

Looking to 2011

Human Resources in Public Education and the Learning Journey

While the past isn't a predictor of the future, where you start the future from can be a very telling indicator of how things might go.

We are now well into December 2010 and are looking toward the dawn of 2011. This will be a challenging period. Bargaining for support staff continues as it does in much of the public sector; bargaining between the BC Teachers' Federation (BCTF) and the BC Public School Employers' Association (BCPSEA) can commence as early as March; there will be a new Premier and a new Minister of Education; and human resource opportunities abound.

As 2010 closes we thought it would be helpful to review the key human resources issues, as those issues will form a backdrop for the January to June period. Are *telling indicators* emerging that can instruct our journey?

Make a Future



CAREERS IN BC EDUCATION

Innovations and Opportunities

In April 2008, Make a Future was established with an integrated recruitment portal comprised of an interactive website, web-based employer and employee resources, and a leading education job search engine managed by *applytoeducation*. For job seekers, the site offers information about the various job options within the sector as well as district-specific employment opportunities. For school districts and their employees, the site offers a centralized destination to post jobs and to access resources such as toolkits, guides, and reports.

Subsequent to establishing the recruitment portal, Make a Future expanded its range of support services in direct response to district requests. Services available to districts are organized in four categories: recruitment, selection, retention, and bundled services.

In the past year, the *makeafuture.ca* portal has attracted over half a million potential candidates to opportunities in British Columbia's education sector. Leveraging the power of social networks, Make a Future's promotional and communications capacity has grown. Broadcasting messages about opportunities in BC education to Make a Future's 900+ followers on Facebook and Twitter, Make a Future's social network has the potential to reach over 3,000 people.

Responding to districts' needs, the Make a Future team has been involved in a variety of senior leader searches for positions such as Director of Human Resources, Secretary Treasurer, Director of Facilities, and Superintendent. In addition, districts have accessed Make a Future's recruitment advertising services over 112 times this year.

In the upcoming year, districts can expect a fresh new look to the *makeafuture.ca* portal that will feature enhanced district profiles, integrated social media and interactive elements to help districts promote their communities and their opportunities, and a revamped Employers section with robust new tools, reports and content. Even more exciting will be the launch of Make a Future and *applytoeducation's* no cost online application system, which will be even easier to use.

With the goal of providing high quality, efficient, and cost-effective services, Make a Future continues to shape its portal and portfolio of services with the aim of supporting districts' immediate and long-term needs while promoting recruitment, selection, and retention best practice.



The BCPSEA HR Learning Series has been attended by over 800 participants, including 20 in-district programs. Improvements continue to be made and new courses offered. Programs include our foundation programs:

1. Productive Workplace Conversations Level 1: Understanding the Technology of Conversations
2. Productive Workplace Conversations Level 2: Interactions, Matters at Issue, and the Road to Resolution.
3. Navigating Your Way to Constructive Labour Relations: Understanding the What and the How

and programs of increasing specialty:

4. Disputes and the Collective Agreement
5. Collective Bargaining: Concepts and Constructs.
6. Public Education Collective Bargaining Academy.

The three day *Public Education Collective Bargaining Academy* has been very successful, building on the knowledge and skills gained in *Collective Bargaining: Concepts and Constructs*. The Academy is a high-energy, interactive learning opportunity in a unique three-day format. The Academy covers all aspects of collective bargaining set in a CHALLENGING environment and features lectures, facilitated discussions, small group activities, and a collective bargaining simulation. The next Academy is scheduled for January 12-14, 2011 in Vancouver. Details can be found at:

<http://www.bcpsea.bc.ca/access/events/prod/bargainacademy.html>

Labour Relations

Labour relations, while only one part of our statutory mandate under the *Public Sector Employers Act*, dominates our work on a variety of fronts. There have been many key events and cases decided that continue to shape our employment world...and collective bargaining has begun, first with support staff and soon with the BCTF.

▪ **Collective Bargaining and Support Staff**

All districts are now in a legal position to engage in collective bargaining with their support staff unions. At this point, CUPE (the largest support staff union) has established a council for the purpose of coordinating bargaining.

BCPSEA has also established a system to support school districts as they negotiate under the delegated authority model with support staff. One of the most important tools in place in support of this is the Collective Bargaining Information Management Centre (CBIMC). The CBIMC is an online portal which allows districts to share information on bargaining on a real-time basis.

At this point, it would appear that support staff unions are engaged in a drift strategy as they wait to see if the BCTF will progress in bargaining once they are in a position to commence their activities in March of this year.

