(Section 84 Appointment) ARBITRATION AWARD

BRITISH COLUMBIA TEACHERS' FEDERATION

UNION

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

EMPLOYER

(2010-11 School Year – "15 school days after the school opening day" and Consultation on Class Changes and New Classes after September 30th)

Arbitration Board:

James E. Dorsey, Q.C.

Representing the Union:

Carmela Allevato and John Wadge

Representing the Employer:

Judith C. Anderson and Brian Chutter

Date of Hearing

October 13, 2010

Date of Decision:

October 18, 2010

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1. Agreed Arbitral Jurisdiction

- [1] The union and employer request final and binding interpretations and declarations on two issues relating to the consultation requirements under the class size provisions of the *School Act* in the current school year.
- [2] The union and employer agree I am properly constituted as an arbitrator under their collective agreement and the *Labour Relations Code* with jurisdiction to make a final and binding ruling on the issues.
- The union and employer agree the interpretations, declarations and directions on the second issue relating to new and changed classes after September 30th will have prospective effect for the administration and application of their collective agreement and the *School Act* from the date of this decision.

2. Fifteenth School Day after the Opening School Day in 2010-11 School Year

[4] The first issue is the calculation of the time period within which a principal must consult teachers in accordance with section 76.2 of the *School Act* in the current 2010-11 school year. In previous decisions, the precise calculation was not in issue and was deliberately not addresses.

There is no issue in this arbitration about the calculation of the date by which consultation was required in September 2007. There is no justiciable issue about any obligation to consult between the fifteenth or sixteenth school day and September 30th. (*British Columbia Public School Employers' Association* [2009] B.C.C.A.A.A. No. 81 (Dorsey) (QL), ¶ 353)

The "fifteenth school day" was spoken of as the deadline to complete consultations.

In the 2007-08 school year, the school opening day was September 4th and the deadline to consult was treated as September 24th (*British Columbia Public School Employers' Association* [2009] B.C.C.A.A.A. No. 81 (Dorsey) (QL), ¶ 322 and 1,174). Consistent with this approach, in a recent decision, I wrote:

In circumstances where a board is permitted, following principal-teacher consultation, to exceed thirty students in a Grade 8-12 class or to have more

than three students entitled to an individual education plan in any class, the consultation must have occurred in September within fifteen school days after the school opening day. Section 76.2 (a) of the *School Act* states:

In each school year, the principal of a school must, within 15 school days after the school opening day set out in the school calendar applicable to the school for the school year....

In the 2007-08 school year, school opening day was September 4^{th} and the fifteenth school day was Monday, September 24^{th} . In the 2006-07 school year, school opening day was September 5^{th} . School opening day was September 2^{nd} in the 2008-09 school year and September 8^{th} in the 2009-10 school year. These two most recent school years capture the range of two to six school days between the fifteenth school day (September 22^{nd} to 28^{th}) and September 30^{th} as school opening day moves from September 2^{nd} to 8^{th} . (*British Columbia Public School Employers' Association* [2010] B.C.C.A.A.A. No. 102 (Dorsey) (QL), \P 5 – 6)

Now a focused analysis of the deadline to conclude consultation is required.

- [6] The school opening day is set out in the standard school calendar in Schedule 1 of the *School Calendar Regulation*, B.C. Reg. 114/02 as amended, which provides that the school opening day can be shorter than other instructional days (s. 8(6)).
- [7] September 7, 2010 is the school opening day set out in the standard school calendar for the 2010-11 school year. Under section 76.2 of the *School Act*, this day is not included in the fifteen school days within which mandatory consultations must be conducted. It is the fifteen school days "after" the school opening day set out in the school calendar. Consequently, the fifteenth school day for consultation in the current 2010-11 school year was September 28, 2010.

