

Marguerite Jackson

Arbitrator

September 17, 2011

Harris & Company LLP
14th floor, 550 Burrard Street
Vancouver, BC V6C 2B5

Attention: Lindsie Thomson

Victory Square Law Office
500 – 128 West Pender Street
Vancouver, BC V6B 1R8

Attention: Steven Rogers

Dear Mesdames/Sirs:

Re: BCPSEA and BCTF

In my Letter Decision dated August 28 I identified an issue that might require rectification in light of the answers to the five questions referred to me for adjudication. I said that the BCTF's proposal regarding the re-designation of LOU No. 1 "may include matters that it seeks to have designated as local but that fit within the cost provisions deemed to be provincial under Question #4." I indicated that the BCTF should review its proposal and stated that I was prepared to assist and provide guidance if there was any difficulty.

I met with the parties on August 31 and September 1 to deal with this and other issues. The parties had differing views on how the re-designation issue should be rectified and the timeframe that should be established. Both parties made submissions which I considered.

I determined that the BCTF should review its proposal in light of my answer to Question #4 and make any necessary amendments. This was to be done by a specific date and the amended proposal given to BCPSEA. Any disputed items in the proposal were to be referred to me by the evening of September 9 - which was extended to September 12 at the request of the parties - with written submissions from both parties.

A conference call was held with counsel on Tuesday, September 13 to determine how best to proceed. Both parties indicated they did not see the need for a evidentiary hearing but it was agreed both parties would reply to the opposing party's submission by noon on Wednesday, September 13. A second conference call was held on Thursday, September 14 and a concern was raised by BCTF about the need

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for a further reply since it felt some matters raised in BCPSEA's Reply were new. Both parties were given the opportunity to make a final submission on any new matters.

I have considered the submissions and all the accompanying documents. My conclusions follow.

First, my jurisdiction is confined to a review of the BCTF's proposal – U49 – and a determination of whether the disputed matters identified as local by the BCTF in its proposal comply with sections 7(3) and (4) of *PELRA*. The headings and numbers that are utilized in this letter are based on Proposal Number U49 and on the BCTF's LIST accompanying its September 14, 2011 Reply submission which contains the same headings and numbers.

Second, I turn to the matters the BCTF has called "purely local matters" and I will refer to as Group A. (These matters do not include the phrase "provisions which do not affect the cost of the collective agreement"). In my opinion the following matters in Group A fit within the cost provisions deemed to be Provincial under Question #4 and should be removed from Appendix 2 in U49.

Section C – Employment Rights

- 7. Seniority - Layoff – Recall
- 9. Retraining

Section D – Working Conditions

- 17. Child Care for Work Beyond Regular Hours
- 18. Home Education
- 19. Itinerant Teachers
- 21. Non-traditional Worksites
- 22. Correspondence Courses
- 24. Hearing and Medical Checks
- 27. Middle School

Section F – Professional Rights

- 8. Professional Development: Funding

Third, based on para 6 of the Agreement in Principle it is my view that I do not have jurisdiction over item #4 under Section D - Working Conditions: Manner and Consequence – Class Size and Composition, Professional Teaching Staff Formula, Mainstreaming/Integration.

Fourth, there are numerous matters in the BCTF proposal that I will refer to as Group B. These matters relate to a "PELRA 4 category" but are accompanied by the phrase "provisions which do not affect the cost of the collective agreement" and are listed as local matters. These same matters but without the accompanying phrase are also found in the BCTF proposal and identified as Provincial matters. In my opinion this blanket approach is not consistent with *PELRA*. These Group B matters are deemed Provincial matters. If there are identifiable elements of these Group B matters that the BCTF seeks to have designated as local that would allow the conclusion that the elements are not "cost provisions" such should be specified so an informed determination can be made. Since there has been no such specification, the Group B matters should be removed from Appendix 2 in U49.

The reasons for my conclusions will follow at a later date unless the parties advise that this is unnecessary.

Yours truly,

A handwritten signature in black ink, appearing to read "M Jackson", written in a cursive style.

Marguerite Jackson, Q.C.