

Recruitment, Retention, Succession:

Do You Know Who Your Future Leaders Are?

There is no doubt that many individuals who are leading today's organizations or filling key positions are nearing retirement. At the same time, there are too few people at younger ages to replace the baby boomers. This employee shortage will affect every organization.

By now you have heard the statistics, the predictions and the dire warnings about the future shortage of trained employees. Is this another Y2K type issue, or should your organization be worried? Do you need to invest time and money into human resource planning for the future?

The fast answer is YES! How much time and effort you need to invest is a more complex question. The correct answer for your organization is unique to your industry and the profile of your workforce. Some HR strategy planners are saying, "Our workforce is young, so we don't have a problem." They are wrong! This employee shortage will affect every organization or company.

In the first 58 years of its existence, the baby boom generation changed every major social institution from education to employment to health care. There is no doubt that many individuals who are leading today's organizations or filling key positions are nearing retirement. The "aging workforce" phrase is but the latest in the progression of this generation.

In assessing your organization's level of risk, you need to ask several basic but difficult questions:

- Are you able to forecast your HR needs for the future?
- Who do you see filling these roles?
- Where will you go to find talented individuals for the approaching vacancies?
- How will you retain your "key workers" as the job market becomes more competitive?

These questions are especially relevant for public sector, quasi-government organizations and utilities, which are facing the loss of 40 to 50 percent of their workforce in the next few years. At the same time, there are too few people at younger ages to replace the baby boomers. Some organizations are missing two generations of employees due to hiring restrictions for a period of time.

Workforce and Succession Planning

Although organizations began looking at these issues in the early 1990s, in the past three to five years a sense of urgency has developed around workforce demographics.

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Economic issues such as globalization, employee productivity and outsourcing are closely tied to the availability of a “ready, willing and able” workforce.

Recently, an article in the *Globe and Mail* touted the opportunities for trained employees during the 2006 year. The article finished by coaching employees on how to protect themselves from outsourcing and downsizing. The view of employees seizing the opportunities and managing their own career growth is characteristic of the growing “emergent workforce.” (Employers were clearly “second-class readers,” in that writer’s view.)

In addition, organizations with a shrinking workforce can find themselves in the situation where only one individual owns key information about specific processes, procedures and the history of decision making in the organization. In this case, the loss of one person adversely affects the operation of an entire organization.

At the same time, the world is competing for the same talented individuals. Now your most valuable employees can choose from work options and they are often interviewing multiple organizations that are competing for their talent. That makes your challenge even more complex as you cannot always predict these unplanned vacancies.

The questions just keep building:

- Where will you look for talented individuals to fill these predicted and unpredicted gaps?
- How will you prepare your organization to compete for the best job candidates?

- How will you inspire and retain those who you do attract and hire?
- How will you know which of these individuals are the best fit with your key “at risk” positions?
- How will you go about preparing these talented employees to be ready to take over when a predicted or unplanned loss of an individual in a key position occurs?
- How will you maintain (or transition) the “culture” of your organization?

Ideas from the “Best in Class” Human Resources Planners

“The SHRM 2004-2005 Workplace Forecast shows that HR professionals rate preparing for the next wave of retirement as the third most important trend in the HR profession, and a large number plan on investing more in training and development to boost employee skill levels, as well as use succession planning to a greater extent” (Society for Human Resource Management (SHRM) 2005 Workforce Report).

The best practices in planning include:

- Planning for the development or replacement of key leaders
- Identification of key positions and the competencies needed to be successful in these roles
- Identifying critical success factors for leadership development and key position development
- Appointing HR strategic practitioners and hiring senior HR leaders with strategic business goals as a job priority

The best practices in development include:

Now your most valuable employees can choose from work options and they are often interviewing multiple organizations that are competing for their talent.

The shift to a knowledge economy makes the knowledge, skills and competencies of employees the most significant driver of an organization's value.

- Building a “talent pipeline” to fulfil and champion these key roles
- Identifying “talent champions” to lead or model the needed development of future talent
- Providing opportunities for accelerated development or growth in critical areas of the organization
- Creating the needed “value proposition” to attract, retain and maintain key employees

Leaders in succession planning recognize the importance of the strategic HR practitioner. These are individuals familiar with HR research on trends, such as the *Spherion* studies on the emergent worker (see “Major Workforce Study Exposes Serious Disconnects Between Employers and Employees” in this issue of *NewsLink*). For example, if the *Spherion* research trends continue as seen over the past six years, by 2009 75% of the workforce will be holding “emergent work values.” To provide the time needed to shift the organizational culture to meet the new employee needs, the HR group needs this critical strategic planning focus. The strategic HR practitioners are the future champions of the cultural transformation in the succession planning process.

Shall We “Hire” or “Develop” Skills Needed in the Future?

The shift to a knowledge economy makes the knowledge, skills and competencies of employees the most significant driver of an organization's value. However, “because the increase in knowledge turnover is now so rapid, a greater investment in skills development is required. Though employees take on some of this burden through their own investment

in education, the growth of specialized knowledge means that employers will increasingly need to take on the responsibility of providing more specialized business or sector-specific training and education” (Schramm, Manager, Workplace Trends and Forecasting – SHRM).

A workplace with rapid knowledge turnover will increase the importance of position profiling and the use of tests or tools to assist in the rapid assessment of candidates. Hiring with future needs in mind, the candidates hired require the potential to learn quickly and need to demonstrate the “core competencies” needed for future growth and success. Further, in a competitive market, employers using slow hiring methods will lose the best candidates to others.

What About the Changing Organizational Culture?

The organizational culture will also be impacted by the shortage of employees. We are already seeing much greater diversity within the workforce. Emergent employees bring differing expectations of leaders. Women are moving into non-traditional careers. Employees are being recruited internationally to meet the needs of key roles.

The future shortages are going to change the face of the workforce. Managing the transition points will be tricky and perhaps painful. Despite the challenges, these changes offer high opportunity for organizations prepared to synergize these differing viewpoints.

So What Do You Do?

Today, strategic refocusing of business priorities is the primary role of HR succession planning. The future challenges

are likely to be in managing a complex workforce, through a structured and practical approach to developing human resources.

Traditional leadership training will not meet the future demands. Employees are predicted to be more demanding and less forgiving. They will “talk with their feet” by leaving less effective organizations.

We need to find, develop and retain the employees of the future to stay com-

petitive. How organizations plan and support these key human resources will be the single greatest factor in their future success.

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...in a competitive market, employers using slow hiring methods will lose the best candidates to other.

Building a Succession Plan for Your Organization

To assist school districts in this critical planning for the future of their organizations, BCPSEA, in conjunction with Facilitator Training Institute (FTI), is providing a series of professional development opportunities.

Building a Succession Plan for Your Organization takes participants through the process of developing a plan for the loss of individuals in key positions and demonstrates how to build leadership development into an overall succession strategy.

The workshops are offered in three phases: Phase 1 (December 12, 2005; January 26, 2006); Phase 2 (January 27, 2006; April 2006 TBA) and Phase 3 (April 2006 TBA).

The workshops will prepare participants to:

- Recognize factors influencing the need for building a succession strategy
- Define a model for managing succession based on current best practices and key gaps specific to each region as well as BC school districts as a whole
- Use a software template to build a succession strategy that facilitates stakeholder buy-in and engagement in the process
- Identify and create benchmark profiles for key “at risk” positions
- Apply a model for mapping key position competencies
- Use a competency assessment software tool for validating mapped job competencies, assessing performance gaps with pool candidates, and getting stakeholder feedback
- Build individual development plans using a Personal Development Planning Template
- Identify and match the “right” individuals to these critical positions, and begin building the succession pool
- Review models and best practices for building and reinforcing required performance for pool candidates
- Define next steps required for final implementation of the strategy.

For more information on succession planning or the workshops, please contact Deborah Stewart (604.730.4506, deborahs@bcpsea.bc.ca) or Ron Pound (604.730.4519, ronp@bcpsea.bc.ca).

Major Workforce Study Exposes Serious Disconnects Between Employers and Employees

New survey of U.S. employers and workers shows that few organizations have emergent mindset, policies and structure to meet evolving employment needs.

Spherion Corporation (www.spherion.com), a leader in the staffing industry in North America, has pioneered research on the emerging workforce. The results of their most recent workforce study were announced in a press release on November 8, 2005. Although this is a United States-based survey, the observations are applicable to the Canadian workforce.

Note: Based on percent indicating "very important" when asked what are the most important drivers of retention.

As a serious talent and worker shortage looms in the U.S., a new comprehensive study released by Spherion Corporation (NYSE:SFN), a leading North American staffing and recruiting company, indicates that many employers aren't taking the steps necessary to retain existing employees and attract top talent from the shrinking worker pool.

Spherion's 2005 Emerging Workforce® Study, conducted by Harris Interactive¹, surveyed a large, nationally representative sample of U.S. employers and adult workers to reveal a troubling gap between employers and employees on critical workplace issues such as retention factors, training and development and work/life balance. The Study also finds that less than one in five employers is well positioned to attract and retain top talent.

According to the latest Spherion® Emerging Workforce Study:

- 60% of workers rate time and flexibility as a very important factor in retention,

but only 35% of employers feel the same.

