

The BCTF and the Urgency to Strike

The recent media campaign by the BC Teachers' Federation (BCTF) and its local teachers' associations sets the stage for the execution of a province-wide job action plan. The backdrop against which this plan is set includes:

- the demand that only **salary and benefits, time worked, and paid leave** be bargained at the provincial table and all other matters locally.
- alarm expressed at the employer's bargaining objectives, characterizing the underlying motivation. Both the BCTF and BCPSEA bargaining teams introduced their respective themes/objectives on May 24. Tabling of specific proposals related to the objectives commenced May 31.
- "... the need to send a message to government" concerning the progress of negotiations to address the recent BC Supreme Court decision regarding Bills 27/28.

In their May 30, 2011 [School Staff Alert](#) (No. 27), the BCTF described their circumstances in stark terms:

"Teachers need to send a strong message showing commitment to our bargaining objectives:

- improved class size, class composition, ratios and caseloads, and preparation time
- fair and reasonable compensation packages (wages and benefits)
- local bargaining to resolve local problems.

The BCTF May 27 [news release](#) comments as follows:

Lambert emphasized that teachers want to achieve a negotiated settlement. Although the BCTF and its locals have been bargaining since the beginning of March, progress so far has been limited. "We're facing resistance at both local and provincial tables, with the BC Public School Employers' Association stalling on the split of issues and local trustees refusing to bargain anything of substance," Lambert said.

Given the BCTF commentary, what has happened to date?

Bargaining commenced on March 1, 2011 — 14 provincial bargaining sessions have been held, including today's session. Talks continue, with a further 14 dates to bargain scheduled before the end of June. The BCTF and BCPSEA mutually agreed to move beyond the preliminary issue of what is bargained at the provincial level and what is bargained at the local level. Despite this mutual agreement, and in the absence of any agreement to change the designation of which items are local and which items are provincial, the BCTF has been counselling its local teachers' unions to table provincial matters at local tables. This advice and approach is not constructive and further, is in contravention of both the *Public Education Labour Relations Act* (PELRA) and the existing agreement

between the BCTF and BCPSEA that designates which items are to be bargained at local tables and which items are to be bargained at the provincial table.

What is the issue concerning local bargaining?

The BCTF is demanding a change to the agreement between the BCTF and BCPSEA on the provincial–local split of issues that would move most matters except wages, benefits, and paid leaves to be bargained at the local level. This change would likely result in provincially coordinated local bargaining and tremendous inefficiencies and costs across the system. Collective bargaining between the parties continues to operate under the same structure and split of issues based on the letter of understanding that was agreed to by BCPSEA and the BCTF at the time PELRA was established.

It is interesting to note the comments of Elizabeth Cull, the then-NDP Minister of Finance, as recorded in [Hansard](#) for Monday, June 6, 1994:

“...[Provincial bargaining] will save us money. The Korbin Commission estimated that at least 25 to 30 percent of the \$9 million that's now being spent on collective bargaining can be saved. Those dollars can be redirected back to the classrooms to benefit students. It will provide greater stability for students, because we will not have 75 districts playing one another off against each other, trying to come up with some kind of agreement. Finally -- despite all the protestations of the opposition members -- it will protect local autonomy because trustees will bargain, local issues will be dealt with and the trustees can get on with dealing with the educational issues that are most important to the kids.

Despite the focus on local bargaining by the BCTF, they have decided to conduct a province-wide strike vote at the end of June. This raises a number of questions:

- Isn't this just provincial pressure — visited on one district at a time — in pursuit of their provincial agenda?
- Is this an efficient or effective way to deal with legitimate matters at issue?

The BCTF commentary at this early stage, including their news release, *School Staff Alert*, and media campaign, appears to be more about political and public positioning than it is about issue exploration and engaging in meaningful dialogue at the bargaining table.

Given that the parties have only just commenced the exchange of specific proposals, we need to consider at the early stages of bargaining how best can a productive dialogue be facilitated? Through interaction and meaningful conversation with the other party to share information and aid understanding, or through the use of polarizing and alarmist rhetoric to label and frame the other party as “stalling” and obstructionist? For example:

- “Lambert emphasized that teachers want to achieve a negotiated settlement. Although the BCTF and its locals have been bargaining since the beginning of March, progress so far has been limited. “We’re facing resistance at both local and provincial tables, with the BC Public School Employers’ Association stalling on the split of issues and local trustees refusing to bargain anything of substance,” Lambert said.” [BCTF [news release](#), May 27, 2011].
- “Bargaining between the two sides began at the start of March, but government, at both provincial and local bargaining tables, has refused to tackle the teachers’ big issues of pay and class size said BCTF president Susan Lambert.” [[“BC teachers consider holding June strike vote.” The Vancouver Sun, May 28, 2011](#)].

