

**IN THE MATTER OF AN ARBITRATION UNDER THE
LABOUR RELATIONS CODE, R.S.B.C. 1996**

BETWEEN:

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION/
THE BOARD OF EDUCATION OF SCHOOL DISTRICT 67
(OKANAGAN SKAHA)

(the "Employer")

AND:

BRITISH COLUMBIA TEACHERS' FEDERATION/
OKANAGAN-SKAHA TEACHERS' UNION

(the "Union")

***Re: Class Size and Composition Grievance
(2010-2011 School Year)***

ARBITRATOR:

John Steeves

COUNSEL:

Judith Anderson
for the Employer

Craig Bavis
for the Union

DATE OF HEARING:

March 11, 2011

PLACE OF HEARING:

Penticton, B.C.

DATE OF DECISION:

March 15, 2011

A. INTRODUCTION

1. This is a decision about the Employer's application to adjourn the hearing of this grievance. The grievance relates to the size and composition of class sizes for the 2010-2011 school year.

2. The Employer submits that the hearing of this grievance should be adjourned pending the completion of another arbitration award under a provincial process to resolve disputes over class size and composition. According to the Employer, that process involves the adjudication of a representative number of cases which will set guiding principles to assist the resolution of a number of the issues in this grievance. Further, the parties agreed on this representative approach in order to effectively deal with disputes over thousands of classes in all school districts and since 2006. The value of this approach includes, among other things, consistency of decisions across the province. The other arbitration award is to be published on or about April 20, 2011 and the Employer seeks an adjournment so that the parties can use that award to resolve some of the issues in this grievance. Previous awards have resulted in the resolution of large numbers of disputes. The Employer expresses "surprise" with the initiation of the grievance in this case at a local level while the provincial process is underway.

3. The Union opposes the Employer's application for an adjournment. They submit that the issue of class size and composition is critical to the quality of education and it has been unresolved for too long, at least since 2002. The Union notes the representative approach that has been used to date but they say this has taken too long. For example, while a previous award provided assistance to the parties for the 2006-2007 and 2007-2008 school years, it was not completed until August 2009. The Union takes considerable issue with this delay because some teachers who benefitted from the award had retired or even were deceased by the time a remedy was available. The Union is also concerned about some of the remedies from the August 2009 award. They also assert their right to file a local grievance on behalf of the teachers in this school district in order to seek different results for the 2010-2011 school year. In summary, the Union

submits that this grievance should proceed without any delay with the objective of having a decision before the end of the current school year in June 2011.

B. BACKGROUND

4. The Board of Education School District No. 67 - Okanagan Skaha operates public schools in the south Okanagan area of British Columbia. The local Union represents teachers employed by this school district and it is a member of the B.C. Teachers' Federation.

5. The issue of class size and composition has been a controversial one for some time in the education system in this province. Prior to 2002 the parties could and did bargain this issue but in that year the *School Act* was amended by the Government of B.C. to remove that right. Specifically, the *School Act* was amended to include average sizes of classes based primarily on grade level. There is a constitutional challenge by the Union to this legislation and the parties are waiting for a judgment from the courts.

6. The 2002 amendments specifically, and class sizes generally, were very contentious and teachers conducted job actions over the issue. The Union has previously described the issue of class size/composition in the following terms,

Undoubtedly, the elimination of freely negotiated class size and composition provisions, and the replacement with minimal statutory protection has been an emotionally charged issue for teachers, parents, and students. The legislation resulted in a province-wide walk-out and demonstration by teachers, and the continued use of government legislation to impose terms and conditions on teachers resulted in a 17-day strike in 2005.

Cited in, British Columbia Teachers' Federation and British Columbia Public School Employers' Association, [2009] B.C.C.A.A.A. No. 81 (Dorsey), at paragraph 27; the "Merits Award".