- Only 49% of employers rate financial compensation as a very important driver of retention, but 69% of workers believe it is.
- On average, employers only expect 14% of their workforce to leave in the next year, but Spherion data shows that nearly 40% of U.S. workers intend to find a new job in the next 12 months.
- Less than half (44%) of U.S. workers believe their companies are taking steps to retain them and nearly a third (31%) believe there is a turnover problem at their company already.
- Only 34% of HR managers mention turnover/retention as a key HR concern.

The following chart clearly shows the significant disconnect between employers and employees on what will keep workers in their current positions:

Drivers of Retention

Employer View		Employee View	
1. Management climate	(80%)	1. Financial compensation	(69%)
2. Supervisor relationship	(80%)	2. Benefits	(68%)
3. Culture & work environment	(65%)	3. Growth & earning potential	(64%)
4. Benefits	(61%)	4. Time & flexibility	(60%)
5. Growth & earning potential	(58%)	5. Management climate	(60%)
6. Training & development	(54%)	6. Supervisor relationship	(57%)
7. Financial compensation	(49%)	7. Culture & work environment	(54%)
8. Time & flexibility	(35%)	8. Training & development	(49%)

1. Harris Interactive Inc. (www.harrisinteractive.com) is the 13th largest and fastest-growing market research firm in the world, perhaps best known for The Harris Poll® and for pioneering and engineering Internet-based research methods.

“There’s no doubt that talent will be a defining success factor for companies in the years to come and our latest Study sheds light on just how differently employers and employees view key issues in the workplace,” said Roy Krause, Spherion president and chief executive officer. “It is imperative that organizations understand these disconnects and make the right adjustments to their HR strategy and policies to meet the evolving desires of the U.S. workforce. Employers that choose not to react could seriously hamper their ability to compete for top talent, especially as continued demographic and attitudinal shifts amplify this issue.”

Workers Seek Work/Life Balance, But Employers Missing the Mark

One of the biggest disconnects between employers and employees is the importance workers place on their ability to maintain a balance between their professional and private lives. In its previous Study, conducted in 2003, Spherion found that 86% of U.S. workers agreed that work/life balance and fulfillment was a top career priority and 96% agreed that an employer was more attractive when it helped them meet family obligations through options like flextime, telecommuting or job sharing. However, it appears that U.S. employers have not significantly responded to that need.

According to the 2005 Study, one-third of workers between the ages of 25 and 39 feel burned out by their job and 28% of all workers say their employers expect them to stay connected to the office outside normal office hours. At the same time, only 24% of employers offer a formal flex-time program, only 12% offer

telecommuting and 11% offer job sharing.

Even more concerning, many companies don’t plan to implement work/life balance programs at all. In fact, 61% of all companies stated they don’t plan to offer job sharing, 56% don’t plan to offer telecommuting and 33% don’t plan to offer flextime.

“It is clearly evident that maintaining balance continues to be a top priority for most workers, but technology and increasingly strenuous employer expectations have eroded the concept of traditional office hours, vacations and personal time for many,” Krause said. “While today’s workers are willing to accept these changes, employers must be mindful of the flexibility workers seek and offer them ways to maintain the balance between their work and personal lives. Employers that choose to ignore or discount this important issue expose themselves to a greater chance of employee burnout, lower productivity and eventual turnover.”

Emerging Workers Meet the Emerging Workplace

Although the Study highlights potentially serious differences between employers and employees, Spherion did uncover a small percentage of organizations that do understand the changing face of American workers and that are taking the right steps to meet their needs. Previous Emerging Workforce Studies have identified a new breed of American worker – confident, self-reliant and distinguished by a set of workplace values and expectations that vary drastically from what managers have previously encountered – which we have termed emergent workers. This growing group represents nearly

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Emergent companies will continue to make strides with employees and candidates, while the rest will fall further behind in the battle for talent.

one-third (31%) of workers today and is expected to comprise the majority of all employees in 2007, whereas more traditionally minded workers are expected to dwindle to near extinction.

While the growth of emergent workers has been tracked for nearly a decade, there was no barometer for tracking the changes employers were making to meet the needs of this growing workforce segment. For the first time, the 2005 Emerging Workforce Study was expanded to include data collection from employers, allowing Spherion to provide a more complete picture of the employment landscape and classify workplaces as *emergent, migrating or traditional*.

The results were stunning: only 19% of employers are classified as emergent and have the progressive mindset, policies and structure in place to attract and retain top talent and maintain workforce flexibility to easily adjust employee levels as demand warrants.

Emergent Employers:

- Embrace management practices such as work/life balance programs, training and development options and regular surveys of employees to identify specific retention drivers
- Reap benefits such as increased flexibility, cost savings and ability to weather economic fluctuations because they've hired the right mix of full-time and contingent resources
- Utilize best HR practices which can help them achieve greater financial success and employee growth than more traditional organizations

On the other hand, traditional employ-

ers, representing 33% of all employers, may have the greatest disadvantage when it comes to attracting and retaining talent because of the vast disconnect between management and employees. Contrary to *emergent* employers, *traditional* organizations have entirely different views of retention drivers than that of most U.S. employees, most evident regarding the issues of time and flexibility and opportunities for growth.

The remaining 48% of employers are considered migrating from a *traditional* to *emergent* management style. While these organizations have begun to implement some emergent practices, much work remains to be done before they can be considered ideal employers.

"We applaud the innovative efforts of *emergent* organizations that have dedicated the time and resources to truly become employers of choice," Krause added. "Not only do such best HR practices help bring top talent into their organizations, but studies have shown that implementing such practices result in better company growth and employee expansion²," Krause added. "While a growing number of companies have sought our assistance in developing and implementing *emergent* strategies and programs over the past few years, the reluctance or inability of the majority of U.S. companies to adopt *emergent* qualities is certainly mystifying, and I hope these findings serve as a wakeup call. *Emergent* companies will continue to make strides with employees and candidates, while the rest will fall further behind in the battle for talent."

Nationwide, one of the largest insurance and financial services companies in

2. Source: Lehigh University Study, University of Southern California Study, Spherion Emerging Workforce Study

the world, is an example of an *emergent* employer that takes its work/life balance initiatives and performance management seriously and believes its success is directly connected to the quality and performance of its associates.

“At Nationwide, we understand the value of providing an environment that meets the ongoing needs of our associates,” said Bob Puccio, vice president of associate services. “Offering programs and resources that support associates both at work and outside of work goes a long way in building a company that is great for associates and customers.”

“Our firm and our clients expect a lot from our people,” says Maryella Gockel, flexibility strategy leader at Ernst & Young. “In return, to help our people succeed personally and professionally, we trust them to get their work done in a high quality way, when and where it makes sense for teams and individuals. We also provide programs and tools to help them be successful including flexible work arrangements, telecommuting options, online training programs and back-up child and adult care.”

For additional information on the Emerging Workforce Study please visit www.spherion.com/emergingworkforce. ◆ —

The Emerging Workforce® Study classified all employees and employers into three different groups, based on their distinct set of workplace values and expectations: *emergent, traditional and migrating*.

Employers

- *Emerging* – Embraces management practices to address *emerging* employees’ mindset
- *Traditional* – Favors to maintain current management practices & strategies for retaining talent
- *Migrating* – Utilizes a combination of a *traditional* mindset & an *emergent* style of management

Employees

- *Emergent* – Takes charge of their careers, want to learn new skills & embrace change
- *Traditional* – Prefers job security and stability & like employers to pave their career path
- *Migrating* – Possess a mix of both *emergent* & *traditional* workplace values

Source: www.spherion.com

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Employment Issues for 2006

Business Council of British Columbia Executive Comment

In the public sector, several years of pay restraint have created legacy issues in terms of the public sector's ability to attract, retain and motivate skilled staff.

The Business Council of British Columbia recently hosted its annual Employee Relations Outlook Session. This session was attended by senior human resource professionals from a representative group of the Business Council's membership. There were several employment related issues raised and discussed during the session. Possible solutions were offered in round table discussions. This month's Executive Comment is based on a summary of these discussions.

Attraction and Retention

The attraction and retention of employees is a key issue for both the public and private sectors. In the private sector, expanding global markets, driven by the demand for commodities, has created shortages of technical and management staff and has driven up compensation packages. During the 1990s, young people were not drawn to particular occupations, such as engineering, and as a result, we are now faced with shortages in certain key skills. In addition to compensation adjustments, employers are concentrating on improving career development opportunities for staff and offering continuing education and career broadening assignments. Some employers are even working with universities and colleges by providing funding and support for additional programs.

In the public sector, several years of pay restraint have created legacy issues in terms of the public sector's ability to attract, retain and motivate skilled staff. Public sector members of the Business Council reported soaring vacancy rates, in one case as high as 10%. Further, only in limited cases where an attraction or retention problem can be demonstrated, has the government been prepared to grant flexibility. To combat this problem,

public sector employers are using contractors and retirees, who are not subject to compensation restraints. They are also offering continuing educational programs along with creative time off arrangements outside the government guidelines.

Mandatory Retirement

Despite the concerns and objections of some employers, mandatory retirement will soon be a thing of the past. The issue then becomes how to prepare for the world without mandatory retirement?