3. Consultation on Class Changes and New Classes after September 30, 2010

- There have been several disputes and arbitration decisions on the interpretation and application of the class size provisions of the *School Act* and the *Class Size Regulations*, B.C. Reg. 245/02 as amended to principal-teacher consultation and class size and composition in past school years. There are some outstanding, unresolved disputes over classes in the 2006-07 and subsequent school years.
- [9] This referral to arbitration is a proactive initiative by the union and employer to resolve anticipated differences and to obtain a measure of clarity and certainty for consultation about changed and new classes for the remainder of this school year and future school years. All issues concerning teacher consent have not been and are not

intended to be addressed.

- In each school year, there are changes in class composition when students move between schools for any number of family and other reasons; when new students move to British Columbia; when students are placed in classes or moved between classes during the school year for any number of educational reason; when new programs or classes are commenced during the school year; when second semester classes in secondary schools are organized in February; and in other circumstances. There is also a rich diversity and adaptability in the organization and delivery of programs and curricula to meet the needs of a highly diverse population of students with a wide range of interest and needs.
- [11] The class size provisions of the *School Act* contemplate the common occurrence of school organization in September for the commencement of the school year in accordance with the standard school calendar. However, in the dynamic world of student growth and a highly mobile society, class organization within a school will not and cannot remain static after September 30th.
- The School Act provides for further principal-teacher consultation after September 30th about class size and composition in circumstances when there are changes to classes for which there was prior consultation in September. The School Act also provides for principal-teacher consultation when class size and composition changes after September 30th result in classes of a size or composition for which consultation would have been required if the classes had been organized in the changed manner in September.
- The legislature directed less attention to the detailed requirements for meaningful and timely consultation in circumstances that arise after September 30th and placed less burden and responsibility on boards of education to report class changes and reorganization made after September 30th.
- This was not a legislative decision that lessens the importance of the impact of class size and composition change on students, teachers, and administrators and the allocation or reallocation of scarce resources to further the educational goals of the students and school. It was simply proportion attention to the preponderance of class

organization that occurs at the beginning, rather than during, the school year.

- The union and employer make extensive submissions about the language of section 76.4 of the *School Act* and the *Class Size Regulation*; their interaction with other provisions of the *School Act*; and the manner in which they must be interpreted to fulfill the legislative purpose and to balance the needs of students, teachers and administrators. Their differences are important, but highly situational in the broad context of the range of class size and composition changes that can occur during a school year after September 30th.
- [16] Despite their difference, the union and employer have a shared goal of an interpretation and direction: that respects the educational needs of students and the responsibilities of teachers and administrators; that is a familiar process for persons experienced in administering the class size and composition consultation process in September; that is comprehensive; and provides clarity of direction that is not administratively burdensome and fosters meaningful professional dialogue between principals and teachers within the legislative framework.
- To these ends, with the concurrence of the union and employer, I have dispensed with reciting the extensive submissions of the union and employer and the interpretive reasoning that has lead to the conclusions and directions that I make in response to the issues and questions that were submitted and rose during the hearing. These interpretations, declarations and directions do not apply to consultation in September.
- [18] My interpretations, declarations and directions are as follows:
 - 1. Consultation after September 30th is required in the following situations:
 - (a) A class for which a consultation was required under s.76.1 of the School Act increases in size or number of students entitled to an individual education plan or both;
 - (b) A class for which a consultation was not required under s.76.1 of the School Act increases in size or number of students entitled to an individual education plan or both so that it becomes a class for which consultation would have been required under s.76.1 of the School Act;

- (c) All second semester classes organized in a manner that would require consultation under section 76.1 of the *School Act*.
- The required consultation in the above situations must occur within fifteen school days after;
 - (a) The principal is notified that a student in a class has been designated a student entitled to an individual education plan;
 - (b) The placement in the class of a student increasing the size of a class;
 - (c) The school opening day of the second semester.
- 3. The definition of "consult" in section 1(4) of the *Class Size Regulation* applies to all situations when consultation is required after September 30th.
- 4. The principal must communicate to the teacher or teachers of the class his or her decision about the appropriateness of the class for student learning before the expiration of the time within which the time consultation must occur.
- [19] I retain and reserve jurisdiction over the interpretation and implementation of this decision.

OCTOBER 18, 2010, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

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