▪ **Collective Bargaining and the BCTF — the Age-old Question of Structure**

Back to the Future: BCTF and the Search for Local Bargaining Continues

Following is an example of a recent e-mail from a local teachers' association to a school district (this e-mail was received by a number of districts):

We strongly believe that local Boards of Education should be re-empowered to bargain local issues and address these with local solutions.

Is the Board prepared to enter into a comprehensive dialogue with us with the ultimate goal of submitting a joint brief to the Ministry of Education and your bargaining agent, the British Columbia Public School Employers' Association, supporting a realignment of the

current limited split of issues that we are permitted to address and return to meaningful local bargaining?

At the risk of repeating what is well known to most of us it is important, for illustrative purposes, to put the latest discussions regarding the approach and organization of bargaining in context. In a letter from BCPSEA to the BCTF, the association observed that the approach the parties adopt should be informed by the experiences and conclusions drawn from this course of events.

With the 1987 organization of teacher union locals in each BC school district, teachers and boards of education experienced full scope collective bargaining between local school districts and teachers' union locals of the BCTF. The BCTF has characterized the system of local bargaining as follows:

What emerged was a system of co-ordinated local bargaining. Locals were the bargaining unit charged with the responsibility of negotiating a collective agreement with their school board. The BCTF developed the Collective Bargaining Handbook, with model clause language on every conceivable provision that teachers might wish to negotiate. Local bargaining teams were trained by the BCTF and supported by staff assigned to work with locals.

Additional staff were hired to assist and new policies and procedures were put in place to support the new bargaining regime, including strike pay and assistance.

The first round of full collective bargaining for teachers in 1988 continued to mobilize the excitement and energy of teachers that was generated in the sign-up certification campaign the year before. On November 28, 1988, Kitimat teachers began a 10-day strike before successfully concluding an agreement that included class-size maximums. Eleven other locals struck in the first round and others mobilized to achieve their objectives that became identified in the slogan, "WHY NOT HERE?" The important aspect of the experience of co-ordinated local bargaining was not that we did well—we did. What was so very important about local bargaining was the high degree of democracy and member participation in decisions and the process of achieving local collective agreements. As a Federation officer in the first two rounds of local bargaining, I well remember my visits to locals and the high percentage of members who attended meetings, took part in activities, and supported their bargaining teams in their efforts to achieve improvements in teacher salaries, working conditions, and professional rights.

The stories of local bargaining in the three rounds before provincial bargaining was imposed in 1994 constitute an exciting and dramatic period in the history of the BCTF.¹

The local bargaining experience (what came to be seen as highly patterned and centralized bargaining on the part of BCTF locals across the province) became the backdrop against which the next milestone was set. In 1992, the provincial government established the Korbin Commission, with a mandate to examine human resource practices in the public sector and

¹ Novakowski, Ken. *Teacher* newsmagazine, BC Teachers' Federation, April 2000.

propose a new framework of human resource management. The BCTF, in its submission to the Commission, made the following comments:

Centralization is often seen as having negative consequences for the bargaining and representation process. These consequences include a reduction in the local flexibility and autonomy of both management and workers and a restriction of the scope of worker participation. As a result, the workers may become alienated and frustrated, and hence less productive and more prone to both official and unofficial strike action.

Given the importance of negotiations with the district's teachers on matters that are critical to good school programs and practices, the heart of the trustees' mandate would be taken away by centralization. It's not just bargaining. Proposals for centralization of this critical function really raise the question as to whether any meaningful role remains for trustees, or even for local boards as institutions.

The BCTF also recommended a continuation of local bargaining:

Collective Bargaining for teachers — a right long withheld from them — must be upheld and continued on the basis of direct negotiations with their employers, the school board in each district.

In contrast, the employer community recommended forms of centralized bargaining. While the Korbin Commission did not recommend one particular model, the provincial government proceeded to enact the *Public Education Labour Relations Act* (PELRA) in 1994. PELRA required that the parties negotiate which matters would be dealt with at local bargaining tables and which matters would be negotiated provincially. In April 1995, the BCTF and BCPSEA completed the "split of issues" and all substantive issues, including monetary provisions, were placed at the provincial table. In 1995, 1996 and 1997, the parties modified the split of issues with four addenda, addressing unpaid leave (two addenda), selection of administrative officers, and professional development.

