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By E-mail: Three Pages

Arbitrator Jackson Issues Further Decision

BCPSEA made submissions to Arbitrator Marguerite Jackson on August 31 and September 1 seeking her direction to the BC Teachers' Federation (BCTF) that they comply with the arbitrator's decision of August 28 before the BCTF commences its Phase 1 strike action planned on September 6.

Arbitrator Jackson has this morning issued a further decision providing direction and associated timelines to the parties, and specifically to the BCTF and its local teachers' associations.

The arbitrator has directed that all provincial matters must be removed from local bargaining tables after September 5. In addition, the arbitrator stated that any provincial matters at local tables that are key issues should be raised by the BCTF at the provincial bargaining table — a list of items or titles should be submitted to BCPSEA by the BCTF no later than September 5 and corresponding proposals should be tabled by the BCTF by September 16. Full text of Arbitrator Jackson's decision follows:

I issued a Letter Decision in this matter on August 28, 2011 with reasons to follow. Those reasons remain outstanding.

In accordance with paragraph 3 of the Agreement pursuant to which I was appointed I met with the parties on August 31 and September 1.

There are two issues requiring rectification at this time. However, the parties had differing views on how these issues should be rectified and the timeframe that should be established. Both parties made submissions which I have considered.

My conclusions follow in point form.

1. The timeframe established by the arbitrator referred to in paragraph 3 of the Agreement can go beyond September 5.
2. Any provincial matters at local tables that are key issues should be raised at the the provincial table. The term "provincial matters" is not limited to a list of items or titles but includes proposals.
3. Provincial matters should not be at local tables since there is no authority to delegate those matters unilaterally.
4. In order to rectify this issue, when Locals sit down with School Boards after September 5 all provincial matters should be off the table.
5. Further, any provincial matters at local tables that are key issues should be raised at the provincial table according to the following timeframe:
 - a list of items or titles by September 5
 - proposals by September 16
6. I have the jurisdiction to identify cost items if there is a dispute.

7. I set out a two-fold test in answer to Question #4. As a result of that interpretation I identified an issue of rectification concerning the BCTF re-designation proposal.
8. Now I set a timeframe for that rectification. The BCTF should review its proposal in light of my answer to Question #4 and make any necessary amendments. This should be done by September 7 and the amended proposal given to BCPSEA. If there are any disputed items in that proposal they should be referred to me by the evening of September 9 with written submissions from both parties.
9. If I consider a hearing is necessary with respect to any disputed cost items, that hearing will be held in the afternoon of September 13 and/or September 14.

If any clarification is required, the parties should contact me by e-mail.

"Marguerite Jackson"
Arbitrator

The BCTF have indicated they will be working between now and September 5 to be able to provide BCPSEA with the information required by the arbitrator. The BCTF have also confirmed that they intend to meet with BCPSEA on Monday, September 5, to present the required list at the bargaining table.

Districts should also ensure that any local meetings are consistent with the arbitrator's ruling and, in particular, her determination that:

Provincial matters should not be at local tables since there is no authority to delegate those matters unilaterally.

In order to rectify this issue, when Locals sit down with School Boards after September 5 all provincial matters should be off the table.

Given these requirements, please ensure you contact BCPSEA if your local teachers' association requests local bargaining meetings to ensure the local parties are bargaining in a manner that is consistent with the arbitration award.

Background

As outlined in *Teacher Bargaining Bulletin* [No. 2011-11](#) dated August 28, Arbitrator Jackson issued a decision following the referral of a dispute between the parties on the provincial-local split of issues. In her decision, Arbitrator Jackson determined that:

- Neither party has the authority to unilaterally delegate provincial matters to local tables.
- If any of those matters being raised or discussed at the local tables are key issues with respect to the overall bargaining agenda of the BCTF, those matters should be raised at the provincial table to ensure compliance with section 59 of the *Labour Relations Code*.
- The test of whether a provision is deemed to be provincial is two-fold. First, does the provision relate to, for example, salaries? Second, does the provision affect the cost of the collective agreement? If the answer to both questions is "yes," then the provision is one that is deemed to be provincial.
- Letter of Understanding (LOU) No. 1 is not an independent protocol agreement but is part of the collective agreement. The content of LOU No. 1 can be bargained to impasse.

BCPSEA and the BCTF met with Arbitrator Jackson on August 31 and September 1. BCPSEA asked Arbitrator Jackson to direct the BCTF to implement the decision by no later than the end of day, September 5. BCPSEA submitted to Arbitrator Jackson that this requires that the BCTF direct its union

locals to remove the provincial bargaining items at the local tables and to identify and table its provincial bargaining proposals at the provincial table. BCPSEA's position is that it was clearly contemplated by the parties when they reached agreement to refer the dispute to arbitration that implementation of the arbitrator's decision and rectification of issues would occur before any BCTF job action, and that the BCTF should suspend its job action for the duration of any extension to the timeframe that the arbitrator may grant.

In addition, BCPSEA provided its position to BCTF on the cost provisions deemed provincial under the *Public Education Labour Relations Act*, and asked Arbitrator Jackson to assist the parties if there is conflict in interpretation of her decision.

We will continue to provide updates as matters develop.