The major concerns of employers on this issue include significant cost increases as health care demands of older workers become apparent, the impact of managing the declining productivity of an older and potentially less healthy group of workers, and the related issue of the duty to accommodate.

To address these concerns, business needs to have the ability to provide reduced benefits to certain employees beyond a certain age, without concern that this will be viewed as discriminatory by the courts or other bodies, the ability to terminate employment without having to defend against duty to accommodate challenges, and the ability to rehire employees without a large financial liability.

Skill Shortages

There is no question that skills shortages are an issue. Much has been written on this subject and needs no repeating here. There are a number of ideas to address the shortages. Participants at the Outlook Session identified the following (among others):

The first is some type of cost relief for training, be it a tax incentive similar to that in Ontario, or some other such incentive. Many employers in the province train workers, but they later lose them to competing employers who may not. A financial incentive to train workers would lighten the impact for employers and be viewed as a positive step.

Second, we must develop foreign trained professionals. ESL/language skills are required to integrate individuals into society and the workforce. Cultural/diversity training is also needed to assist people to understand the local culture. In addition, the concept of temporary, limited licensing approval to alleviate the liability fears of regulatory and licensing bodies should be explored.

Third, in the area of local skills development, more apprenticeships should be awarded to those who will have greater impact in the long term (i.e., not by seniority). There should also be policy changes regarding access to such things as co-ops. And finally, aboriginal skills development needs to be accelerated and/or improved.

Benefit Cost Containment

Benefit costs have risen dramatically over the last several years. Employers have experimented with a variety of methods in an attempt to curb these rising costs. Some employers have moved to a flexible

benefit/pension arrangement where employees choose to a maximum dollar amount. Some other employers who have capped benefits report greater success with employees if the current levels of benefits are maintained while the employees pick up a greater share of any future costs. Those employers with unionized employees have a very difficult time getting unions to share in the increasing cost burden, but once the union understands the problems, there is greater buy-in and changes can be made. Further, employers are also looking at prevention programs such as introducing wellness programs in the workplace. The use of private care providers also lowers costs.

Education for Employees

There is the perception that there is a low level of understanding among the workforces of employers as to how business operates. It is very difficult to make necessary changes if the reasons for doing so are not understood. Hence, business literacy skills need to be improved. Senior executives could hold roundtable discussions with their employees (or union representatives where appropriate) to discuss issues such as how to raise capital or quality issues.

Provincial Public Sector Bargaining

There is no question that provincial public sector bargaining will have large visibility in the next year. Virtually all public sector agreements with the provincial government expire over the next several months. Recent history has shown that where agreements could not be arrived at mutually, the government has

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The Business Council is supportive of changes which will make public sector bargaining work more effectively.

brought in legislation to determine the outcome. This has led to some unfortunate consequences.

Public sector members of the Business Council report that they are having difficulty recruiting in certain occupations and professions, especially in the higher paying classifications. The current pay structure makes it difficult to compete with the private sector for certain senior positions. The wage freezes in the management area have led to salary compression problems, where many public sector employees do not want to take on the additional responsibilities that come with a management or supervisory position for very little difference in pay.

Most public sector workers have had little or no increases to their compensation levels over the past several years. Expectations are high. Negotiators for the government and the unions will have a difficult time negotiating in this climate. Targeted wage increases, rather than across-the-board increases, may represent a solution to some of the problems facing the parties. While it is not the role of the Business Council to become involved

in public sector bargaining, our private sector members are impacted by the outcome. Hopefully, this round of public sector bargaining will result in a positive outcome and the general economic climate of the province will not suffer.

On a broader level, it is clear to the Business Council that the model currently used in public sector bargaining may have to be reviewed. As a result of some of the negative outcomes in some of the higher profile disputes (e.g., ferries, health care and education), there has been a call by some that the model should be changed. In some cases, alternatives have been suggested.

The Business Council is supportive of changes which will make public sector bargaining work more effectively. We will commit to meeting with other stakeholders to develop a model or models which will help parties in the public sector reach collective agreements which are fair to all parties, including the taxpayer.

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604.684.3384, www.bcbc.com ◆—

The WCB in 2006

New Name and New Focus

This may well prove to be a year of great change in the relationship between employers and the Workers' Compensation Board of BC.

The WCB signaled a change in focus in 2005 by taking the simple step of changing its name to **WorkSafe BC**. While still fully responsible for all aspects of workplace accident prevention and injury compensation, WorkSafe BC has made clear

its intentions to significantly increase its focus on prevention of accidents — on making the workplace safe.

The second indication of a change in focus at the WCB was the introduction of the **WorkSafe BC Board of Directors' Health and Safety Initiative in 2005**. In the words of Doug Enns, Chair of the Board of Directors, *The Board of Directors has embarked on an initiative to exam-*

ine the current and future state of BC's workplace health and safety system.

In a May 2005 speech to the Western Safety Conference, Enns noted several trends that were important to the future of workplace health and safety in BC:

- Continuing *high number of claims for occupational diseases (especially repetitive strain-related diseases)* and its impact on healthcare costs
- Largest demographic shift in the workplace in many decades resulting in a *younger workforce and increased numbers of workers from outside Canada*
- Significant economic growth in many sectors of the economy and its impact on the nature and pace of work.

The Board of Directors' Health and Safety Initiative began consulting employers and workers in 2005 and will continue the consultation process through 2006. BCPSEA staff have actively participated in the process.

In promoting its accident prevention focus, the Board of Directors has asked employers:

1. **What kind of workplace health and safety regulations will be most effective in promoting injury prevention?** Do you favour prescriptive regulations that set out precisely how regulation compliance is to be achieved? Or do you favour performance-based regulations that specify a safety goal and then leave it up to workplaces to determine how the goal is best met?
2. **How should WorkSafe BC carry out its mandate to educate, consult and enforce? Should more inspectors be placed in the field?** Should there be increased targeted enforcement at high risk workplaces?

3. **Will financial incentives increase employers' focus on injury prevention?** Should current administrative penalties be increased? Should reward programs like the pilot Certificate of Recognition program be expanded?
4. **Should WorkSafe BC and employer-funded industry sector safety associations be more actively promoted in BC?** Should industry sectors with effective funded safety associations be allowed to self-regulate?

BCPSEA has considered these questions and has already taken the following steps to respond:

- In general, BCPSEA supports a move toward more performance-based workplace health and safety regulations. BCPSEA believes that such regulations are much more appropriate for the unique public school workplace. This position has been communicated to WorkSafe BC.
- BCPSEA believes that WorkSafe BC should continue to use a combination of education, consultation and enforcement but that enforcement must be done in a way that recognizes the unique nature of work and the work environment that exists in public schools. This position has been communicated to WorkSafe BC.
- BCPSEA supports financial incentive programs such as the Certificate of Recognition (COR) which will reduce the WCB insurance premium costs for those districts with effective safety programs. BCPSEA and the BC School Safety Association (BCSSA) are actively working with WorkSafe

In general, BCPSEA supports a move toward more performance-based workplace health and safety regulations.

BC on a COR initiative which will be introduced to districts in early 2006.

BCPSEA recognizes the value of effective sector safety associations. The BCSSA has effectively represented the interests of districts to WorkSafe BC for many years. BCPSEA, BCSSA and WorkSafe BC are currently actively

exploring the establishment of a funded Education Sector Safety Association in BC.

For additional information please contact Warren Fox (604.730.4502; warrenf@bcpsea.bc.ca) or Vanessa Wong (604.730.4509; vanessaw@bcpsea.bc.ca)

Additional reading on these issues may be found at:

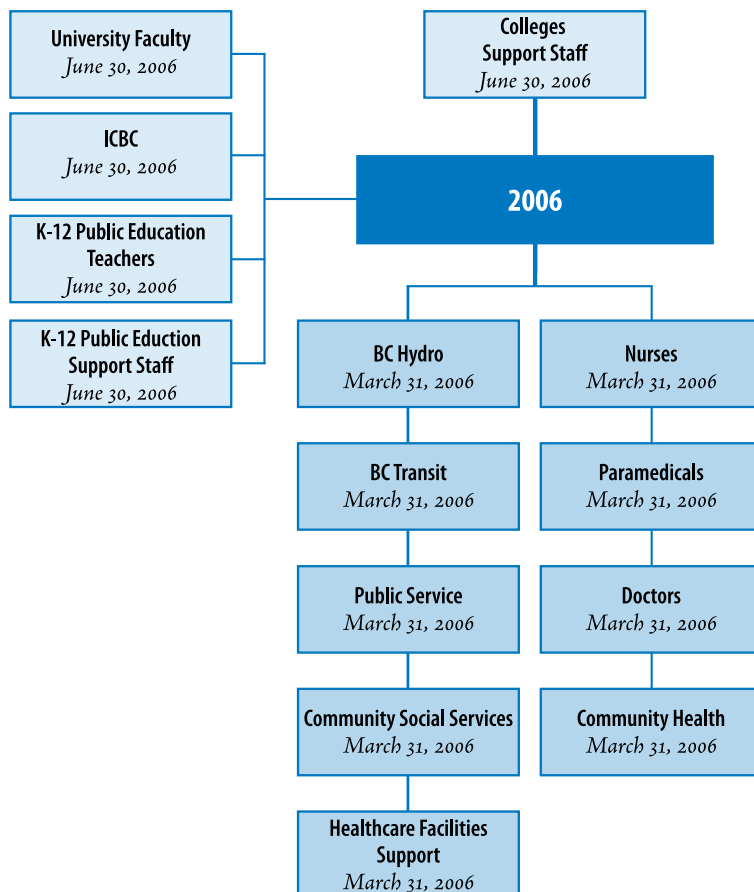
http://www.worksafebc.com/about_us/governance/BoD_initiative/assets/pdf/resource_guide.pdf (*WorkSafe BC Board of Directors' Health and Safety Initiative*)

http://www2.worksafebc.com/PDFs/construction/Roadbuilders_COR.pdf (*Certificate of Recognition*)

<http://www.esao.on.ca/> (*Education Safety Association of Ontario*) ◆—

2006 Negotiating Framework for Public Sector Bargaining

Public Sector Collective Bargaining Calendar



On November 30, 2005, the Ministry of Finance issued a news release outlining the new negotiating framework which will guide public sector compensation until 2009/2010. This new framework will replace the current “net zero” compensation mandate.