Since the Korbin Commission, there have been three additional studies into K-12 public education collective bargaining. Don Wright's Commission to Review Teacher Collective Bargaining provided 12 recommendations, aligned with three key principles as identified by Dr. Wright:

- Teachers must have an effective voice in influencing the terms and conditions of their employment
- There must be sufficient transparency so that proper accountability can be established, and
- We need to find the ability to engage in a true dialogue about how to make a good public school system even better.

Arbitrator/Mediator Vince Ready was Industrial Inquiry Commissioner, initially appointed in 2005, to facilitate the next round of collective bargaining between the BCTF and BCPSEA.

Mr Ready's January 2006 Interim Report commented upon the history and status of collective bargaining:

Although the history of local bargaining before 1994 was fraught with disputes and other difficulties, the evidence is overwhelming that the parties have not conducted meaningful negotiations in the decade since the *Public Education Labour Relations Act* established the present bargaining structure. It is clear that, unless both sides are committed to collective bargaining, the process will be fruitless no matter what system is adopted or legislated.

As a starting point, all parties must recognize this failure to engage in meaningful negotiations. This will require them to establish a realistic bargaining agenda and then commit to concluding collective bargaining within realistic timeframes. These are basic steps in the collective bargaining process, but they have been sadly lacking between these parties.

It is trite to say that free collective bargaining carries with it the responsibility to make it work. That responsibility lies mainly with the parties. That said, I will continue to study other bargaining structures that may provide a workable variation or alternative to the present system.

Mr. Ready's April 2006 *Interim Report #2 for Transitional Negotiations* provided guidelines for the coming round of collective bargaining. Those guidelines were adopted and resulted in the first negotiated collective agreement between the BCTF and BCPSEA.

Mr. Ready concluded his work as Commissioner with the February 2007 *Final Report for Collective Bargaining Options*. The Report addressed the following three questions:

1. What matters, if any, should be concluded at local bargaining
2. What matters should be concluded through a Provincial Master Collective Agreement, and
3. What bargaining structure should be adopted in collective bargaining between the parties?

The Report reflected upon the guidelines provided in the April 2006 Interim Report, noting:

The parties agreed to implement these Recommendations and commenced collective bargaining. The reports I have received persuade me that the modifications to the traditional bargaining structure assisted the parties in avoiding breakdowns of bargaining, helped them move forward in a timely way and in ensuring that through the direct involvement of Government officials, the full mandate for achieving a collective agreement was understood and ultimately accepted.

The principal credit for the achievement of the voluntary collective agreement should reside with the parties themselves. It was evident to me and to the Facilitator/Mediator that the parties were dedicated to the achievement of a collective agreement. Compromises were reached and solutions were found that allowed them to do so.

I have, therefore, concluded that, in the circumstances, it is not the format or process of collective bargaining which will help achieve a collective agreement. Instead, it is necessary to provide support to the parties in their desire to achieve a collective agreement. The presence of a Facilitator/Mediator and the presence of a Government official provided that support.

Having just achieved such a singular success, I am reluctant to recommend a wholesale change in the process of collective bargaining. Imposing solutions for collective bargaining which have worked in other jurisdictions may very well disturb the commitment of the parties which was evident during 2006. This would be contrary to the public interest.

Instead, my recommendations have been forged on the experience of 2005 and 2006. I also have been conscious of the damage which might be done to the new relationship by singling out these parties for separate and unique treatment as compared to other participants in collective bargaining in the public sector in British Columbia.

I will not make a separate recommendation about bargaining issues locally. If the parties in collective bargaining decide that certain issues should be decided at the local level that is up to them to decide.

At a meeting in mid-September, BCTF representatives described how each local has different issues that need to be addressed, and different prioritization of those issues. This was followed by correspondence from the BCTF:

I write regarding your letter of October 20 where you say we have not identified the specific items which will be bargained locally. In our September 14, 2010 letter to you we are clear that we wish to see all items other than salary, benefits, hours of work and paid leave bargained at the local level. Toward that goal, we requested that you meet with us for the purpose of negotiating a mid-contract modification.

We conclude from your letter that you are not interested in renegotiating the split of issues through a mid-contract modification prior to the next round of bargaining. If our conclusion is in error, please advise.

As evidenced by the commentary and conclusions of Mr. Ready, and the successful outcome of the 2006 round of bargaining, it is not the format or process of collective bargaining that determines its success. Rather, the attitude and commitment of the parties are the drivers of success.