7. Following the 2005 job action a "Roundtable" was established that involved the Union and other parties including the Government of B.C.. Discussions in this forum resulted in further changes to section 76 of the *School Act* in 2006. These changes

retained an averaging approach but they also qualified the maximum of thirty students. A class can be larger than thirty students if it is "appropriate for student learning" and a consultation process takes place. For grades four to seven the consent of the teacher is required and for grades eight to twelve the teacher must be consulted. In the end it is the superintendant of a school district who makes the decision based on these provisions in the *School Act* and after following the process set out in the *Act*.

8. An arbitration award in 2009 summarized the purpose and intention of the 2006 class size provisions in the *School Act* as giving "... school districts a latitude in class organization and opinions about class organization for student learning to which there is arbitral deference". The arbitrator in that case did not agree with the Employer that this is absolute deference; "It is deference to classes presumptively with in [sic] a range of instructability" (the Merits Award, *supra*, at paragraph 479). In other parts of this award Arbitrator Dorsey used the term "presumptive deference" (paragraph 483) to indicate that, for classes where the number of students (including those with an Individual Education Plan or IEP) equals or is less than thirty-three, he would give some deference to the decisions of principals and superintendants (paragraph 480). This is referred to as the "33 rule". An IEP is an individualized education plan for a student who meets the Ministry of Education criteria to be designated as, for example, dependant handicapped or learning disabled. Arbitrator Dorsey also pointed out this does not mean that employer decisions about class size and composition are "beyond challenge" and the Union can lead evidence to challenge the opinions of principals and superintendents (paragraph 483).

9. Following the 2006 changes to the *School Act* the Union sought to grieve class sizes under the *Act*. An arbitrator concluded that such a dispute was not arbitrable; this was successfully appealed with the result that an arbitrator under the collective agreement does have jurisdiction over some matters under the *Act* (*British Columbia Public School Employers' Association and British Columbia Teachers' Federation*, [2004] B.C.C.A.A.A. No. 8 (Munroe); appeal allowed, *British Columbia Teachers' Federation and British Columbia Public School Employers' Association*, 2005 BCCA 92). The Employer then raised other preliminary objections to grievances about class size and

composition for the 2006-2007 and 2007-2008 school years, including a submission that the grievances were filed on an individual basis rather than by way of general application. The Employer's objections were dismissed (*British Columbia Teachers' Federation and British Columbia Public School Employers' Association*, [2008] B.C.C.A.A.A. No. 131 (Dorsey)).

10. In October 2008 the parties began to meet about the disputes over class size and composition in the context of case management of the grievances on a provincial basis. There were 1,652 classes in dispute involving about seventeen school districts. Faced with these large numbers the parties agreed to proceed on the basis of a representative model whereby certain representative classes would be referred to arbitration in order to develop some principles that could be applied to all the outstanding disputes. Arbitrator Jim Dorsey conducted fifty-six hearing days in a number of locations in B.C. over the period November 2008 to July 2009. Final argument was heard in mid-July 2009. A lengthy award of more than 250 pages was issued a short time later, on August 21, 2009, with regards to the 2006-2007 and 2007-2008 school years (the Merits Award, *supra*). The arbitrator found that some classes were in compliance with the size and composition standards and some were not. Issues about remedy arose and these were decided in a decision in September 2009 (*British Columbia Teachers' Federation and British Columbia Public School Employers' Association (Class Size Grievance)*, [2009] B.C.C.A.A.A. No. 101 (Dorsey)).

11. The parties met again with the benefit of the Merits Award and developed a process to resolve the outstanding classes that were not considered in that award. Specific issues arose in these discussions and arbitration was required on some of those issues (for example, *British Columbia Teachers' Federation and British Columbia Public School Employers' Association*, [2009] B.C.C.A.A.A. No. 101 (Dorsey); *British Columbia Teachers' Federation and British Columbia Public School Employers' Association*, [2010] B.C.C.A.A.A. No. 1 (Dorsey); *British Columbia Teachers' Federation and British Columbia Public School Employers' Association*, [2010] B.C.C.A.A.A. No. 24 (Dorsey); *British Columbia Teachers' Federation and British Columbia Public School Employers' Association*, [2010] B.C.C.A.A.A. No. 102 (Dorsey); *British Columbia Teachers'*

Federation and British Columbia Public School Employers' Association, [2010] B.C.C.A.A.A. No. 103 (Dorsey); *British Columbia Teachers' Federation British Columbia Public School Employers' Association*, [2010] B.C.C.A.A.A. No. 147 (Dorsey)).