The new negotiating framework contains the following broad public sector-wide elements:

- Up to \$1 billion available this year for agreements reached before they expire
- Up to \$4.7 billion dollars available for compensation agreements across the broad public sector
- Up to \$300 million “dividend option” that can be applied to four year agreements.

At the time of publication, we continue communication with the Public Sector Employers’ Council (PSEC) to obtain more information as to the application of this framework to unionized support staff in the K-12 public education sector, as well as to exempt staff. We will continue to communicate with districts by e-mail and conference call as information becomes available.

If you have any questions regarding the mandate, please contact Renzo Del Negro at 604.730.4511 or renzod@bcpsea.bc.ca.

Anatomy of a Labour Dispute

Collective Bargaining, Teacher Job Action and the Ready Commission

The 2005-2006 school year opened with collective bargaining at impasse, a province-wide illegal strike by teachers, legislation and, finally, non-binding recommendations from facilitator Vince Ready that resulted in teachers' return to work.

Collective bargaining between the BC Public School Employers' Association (BCPSEA) and the BC Teachers' Federation (BCTF) went into hiatus over the summer vacation. As school resumed in the fall, the parties met on September 15 for their 35th bargaining session. At that session, BCPSEA tabled a proposal for a two-year collective agreement, expiring on June 30, 2006, which would take the parties through the net zero compensation mandate established by the provincial government. At the time, 30 collective agreements with unionized support staff in the K-12 sector had been concluded under the mandate. The BCTF reiterated its position that it had no intention of settling an agreement under the net zero mandate. Bargaining had clearly reached impasse.

Fact Finder Appointed

The following day, Labour Minister Mike de Jong appointed Associate Deputy Minister Rick Connolly as a fact finder to meet with both sides, determine their stance on key issues, and report back to the Minister by September 30.

Specifically, the fact finder's mandate was to:

"examine the positions of the parties in their negotiations, to report on the perspective of each party on the matters of critical importance, and to assess the prospect for re-engagement in collective bargaining."

Connolly submitted his report to the Minister on September 30, 2005.

In the concluding comments of his report, Connolly focused on the two key areas of disagreement::

- compensation
- working and learning conditions.

With respect to compensation he noted that despite numerous meetings, the parties had yet to discuss this issue in detail and, as a result, costing of the BCTF compensation proposal reflected certain general assumptions that had not been tested through discussion.

BCPSEA estimated the cost of the BCTF proposal to be approximately \$938 million and the BCTF calculated the cost of their proposal at \$678 million. Connolly observed:

"The lack of dialogue on compensation led to a public media debate about the cost of proposals that only increased the tension and conflict between the parties and did not further understanding, clarity or opportunity to find agreement within a collective bargaining process. There is no question that the compensation demands

and expectations of the BCTF, even with their declaration that these are opening positions, far exceed any opportunity for resolution within the current mandate.”

Regarding the issue of working and learning conditions, Connolly noted:

“...it is clear from this fact finding process that this issue is of great concern to the BCTF.”

At issue is where the authority lies for these discussions and decisions to be made. In his concluding comments Connolly noted:

*“...government has elevated the issues of learning conditions to the status of legislation. However, effective public policy requires involvement of all those affected. It is my opinion that Government should develop an approach to engage with teachers and education stakeholders including parents, trustees, superintendents and principals in an effective and meaningful dialogue regarding this critical issue that is **entirely separate** [emphasis added] from the collective bargaining process.”*

Based on his meetings and discussions with the parties, the Fact Finder concluded:

“...because of the positions of the parties on the two major issues, it is my opinion that there is no prospect for a voluntary resolution at the bargaining table in these negotiations.”

BCTF Takes Strike Vote

The BCTF proceeded to conduct a strike vote between September 20 and 22. On September 23, the BCTF announced the results – 88.4% of those teachers who voted, voted “yes” to strike. BCPSEA was subsequently served with 72-hour strike notice.

The parties resumed hearings at the

Labour Relations Board (LRB) on essential services designations. Late in the evening of September 23, 2005, the LRB issued its decision on the initial phase (Phase a) of the BCTF multi-phase job action plan. Although the BCTF had been set to commence its job action on September 27, the LRB Order stated that:

1. The BCTF strike notice, effective Tuesday, September 27 is invalid. **The BCTF is not permitted to commence the first phase of its job action plan until Wednesday, September 28, 2005.**
2. **Teachers must continue to gather and report student attendance data in the normal manner;** i.e., teachers are not permitted to refuse to gather and report student attendance data.

Under this initial phase, teachers would be permitted to withdraw services such as supervision of students at break periods, attendance at staff meetings and participation in district committee meetings.

The BCTF made application to the LRB to vary the Phase (a) designation to permit teachers to refuse to provide student attendance data to administrators, but that application was denied by the LRB.

Legislation Introduced

Faced with the prospect of a phased withdrawal of services by teachers, the provincial government decided to intervene. On October 3, 2005, the government introduced Bill 12, the *Teachers' Collective Agreement Act*, which extended the terms of the existing collective agreement to June 30, 2006.

The BCTF reacted quickly to govern-

ment’s intervention. Shortly before 10:00 pm October 5, BCPSEA received a letter from BCTF President Jinny Sims advising of the BCTF response:

“I am writing to inform you that members of the British Columbia Teachers’ Federation will not be reporting for work on Friday, October 7, 2005 and subsequently in all school districts in the province, in protest to the imposition of terms and conditions of employment contained in Bill 12.”

The BCTF reported that of the teachers who voted, 90.5% voted in favour of engaging in this political protest of Bill 12.

BCPSEA Chair Ron Christensen described the BCTF plan as “regrettable.” “We believe that students should not be negatively affected any further as a result of this labour dispute,” Christensen said. “We have confidence in the professionalism of teachers and urge the BCTF to comply with the law. School boards value the work of teachers and hope that they will not disrupt the education of our students to engage in political protest.”

As a full withdrawal of services by BCTF members would constitute an illegal strike, in violation of the Essential Services Orders issued by the LRB, BCPSEA took action before the LRB as soon as possible in order to attempt to keep schools open for the province’s 600,000 students.

LRB Orders BCTF to Resume Duties

BCPSEA sought an LRB declaration that the escalation of job action announced by the BCTF scheduled for October 7, 2005 was contrary to the Labour Relations Code and represented a violation

Consistent with the current net zero mandate, BCPSEA committed to seeking economies in the collective agreement. Where economies were achieved, they could be reinvested in the agreement as had occurred in other sectors. While viewed as concessions by the BCTF, there would be no actual loss to the BCTF in that the monies would be re-allocated through negotiations.

In contrast, the BCTF opened this round with a very different view of collective bargaining. First and foremost, the BCTF stressed the importance of re-establishing all collective agreement language related to school organization that was removed as a result of legislation in 2002. In addition, the BCTF was very clear that they had no intention of settling under the net zero mandate. They also stressed the importance of achieving compensation parity with teachers in other parts of the country such as Alberta and Ontario, as well as other gains in areas such as seniority and Teacher on Call rights.

The following differences formed the basis of the fundamental issues in dispute:

Table: Fundamental Issues in Dispute

BCPSEA	BCTF
Net zero compensation mandate - Achieve changes within the collective agreement that are consistent with the current net zero mandate (until March 2006). This mandate allowed for structural changes and trade-offs in costs and savings, provided the net cost of the collective agreement does not increase.	Significant improvement in compensation - A general wage increase of 4%, 5%, and 6% over three years in order to, as they characterized it, keep pace with the wage increases for teachers in other provinces such as Alberta and Ontario. In addition, the BCTF had other proposals with cost implications on the table, such as benefits improvements, early retirement incentive, professional development, structural changes to salary grids, etc. BCPSEA estimated the cost of these other proposals at approximately 25%.
Movement towards standardization - Standardize terms and conditions such as compensation by establishing a foundation for provisions such as regional or provincial wage grids.	No concessions - Accept no agreement that would result in the BCTF, any local of the BCTF, or any member of the BCTF losing any provision, term, or benefit that existed under the terms of the previous agreement.
Maintenance of the current school organization system - Bargain only matters that are within the scope of bargaining. Matters outside of the scope of bargaining, such as school organization matters removed from the collective agreement by legislation in 2002, by law cannot be the subject of collective bargaining or a collective agreement.	Restore or re-establish school organization provisions in the collective agreement - Continue to use collective bargaining as the mechanism to achieve the restoration or re-establishment of school organization matters, regardless of legislation.

