve disputes. The BCTF argues that BCPSEA's position of a 20% reduction in the work week, in combination with the phases of job action, would place no real pressure on the employer. In looking back to the last round of bargaining, the BCTF believes that a partial strike did not, and would not in the future, apply the required pressure.

The BCTF also highlighted the previous language under the former *Industrial Relations Act*. However, their assertion is that the language of then and now is remarkably similar. As such, the current legislation should be treated in the same manner as the former legislation, where only one application was received, which was then denied.

The hearing continued through January and has a scheduled conclusion for late April.

# New Employment Insurance Compassionate Care Benefit

Effective January 4, 2004, a new category of Employment Insurance (EI) benefit became available to eligible employees who are absent from work to provide care or support to a gravely ill family member.

**Questions have arisen regarding the nature of this benefit and a school district's obligations**.

## BACKGROUND

An individual can receive compassionate care benefits for care or support of the following family members:

- Child (or child of spouse, including common-law spouse)
- Spouse (including common-law spouse)
- Parent (or parent of spouse, including common-law spouse)
- Parent's spouse (including common-law spouse)

In order to qualify as compassionate care, the family member must be gravely ill, with a significant risk of death within 26 weeks. A medical certificate is required.

Care or support to a family member means any of the following:

- Providing psychological or emotional support
- Arranging for care by a third party
- Directly providing or participating in the care.

As with other EI benefits, the individual must be eligible for benefits and must have accumulated a threshold of hours in the qualifying period.

A maximum of six weeks of compassionate care benefits are available per family. As with most other EI benefits, there is an additional two week waiting period.

Benefits may be shared between eligible family members; only one family member serves the two week waiting period. In addition, the benefits need not be taken for consecutive weeks, but may be spread over a 26 week period in weekly increments.

The basic benefit rate is 55% of the employee's average insured earnings, to a maximum of $413 per week. The EI payment is considered taxable income.

An FAQ regarding Compassionate Care Benefits is available at the following Government of Canada website link:

http://www.drhc-hrdc.gc.ca/ae-ei/pubs/compassionate_care.shtml

## SCHOOL DISTRICT OBLIGATIONS

The federal EI legislation provides for a benefit for eligible employees. It does not regulate the granting of leave from employment.

Accordingly, although employees may be eligible for the new Compassionate Care Benefit, the decision to grant the leave for the period rests with the employer, subject to other legislative and contractual requirements.

Employment matters are regulated provincially; it should be noted that government representatives have indicated in recent statements that there are no plans to change the *Employment Standards Act* to harmonize its provisions with the availability of the new Compassionate Care Benefit.

Currently, the only legislative requirement for a leave of this nature in British Columbia is the five day unpaid Family Responsibility Leave under s.52 of the *Employment Standards Act*.

All employees in BC, regardless of whether they are covered by a collective agreement, are entitled to a leave under this provision.

For employees covered by a collective agreement, the provisions of the collective agreement will likely govern the granting of an extended leave; for example, there may be a specific provision regarding compassionate leave for the care of ill relatives, or a provision regarding personal leaves of absence. The decision whether to grant a leave to coincide with the Compassionate Care Benefit payments will be made in accordance with the standards set out in the collective agreement.

Otherwise, in the absence of a specific collective agreement provision, or for those employees not covered by a collective agreement, the decision whether to grant a leave to coincide with the Compassionate Care Benefit payments is within the discretion of the employer, in accordance with its general policies on leaves of absence.

For more information, please contact your BCPSEA district liaison.

# Labour Relations Board Fees

On October 30, 2003, Order in Council No. 1033 brought into effect, as at January 5, 2004, the *Labour Relations Board Fees Regulation*.

**The LRB has advised that they will be publishing a Practice Guideline regarding the logistics for implementation of the Cost Recovery Program.**

Following is a summary of LRB fees that will apply to services commonly accessed by employers in the K-12 public education sector.

BCPSEA is the accredited bargaining agent for school boards and deals with matters before the LRB on behalf of public school employers.