- “Indeed, there was consensus that we’re being shafted by the provincial government, and need to take action if things don’t change. Some remarked that our best bet is to defeat the Liberal government in an upcoming election.”
[\[http://politicalsensei.wordpress.com/2011/05/29/contradictions-at-the-spring-ra/\]](http://politicalsensei.wordpress.com/2011/05/29/contradictions-at-the-spring-ra/).

What is the BCTF saying about taking a strike vote?

The BCTF has stated that if they believe there is no progress at the bargaining table, they will conduct a strike vote on June 24, 27 and 28.

One local teachers’ association bulletin says that Phase One of the BCTF provincial strike plan will

“...be province-wide and focused on serving our students:

- a. Members will:
 - i. teach.
 - ii. maintain communications with parents regarding student progress.
 - iii. maintain communications with appropriate officials regarding the health and safety of students and staff.
- b. Members will not:
 - i. undertake any mandated supervision of students outside of regularly scheduled classes.
 - ii. attend any meetings with management.
 - iii. submit student attendance information to administration, including any electronic formats.
 - iv. provide administrative officers with any routine printed, written, or electronic communications.
 - v. accept any printed, written, or electronic communication from an administrative officer, unless it is necessary to class start up.
 - vi. engage in mandated reporting.
 - vii. administer or mark any mandated or employer initiated assessment.”

If the BCTF obtains a mandate from its members to strike, can they initiate their plan?

Under the *Labour Relations Code* (the Code), a union cannot declare or authorize a strike until a valid strike vote has been taken in accordance with the Labour Relations Regulation. A strike vote cannot be taken until the trade union and the employer have bargained collectively in accordance with the Code, which includes the duty to bargain in good faith.

The duty to bargain in good faith requires parties to make every reasonable effort to conclude a collective agreement, including scheduling regular meetings between bargaining teams who have the full authority to enter into a collective agreement and engaging in full and rational discussions with respect to the issues on the table. This means that a strike vote cannot be held in accordance with the Code and Regulation until these criteria have been met. If the BCTF takes a strike vote as planned, it will have to be determined whether the prerequisites for a valid strike vote have been met.

If the BCTF’s strike vote is valid, it will then be in a position to serve 72-hour strike notice on the employer, subject to the essential services process. The essential services process is underway. Under the essential services provisions of the Code, if the Labour Relations Board is in the process of designating essential services, a strike may not occur until the essential services designation process is complete.

Further information will be provided concerning the progress of the essential services process and its impact on any job action.

What about the BC Supreme Court decision in Bills 27 and 28?

Government has noted that the Court accepted the policy objectives underlying Bills 27 and 28 and that the ruling of unconstitutionality was based on the process it used to achieve those objectives.

Government has now indicated that it intends to continue to pursue these policy objectives through a process consistent with the current case law requiring good faith consultation with the BCTF.

The policy objectives accepted by the Court were described as follows: to provide greater flexibility to school boards to manage class size and composition issues, to respond to choices of parents and students and to make their own decisions on better use of facilities and human resources” [para. 339 of the Court’s [decision](#)].

On May 20, government commenced the initial phase of the consultation process with the BCTF in relation to these policy objectives. The interplay between the government’s consultation and negotiation process with the BCTF, and the ongoing collective bargaining between the BCTF and BCPSEA in relation to working conditions, is not yet fully known.

The end result of the government’s consultation and negotiation process could be that issues such as class size, class composition, non-enrolling staffing ratios, and hours of work in relation to school calendars are not matters that may be restricted by collective agreement provisions. Alternatively, if government determines a different approach is warranted, it could, after consultation with the BCTF and other stakeholders, enact legislation dealing with these matters which allows collective bargaining on some or all issues. Finally, although it seems extremely unlikely given the government’s present actions, if the government decides to take no further action in the wake of this decision, in 12 months time the collective agreement provisions removed from the collective agreement by Bill 19, the *Education Services Collective Agreement Amendment Act* in 2004, would be applicable and binding on the parties to the collective agreement.