

Class Size – Resolution Process Agreement – School Years 2006-2010

On August 23, 2011 BCPSEA reached a signed agreement with the BCTF on a resolution process to resolve the approximate 10,000 classes that are presently under grievances for the 2006–2010 school years (copy attached).

The process has now been successfully completed for the 1,668 classes under grievance covering 18 school districts for the 2006-07 and 2007-08 school years. All class size grievances for the 2006-07 and 2007-08 school years have now been resolved. BCPSEA is very pleased how with this process worked and would like to thank each district and local association involved.

On January 20, 2012, the same process will commence for approximately 9,000 classes under grievance covering 49 school districts for the 2008-09 and 2009-10 school years. On this date (amended from December 31, 2011), the BCTF will provide BCPSEA with the list of classes and alleged violation for these two school years. Upon receipt of this list, the provincial parties will then have 20 working days to work with districts/locals to attempt to verify the information contained on these lists i.e., school, teacher, grade, subject, number of students on September 30, 2011 number of students with an IEP on September 30 issue in dispute.

The next steps in the process would then follow:

- Clause 4.b: Lists would be provided to Arbitrator Dorsey.
- Clause 4.c: Arbitrator Dorsey would cull the list of classes grieved and refer back to the local parties the classes that he believes the parties should attempt to reach a settlement.
- Clause 4.d: Using the guidance of the 125 representative classes previously ruled upon by Arbitrator Dorsey in formal arbitration, the local parties would then have 20 working days to attempt to reach settlement. Internal processes will be established between BCPSEA and districts to assist with consistency and knowledge transfer in this regard.
- Clause 4.e: Any remaining classes not settled would then be referred back to Arbitrator Dorsey.
- Clause 4.f: Arbitrator Dorsey would then be supplied with additional basic information in chart format.
- Clause 4.g: After reviewing this information, if Arbitrator Dorsey deems additional information is necessary, he would advise the parties of what information he requires and in what format/venue.
- Clause 5: Arbitrator Dorsey would then make a final and binding decision on all outstanding classes for the 2008-09 and 2009-10 school years.
- All settlements by the parties and/or determinations by Arbitrator Dorsey under this resolution process are on a without precedent and prejudice basis and cannot be relied upon by the parties or referred to at any future arbitration or legal proceeding.

BCPSEA will be in contact with districts once the list is received by the BCTF.

2010-11 School Year

Unlike previous years, instead of filing a provincial policy grievance, class size grievances for the 2010-11 school year were filed individually at the local school district level. It is our understanding that approximately half of the districts received local grievances. So far 16 of these grievances have been referred to arbitration.

For the 2010-11 school year, the BCTF and BCPSEA have agreement to adjourn and/or hold in abeyance all pending or future class size/composition that have been referred to arbitration pending the outcome of the BCTF appeal to Arbitrator Dorsey's second representative class size award which is described later in this document.

2011-12 School Year

On June 29, 2011, the BCTF filed a provincial policy grievance which alleges that as a result of the April 13, 2011 ruling from Madam Justice Griffin concerning Bills 27 & 28, the class size, composition and non enrolling ratios which were removed from the collective agreement through Bill 28 now again have application and apply for the 2011-12 school year. In effect they are grieving the current application of the language that was previously removed by Bill 28.

In addition to the provincial policy grievance, many local teacher unions have filed similar grievances at the local level. Many of these local grievances not only grieve the Bill 28 issue as described above, but also grieve alleged violations of Section 76 of the *School Act*. Therefore, many of these locally filed grievances are a combination of:

- alleged violations of the previous collective agreement language that was removed from Bill 28 now taking effect
- alleged violations of issues concerning the application/implementation of Section 76. These would include issues such as consultation, appropriate for student learning, district averages, etc., as were grieved in previous years
- take the position that when interpreting the application of Section 76 alleged violations on "appropriate for student learning" that the ruling from Madam Justice Griffin concerning Bills 27 and 28 should be taken into consideration and given weight i.e., the arbitrator must look to the old removed language of the collective agreements when determining whether a class under section 76 is "appropriate for student learning" or not.

The provincial parties have on a without precedent and prejudice basis agreed to hold all local class size grievances filed for the 2011-12 school year in abeyance pending the outcome of the provincial policy grievance described above. Furthermore, no Section 76 issue with respect to the 2011-12 school year will proceed to arbitration prior to the receipt of the BC Court of Appeal decision pertaining to Arbitrator Dorsey's second representative class size award which is described below.

BCTF Appeal of Arbitrator Dorsey's Second Representative Class Size Award

After nearly three years of arbitration, the parties now have clear direction on virtually all aspects of the class size legislation i.e., the interpretation/application of the processes, procedures, timelines

and redress issues (both consultation and appropriate for student learning). As a result of these rulings, BCPSEA has supplied districts with training, templates and a manual in this regard.

Although it is the employer's view that the BCTF had agreed to the representative class arbitration process and had not appealed Arbitrator Dorsey's first representative class size award on the same issues now in dispute, on June 16, 2011 the BCTF appealed Arbitrator Dorsey's second representative award of May 19, 2011 on the issue of appropriate for students learning where 41 of 44 classes were found in the employer's favour.

More specifically, the BCTF appealed Arbitrator Dorsey rulings that:

- the onus is on the union to prove that classes which exceed the numbers of students set out in s.76.1(2.2) and s. 76.1(2.3) of the *School Act*, R.S.B.C. 1996, c. 412 are not in compliance with the *School Act*; and
- Section 76.1 (2.2) and s. 76.1 (2.3) of the *School Act* are to be interpreted as providing presumptive deference to the opinion of a principal that a class is appropriate for student learning where the sum of the class size plus the number of students with an individual education plan is 33 or below in the case of classes for grades 4 to 12 and 27 or below in the case of classes for grades 1 and 3.

This appeal is currently scheduled to be heard by the BC Court of Appeal on February 16/17, 2012.

BCTF Appeal of Arbitrator Dorsey's Award on the Superintendents' Class Size Report to the Board

Both arbitrators Diebolt and Dorsey have ruled that grievances concerning the Superintendents' class size report to the board are inarbitrable. On October 24, 2011, this matter was appealed by the BCTF to the BC Court of Appeal

The parties are currently in the process of filing their respective factums with the Court of Appeal. Court dates have yet to be set.

Questions

Should you require assistance or wish to discuss this issue further, please contact Brian Chutter at brianc@bcpsea.bc.ca .