Please contact your BCPSEA district liaison if you have any questions.

| Labour Relations Board Service | Amount Payable | By Whom? |
|---|---|---|
| **Part 2 – Rights, Duties and Unfair Labour Practices** | | |
| • Filing of an Unfair Labour Practice (section 14) | $100 | Each party filing the complaint |
| • For a response to that complaint | $50 | Each party filing the reply |
| **Part 6 – Essential Services** | | |
| • Mediation services related to the designation of essential services (section 72(3)) *(cost per day or part thereof)* | $250 | Each party |
| **Part 7 – Mediation and Disputes Resolution** | | |
| • Mediation Services (section 74(1) *(cost per day or part thereof)*) | $250 | Each party |
| **Part 8 – Arbitration Procedures** | | |
| • Filing the request for a Grievance Settlement Officer (section 87(1)) | $100 | Each party filing the request |
| • Application for the appeal of an arbitration award under section 99 | $100 | Each applicant |
| • For a reply to that application | $50 | Each party filing a reply |
| • Application for Expedited Arbitration under section 104 (1) | $100 | Each applicant |
| • For a reply to that application | $50 | Each party filing a reply |
| • Joint request for Mediator Arbitrator under section 105 (3) to aid in the expeditious and informal resolution of grievances | $50 | Each party filing the request |
| • Mediation or arbitration services provided by the mediator-arbitrator who is appointed under section 105(3) of the Code and is a member of the Board or its staff *(cost per day or part thereof)* | $250 | Each party |
| **Part 9 – Labour Relations Board** | | |
| • File an application for Leave to Reconsider under section 141 (1) | $200 | Each applicant |
| • A reply to that application | $100 | Each party filing a reply |
| *Any application or complaint made to the LRB not listed in the schedule* | *$100* | *Each applicant or party filing the complaint* |
| *Reply to the application or complaint* | *$50* | *Each party filing a reply* |

The LRB Cost Recovery Program will also apply charges to services under the following sections of the *Labour Relations Code* not listed above.

**Part 2 – Rights, Duties and Unfair Labour Practices**
14 Inquiry into unfair labour practice

**Part 3 – Acquisition and Termination of Bargaining Rights**

Division 1 – Acquisition of Bargaining Rights
18 Acquisition of bargaining rights
19 Change in union representation
20 Joint application
21 Craft unions
28 Dependant contractors
29 Unit partly supervisory

Division 2 – Revocation of Bargaining Rights
33 Revocation of bargaining rights

Division 3 – Successor Rights and Obligations
35 Successor rights and obligations
37 Merger or amalgamation

# Support Staff Salaries Competitive, Report Reveals

During collective agreement negotiations, one or both parties will present data supporting or refuting a wage increase based on the prevailing market wages or the employer's ability to pay.

**And there's the challenge – achieving the appropriate balance between the employer's ability to pay and the fair treatment of employees within a competitive employment market.**

To achieve this balance, employers must consider both compensation levels and compensation structure, in order to ensure that the organization runs effectively and efficiently.

BCPSEA's Research/Discussion Paper, *How Does British Columbia's Education Sector Support Staff Fare*, reviews the compensation paid to BC's public school support staff. The report focuses on selected positions in larger urban school districts. It also considers support staff compensation in the context of the broader labour market, by comparing compensation in the public education sector to compensation in BC's other public and private sectors.

What does the report tell us? Based on the sample data, salaries paid to BC's public school support staff are competitive. Salaries in the public school sector tended to be slightly lower than those paid in BC's public sector generally, but were higher than salaries paid in the BC private sector. (It should be noted that compensation comparisons between the public sector and the private sector are complicated by issues such as differing working conditions, and health and welfare benefits.)

Further, when salaries are compared nationally – most notably with Alberta and Ontario – BC's public school support staff are better compensated than their public school counterparts across the country. Surprisingly, BC's public school sector has maintained these competitive salaries despite the changes in the province's economic climate.

*The report will be finalized in mid-April. To receive a copy of the complete report, please send an e-mail to publications@bcpsea.bc.ca.*

*continued from page 25*

Division 5 – Councils of Trade Unions
42 Dissolution of councils of trade unions

Division 6 – Employers' Organizations
43 Accreditation of employers' organization

**Part 4: Collective Bargaining Procedures**

Division 2 – Joint Consultation and Adjustment Plans
53 Joint consultation

Division 3 – First Collective Agreement
55 First collective agreement

Part 5 – Strikes, Lockouts and Picketing
60 Pre-strike vote and notice
61 Pre-lockout vote and notice
65 Picketing
70 Declaratory opinion