“...it is the rule of law, in this case obedience to court orders, which permits us to enjoy the rights and liberties of a civilized democratic society...no citizen or group of citizens may choose which orders they will obey.”

of the LRB Essential Services Order for Phase (a). The LRB found in favour of the employer and, in their Order issued late in the evening of October 6, 2005, ordered BCTF members to immediately resume their duties and work schedules of employment, except as authorized by the Essential Services Order.

BCPSEA initiated enforcement proceedings of the LRB Order by filing it with the BC Supreme Court the same evening. Despite the LRB Order, teachers did not report for work on October 7.

Contempt of Court Order

In response to the escalation of job action by the BCTF, BCPSEA made application to the BC Supreme Court to find the BCTF in contempt of the Order of the Court dated October 6, 2005.

The issue before Madame Justice Brown was not whether the legislation was correct or whether the BCTF political protest of the legislation was appropriate. The issue was limited to the consideration of the breach by the BCTF of the Order of October 6.

In her October 9 decision, Madame Justice Brown noted the importance of citizens obeying court orders and referenced Madame Justice McLaughlin quoted in *Canada Human Rights Commission v. The Canadian Civil Liberties Net* (1998), 1 S.C.R. 626:

If people are free to ignore court orders because they believe that their foundation is unconstitutional, anarchy cannot be far behind.

She went on to note that:

“...it is the rule of law, in this case obedience to court orders, which permits us to enjoy the rights and liberties of a civilized democratic society...no citizen or group

of citizens may choose which orders they will obey.”

Based on the evidence before her, Madame Justice Brown was satisfied that the BCTF was in contempt of the LRB order of October 6.

With respect to the issue of remedy, Madame Justice Brown chose to defer her decision in the hope that teachers would see the seriousness of the Court’s finding. She ordered the parties to return to Court on October 13, 2005 in order to establish remedy. She also noted that there would not be any “free days of picketing” if the BCTF did not comply and did not return to work on Tuesday, October 11.

Remedy Related to Contempt of Court

On October 13, 2005, the BC Supreme Court issued its ruling on the penalty phase of the contempt proceedings between the BCTF and the BCPSEA. The Court found that despite the Order of October 9, 2005, the contemptuous conduct of the BCTF had continued. Moreover, the Court found that the BCTF was clearly using its assets as an organization to further its contempt. In response, the Court issued a series of broad restrictions.

The Court prohibited the BCTF and its related entities (which included local teachers’ associations) from using their assets to further, directly or indirectly, an ongoing breach of the Court Order. This prevented the BCTF from expending any funds on matters such as strike pay, signs, direct advertising, etc., or using any other assets such as buildings, phones or fax machines to further this illegal action.

The BCTF was also prohibited from using any of its books, records, or offices

to permit third parties (e.g., other unions) to facilitate continuing breach of the Order. However, the BCTF was permitted to use its assets in the ordinary course of business (e.g., paying its rent or wages to employees).

In order to ensure compliance with the Order, the Court appointed an independent Monitor. The accounting firm of Ernst and Young had full power and authority to review on a daily basis all books, accounts, and payments of the BCTF and its related entities to ensure compliance with the Order. If the BCTF was not in compliance, the Monitor was required to report to the court. The Monitor could retain legal counsel, and the BCTF was required to pay all of the expenses of the Monitor.

The Court adjourned its ruling on the issue of further financial penalties, choosing to focus on injunctive relief, and the creation of a mechanism which had the effect of placing the BCTF under independent financial direction from a Court-appointed Monitor.

BC Supreme Court: Continuation of Penalty Phase

On October 21, the parties again appeared before Madame Justice Brown for the continuation of the penalty phase. In her decision, Madame Justice Brown noted that when determining an appropriate sanction:

The Court must impose a sanction that recognizes the gravity of the contempt, deters this party from continuing the contempt and deters others from similar conduct.

She considered previous fines imposed in such cases, the size of the BCTF mem-

bership, and the extent of the BCTF assets. Madame Justice Brown set a fine against the BCTF of \$500,000 covering the period October 7 to 17. In addition, the BCTF was required to pay for the costs of the monitor and its counsel. The BCTF also had to pay the employers' special costs of the proceedings. In a subsequent court proceeding on October 28, Madame Justice Brown ruled as to which charities would be the beneficiaries of the BCTF fine.

Vince Ready Facilitation

In the meantime, on October 6, the government had appointed respected mediator and arbitrator Vince Ready as an Industrial Inquiry Commission to recommend a new collective bargaining structure. In an attempt to bring a resolution to the teachers' dispute, the government decided on October 18 to also enlist Ready as a facilitator. Ready met several times with the BCTF, BCPSEA, and the provincial government and was scheduled to meet again with the BCTF and BCPSEA on October 21. The BCTF preempted the meeting with Ready by holding a press conference at 9:00 am that morning. Upon learning of the BCTF action and statements, Ready made the following public comment:

Based on the positions of the parties – in particular, the position as stated by the BCTF and their press conference this morning – I've advised the teachers that – and the parties – that they're really stalemated at this point. They're just too far apart to come to a facilitated agreement or any kind of a negotiated agreement.

And in the circumstances and given the

In an attempt to bring a resolution to the teachers' dispute, the government decided on October 18 to also enlist Ready as a facilitator.

Of those teachers who voted, 77% voted in favour of accepting the Ready recommendations and returning to the classroom on Monday, October 24, 2005.

nature and the impact that this dispute is having on the public, I feel an obligation to make non-binding recommendations to the parties and I intend to do so today – later on today.”

Ready released his recommendations later that evening:

Harmonized salary grids

Government is to commit \$40 million towards the harmonization of salary grids throughout the province. The parties are to meet within 60 days of teachers returning to work in order to determine specific mechanics. If the matter has not been resolved by March 31, 2006, either party may refer it to the Industrial Inquiry Commission (IIC) for resolution. The effective date for harmonization will be between April 1, 2006 and June 30, 2006.

Benefits

Government is to commit one-time funding of \$40 million to the BCTF's LTD trust. In addition, the parties must conduct a study of benefits (i.e., all non-salary monetary provisions) applicable in each school district with a view to harmonizing benefit provisions in the upcoming negotiations. The IIC will assist the parties and the study will be concluded by February 28, 2006.

Recruitment and Retention of Teachers on Call (ToCs)

Government is to fund \$5.25 million to establish a uniform daily base rate of \$190 and for the placement of ToCs on the provincial salary grid after three continuous days in any assignment. In addition, ToCs are to accumulate seniority while being paid on the provincial salary grid. The parties are to meet within 20 days to

discuss implementation. If the matter is not resolved by December 31, 2005, either party may refer the matter to the IIC for resolution. The effective date for this recommendation is April 1, 2006.

Learning Roundtable

Ready's recommended an increase in the number of BCTF nominees to the Learning Roundtable, announced by the provincial government on October 6 as a forum for education stakeholders to discuss class size, class composition, and other issues related to learning conditions in the BC public school system.

Class Size and Composition

Government is to increase its commitment for learning conditions in this fiscal year from \$150 million to \$170 million. The additional money is to be targeted to issues of class size and special needs students. Further, he recommends that government consider incorporating additional money as an increase to base funding. Mr. Ready recommends that the *School Act* be amended to provide an effective mechanism for the enforcement of class size limitations. Finally, he recommends that government consult with the BCTF with respect to potential amendments to the *School Act* with respect to class size limits for Grades 4-12.

Consultation with Teachers

Mr. Ready recommends that the government and the BCTF establish an ongoing process for communication regarding teacher issues.

Return to Work

Upon review of Ready's report, the provincial government accepted his recommendations unconditionally.

The BCPSEA Board of Directors also announced acceptance of the recommendations. The BCTF put Ready's recommendations to its members for a vote prior to acceptance or rejection. Of those teachers who voted, 77% voted in favour of accepting the Ready recommendations and returning to the classroom on Monday, October 24, 2005.

Industrial Inquiry Commission

BCPSEA met with Vince Ready in mid-November to review the process and obtain more specific information regarding how the parties would proceed.

The Ready recommendations can be divided into two specific components:

- A number of specific settlement issues to be addressed by BCPSEA and the BCTF, including salary grids, benefits, ToC rates and ToC seniority
- Bargaining structure.

The initial timeframes for both components were extremely short (salary grids – March 31; ToC issues – December 31; bargaining structure – December 31). The timelines for ToC issues and bargaining structure were subsequently extended.

Although BCPSEA is hopeful that we can resolve as many issues as possible with the BCTF, we are also mindful of the fact that on a number of these issues there are different views between the parties that may require a final determination by Mr. Ready.

