

Arbitrator Dorsey Award on Class Size

Yesterday the BC Public School Employers' Association (BCPSEA) received the arbitration award of Arbitrator Dorsey on the issue of the Superintendent Class Size Report to the Board.

Although the January 4, 2010 award by Arbitrator Diebolt had already ruled that these [reports were inarbitrable](#), the BC Teachers' Federation (BCTF) had referred this same matter to arbitration again. It was the BCTF position that the recent obiter comments contained in the BC Court of Appeal decision (Bettand – 2011 BCCA 148), on a separate class size matter, had now made the issue of the report a substantive issue for teachers and therefore, arbitrable.

This morning Arbitrator Dorsey has re-confirmed that this matter is inarbitrable and not within the jurisdiction of grievance arbitration. He ruled that:

[125] In this context, whether using the roles and responsibilities and governance approach of the employer or the judicial substantial connection or essential nature test, I find that the superintendent class organization report required under sections 76.3(2) and (3) of the *School Act*, while significant for several reasons and of keen interest to the union and teachers, is not a condition of employment for teachers and is not a condition of employment that has an implicit or express connection to the collective agreement. Therefore, I agree with the conclusion reached by Arbitrator Diebolt and find the subject matter of Superintendent Munro's 2010 class organization report compliance with section 76.3(3) is not in the jurisdiction of grievance arbitration.

This is an important decision, not only for this issue, but more importantly this award continues to support the general case law that has been established in our sector pertaining to the inarbitrability of other legislative provisions, internal employer processes and issues involving students which have been found **not** to be substantive matters for teachers and/or involve conditions of employment for teachers.

Although the issue of the superintendent report to the board has been found to be inarbitrable, districts must continue to ensure that these reports are provided to the board in accordance to the legislation.

For more information on this subject, please refer to pages 44-45 of the – Guidelines for Implementing Class Size and Composition Provisions – August 2011.

Questions

Should you have any questions regarding the class size and composition legislation, please contact Brian Chutter at brianc@bcpsea.bc.ca.