**Part 6: Essential Services**

72 Essential services

**Part 7: Mediation and Disputes Resolution**

Division 1 – Mediation and Fact Finding
78 Last offer votes

**Part 8: Arbitration Procedures**

Division 3 – Collective Agreement Provisions
86 Failure to appoint arbitration board
87 Settlement officer
99 Appeal jurisdiction of Labour Relations Board

Division 4 – Expedited Arbitration
104 Expedited arbitration
105 Consensual mediation-arbitration

**Part 9: Labour Relations Board**

136 Jurisdiction of board
141 Reconsideration of decisions
143 Declaratory opinion

**Part 10: Miscellaneous**

151 Financial statements

# What's Happening to WCB Assessment Rates?

The Workers' Compensation Board (WCB) collects assessments from school districts to pay the cost of claims of employees injured while working.

**In recent years, the costs of these accidents have been higher than the revenue and investment income received by the WCB. Consequently, as time went by, there was pressure to raise the assessment rate.**

The deficit created by these shortfalls in funds increased from $9 million at year end 2001 to almost $15 million at year end 2002.

Without a reduction in costs or an increase in revenue, it was becoming more and more likely that school districts would be faced with an increase in their assessment rate.

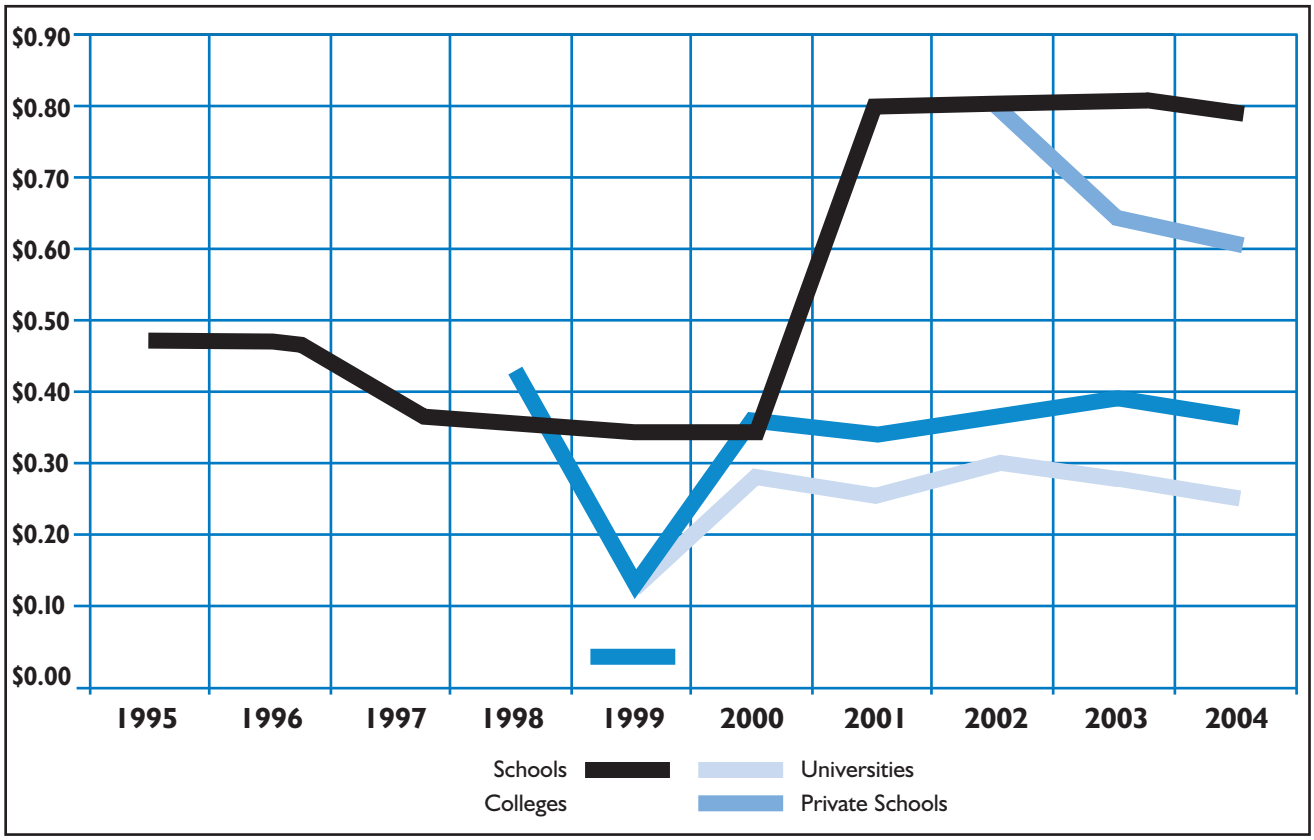
In 2002, there were some signs that a turnaround was underway. For the first time in several years, there was a significant decrease in the number of accidents during the year. However, not all the signs were as strongly positive. The duration of injuries remained steady. The deficit increased to $15 million.