BCPSEA will continue to work with resource groups comprised of representatives from districts to ensure that our work in the process is as representative as possible. In addition, we continue to distribute updates and hold conference calls

and regional meetings as required.

We are in the process of developing a response to various issues which were raised by the BCTF at our meetings with them. We are working towards finalizing options for the implementation of Ready's recommendations on salary harmonization and the distribution of the \$40 million earmarked for this task. BCPSEA staff and trustee Directors met with a Focus Group of district-based personnel to review our work in these areas prior to broader consultations with local boards.

Ready Request for Submissions

Ready initiated his inquiry into the bargaining structure with a letter to the parties on November 23, asking for written submissions on a broad range of issues, focused mainly on the IIC's task of recommending a new bargaining structure for the K-12 sector. BCPSEA provided our submission on December 16.

In a letter issued by Minister de Jong on December 15, the deadline for the report of Commissioner Ready was extended to January 31, 2006. Commissioner Ready's terms of reference were also expanded to include a consideration of the viability of a local bargaining structure and the related accountabilities necessary to ensure a functional local bargaining structure. After consultation with school board staff and trustees, BCPSEA submitted a supplemental submission to Mr. Ready in compliance with his deadline of January 5, 2006.

The Work Continues, The Challenge Remains

It is timely to reflect on the comments of Don Wright, who was appointed by the

The deadline for the report of Commissioner Ready was extended to January 31, 2006.

The central role of the Industrial Inquiry Commission is to inquire into and make recommendations concerning the teacher collective bargaining structure, giving due consideration to the recommendations of Don Wright. Ready asked the parties to make submissions on bargaining structure as well as to reflect on the issue of why the parties have not been able to engage in productive negotiations:

As a starting point, I am asking all the parties on the attached list to provide the Commission with written submissions addressing the Terms of Reference. Additionally, I invite your submissions as to why the parties have been unable to engage in more meaningful and productive negotiations.

During the Wright Commission process, BCPSEA, through work with member employers, developed criteria to assist in the development of a functional collective bargaining system:

Theme	Proposition
<p>1. Balance The parties are permitted to pursue their goals through collective bargaining but this pursuit must be balanced against the costs of bargaining: Consequences of industrial conflict</p> <ul style="list-style-type: none"> • Costs associated with resolving the conflict (dollars, relationship, public confidence) • Out of line settlements and the implications for other public sector 	<p>It is recognized that bargaining in the public sector context requires that certain interests often seen as external to the negotiating parties must be balanced. This recognition leads to certain structural choices related to authority, responsibility and accountability.</p>
<p>2. Consequences The effects of labour disputes on persons not directly involved in those disputes are minimized.</p>	<p>Collective bargaining in the public sector has implications for the general public. Processes and structures to manage workplace disruption arising out of a labour dispute must be structured in a way that minimizes the impact on the public and, as a result, the impetus for government involvement.</p>
<p>3. Incentive There are incentives and pressures that encourage negotiated settlements. Sufficient uncertainty exists in the outcome of bargaining such that the parties are encouraged to negotiate.</p>	<p>The parties will not negotiate if they can predict the outcome both in terms of substance – the deal itself – and process – how the deal will be concluded. What can be characterized as institutionalized uncertainty has the potential of encouraging negotiated agreements.</p>
<p>4. Time All parties face significant pressure if an agreement is not reached in a reasonable time.</p>	<p>Participants and observers of the negotiation process will lose faith in it if it is perceived to be protracted and unproductive. These perceptions can lead to intervention by government.</p>
<p>5. Resolution The process for achieving resolution is found within the bargaining structure.</p> <ul style="list-style-type: none"> • No alternative processes external to the structure exist or can be accessed. 	<p>A bargaining system that can be characterized as a closed system builds faith in both the parties and the process – the parties can resolve their differences. Alternative processes external to the structure – ad hoc legislative intervention, for example – undermine the structure and erode the bargaining relationship.</p>
<p>6. Role Recognition Participants understand and respect, as legitimate, the roles of the parties to the bargaining process.</p>	<p>Collective bargaining requires that the parties meet, recognize one another as legitimate representatives of their principals and engage in informed discussions with the intention of concluding a collective agreement.</p>

provincial government in December 2003 as a commissioner to review the teacher – employer collective bargaining structure. Wright submitted his recommendations to the Minister of Labour in December 2004¹. Whether one agrees with all, some or none of his recommendations for a better collective bargaining system, one of his early observations foretold of the challenges posed by this round:

In summary, the past sixteen years of teacher collective bargaining have not resulted in a happy legacy...No party seems to believe that the existing structure, unchanged, can lead to successful collective bargaining in the future.

Towards a Better Teacher Bargaining Model in British Columbia, November 2003

When his comments are considered, it is not surprising that a dispute between the parties emerged.

Is the answer to dissatisfaction with bargaining, whether at the local level or the provincial level, solely a structural

one? With the BCTF advocating local bargaining with full scope and an unfettered strike/lockout, while employers in general and government in particular remain unprepared to return to local bargaining, can a structure be developed and implemented that enjoys the support of all participants? And if not, is there any hope for meaningful bargaining?

Success will depend on the capacity, capability and willingness of the parties to accept and implement the recommended structures and processes, whatever those recommendations may be. This alone, however, may not be enough.

As Don Wright observed in the recommendations contained in his final report submitted to government in December 2004, observations that can be applied to any recommendations:

“...these recommendations will not significantly improve the state of bargaining unless there is an attitudinal and behavioural change on both sides.”

1. Given that the Wright report was imminent and would potentially affect the bargaining structure in whole or in part, when questioned whether the current round of bargaining would proceed, the then-Minister of Labour indicated that if the parties desired to commence bargaining he had no objection. The BCTF served BCPSEA with notice to bargain and bargaining commenced in November 2004.



12th Annual General Meeting

It's that time of year again. 2006 kicks off with the 12th Annual General Meeting of the BC Public School Employers' Association January 27-28. School district trustees and staff will convene for professional development opportunities starting January 26, information updates, and elections to the Board of Directors. Check out the BCPSEA website (www.bcpsea.bc.ca under Events) for more details. See you there!

How Do You Rate?

School District Assessment Rates

The experience rate should not be used as the sole criterion of comparison between school districts.

For 2006, WorkSafeBC increased the base assessment rate for public school districts by \$0.06 from \$0.64 to \$0.70. Why did this happen?

The base assessment rate is an average. Consequently, it reflects the costs of all claims incurred by all school districts. The base rate has no relationship to the cost of claims incurred within a district.

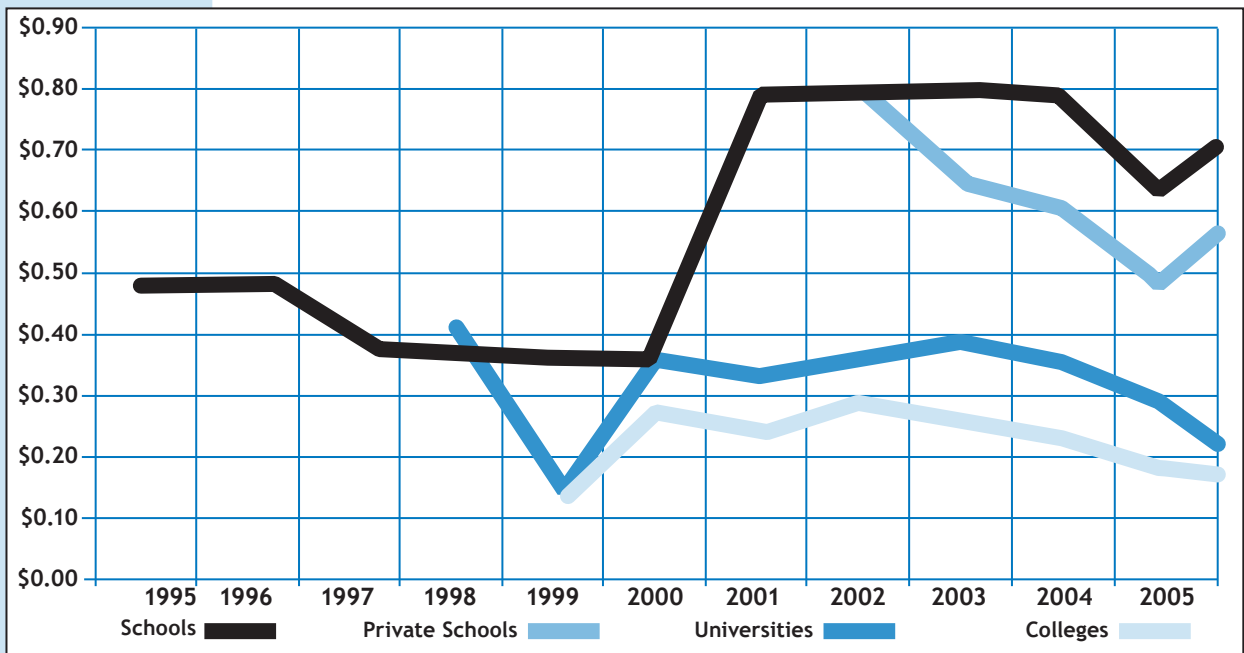
The assessment rate paid by each district is first determined by the base rate. The base rate is then adjusted in each district to reflect the cost of claims with that district as compared to all districts. This is the experience rate. Payroll figures are used to set the actual rate. The experience rate should only be considered as an indicator of how well a district is managing safety, return to work and accommodation issues in relation to its prior performance. The experience rate should not be used as the sole criterion of comparison between school districts.