12. At the end of this process for the 2006-2007 and 2007-2008 school years a large number of class disputes were resolved by either the Merits Award or by subsequent agreement between the parties. In argument in the case before me it was estimated that 400-700 classes remained in dispute from the original 1,652. In some school districts the local Unions withdrew grievances where the 33 rule applied as decided in the Merits Award. The expectation is that, even though the Merits Award dealt with the 2006-2007 and 2007-2008 school years, there will be guidelines from that award (and later ones for the 2008-2009 and 2009-2010 school years) that will assist in resolving disputes about classes for the 2010-2011 school year.

13. The local Union in this arbitration has not withdrawn any grievances because of this rule. Mr. Kevin Epp, the President of the local, testified that his members are "still disagreeing" over this issue and many believe that class sizes of thirty-three or less should be changed in order to meet the education needs of students. He also agreed that a large majority of the outstanding class size/composition grievances in this school district are ones involving less than thirty-three students. Mr. Epp testified that he did not think that I, sitting as arbitrator on this grievance, was bound by the 33 rule and it was generally open to the local Union to seek different remedies than were decided by the Merits Award. Mr. Epp also expressed concern with the decision in the Merits Award to use release days to compensate teachers where it is found that a class is not consistent with the size and composition requirements. The concern is that this does not deal with class size/composition issues directly. Also, the granting of release days is after the fact and some teachers have retired or, in one case, deceased.

14. The provincial parties are currently engaged in a second round of representative classes before Arbitrator Dorsey. This group is from the 2006-2007 and 2007-2008 school years and it was selected on the basis of two criteria: the classes were not part of the representative model decided in the Merits Award and there was also consideration

of classes with smaller numbers than the classes in the Merits Award. Hearing dates numbering about eighteen days have been completed, argument is scheduled for the end of March 2011 and it is expected that an award will be issued on May 20, 2011. The Employer seeks an adjournment of the grievance before me so they can consider this award and the other awards. The objective is to resolve more class size disputes in the same way as was done following the Merits Award.

15. There are further disputes between the parties about class size and composition for the 2008-2009 and 2009-2010 school years. The parties have agreed that Arbitrator Dorsey will decide those disputes.

C. THE GRIEVANCE

16. The grievance in this case was filed by the local Union, Okanagan-Skaha Teachers' Union. It relates to disputes about class size and composition for the current school year, 2010-2011, within the Okanagan Skaha school district. Thirty-four classes are disputed in the grievance.

17. Other local Unions in other school districts have or will also be filing their own grievances about class size and composition. This is the result of a change within the B.C. Teachers' Federation that future grievances on this issue will be made at the local level. Previously, disputes over class size and composition were considered provincial matters. Local grievances are a significant change from the provincial approach that resulted in the provincial and representational process and the Merits Award.

18. The background to the grievance in this case was explained by Mr. Epp, the President of the Okanagan Skaha Teachers' Union. Beginning in 2002 the members of his local have had a growing sense of frustration about the issue of class size and composition. There was some hope after the 2006 amendments to the *School Act* but Mr. Epp testified that the current view is that the legislation is "completely flawed" and it does "not protect workloads, students or the educational environment". He was critical of release days as set out in the Merits Award because "getting a release day, one

or two years later, has no benefit to workload" issues. He testified that in his school district there are a number of disputed classes from the 2006-2007, 2008-2009 and 2009-2010 school years that have not been resolved by arbitration. There are no outstanding class disputes for the 2007-2008 school year in this district. Another problem, described by Mr. Epp, is that the current situation creates conflicts between teachers. A February 2011 article written by Mr. Epp for the local Union's newsletter described an example of colleague-to-colleague conflict as "When colleagues become frustrated that some teachers "accept" huge classes/overages ...".