The good news for 2004 is that the decrease in the number of injuries and the number of health care claims that first appeared in 2002 continued into 2003. Adding to this good news is a decrease in duration for time loss injuries in 2003. These three factors, combined with much improved investment results on assessment income for 2003, has reduced the deficit in the accident fund to about $4 million at year end 2003.

If this trend continues the deficit will disappear and school districts may expect to look forward to a lower assessment rate in the future.

Other partners in the education field appear to have done even better in 2004. The assessment rate for universities decreased to $0.35 from $0.39; for colleges to $0.22 from $0.29 and for independent schools to $0.60 from $0.64. Public school districts remained at $0.80.

The following tables provide a visual indication of how our sector is doing in comparison to others in the education field and how your district's costs compare to other districts. Districts with an assessment rate above $0.80 are contributing to increased costs for all districts while those with an assessment rate below $0.80 are making strides to reduce costs for every district.



# How Do You Rate?

| School District | Assessable Payroll 2002 | Experience Rate 2004* $ | Experience Rate 2003* $ | Experience Rate 2002 $ | Experience Rate 2002* $ |
|---|---|---|---|---|---|
| 05 (Southeast Kootenay) | 32,424,237 | 0.73 | 0.83 | 1.06 | 1.04 |
| 06 (Rocky Mountain) | 23,173,566 | 0.66 | 0.65 | 0.76 | 0.89 |
| 08 (Kootenay Lake) | 34,505,860 | 0.75 | 0.83 | 0.80 | 0.83 |
| 10 (Arrow Lakes) | 4,918,498 | 0.67 | 0.75 | 0.79 | 0.79 |
| 19 (Revelstoke) | 7,391,146 | 0.88 | 0.87 | 0.93 | 0.84 |
| 20 (Kootenay-Columbia) | 27,175,816 | 0.90 | 1.02 | 0.93 | 0.82 |
| 22 (Vernon) | 43,992,199 | 0.88 | 0.76 | 0.72 | 0.74 |
| 23 (Central Okanagan) | 96,102,723 | 0.67 | 0.74 | 0.69 | 0.73 |
| 27 (Cariboo-Chilcotin) | 37,607,067 | 0.77 | 0.72 | 0.72 | 0.74 |
| 28 (Quesnel) | 24,341,211 | 0.78 | 0.84 | 0.88 | 0.85 |
| 33 (Chilliwack) | 54,756,126 | 0.66 | 0.77 | 0.94 | 0.93 |
| 34 (Abbotsford) | 81,979,009 | 0.82 | 0.78 | 0.79 | 0.70 |
| 35 (Langley) | 93,974,007 | 0.70 | 0.70 | 0.91 | 0.96 |
| 36 (Surrey) | 273,745,219 | 0.88 | 0.83 | 0.89 | 0.87 |
| 37 (Delta) | 80,843,809 | 0.90 | 0.77 | 0.81 | 0.85 |
| 38 (Richmond) | 109,848,350 | 0.78 | 0.90 | 0.91 | 0.99 |
| 39 (Vancouver) | 302,961,570 | 0.86 | 0.86 | 0.81 | 0.73 |
| 40 (New Westminster) | 29,549,469 | 0.77 | 0.79 | 0.86 | 0.70 |
| 41 (Burnaby) | 115,132,308 | 0.99 | 0.98 | 1.12 | 1.05 |
| 42 (Maple Ridge-Pitt Meadows) | 69,094,096 | 0.63 | 0.62 | 0.64 | 0.71 |
| 43 (Coquitlam) | 145,389,151 | 0.81 | 0.78 | 0.72 | 0.75 |
| 44 (North Vancouver) | 86,955,472 | 0.80 | 0.76 | 0.80 | 0.77 |
| 45 (West Vancouver) | 30,596,549 | 0.68 | 0.66 | 0.67 | 0.72 |
| 46 (Sunshine Coast) | 21,370,693 | 0.66 | 0.73 | 0.76 | 0.78 |
| 47 (Powell River) | 14,836,154 | 1.17 | 1.24 | 1.20 | 1.09 |
| 48 (Howe Sound) | 22,299,760 | 0.88 | 0.94 | 0.85 | 0.75 |
| 49 (Central Coast) | 2,910,305 | 0.69 | 0.75 | 0.79 | 0.82 |
| 50 (Haida Gwaii/Queen Charlotte) | 6,496,165 | 0.89 | 0.93 | 0.86 | 0.90 |
| 51 (Boundary) | 9,748,541 | 0.63 | 0.60 | 0.55 | 0.62 |
| 52 (Prince Rupert) | 18,086,529 | 0.77 | 0.91 | 0.92 | 0.77 |