The collective agreement now contains the following provincially negotiated provisions:

1. Term, Continuation and Renegotiation
2. Recognition of The Union
3. Membership Requirement
4. Local and BCTF Dues Deduction

5. Committee Membership
6. Grievance Procedure
7. Leave for Provincial Contract Negotiations
8. Legislative Change
9. Salary
10. Teacher On Call Pay and Benefits
11. Salary Determination for Employees in Adult Education
12. EI Rebate
13. Registered Retirement Savings Plan
14. Salary Indemnity Plan Allowance
15. Reimbursement for Personal Property Loss
16. Optional Twelve-Month Pay Plan
17. Pay Periods
18. Reimbursement for Mileage and Insurance
19. Benefits
20. Category 5+
21. Resignation
22. Seniority
23. Alternate School Calendar
24. Preparation Time
25. Middle Schools
26. Non-Sexist Environment
27. Harassment/Sexual Harassment
28. Portability of Sick Leave
29. Compassionate Care Leave.

In addition to these matters, there are also 16 provincial letters of understanding on a variety of issues.

Through the joint efforts of the respective BCTF/BCPSEA staff resources, the parties have been able to complete working collective agreement documents in 54 of the 60 districts.

With this work as the foundation, and informed by the parties' bargaining experiences and inquiries, BCPSEA proposed that the parties move beyond the discussion of bargaining forum to a discussion that identifies and seeks to address the matters at issue. The nature of the matters at issue, the strategic choices each party makes regarding the preparation/conduct of bargaining, and the degree of commonality that emerges will provide the necessary evidence as to what forum is appropriate, BCPSEA concluded.

BCPSEA does not see that re-establishing what is a decades-old system of local board of education—local teachers' union bargaining and the resulting degree of duplication of effort, akin to the previously referenced BCTF characterization of the pre-1994 rounds of local bargaining, provides the most efficient means possible in a time when districts have sought to streamline processes in order to ensure the greatest possible resources are available at the school level.

Public education in BC has a bargaining construct with centralized bargaining agents and provincial compensation mandates, continuing down the path toward a greater degree of common terms and conditions of employment. There continue to be, however, provisions

that can be characterized as holdovers from the pre-provincial bargaining period. Some of the provisions have been modified through the mid-contract modification process. This may necessitate a unique process to address these issues. BCPSEA suggested:

Given this, we propose that the provincial parties meet to discuss the most effective approach to this round of bargaining without a predetermined process outcome. This approach will ensure that we can tailor any solution to the actual issues. We further propose that the parties should seek to ensure any process for collective bargaining:

- is constructive for both parties
- minimizes the possibility of disruption and harm to local relationships
- is sustainable for both parties
- is cost effective with limited duplication of effort and cost
- is efficient
- is best able to address issues unique to one district or region.

In order to begin this process, one possible approach would be for the provincial parties to:

- identify all matters at issue
- identify matters unique to one district or region
- develop a process to address such matters subject to the principles above.

Further BCPSEA proposed the parties again revisited what worked in 2006:

that, for the upcoming round of collective bargaining, the BCTF and BCPSEA together review the February 2007 Final Report for Collective Bargaining Options and incorporate the process options that the parties believe will facilitate bargaining.

And so it goes....

Preparing for Teacher–Public School Employer Bargaining 2011

...shaped by the interplay of employer interests, government priorities, economic, social and human resource factors....

As an employers' association, BCPSEA has a unique role related to collective bargaining — balancing the needs/interests of boards of education as employers with those of government on the public policy/fiscal side to ensure agreements are grounded in the realistic world of public education...the changing world of public education.

Bargaining will be both a process and outcome challenge if early events and commentary are any indication. On the compensation mandate that applies to the public sector:

The BCTF says it will bargain increases in pay no matter what the government says despite the fact its 45,000 members are subject to the provincial government's wage freeze until

2012. BCTF President Susan Lambert said the goals, objectives and strategy were worked out earlier this month.²

These statements set an early hurdle.

We completed a series of regional meetings across the province this fall. As a result of the dialogue and information gathered through these sessions, we were able to develop a series of broad bargaining themes. We are now gathering data regarding the importance and priorities between and within these themes in a bargaining survey.

The results of the survey will be provided to the Representative Council in January. From the Representative Council, the bargaining objectives will be developed and confirmed and bargaining with the BCTF will commence as early as March 2011.