It is the base rate that should concern all districts. Because the base rate is a

function of the total payroll, the assessment costs paid by each district are a function of how well every other district is “managing” these costs. If the base rate for all school districts changes, it is possible for a school district’s experience rate to improve or decline without any real change having taken place within the district.

The 2006 experience assessment rate for school districts is based on claims cost incurred from 2004, 2003 and 2002 claims. However, the base rate is based on claims costs from all years. In 2004, both current year (being 2004) and prior year (being all other years) claims costs increased. This was the first time in three years that current year claims costs have increased. Additionally, costs for prior year claims also increased.

The increase in prior year claims may be due to the activity of WorkSafeBC to eliminate a large backlog in claims that had accumulated under the old multi-tiered appeal system that has now been



streamlined. WorkSafeBC now estimates that the backlog will be eliminated in early 2006. Elimination of these costs will be reflected in the 2008 assessment rates. However, current year claims show increases in both the number of claims and cost. The larger and more significant increase is the cost. The cost of current year claims in 2004 increased by \$2.5M to \$19.1M from \$16.5M in 2003. This is possibly an indicator that school districts need to place greater emphasis on return

to work initiatives and accommodation efforts.

At present, assessment revenue coupled with investment returns minus expenses arising from claims costs and overheads (salaries, etc.) are in close balance. However, unless claims costs decrease, the assessment rate paid by school districts may well rise and fall depending on the fortunes of WorkSafe BC in managing the investment portfolio.

School District	Assessable Payroll 2004	Experience Rate 2006	Experience Rate 2005	Experience Rate 2004
5 (Southeast Kootenay)	30,388,885	0.58	0.55	0.73
6 (Rocky Mountain)	20,880,107	0.66	0.59	0.66
8 (Kootenay Lake)	34,260,378	0.73	0.64	0.75
10 (Arrow Lakes)	4,239,474	0.51	0.50	0.67
19 (Revelstoke)	7,012,285	0.76	0.66	0.88
20 (Kootenay-Columbia)	24,257,304	0.79	0.61	0.90
22 (Vernon)	43,563,430	0.73	0.67	0.88
23 (Central Okanagan)	96,777,909	0.53	0.48	0.67
27 (Cariboo-Chilcotin)	37,341,328	0.75	0.66	0.77
28 (Quesnel)	23,586,384	0.61	0.59	0.78
33 (Chilliwack)	57,863,538	0.60	0.52	0.66
34 (Abbotsford)	84,095,775	0.69	0.61	0.82
35 (Langley)	92,706,754	0.72	0.60	0.70
36 (Surrey)	281,638,246	0.70	0.68	0.88
37 (Delta)	83,859,570	0.77	0.68	0.90
38 (Richmond)	110,612,259	0.65	0.61	0.78
39 (Vancouver)	304,612,460	0.73	0.68	0.86
40 (New Westminster)	31,250,669	0.75	0.61	0.77
41 (Burnaby)	118,437,392	1.01	0.82	0.99
42 (Maple Ridge-Pitt Meadows)	71,913,907	0.56	0.51	0.63
43 (Coquitlam)	148,567,663	0.65	0.64	0.81
44 (North Vancouver)	85,893,624	0.74	0.76	0.80
45 (West Vancouver)	32,095,016	0.82	0.65	0.68
46 (Sunshine Coast)	20,628,242	0.85	0.59	0.66
47 (Powell River)	13,728,206	0.96	0.97	1.17
48 (Howe Sound)	21,968,939	0.81	0.67	0.88
49 (Central Coast)	2,889,103	0.54	0.52	0.69

School District	Assessable Payroll 2004	Experience Rate 2006	Experience Rate 2005	Experience Rate 2004
50 (Haida Gwaii/Queen Charlotte)	5,950,021	0.81	0.78	0.89
51 (Boundary)	9,598,479	0.52	0.51	0.63
52 (Prince Rupert)	17,630,900	0.59	0.57	0.77
53 (Okanagan Similkameen)	15,356,458	0.66	0.62	0.72
54 (Bulkley Valley)	14,527,720	0.80	0.68	0.79
57 (Prince George)	81,073,945	0.74	0.65	0.76
58 (Nicola-Similkameen)	16,061,962	0.68	0.59	0.66
59 (Peace River South)	25,908,492	0.63	0.62	0.72
60 (Peace River North)	28,484,819	0.60	0.59	0.72
61 (Greater Victoria)	102,895,283	0.70	0.64	0.89
62 (Sooke)	45,130,823	0.69	0.65	0.84
63 (Saanich)	41,848,565	0.77	0.73	1.02
64 (Gulf Islands)	9,617,065	0.73	0.71	0.84
67 (Okanagan Skaha)	33,560,852	0.54	0.51	0.68
68 (Nanaimo-Ladysmith)	74,110,423	0.65	0.57	0.66
69 (Qualicum)	26,010,310	0.53	0.49	0.64
70 (Alberni)	25,557,476	0.66	0.60	0.75
71 (Comox Valley)	45,663,100	0.62	0.54	0.69
72 (Campbell River)	33,573,997	0.74	0.69	0.97
73 (Kamloops/Thompson)	75,626,138	0.57	0.54	0.68
74 (Gold Trail)	12,609,423	0.80	0.64	0.71
75 (Mission)	34,884,681	0.53	0.55	0.72
78 (Fraser-Cascade)	12,245,064	0.56	0.53	0.65
79 (Cowichan Valley)	46,389,900	0.76	0.69	0.83
81 (Fort Nelson)	5,964,667	0.55	0.49	0.63
82 (Coast Mountains)	32,218,347	0.92	0.91	1.01
83 (North Okanagan-Shuswap)	38,310,076	0.75	0.70	0.87
84 (Vancouver Island West)	4,203,975	0.58	0.56	0.74
85 (Vancouver Island North)	11,689,226	0.75	0.62	0.80
87 (Stikine)	3,458,841	0.53	0.51	0.67
91 (Nechako Lakes)	28,900,935	0.62	0.57	0.63
92 (Nisga'a)	4,663,143	0.75	0.72	0.93
93 (CSF)	17,730,737	0.40	0.38	0.51

*Prepared from WCB data as of November 2005

Custodial Best Practices

The BC School Safety Association has recently been the recipient of funding from WorkSafe BC to develop guidelines and safe work practices for custodial staff in school districts. The work is a result of an Expert Panel report, *Reducing Musculoskeletal Injuries among School Board Custodial Workers through Cooperative Summer Work Organization*. The project is currently underway and an official launch of the guidelines is estimated for June 2006.

Status of Support Staff Collective Bargaining

Following is a brief summary of the status of support staff collective bargaining as at January 1, 2006:

Number of Support Staff Collective Agreements	69
Number of Settlements Concluded and Ratified	42

Summary of Key Provisions

- **Term** – to date, all but one district has negotiated a three year deal expiring June 30, 2006 (one district has negotiated a four year deal expiring December 31, 2007).
- **Wage Increases** – a majority of districts have either negotiated three years of 0%, or two years of 0% and a wage reopener effective July 1, 2005.
- **Health and Welfare Benefits** – Many districts have agreed to a committee to review benefits and benefit costs and to make recommendations to address the issue of rising benefit costs.
- **WCB Top-up** – Several districts were able to address the ongoing inequity with employees receiving WCB and top-up. The negotiated changes have ranged from language allowing only top-up to net income to the elimination of the top-up altogether.
- **Contracting Out** – Under the current PSEC guidelines, school boards are required to eliminate provisions that restrict the board’s ability to competitively tender capital construction projects of more than \$50,000. The majority of districts already have the ability to do this. Some districts have had to negotiate changes to comply with this policy.

All memoranda and summaries of settlement can be accessed on the BCPSEA website at www.bcpsea.bc.ca under Employee Groups / Support Staff / Publications / Support Staff Bargaining Bulletin. ◆—

BCPSEA reports on arbitration awards monthly in the *Grievance & Arbitration Update*.

Arbitration Update

Following is a summary of recent arbitrations of general interest. The awards are often based on specific language, past practice and/or bargaining history. If in doubt about the applicability of an award in your district, please contact your BCPSEA liaison or Laura Parks (604.730.4522, laurap@bcpsea.bc.ca) to obtain a copy of the award.

Freedom of Speech

As part of its Action Plan in response to the enactment of the *Public Education Flexibility and Choice Act*, in the fall of 2002 the BCTF distributed political materials regarding class size and other issues to locals for distribution to parents and posting on teacher bulletin boards. A number of districts took action to prevent the distribution of these materials, and directed teachers not to use parent-teacher interview time to discuss political issues surrounding class size.

Arbitrator Don Munroe upheld the union's grievance, ruling that the districts' actions violated teachers' right of free expression under section 2(b) of the *Charter of Rights and Freedoms*.

