

LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION AWARD

BRITISH COLUMBIA TEACHERS' FEDERATION

UNION

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

EMPLOYER

(Primary Class Size Average – Board of Education, School District No. 70 (Alberni):
2006-07 and 2007-08 School Years)

Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	Craig D. Bavis and George Popp
Representing the Employer:	Judith C. Anderson and Brian Chutter
Dates of Hearing	November 25 and 26, 2009
Date of Decision:	January 11, 2010

[1] This decision is about an appropriate remedy at grievance-arbitration for the failure of Board of Education, School District No. 70 (Alberni) to comply with the mandatory average class size, in the aggregate, for Grades 1 to 3 in the 2006-07 and 2007-08 school years contrary to section 76.1(1)(b) of the *School Act*.

[2] Sections 76.1(1) and (2) of the *School Act* state:

Class Size

- (1) A board must ensure that the average size of its classes, in the aggregate, does not exceed
 - (a) for kindergarten, 19 students,
 - (b) for grades 1 to 3, 21 students,
 - (c) for grades 4 to 7, 28 students, and
 - (d) for grades 8 to 12, 30 students.
- (2) Despite subsection (1), a board must ensure that the size of any primary grades class in any school in its school district does not exceed
 - (a) for kindergarten, 22 students, and
 - (b) for grades 1 to 3, 24 students.

[3] The background to this grievance and decision is in *British Columbia Public School Employers' Association* [2009] B.C.C.A.A. No. 81 (Dorsey) (QL) and a companion remedial decision issued the same date as this decision.

[4] The union and employer agree I am properly constituted as an arbitrator under their collective agreement and the *Labour Relations Code* with jurisdiction to finally decide the merits of the union's grievances.

[5] The union and employer agree on the relevant facts. As a result of good faith errors, the district class size average for Grades 1 to 3, in the aggregate, for the 2006-07 and 2007-08 school years were 21.1 and 21.2 students per class, respectively. This is a total of 0.3 above the mandatory average for the two school years. The average for the 2008-09 school year was 20.6 students per class. The union and employer have been unable to agree on the remedy.

[6] The employer proposes that the Grades 1 to 3 class size average, in the aggregate, for the 2010-11 school year should be 20.7.

[7] Because there were repeated contraventions that could not be addressed within the school year, the union proposes:

- I. The District will ensure that the 2010-2011 district class size averages for grades 1-3 do not exceed 20.7, such level to be reached by adding enrolling teachers and without reducing non-enrolling staff or increasing the size of classes in any other grades.
- II. The District will hire an additional 1.0 FTE non-enrolling teacher for the 2009-2010 school year (or the 2010 Calendar year if the Alberni District Teachers' Union (ADTU) agrees) to provide support for grade 1-3 teachers and students in the District. The District will mutually agree upon the duties of the additional teacher with the ADTU and seek the agreement of the ADTU that the hiring and assignment of this additional non-enrolling teacher alleviates class size and composition workload issues of classroom teachers in the affected grades.
- III. In order to avoid future grievances and delays in addressing the BCTF's concerns regarding class size averages, the BCTF seeks an order that the District provide its detailed calculations of class size averages which it provides to the Ministry, broken down by teacher and class, directly to the Local Association no later than September 30 of each school year.

[8] There is discussion about the appropriateness of remedies similar to the first two proposed by the union in the companion remedial decision. This good faith contravention involving the mis-identification of student groupings that constitute a "class" and other factors does not warrant reporting and vigilance as in the union's third proposed remedy. The remedy proposed by the employer is appropriate in the circumstances.

[9] Therefore, I declare and order the Board of Education, School District No. 70 (Alberni)

- (a) contravened section 76.1(1)(b) for each of the 2006-07 and 2007-08 school years; and
- (b) is ordered to ensure its average class size, in the aggregate, for Grades 1 to 3 in the 2010-11 school year does not exceed the lower of 20.7 or 0.3 students per class below the average in effect for that school year.

[10] I retain and reserve jurisdiction over the interpretation and implementation of this decision.

JANUARY 11, 2010, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

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