Employment and Public Policy Go to Court

Do you remember? In early 2002 the newly elected provincial government, among its early legislative initiatives, introduced two pieces of education legislation that would have workplace and, in turn, labour relations implications. At the root of the initiatives was, first, Bill 27, the *Education Services Collective Agreement Act*, to legislate striking teachers back to work, and second, Bill 28, the *Public Education Flexibility and Choice Act*, to implement a pillar in the government's education agenda — moving school organization matters such as class size and composition from the collective bargaining forum to the *School Act*, where more (parents, principals, teachers) than just the bargaining parties play a meaningful role in the determination of the organization of schools.

While at the time the changes enjoyed support from many in the education community, the BCTF was opposed. That opposition has played out in court challenges, grievances and arbitrations, and other campaigns in opposition punctuated by legislative responses. namely Bills 19 and 33. *And now the next chapter....*

The BCTF court challenge to the 2002 legislation enacted by the provincial government was heard in BC Supreme Court in November. The BCTF is challenging the constitutionality of Bills 27 and 28, enacted in January 2002. and Bill 19 (*Education Services Collective Agreement Amendment Act*), enacted in 2004. The BCTF action is against the provincial government, as the author of the legislation subject to its challenge. BCPSEA is not a party to this proceeding.

Bill 27 legislated the BCTF–BCPSEA collective agreement and also established one set of local terms and conditions in districts which had been amalgamated in 1996 but which were still operating under the terms of multiple local agreements. Bill 28 inserted into the *School Act* provisions relating to class size and composition and non-enrolling teacher ratios and amended the *School Act* to prevent the negotiation of certain restrictions on these issues. Bill 28 also established an arbitration process for ensuring that the collective agreement no longer contained provisions which ran afoul of the amendments to the *School Act*. The arbitrator's

² "Lambert: BC teachers' wages lag." CHNL Radio, Wednesday, November 24, 2010.

decision, which removed a number of provisions from the collective agreement, was judicially reviewed by the union and overturned by the BC Supreme Court. Bill 19 was then enacted to reinstate the removal of those provisions.

The BCTF argues that Bills 27, 28, and 19 substantially interfere with the guarantee of freedom of association in the *Canadian Charter of Rights and Freedoms* (the Charter) by removing terms from the collective agreement, placing them in legislation, and providing them with no recourse to collective bargaining with respect to those issues. It seeks an order that the legislation be found to be of no force and effect.

The government's position is that there was no substantial interference with the guarantee of freedom of association, or if there was, it was justified. It takes the position that issues of class size and composition were not traditionally bargained and are more appropriately dealt with in legislation and, in any event, the BCTF had input into the subsequent amendments to the class size legislation through the Learning Roundtable. Government also takes the position that its legislation preserved the ability of the parties to bargain collectively on traditional collective bargaining issues. With respect to amalgamation, its position is that nothing prevented the parties from negotiating this issue and they did, in fact, do so.

Finally, the government's position is that even if the legislation did substantially interfere with the guarantee of freedom of association, it was justified because its purpose was to enable boards of education to focus resources on the delivery of educational services and because it did so in a manner which only minimally impaired freedom of association.

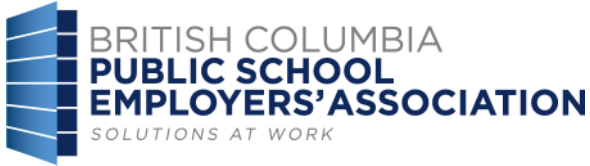
The Court has now heard submissions from both the Union and the Attorney General; a decision is expected in the spring of 2011.

The issue of the organization of schools has been strenuously litigated on a number of fronts. So what are the possible scenarios for the outcome of this case?

- The BCTF claim could be dismissed.
- If the Court finds that the BCTF claim has merit, it could issue an order similar to the *Health Services* case and suspend the declaration that the legislation is unconstitutional for a period of time to give the government an opportunity to address the repercussions of the decision, during which time the government could negotiate a resolution of the issues with the BCTF or enact legislation that complies with the Charter.
- The Court could issue a ruling declaring unconstitutional any or all of Bills 27, 28 or 19.

Final Comments

Political changes, policy initiatives, bargaining and implications for our work will all make for an interesting 2011. In the meantime, have a great Christmas and we look forward to seeing you in January at our pro-d sessions on January 27, our Representative Council on January 28, and our AGM on January 28-29.



The BC Public School Employers' Association (BCPSEA) supports public education through innovative human resource practices, partnerships, and services. As the employers' association and accredited bargaining agent for the province's 60 public boards of education, we provide a full range of human resource services with a focus on the development, coordination, and facilitation of human resources best practices.