BCPSEA appealed the arbitrator's award directly to the Court of Appeal. On August 3, 2005, the Court issued its decision. The majority of the court (two of the three justices) voted to dismiss the appeal, with one judge dissenting.

BCTF/BCPSEA: Court of Appeal – Freedom of Speech

Grievance & Arbitration Update

No. 2005-08, September 2005

BCPSEA Reference No. A-48-2005

The full text of the Court's decision can be accessed at <http://www.courts.gov.bc.ca/jdb-txt/ca/05/03/2005bccao393.htm>

NOTE: BCPSEA has sought leave from the Supreme Court of Canada to appeal this decision.

Duty to Accommodate

1. An employee must seek a medical leave to create a duty to accommodate. An employer cannot be said to have failed to accommodate an alleged disability of which it has no knowledge.

School District No. 73 (Kamloops/Thompson):

Partial Medical Leave

Grievance & Arbitration Update

No. 2006-01, January 2006

BCPSEA Reference No. A-32-2005

2. An employee must disclose a disability to the employer to create a duty to accommodate. The union and/or the employee must be prepared to do their part to provide information sufficient to initiate the assessment of a claim for accommodation. While the employee may be entitled to invoke privacy rights, lack of disclosure which in turn leads to lack of knowledge, may ultimately impact on whether the employer has fulfilled its duty to accommodate to the point of undue hardship. Without sufficient information, an employer may not be able to accommodate to the extent expected.

An employee must be qualified for the accommodation sought. An employer is not required to accommodate an

employee into a position for which the employee is not qualified.

School District No. 73 (Kamloops/Thompson):

Duty to Accommodate

Grievance & Arbitration Update

No. 2005-04, April 2005

BCPSEA Reference No. A-04-200

3. The employer is not obliged to provide an employee with the employee's assignment of choice. In this case the grievor, who had mobility limitations and wanted to remain in the Learning Centre which was being downsized, was offered and accepted an assignment in a secondary school. The arbitrator determined that the employer had fulfilled its duty to accommodate. The grievor's new assignment was within his subject area and in a room that had been used by a teacher who was accommodated for mobility limitations.

Accommodation is not a single event or single effort. It is an individualized process that must consider and respond to both the individual and the context and is an ongoing shared process. An attempted arrangement must be monitored and adjusted or, if necessary, replaced.

School District No. 61 (Greater Victoria):

Qualifications/Management Rights/

Duty to Accommodate

Grievance & Arbitration Update

No. 2005-04, April 2005

BCPSEA Reference No. A-03-2005

NOTE: For a comprehensive summary on Duty to Accommodate, please see BCPSEA @Issue No. 2005-01, May 20, 2005.

Layoff and Recall

1. "Aggregate length of service in the employment of the board for actual time worked, inclusive of services under temporary appointment and part-time teaching" was determined to mean service within an unbroken period of employment with the board. Aggregate service does not include earlier periods of employment from which an employee had resigned, retired and/or been terminated and then rehired.

School District No. 68 (Nanaimo-

Ladysmith): Definition of "Aggregate" Seniority

Grievance & Arbitration Update

No. 2006-01, January 2006

BCPSEA Reference No. A-30-2005

2. Once a teacher accepts a re-engagement offer and is actively working, at any FTE level, the teacher has been re-engaged and is no longer to be retained on the re-engagement list.

School District No. 75 (Mission):

Recall to Part-Time Position

Grievance & Arbitration Update

No. 2005-09, October 2005

BCPSEA Reference No. A-24-2005

3. All employment rights end upon the acceptance of severance. An employee cannot accept severance and remain on the Teacher-on-Call (TOC) list. The acceptance of severance pay represents a complete termination of the employment relationship.

A teacher on the recall list does not become a TOC by virtue of opting to obtain employment through TOC assignments.

The just and reasonable cause protection for removal from the TOC list is intended to apply to removal for disciplinary reasons only. Even if teachers on recall became TOCs, removal

upon acceptance of severance is not disciplinary.

*School District No. 39 (Vancouver):
Severance Pay/Employment Rights
Grievance & Arbitration Update
No. 2005-08, September 2005
BCPSEA Reference No. A-20-2005*

4. Acceptance of a temporary assignment has no effect on the duration of a teacher's recall and severance rights. A teacher who works temporary assignments while on recall may acquire other rights (that of a temporary employee through conversion), however, these rights are not related to recall and severance rights.

*School District No. 6 (Rocky Mountain): Effect
of Temporary Employment on Recall Rights
Grievance & Arbitration Update
No. 2005-07, August 2005
BCPSEA Reference No. A-18-2005*

NOTE: In reaching a different conclusion from an earlier award in School District No. 5 (Southeast Kootenay), the Arbitrator considered and addressed an inherent inconsistency in the Southeast Kootenay award. The BCTF has appealed the Rocky Mountain decision.

5. During the layoff process, junior teachers may be deemed protected by virtue of particular skills. Only teachers not being retained should be laid off.

*School District No. 75 (Mission): Layoff Notice
(Reduced FTE/Surplus)
Grievance & Arbitration Update
No. 2005-01, January 2005
BCPSEA Reference No. A-66-2005*

Payment to Teachers During Summer Break

1. Teachers are eligible for supplemental employment insurance top-up in summer if they qualify for leave under the *Employment Standards Act* (ESA).

*School District No. 36 (Surrey): Maternity/
Parental Employment Insurance Top-Up
Grievance & Arbitration Update
No. 2006-01, January 2006*

BCPSEA Reference No. A-31-2005

NOTE: Since reporting on this award, we have received queries from districts whose practice is to not provide top-up over summer as leaves are not required. Such districts do not have to change their practice. The practice in Surrey was to provide top-up in summer.

2. Where teachers are paid on a 10 month basis, the employer is the correct recipient of a teacher's wage-loss benefits for July and August. If a teacher were to receive disability benefits in summer, the teacher would be receiving double payment for those two months.

*School District No. 43 (Coquitlam):
WCAT – Summer Wage-Loss Benefits
Grievance & Arbitration Update
No. 2005-09, October 2005*

BCPSEA Reference No. W-01-2005

WCAT Decision No. WCAT-2005-04543



Union Access to Information

BCPSEA currently has a number of grievances that contain a preliminary matter regarding the union's access to information. At issue is how much information the union is entitled to pre-grievance and pre-arbitration.

There are conflicting arbitral decisions (*SD No. 33 (Chilliwack)*, Arbitrator Korbin; and *Coast Mountain Bus Co. Ltd.*, Arbitrator Burke). The Court of Appeal recently issued a judgment which analyzes the intersection of collective agreement language and the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Following is a set of general guidelines based on that judgment developed by BCPSEA and Harris & Company. The Court of Appeal decision can be accessed at: <http://www.courts.gov.bc.ca/jdb-txt/ca/05/06/2005bcc0604.htm>

Guidelines

The union's access to information is guided by the specific language in the collective agreement. This access may be further limited by FOIPPA Part 3 – Protection of Privacy.

The Court of Appeal judgment states that where the collective agreement provides access to certain information and the union's purpose in accessing that information is for a purpose consistent with the employer's initial purpose in obtaining the information, disclosure is permitted, even if disclosure may include the personal information of a third party. An example would be where the employer initially requires information to select a suitable candidate for employment and the union subsequently seeks informa-

tion to ensure the selection was made in compliance with the collective agreement. However, disclosure is not unlimited. The employer must ensure that it discloses only the minimum amount of third party personal information necessary for the union to perform its task – personal identifiers and information not related to the initial purpose must be blocked out and the union is obliged to ensure that security arrangements are made to properly protect the information.

Access to information language varies between districts in that some provide a right to access documents, others a right to access information, and some a right to access both documents and information. Depending on the specific language, provision of information may be mandatory or discretionary. General access to information clauses may be impacted by specific language in other sections of the collective agreement; e.g., discipline and harassment.

The recommended process to follow in determining whether or not to provide information requested by the union prior to a grievance being filed or during the pre-arbitration stages of a grievance is:

1. Review the specific collective agreement language to determine if the parties agreed that the information requested is to be shared. It is important to note that FOIPPA Part 2 – Freedom of Information only covers FOIPPA requests and does not extend or enhance the access to information clause in a collective agreement. A district may have to review bargaining history and/or past practice in deter-

At issue is how much information the union is entitled to pre-grievance and pre-arbitration.

mining mutual intent if the language is not clear.

2. Assess whether the union's purpose in accessing the information is consistent with the employer's initial purpose in obtaining the information.
3. If provision of the information is discretionary and the district wishes to deny access, the district should be prepared to share the criteria upon which the decision was made.
4. If the district provides the information, and the information contains personal information of third parties, three conditions must be met:
 - a. Ensure that only the information necessary to the union's purpose is provided; e.g., in a post and fill grievance, the union only has access
 - b. Personal identifiers; e.g., name and contact information, and personal information not related to the initial purpose, must be blocked out.
 - c. The union must make an undertaking that it will ensure security arrangements have been made to protect the information.

If you have any questions about these guidelines, please contact Bonda Bitzer at 604.730.4505 or bondab@bcpsea.bc.ca.



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