

Remedy Awards — Class Size and Composition: 2006-07 and 2007-08 School Years (Five Districts); and Primary Class Size Average (Alberni School District)

Arbitrator Dorsey today released his findings on redress for two specific arbitrations: Grades 4-12 Class Size and Composition: 2006-07 and 2007-08 School Years (Five Districts); and Primary Class Size Average (Alberni School District). His determination of redress in each of the cases is significant as it will help provide all parties with guidance in understanding the issue of remedy where it has been determined a school district has breached either the legislative requirements for establishing class size and composition, or the district class size averages.

Background: Class Size and Class Composition Disputes

In 2002, government made a policy decision to provide that the manner in which schools are organized is subject to stakeholder input, as opposed to being strictly left to the BCTF and employers to negotiate at the bargaining table. That decision — to amend the *School Act* under Bill 28, *Public Education Flexibility and Choice Act* — led to a series of disputes. A decision of Arbitrator Munroe, subsequently overturned by the Court of Appeal, resulted in legislative matters being subject to grievance and arbitration and further, where a negotiated settlement was not possible, an arbitrator makes a binding decision.

In a normal circumstance where there is a dispute as to the interpretation or application of a provision of a collective agreement or, now, a statutory provision, a final and binding decision would end the matter. This circumstance is differentiated by the philosophical difference between the BCTF and the provincial government.

Milestones

- Enactment of Bill 33, *Education (Learning Enhancement) Statutes Amendment Act*
- Amendment to Class Size Regulation
- First set of BCTF grievances for the 2006-2007 school year
- BCTF consolidation of outstanding grievances for 2006-2007 and 2007-2008
- Parties decide on representative schools and districts: Arbitration hearings
- Dorsey award, 2006-2007 and 2007-2008 school years (August 2009): Limited violations found setting the stage for remedy discussions
- BCTF “all schools, all classes” grievances for 2008-2009 and 2009-2010

In an attempt to manage the quantity of disputes, the BCTF and BCPSEA agreed to begin the arbitration process based on a set of representative schools (2006-2007, 2007-2008).

Notwithstanding the representative schools approach, the BCTF continued to pursue their all schools, all classes strategy to disputes.

The Dorsey award of August 2009 essentially provided a starting point for the reframing of the disputes that will follow. BCPSEA and BCTF attempted to negotiate the remedy phase contemplated by the Dorsey award but were unable to do so. The matters in dispute with respect to remedy were submitted to Arbitrator Dorsey for a November 2009 hearing. Arbitrator Dorsey has today issued his awards on remedy.

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The Remedy Sought by the BCTF

With respect to the more general and far reaching BCTF Class Size and Composition grievance for the 2006-07 and 2007-08 school years, the BCTF had sought the following remedy, pursuant to the letter from BCTF legal counsel to BCPSEA of October 23 outlining the particulars of the remedy sought by the BCTF for the representative classes “found to be in violation of Bill 33 in the 2007-2008 school year.”

- “Compensation for the teachers of the classes which were in violation of Bill 33 in any manner in the form of paid release time from teaching in the current year. The amount of release time...is to be calculated based on the number of students which exceeded the Bill 33 class size or composition limit...per month and the amount of time during the school year the teacher taught that class....
AND
- Compensation for the students in the classes which were in violation of Bill 33 in the form of the cost of teacher time paid to the Local Association for the district in which the violation occurred, to be used by the Local Association for providing professional development to teachers in the district to address the individual needs of students.”

The Remedy Determined by Arbitrator Dorsey

The remedy as determined by Arbitrator Dorsey in his award is much more limited than what was sought by the BCTF.

In this case, Arbitrator Dorsey has established four incremental tiers of redress to be applied depending upon the size and composition of the class found in violation. It is important to note, however, that remedy is only applied once there has been a determination that a specific class or consultation process situation has breached the legislative requirements. The award does not in any way set new or additional “hard target” class size numbers, nor does it take away a principal’s ability to determine the size of an individual class so long as the class organization is appropriate for student learning and the required consultation process has been followed.

Redress in the Class Size and Composition grievance varied from a simple “declaration” with no monetary compensation attached, to “tier two” compensation for individual teachers in two instances (no awards at either the tier 3 or 4 levels were given).

The system of tiered remedy or “an adaptable remedial formula” created by Arbitrator Dorsey includes: tier 1 – two-thirds (2/3) day paid release time for each month or part thereof that the employer contravened sections 76.1(2.2) and (2.3) of the *School Act* for classes with a

combined total of 33 or lower students plus students with an IEP. The maximum for a class October to June would be six release days. The formula continues with tier 2 at one day release time for classes with a combined total of 34 to 36 students; tier 3 at one and a third ($1 \frac{1}{3}$) days release time for classes with a combined total of 37 to 39; and one and two-thirds ($1 \frac{2}{3}$) days for classes where the combined total of students is 40 or greater. The entitlement is also pro-rated based on the full time equivalent (FTE) of the class (e.g., a secondary class representing $\frac{1}{8}$ th of a teaching day would have the final redress assigned at a rate of only 12.5% of the appropriate tier level).

Representatives of the BCPSEA and the BCTF will be meeting next week to discuss how these decisions on remedy, as well as Arbitrator Dorsey's original decision on class size and composition (August 2009), might be used to settle the remaining large number of class situations in dispute.

While it is likely the final agreement for reviewing the large number of classes still in dispute across the province will involve a local component, we are requesting that districts take no action at this time. It is important that districts do not create a local or varied interpretation of what constitutes a violation of the legislation or in the level of remedy to be applied. These will remain factors to be determined by the parties at the provincial level.

Remedy Award — Primary Class Size Average (Alberni School District)

The remedy award against the Alberni School District for exceeding the required district primary class size average orders them 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 that school year." In essence, it requires the district to reduce its primary class size average next year by a factor equal to the amount by which the average was exceeded in 2006-07 and 2007-08.

For a full copy of either of Arbitrator Dorsey's awards on remedy released today, please go the BCPSEA website at <http://www.bcpsea.bc.ca/access/publications/aissue/aissue.html>. A full analysis of the awards and their implications for school districts will be distributed in the near future.

Questions

Should you require assistance or wish to discuss this issue further, please contact your BCPSEA labour relations liaison.