

Article A.1: Term, Continuation, and Renegotiation

❖ Overview

This article sets out the effective dates and terms of continuation for the collective agreement.

This article also details the process for adding new employee groups to the bargaining unit and determining the terms and conditions under which they will be employed.

❖ Article A.1: Term, Continuation, and Renegotiation

In this Collective Agreement, the term “Previous Collective Agreement” means the Collective Agreement constituted under the Education Services Collective Agreement Act, S.B.C. 2002, c.1, and extended by the Teachers’ Collective Agreement Act, S.B.C. 2005, c. 27, that was in effect between the parties for the period July 1, 2001 to June 30, 2006, including any amendments agreed to by the parties during that period.

1. *Except as otherwise specifically provided, this Collective Agreement is effective July 1, 2006 to June 30, 2011. The parties agree that not less than four (4) months preceding the expiry of this Collective Agreement, they shall commence collective bargaining in good faith with the object of renewal or revision of this Collective Agreement and the concluding of a collective agreement for the subsequent period.*
2. *In the event that a new collective agreement is not in place by June 30, 2011, the terms of this Collective Agreement are deemed to remain in effect until that date on which a new agreement is concluded.*
3. *All terms and conditions of the Previous Collective Agreement are included in the Collective Agreement, except where a term or condition is amended or modified in accordance with this Collective Agreement.*
4.
 - a. *If employees are added to the bargaining unit established under section 5 of the Public Education Labour Relations Act during the term of this Collective Agreement, the parties shall negotiate terms and conditions that apply to those employees.*
 - b. *If the parties are unable to agree on terms and conditions applicable to those employees, either party may refer the issues in dispute to a*

mutually acceptable arbitrator who shall have jurisdiction to impose terms and conditions.

- c. If the parties are unable to agree on an arbitrator either party may request the Director of the Collective Agreement Arbitration Bureau to appoint an arbitrator.*
- 5. a. Changes in those matters agreed to by a local union and the employer will amend the Previous Collective Agreement provisions and form part of this Collective Agreement, subject to Article A.1.5.b below.*
- b. A local union and the employer must agree to the manner and timing of implementation of a change in a local matter.*
- c. i. The Collective Agreement continues previous agreements between the parties with respect to the designation of provincial and local matters (See Letter of Understanding No. 1).*
 - ii. The parties may agree to another designation which is consistent with the Public Education Labour Relations Act.*

❖ Explanation

In this Collective Agreement, the term “Previous Collective Agreement” means the Collective Agreement constituted under the Education Services Collective Agreement Act, S.B.C. 2002, c.1, and extended by the Teachers’ Collective Agreement Act, S.B.C. 2005, c. 27, that was in effect between the parties for the period July 1, 2001 to June 30, 2006, including any amendments agreed to by the parties during that period.

This paragraph clarifies what is included in and meant by the term “previous collective agreement.” It provides a specific time frame and specifically captures the changes during that period.

- A.1.1** *1. Except as otherwise specifically provided, this Collective Agreement is effective July 1, 2006 to June 30, 2011. The parties agree that not less than four (4) months preceding the expiry of this Collective Agreement, they shall commence collective bargaining in good faith with the object of renewal or revision of this Collective Agreement and the concluding of a collective agreement for the subsequent period.*

A.1.1 provides that unless a specific date is referenced in an article or provision of the collective agreement, the entire agreement is effective from July 1, 2006 until June 30, 2011. The effective dates of the new salary grids are examples of exceptions to the July 1, 2006 date.

- A.1.2** 2. *In the event that a new collective agreement is not in place by June 30, 2011, the terms of this Collective Agreement are deemed to remain in effect until that date on which a new agreement is concluded.*

This clause provides for the continuation of the collective agreement after June 30, 2011 if a new agreement has not yet been negotiated or otherwise put in place. The exceptions to this article would be any letters of understanding or memoranda of agreement that expire on a specific date, or have an earlier deadline for completing the referenced task. An example of the latter is the Provincial Articles Housekeeping Committee.

- A.1.3** 3. *All terms and conditions of the Previous Collective Agreement are included in the Collective Agreement, except where a term or condition is amended or modified in accordance with this Collective Agreement.*

A.1.3 provides that the provisions of the previous collective agreement (Provincial Collective Agreement 2001-2004) in each district are continued by this collective agreement, except where a specific provision has been changed pursuant to the collective agreement.

