

Executive Summary

BCPSEA Final Submission

With the advent of the Commission to Review Teacher Collective Bargaining (the Commission), BCPSEA began a series of individual district, regional and general meetings to identify and explore options that would improve collective bargaining between representatives of teachers and employers in the K-12 public education sector.

Through BCPSEA's work with employers, the following criteria or themes were developed that attempt to describe the critical elements that comprise a workable collective bargaining structure:

- Balance
- Consequences
- Incentive
- Time
- Resolution
- Role recognition.

These criteria were confirmed by member school boards at BCPSEA's Collective Bargaining Forum in April 2004.

Mr. Wright requested final submissions from the BCTF, BCSTA, and BCPSEA. In our response, BCPSEA relied on a framework of these criteria or themes. The following is a brief summary of BCPSEA's final submission to the Commission.

Dimensions and Observations

Where issues should be bargained

BCPSEA proposed a model whereby substantive and common issues (both monetary and non-monetary) be bargained at the provincial table. This model provides for efficient use of resources and expertise while providing for a sufficient "balance of bargaining power" between the two bargaining agents and their members. Under the proposed model, there would be a mechanism for addressing unique and important local issues.

We believe it is necessary to consider the nature and structure of collective bargaining and collective agreements when assessing options for the split of issues. Most negotiations involve numerous complex issues, many of which are interrelated. During negotiations, parties can change their positions on one issue in reaction to changes in positions that occur on other issues. In practice, this type of flexibility and process of tradeoffs across outcomes makes an agreement possible. The absence of major issues or related issues because one matter is at the provincial table and the other is at local tables confuses the negotiating process, limits meaningful negotiations, and ignores the interrelated nature of provisions in a collective agreement. If there is to be a split of issues, related matters must be bargained in the same forum.

Further, it is an artificial distinction to suggest that you can separate major cost items, such as salary and benefits, from other terms and conditions of employment, all of which have cost implications or consequences to the assignment of resources. Under such a bargaining structure the union has two opportunities to negotiate matters that have cost implications — once at the provincial table and 60 additional times at local tables for other matters which may have cost implications.

Who will be the bargaining agent for the employer?

BCPSEA favours a model that reflects an employer's bargaining agent jointly accountable to school boards and the province. This model would respect the role government plays as the funder of the enterprise while acknowledging the governance roles and responsibilities of each school board within their local community. This will require clearly enunciating the roles, authority, responsibilities and accountabilities of the parties.

How will impasses be resolved?

The issue of impasse resolution is perhaps one of the most contentious issues among the Commission's challenges, as any scheme carries with it strengths and weaknesses and there are "conflicting rights, values and interests" at play. BCPSEA advanced two possible options for the Commission to consider: one that minimizes the effect of labour disputes and the second that eliminates the effect of labour disputes, as an increasing number of districts expressed the belief that the effects on students should be eliminated, not simply minimized.

1. Minimize the effect of labour disputes — establish a form of "controlled strike" through essential services designation; possibly establish an education sector panel and general criteria to assist the Labour Relations Board (LRB).
2. Eliminate the effect of labour disputes — in the event of an impasse, facilitation would be used to assist the parties to continue bargaining or, where continued

bargaining would not likely achieve a settlement, to propose terms of settlement. Ultimately, where no agreement was concluded following the facilitation phase, an agreement would be concluded through final offer selection.

Both of these options place a premium on a student's right to an education.

What should be the scope of bargaining?

BCPSEA supports maintaining the current scope of bargaining at this time. Future policy discussions concerning these sections of the *School Act* may serve as a foundation to review school organization matters and their relationship to collective bargaining (e.g., *Substantive Consultations on Education Policy Macro-Parameters*).

Transition

We are of the view that one of the reasons there is an inquiry today is because no common foundation existed to commence bargaining under the newly developed provincial bargaining system in 1994. We support a third party assisted transition process, similar to the one established in healthcare in the early 1990s, which would allow the parties to move to a form of common agreement.

Relationships: A Final Thought

In our submission, we drew the Commission's attention to the perils of simplifying the relationship issue. The relationship issue needs to be properly understood and the factors that give rise to a collective bargaining relationship need to be examined. Not only will the structural change require a transition, so too, will the working relationships. Following a basic understanding and recognition of why the relationship is the way it is, we recommend considering a form of structured facilitation such as Relationship by Objectives. This should bring the parties together to understand why the relationship is the way it is; the factors that contribute to it; and then to identify those interests the parties have in common, those that are opposed and how the parties develop and maintain a productive bargaining relationship.

The proposed structural changes and consequent relationship change do not represent a panacea. If the capacity, ability or willingness does not exist to make meaningful change, potentially a worse bargaining dynamic will emerge. The consequences arising out of this dynamic will affect the operation of schools and the delivery of educational programs and, to the degree to which the dynamic is worsened from the current circumstance, public education will not be well served.

Attachment

On August 16, 2004, Commissioner Don Wright delivered an options paper to the parties designed to promote discussions about feasible options for teacher-employer collective bargaining in British Columbia.

The options paper identified five dimensions fundamental to collective bargaining. Within each dimension, Mr. Wright analyzed the possible options for achieving a successful collective bargaining structure; he noted the strengths and weaknesses of each option; and he identified the conditions necessary for each option to be successful.

The five dimensions were phrased as questions:

1. **Where will the issues be bargained?**

Five options have been identified:

- All issues are negotiated at a common provincial table
- All issues are negotiated at a local table
- All issues are negotiated at a regional table
- Issues are split between provincial and local tables
- Issues are split between provincial and regional tables

2. **Who will be the bargaining agent for the employer?**

Underlying considerations of this dimension are Mr. Wright's identification of the fiscal alignment necessary to align responsibility, accountability and authority in a democratically sustainable way for each option. Wright distinguished between options where the major cost items are negotiated at a provincial table and where they are negotiated at a local table.

Where the major cost items are negotiated at the provincial table, the options are:

- An employer's bargaining agent explicitly controlled by the province
- An employer's bargaining agent explicitly controlled by school boards
- An employer's bargaining agent jointly accountable to school boards and the Province.

Where the major cost items are negotiated at the local tables, the options are:

- The employer bargaining agent is the individual school board

The option of having major cost items negotiated at regional tables is identified. The issues in this scenario would be the same as where the major cost items are negotiated at the provincial table.

3. How will impasses at the bargaining table be resolved?

Mr. Wright provided a context for considering this question, by reviewing the basics of collective bargaining theory. He set out the relationship dynamics that occur during collective bargaining.

Four options for dispute resolution are considered:

- Regular strike/lockout
- Controlled strike/lockout (essential service designation)
- Arbitration (in its various forms: conventional, final offer selection, non-binding, etc.)
- Legislatively imposed settlements

4. What should be the scope of bargaining?

Although in his initial report Mr. Wright recommended that the Commission not examine scope of bargaining issues, he subsequently agreed to revisit the matter.

Four options with respect to scope are identified:

- Maintaining the current legislated restrictions on the scope of bargaining
- Substantive consultations on education policy macro-parameters
- Provincial negotiations of macro-parameters
- Return to full scope collective bargaining

5. What transition measures are required?

Irrespective of where major cost items will be negotiated, Mr. Wright considered that there are transition matters to be addressed.

Two options are identified if the major cost items are negotiated at the provincial level:

- Continuing negotiations — the parties could negotiate the common agreement
- A third party transition process

If the major cost items are negotiated at the regional or local level, the main transition concern would be rebuilding the “industrial relations infrastructure” on the employers’ side, as they may not have the negotiating capacity they had 10 years ago.