19. Mr. Epp described "the basic cause" of the class size/composition disputes as being that "freely negotiated language [in the pre-2002 collective agreement about class sizes] was ripped out of the collective agreement". The faith of teachers in the system is "tenuous at best" because "they see nothing in the way of corrective measures" when there are disagreements over class sizes. This has now developed into frustration with the local union because the perception is that nothing has been resolved and "teachers have been left with no clear class size protection at all".

20. The local Union filed the grievance in this case in fall 2010. On January 24, 2011 Mr. Epp, on behalf of the Union, wrote to Mr. David Burgoyne, Assistant Superintendent, about this grievance. I reproduce excerpts from that letter as follows,

As we have been unable to resolve a number of classes in dispute, and, given that BCPSEA has instructed your office not to resolve any of the aggrieved classes at the local level, it is clear that the local process has been ended. It seems that the local process had little or no possibility of resolving any of the disagreements that arose from the consultation process and, in reality, may have been nothing more than an orchestrated waste of time. Further, if there has never been authority or willingness to resolve grievances locally then it appears that perhaps some management parties are ignoring the intentions of Arbitrator Dorsey when he ruled that classes in dispute should be dealt with in a timely manner at the local level.

The union would request that the employer provide all of the principal's consultation forms, notes, and records pertaining to the list of classes (attached). As well, the union requests copies of all relevant documents given to each teacher of each class in preparation for consultation. Since local grievance process has concluded this letter is to inform you that the remaining classes are being referred to the BCTF for assessment and potentially, arbitration.

21. Mr. Burgoyne replied on January 24, 2011 and I reproduce excerpts from that letter,

For the past 4 years (2006 – 2010), the BCTF has filed provincial policy grievances on class size matters. To date there has been in excess of 70 days of arbitration on these matters. While the rules and case law are now fairly clear in the areas of class size processes, procedures and consultation requirements, and the parties have received some very important direction in the area of “appropriate for student learning” (69 out of 71 found to be appropriate and creation of the “33 rule” of presumptive deference and deference with explanation), further direction in the area of “appropriate for student learning” is still required. These gaps include grade and subject levels not covered by the original award as well as determination of more classes at the higher end of the spectrum (sum of 33 – 41). In response to filling in these gaps, the provincial parties agreed to arbitrate an additional 46 representative classes in 5 schools (1 primary, 1 middle and 3 secondary) in 2 school districts with 41 of the 46 classes being in the higher range of 33 – 41. I have been advised that the remaining evidence may be heard later this month with final arguments scheduled in March.

With respect to the 34 classes that you have “referred to the BCTF for assessment and potentially, arbitration” I note that all involve the issue of “appropriate for student learning”. Of these 34 classes 24 are in the range of 27 – 33 and 10 classes are in the range of 34 – 40.

BCPSEA has not indicated that grievances cannot be resolved at the local level, what BCPSEA has asked is that if the district believes there has been a violation of the legislation that discussions take place between the district and BCPSEA prior to any settlement discussions with the local union. This is an internal employer process to ensure consistency and a sharing of knowledge that has been gained to date from these provincial arbitrations. As I indicated in the grievance meeting, the district believes that these 34 classes are in compliance with the legislation and consistent with the arbitrable jurisprudence to date.

I hope this clears up any misunderstandings.

22. The parties were unable to resolve the issues raised by this grievance and the Union applied to the Labour Relations Board for appointment of an arbitrator pursuant to section 104 of the *Labour Relations Code*. This is the expedited arbitration provision in the *Code* and, among other things, a hearing must commence within a specified time and a decision must be made within a specified time. I am the arbitrator appointed by the Labour Relations Board under section 104 of the *Code* to hear and decide this grievance.