| School District | Assessable Payroll 2002 | Experience Rate 2004* $ | Experience Rate 2003* $ | Experience Rate 2002 $ | Experience Rate 2002* $ |
|---|---|---|---|---|---|
| 53 (Okanagan Similkameen) | 15,345,351 | 0.72 | 0.62 | 0.67 | 0.66 |
| 54 (Bulkley Valley) | 14,588,844 | 0.79 | 0.66 | 0.75 | 0.84 |
| 57 (Prince George) | 87,385,600 | 0.76 | 0.72 | 0.75 | 0.81 |
| 58 (Nicola-Similkameen) | 16,303,265 | 0.66 | 0.68 | 0.66 | 0.69 |
| 59 (Peace River South) | 25,040,513 | 0.72 | 0.70 | 0.76 | 0.90 |
| 60 (Peace River North) | 27,388,418 | 0.72 | 0.72 | 0.64 | 0.72 |
| 61 (Greater Victoria) | 107,639,774 | 0.89 | 0.91 | 0.98 | 0.98 |
| 62 (Sooke) | 44,396,992 | 0.84 | 0.89 | 0.85 | 0.82 |
| 63 (Saanich) | 42,096,098 | 1.02 | 1.07 | 1.03 | 0.89 |
| 64 (Gulf Islands) | 10,027,879 | 0.84 | 0.65 | 0.65 | 0.68 |
| 67 (Okanagan Skaha) | 35,177,476 | 0.68 | 0.58 | 0.66 | 0.72 |
| 68 (Nanaimo-Ladysmith) | 76,389,668 | 0.66 | 0.72 | 0.76 | 0.71 |
| 69 (Qualicum) | 25,981,233 | 0.64 | 0.73 | 0.86 | 0.89 |
| 70 (Alberni) | 26,055,612 | 0.75 | 0.69 | 0.73 | 0.62 |
| 71 (Comox Valley) | 46,214,709 | 0.69 | 0.80 | 0.97 | 1.10 |
| 72 (Campbell River) | 35,114,877 | 0.97 | 1.10 | 1.09 | 1.17 |
| 73 (Kamloops/Thompson) | 80,538,560 | 0.68 | 0.71 | 0.73 | 0.75 |
| 74 (Gold Trail) | 15,014,382 | 0.71 | 0.59 | 0.64 | 0.70 |
| 75 (Mission) | 33.703,138 | 0.72 | 0.78 | 0.75 | 0.75 |
| 78 (Fraser-Cascade) | 12,018,419 | 0.65 | 0.69 | 0.73 | 0.74 |
| 79 (Cowichan Valley) | 49,432,571 | 0.83 | 0.84 | 0.86 | 0.88 |
| 81 (Fort Nelson) | 5,819,758 | 0.63 | 0.68 | 0.70 | 0.76 |
| 82 (Coast Mountains) | 34,606,341 | 1.01 | 1.11 | 0.96 | 0.96 |
| 83 (North Okanagan-Shuswap) | 40,784,932 | 0.87 | 0.76 | 0.80 | 0.91 |
| 84 (Vancouver Island West) | 4,345,027 | 0.74 | 0.79 | 0.82 | 0.78 |
| 85 (Vancouver Island North) | 14,023,611 | 0.80 | 0.85 | 0.76 | 0.77 |
| 87 (Stikine) | 3,386,619 | 0.67 | 0.70 | 0.72 | 0.70 |
| 91 (Nechako Lakes) | 28,092,428 | 0.63 | 0.50 | 0.53 | 0.56 |
| 92 (Nisga'a) | 5,071,444 | 0.93 | 0.90 | 0.93 | 0.89 |
| 93 (CSF) | 15,062,848 | 0.51 | 0.62 | 0.71 | 0.76 |

