

## Class Size Update

### SD No. 70 (Alberni) – Mandatory Replacement of Absent Education Assistant

As reported in [@issue](#) No. 2010-06 dated February 4, 2010, the employer was successful in defending the BCTF grievance concerning the issue of whether, in the context of the class size provisions of the *School Act*, the employer has the right to change resources assigned to a class after September 30.

The BCTF has now filed an appeal of this decision by Arbitrator Dorsey with the British Columbia Court of Appeal.

### 2006-07 and 2007-08 Class Size Grievances

We advised in [@issue](#) No. 2010-04 dated January 20, 2010, that BCPSEA and the BCTF reached a signed protocol process agreement for the resolution of the outstanding grievances for the 2006-07 and 2007-08 school years.

As a result, 18 school districts across BC are currently working with their BCTF union locals in an attempt to resolve outstanding class size and composition grievances covering approximately 1600 classes from these years. In addition to the protocol agreement, BCPSEA had also proposed joint data-tracking forms and a sign-off process that we hoped would assist in the recording and resolution of the majority of classes in dispute at the local level. Resolution was to occur using the guidance of arbitrator Dorsey's previous decisions with respect to the seven representative schools.

Although district-based talks that began on February 15, 2010 continue, it is unlikely a significant percentage of the approximate 1,600 outstanding classes in dispute will be resolved through the initial local process. Three significant concerns have arisen during many of the initial discussions:

- The first is an apparent position by the BCTF that cooperative decisions made jointly by the local parties are non-binding (i.e., primarily that any local union decision now to withdraw a class from dispute is non-binding and may be reversed at a later time).
- The second is their decision not to recommend to union locals the use of the previously discussed joint data collection forms proposed by BCPSEA (in our view this is a reversal in the BCTF position, as BCPSEA believed that we had agreement with the BCTF on the use of these joint forms)

- Finally, there appears to be an unrealistic interpretation of violation and entitlement to redress by some local union representatives (i.e., interpretations and expectations that are clearly well beyond the guidance provided by Arbitrator Dorsey in his previous awards).

Through the provincial protocol agreement reached on January 20, 2010, the local parties' process was intended to:

1. Confirm the name(s) of the teachers attached to the classes grieved and identified as in dispute
2. Confirm the number of students and students with a ministry designated IEP on September 30
3. Confirm that the class in dispute meets the definition of class under Bill 33
4. Assign each class/teacher listed into the appropriate alleged violation Appendix "B" category
5. For the classes that have been assigned to the process violation Appendix "C" sub category, confirm whether the classes should be removed from the list, deemed to be a violation, or the parties are at impasse (i.e., disagreement) on the issue
6. Assign redress, where applicable/appropriate, to classes confirmed as having been deemed to be in violation regarding process issues listed in Appendix "C" sub category
7. Refer all interpretive allegations of violations listed in Appendix "D" sub-category regarding the opinion of the principal and/or superintendent that classes were appropriate for student learning as well as any unresolved classes from the initial Appendix "C" sub-category review process to the provincially coordinated four-party process for continued examination.

The recent changes in approach and apparent position by the BCTF will mean that a significant number of classes in dispute for both the 2006-07 and the 2007-08 school years will no longer be able to be resolved locally. These disputes will likely need to move forward to the provincially coordinated four-party process, or ultimately on to arbitration for resolution. This is disappointing as there is a genuine desire on behalf of school districts and BCPSEA to resolve these issues in a realistic fashion in accordance with the guidance provided by Arbitrator Dorsey's arbitration awards on the seven representative schools.

While we are encouraging all 18 school districts named in the original grievances to attempt to complete the planned joint resolution process with their locals, adherence to the original Dorsey guiding sample decisions and subsequent BCPSEA instructions is critical.

### **Next Steps**

BCPSEA will continue to work with the 18 affected districts and has also written to the BCTF requesting that they confirm their views on the provincially-signed grievance resolution process agreement.

### **2008-09 and 2009-10 Class Size Grievances**

The BCTF filed policy grievances of general application for both of these school years that covers all classes in every school in the province — "all school boards governed by the collective agreement intend to and/or will violate the requirements of the School Act and Class Size Regulations concerning class size and composition for all classes in all school districts."

Arbitrator Dorsey has been appointed as the arbitrator for the 2008-09 class size grievance. Presently no dates have been scheduled. With respect to the 2009-10 class size grievance, an arbitrator has yet to be appointed.

For both of these grievances, BCPSEA has requested that the BCTF provide BCPSEA with specific particulars of the list of specific teachers, classes, schools and districts being grieved as well as on what basis the BCTF believes there has been a violation of Bill 33. To date, these particulars have not been provided by the BCTF.

### **Questions**

If you have any questions or would like more information, please contact your BCPSEA labour relations liaison.