23. With regard to the Employer's application for adjournment, Mr. Epp testified that there would be prejudice to the Union if the Employer's application is granted. He used 2006, a year when he taught, as an example. He was concerned that some of his students then are now in Grade 12. He does recall some of the situations of his individual students but with regards to the general impact of class size and composition he said the "class identity [is] not as clear to me now as it was in 2006 when I had students before me on a daily basis". Therefore, the Union would be prejudiced in presenting its case if an adjournment is granted.

D. DECISIONS AND REASONS

24. As above, the Employer applies for an adjournment of the hearing of this grievance. The reason for the application is so that the parties can receive the next award from an arbitrator who is adjudicating a series of representative disputes about class size/composition. His award will be for different and previous school years than the one in this grievance. According to the Employer, having this award will assist the parties to resolve a number of disputes, as has occurred with previous awards. This next award is expected on May 20, 2011.

25. The general approach to adjournments in arbitrations has been described as follows,

An arbitrator's authority to grant adjournments flows from an inherent authority to control the procedure and process of the arbitration. Apart from circumstances where a court orders a stay of proceedings, the authority to grant or withhold an adjournment is discretionary, subject only to the terms of the collective agreement and the overriding judicial directive that the minimum requirements of a fair hearing be maintained.

Brown & Beatty, Canadian Labour Arbitration, (February 2011), paragraph 3:2300.

Under section 92 of the *Labour Relations Code*, arbitrators in this province have the authority to control their own procedures including making decisions as to whether adjournments are appropriate or not.

26. The issue of concurrent proceedings has also arisen in previous awards as the basis for applications for adjournment. A summary of those awards is as follows,

An adjournment may be warranted when another tribunal is to adjudicate the matter, or where it makes "labour relations sense" to exhaust other procedures before proceeding with the arbitration. In these circumstances, the rationale for granting an adjournment is that the issues would be appropriately disposed of in the other forum and that both duplication of effort and the possibility of conflicting results would be avoided. One board has summarized the factors to be considered in adjourning arbitration proceedings in favour of another tribunal as follows:

... whether one forum has a more comprehensive jurisdiction over the issues in dispute, which would reduce the likelihood of multiple proceedings; the possibility of inconsistent results; the expertise of the tribunals regarding the issues in dispute; and whether one tribunal will provide a more timely resolution, so as to avoid undue delay.

Brown & Beatty, supra; citing Chatham-Kent Board of Health (2005), 144 L.A.C. (4th) 289 (Knopf), at pages 432-433.

27. A distinguishing feature of the grievance in this case is that it is an expedited one under section 104 of the *Labour Relations Code*. I am urged by the Union to deny the Employer's application for an adjournment because an adjournment is contrary to the nature of an expedited proceeding.

28. As the Union points out, the history of the expedited arbitration provisions in the *Code* begins with the 1992 *Recommendations for Labour Law Reform* (Vince Ready, Tom Roper, John Baigent). Among other things, that report concluded that cost, delay and prevention of illegal work stoppages were reasons to have a statutory expedited arbitration process. As a result, section 104 of the *Code* provides that a party to a collective agreement may refer a difference about the agreement "for resolution by expedited arbitration". If a difference meets the procedural requirements set out in section 104 then an arbitrator is appointed by the Labour Relations Board and the arbitration must "commence" within twenty-eight days after the referral of the difference to the Board. As well, the arbitrator must issue a decision within twenty-one days after the conclusion of the hearing. There is no dispute that the procedural requirements of section 104 have been met in this case.

29. Notwithstanding the expedited nature of the process set out in section 104, an arbitrator still has discretion to grant an adjournment in appropriate cases. In a previous decision of the Labour Relations Board, the facts were that the employer sought an adjournment of the commencement date of an arbitration as set by the Board in its referral to the arbitrator. The reason for the application was that counsel for the employer was not available on that date. The union opposed the adjournment on the basis that the authority of an arbitrator under section 92(1) of the *Code* to control his or her own procedures and grant an adjournment was "overridden" by the expedited nature of an arbitration proceeding under section 104. The arbitrator agreed with the union and denied the request for an adjournment. The Board allowed a subsequent appeal and confirmed that an arbitrator appointed under section 104 has the authority to grant an adjournment. However, the panel also stated, "... we anticipate that arbitrators would, in only the most exceptional circumstances, consider counsel's availability a sufficient ground for granting an adjournment" (*Pacific Newspaper Group Inc. (Re)*, [2002] B.C.L.R.B.D. No. 7, at paragraph 13).