**Prepared from WCB data as of December 2003.*

# Board of Directors

| | |
|---|---|
| Chair | Ron Christensen SD No. 6 (Rocky Mountain) |
| Vice Chair | Russ Searle SD No. 64 (Gulf Islands) |
| Trustee Representatives | Ron Burton SD No. 41 (Burnaby |
| | Alan Chell SD No. 19 (Revelstoke) |
| | Daryl Hagen SD No. 72 (Campbell River) |
| | Heather Hannaford SD No. 60 (Peace River North) |
| | Andrée Janyk SD No. 48 (Howe Sound) |
| | Janet Shauntz SD No. 37 (Delta) |
| | Gordon Swan SD No. 58 (Nicola-Similkameen) |
| Government Representatives | Bob de Faye<br>Deputy Minister and CEO<br>Public Sector Employers' Council Secretariat |
| | Annette Wall<br>Vice President, Public Sector Employers' Council Secretariat |
| | Keith Miller<br>Lead Director, Funding Department, Ministry of Education |
| | Peter Owen<br>Lead Director, Governance Department, Ministry of Education |
| Superintendents' Association Representative | Ron Rubadeau SD No. 23 (Central Okanagan) |
| Secretary Treasurers' Association Representative | Wayne Jefferson SD No. 36 (Surrey) |

# Your BCPSEA Staff Contacts

### LABOUR RELATIONS

| | | |
|---|---|---|
| Bonda Bitzer | 604-730-4505 | bondab@bcpsea.bc.ca |
| Brian Chutter | 604-730-4520 | brianc@bcpsea.bc.ca |
| Renzo Del Negro | 604-730-4511 | renzod@bcpsea.bc.ca |
| Sherida Harris | 604-730-4504 | sheridah@bcpsea.bc.ca |
| Margaret Ostrom | 604-730-4500 | margareto@bcpsea.bc.ca |
| Dan Peebles | 604-730-4510 | danp@bcpsea.bc.ca |
| Joe Strain | 604-730-4507 | joes@bcpsea.bc.ca |

### EXEMPT STAFF HUMAN RESOURCES

| | | |
|---|---|---|
| Deborah Stewart | 604-730-4506 | deborahs@bcpsea.bc.ca |
| Joe Strain | 604-730-4507 | joes@bcpsea.bc.ca |

### SECONDED SUPERINTENDENT, FIELD LIAISON

| | | |
|---|---|---|
| John Calder | 604-730-4508 | johnc@bcpsea.bc.ca |

### SECONDED ASSISTANT SUPERINTENDENT

| | | |
|---|---|---|
| Brian Junek | 604-730-4502 | brianj@bcpsea.bc.ca |

### OCCUPATIONAL HEALTH AND SAFETY

| | | |
|---|---|---|
| John Bonnet | 604-730-4509 | johnb@bcpsea.bc.ca |

### RESEARCH SERVICES

| | | |
|---|---|---|
| Stephanie Tassin | 604-730-4521 | stephaniet@bcpsea.bc.ca |
| Laura Parks | 604-730-4522 | laurap@bcpsea.bc.ca |

### EXECUTIVE DIRECTOR/CEO

| | | |
|---|---|---|
| Hugh Finlayson | 604-730-4515 | hughf@bcpsea.bc.ca |

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.

British Columbia
Public School Employers' Association

400 – 1333 West Broadway
Vancouver, B.C., V6H 4C1
Telephone (604) 730-0739
Fax (604) 730-0787
E-mail bcpsea@bcpsea.bc.ca
Website http://www.bcpsea.bc.ca

*Editor:*
*Deborah Stewart*

*Contributors:*
*John Bonnet*
*David Brown*
*Hugh Finlayson*
*Margaret Ostrom*
*Laura Parks*
*Wendy Poirier*
*Deborah Stewart*
*Stephanie Tassin*

*Desktop Publishing:*
*Mariana Prins*

ISSN No. 1496-9483
NewsLink, Spring 2004
March 2004 