30. I do not read the *Pacific Newspaper Group Inc.* decision to mean that "the most exceptional circumstances" must exist before an arbitrator appointed under section 104 can grant an application for adjournment. Instead the panel stated that the unavailability of counsel would be a reason for an adjournment in only the most exceptional circumstances. As the panel pointed out, there could be serious illness or some other legitimate reason beyond the control of counsel that would justify an adjournment (paragraph 12).

31. Other decisions are also instructive. In *HEABC and HEU*, [2001] B.C.C.A.A.A. No. 63 (McEwen) the arbitrator denied an employer's application for an adjournment of an expedited arbitration. The reason for the application was that another arbitrator was deciding who was the employer. The arbitrator in the dismissal case concluded that the union was not forum-shopping or engaging in improper manipulation of the process and an adjournment would create genuine prejudice for the grievor who had been dismissed. The arbitrator in *Brewers Distributor Ltd. and Brewery, Winery and Distillery Workers Union, Local 300*, [2003] B.C.C.A.A.A. No. 352 (Moore) also denied

an application for an adjournment in an expedited arbitration dealing with a dismissal of the grievor. The reason for the application was that one counsel was "double-booked". The arbitrator stated that the existence of a statutorily expedited proceeding "... reinforces and gives legal impetus to the expectation of the parties that they will receive an expeditious resolution of the dispute between them" (paragraph 4). On the other hand, an adjournment was granted in another expedited arbitration. This was a grievance about the interpretation of the collective agreement and the arbitrator accepted that the fact that the Labour Relations Board was deciding if there was a collective agreement between the parties was a valid reason for an adjournment (*Rissling Contractors Ltd. and Construction & General Workers' Union, Local 602*, [1996] B.C.C.A.A.A. No. 238 (Devine)).

32. From these authorities I conclude that a generally more restrictive approach to adjournments under a statutory expedited system of arbitration is appropriate, compared with a non-expedited proceeding. Without that approach there is a risk of the system becoming expedited in name only.

33. With the above discussion in mind I turn to the facts in this case.

34. The dispute resolution process that is currently in place to resolve disputes over class size/composition is the provincial, representative model agreed to by the parties and described above. This resulted in the Merits Award and other arbitration decisions as well as the resolution of a large number of disputes. It was described by the arbitrator in the Merits Award in policy terms as follows,

The agreement on this process was predicated on an intention it would produce some clear criteria for addressing recurring differences on the same issues, establish some predictable guidelines for resolution of many differences and avoid divergent outcomes before different arbitrators. One goal is to fashion some structured approach that provides predictability and efficiency in resolving many, if not most, differences over classes that exceed the legislated class size and composition standard. (Paragraph 12).

35. Two features of the representational model currently in place are striking: the scale of the project and the complexity and even intricacy of those disputes. As above, at the beginning of the process in October 2008 there were in excess of 1,600 classes in dispute. This involved about eighteen school districts, each with their local Union. Even with the advantage of a representative approach, the Merits Award took more than fifty hearing days with a decision soon afterwards. There are a number of other awards, all of them interrelated. Despite this scale there has been some progress. After the Merits Award there were 400-700 classes left in dispute and the parties have agreed to a further refining of the representative approach to try and get guidelines to resolve these matters as well.

36. As articulated by Mr. Epp, teachers are frustrated with this process of resolving disputes over class size/composition. As I understand it, that frustration is based on at least three concerns. First, it is taking too long to obtain a remedy. As Mr Epp explained, his members are still waiting for resolution of some issues from the 2007-2008 school year and they are concerned that the current school year will end without any resolution about disputes over class size/composition for this year. The second concern is that the representative approach is not providing remedies that are satisfactory to teachers. Teachers in the local Union involved in this grievance seek to make alternative submissions about issues that were decided by the Merits Award. For example, teachers in this local Union are concerned about the 33 rule. While some local Unions have accepted this rule and withdrawn the grievances that come under this rule, the teachers in this school district have not done so. As Mr. Epp put it, they are "still disagreeing". Another example of dissatisfaction with the representational model is the Merits Award decision to use release days to compensate teachers who have worked classes that were ultimately determined to be inappropriate because of size or composition. The local Union seeks the opportunity through this local grievance to propose alternate remedial measures (such as the use of Instructional Aides).

37. Finally, there is a long-standing and overarching concern among teachers that relates to their objection that class size issues were "ripped out of the collective agreement" by the government in 2002, as Mr. Epp put it in his evidence. The history of

this dispute is set out in some detail in the Merits Award (paragraphs 27-112). Specific examples from only the period prior to the government's decision in 2002 to take class size/composition issues out of collective bargaining include: political action by the Union and some changes by government in the 1970s; a Royal Commission on Education in 1988; negotiations in the 1990s (some leading to strikes and interest arbitrations); and a government report in 1997.

38. Taken overall, I am being asked by the local Union to find that the agreed upon provincial representative model is broken. Further, the local Union seeks to commence, through this local grievance, an alternate process that be faster and that would provide the opportunity to seek different remedies than, for example, those decided by the Merits Award.

39. I appreciate the concerns of the local Union but, in my view, there is value at this stage in deference by me to the representative approach chosen and developed by the parties. A system is in place that is moving towards the resolution of all of the disputes over class size/composition. That model includes the identification of patterns in the disputes and then it focuses on representative classes that will assist in resolving those disputes. It is true that not all disputes have been settled by the representative approach but a large number have. It is also true that it is taking a long time but that is, in large measure, a function of the scale of the project.

40. The grievance before me seeks another approach to the issues of class size and composition. This approach is locally based and it apparently contemplates having different results than the representative approach on issues such as, for example, the 33 rule and use of release time. That is a matter of concern because it contemplates that different school districts would have different solutions to the same problem. That may have some superficial appeal as a way to reflect local concerns but, in my view, it is more likely that the result would be a patchwork of different practices across the province.

41. In my view, what is now at stake is the potential for two very different approaches to the resolution of disputes over class size and composition. On the one hand there is the

provincial, representational approach that began in 2008 while, on the other hand, there is a locally-based approach as represented by the grievance in this case. I conclude that there is considerable labour relations sense in deferring to the established representation approach already underway. I am very reluctant to commence a different process for the parties to continue their disputes when there is a real prospect of the current process producing results to resolve some of the issues in the grievance before me (as it has in the past). This reluctance is more justified if the objective behind this local grievance is to seek different results than have so far been produced by the current process. The expedited nature of the proceedings before me is acknowledged but, at this time, I conclude that the unique facts in this case justify an adjournment of the grievance before me.

42. I have also considered the Union's concern about prejudice if an adjournment is granted. Mr. Epp testified that he had some difficulty in, for example, remembering the "identity" of his classes in 2006-2007, particularly as it related to problems with class size and composition. He thought this would be a problem for all teachers if the hearing of their grievance was delayed. There is some validity to this concern. However, the usual way to manage this difficulty is through the use of note-taking that is consistent with the rules of evidence. This is not a case (such as in the above authorities) where there is prejudice in the sense that an employee has been dismissed and is without income. Therefore, I am unable to find there is undue prejudice if an adjournment is granted.

43. For the above reasons the Employer's application to adjourn the hearing of this grievance is allowed. It is, however, not adjourned generally or indefinitely. My office will contact counsel within a reasonable time after the receipt of the next arbitration award under the representative model (expected May 20, 2011) in order to discuss the continuation of the hearing of this grievance. The parties may, by agreement, alter this condition.

It is so awarded.

Dated this 15th day of March 2011, in the City of Vancouver, Province of British Columbia.

"JOHN STEEVES"

John Steeves