Some examples of such changes are the scheduled amendments to the salary grids, and the new provisions on seniority (Article C.2) and on sick leave (Article G.1).

Unless expressly stated to the contrary, provincial provisions have replaced previously negotiated provisions in Previous Local Agreements on the same matters.

A.1.4 ***A.1.4.a and A.1.4.b***

4. a. *If employees are added to the bargaining unit established under section 5 of the Public Education Labour Relations Act during the term of this Collective Agreement, the parties shall negotiate terms and conditions that apply to those employees.*
- b. *If the parties are unable to agree on terms and conditions applicable to those employees, either party may refer the issues in dispute to a mutually acceptable arbitrator who shall have jurisdiction to impose terms and conditions.*

General Labour Relations Background

When employees are added to a bargaining unit through established processes at the Labour Relations Board, the union and the employer must consider whether the existing collective agreement provides appropriate terms and conditions of employment for the newly included employees. While the union and the employer are making this determination, the pre-inclusion terms and conditions of employment remain in place unless they agree otherwise.

When a newly included employee has a position that is significantly different from the positions for which the agreement was negotiated, the parties may disagree as to whether one or more articles should apply to the newly included employee. Alternatively, the parties may agree that some articles can apply if they are modified through negotiations. In these cases, the parties are obliged to attempt to negotiate a resolution to the differences.

If employees are added to the bargaining unit during the term of the collective agreement, strike or lockout are not available options to resolve disagreements. Instead, under this article, any unresolved issues arising from a new inclusion must be resolved through negotiations and/or binding arbitration. If negotiations break down, an arbitrator will be selected or appointed, submissions will be made by the two parties and a binding decision rendered.

Generally, the issues that need to be arbitrated refer to wage or salary levels and specific conditions of employment, such as the length of the work day, or shift work. In the public education sector, differences will usually involve non-teaching staff inclusions – for example, Associated Professionals – on such matters as the salary grid and increment pattern, hours of work, and the appropriateness of preparation time.

- A.1.4.c* *c. If the parties are unable to agree on an arbitrator either party may request the Director of the Collective Agreement Arbitration Bureau to appoint an arbitrator.*

When the BCTF and BCPSEA are unable to agree on an arbitrator, either party may ask the Director of the Collective Agreement Arbitration Bureau to appoint an arbitrator.

BCPSEA Procedures

As the bargaining agents, BCPSEA and the BCTF have the responsibility and authority to address new inclusions.

When an employee or group of employees is included in the bargaining unit, BCPSEA will require a copy of the job description, or if one is not available, a written description of the position's duties. BCPSEA will also require a copy of the employment contract. If a written contract is not in place or if it does not identify all the terms and conditions of employment, BCPSEA will require a written description of the terms and conditions.

In consultation with the districts involved, BCPSEA will be responsible for negotiations and any consequent arbitration.

New categories of employees have been added in several districts since 1995. In some cases, negotiations have been lengthy and ultimately required an arbitration process to resolve outstanding issues. In others, the parties successfully negotiated all terms for the newly included group. To date, three arbitration awards deal with the inclusion of Adult Education teachers and one award deals with the inclusion of an occupational therapist. Terms have been

negotiated for speech and language pathologists, for school nurses, and for the merger of a union representing Continuing Education teachers.

Anticipated New Positions

To ensure consistency, a district intending to create a new position that might be included in the teacher bargaining unit must consult with BCPSEA before creating the position or notifying the local teachers' association of its creation. According to our bylaws, voluntary inclusions are not permitted.

A.1.5 A.1.5.a and A.1.5.b

5. a. *Changes in those matters agreed to by a local union and the employer will amend the Previous Collective Agreement provisions and form part of this Collective Agreement, subject to Article A.1.5.b below.*
- b. *A local union and the employer must agree to the manner and timing of implementation of a change in a local matter.*

Clauses A.1.5.a and b allow for changes to local matters (as agreed by the local and the district) to be included in the new collective agreement. These changes may or may not be effective at the same time as the new provincial agreement takes effect. Paragraph b provides that the local parties will agree when and how the changes are to take effect. For example, if the district and the local agree to a different timeline for letters of discipline to remain on a personnel file, under this clause they might agree to a specific date for all new letters of discipline, with the previous timeline applying to existing letters on file.

- #### **A.1.5.c**
- c. i. *The Collective Agreement continues previous agreements between the parties with respect to the designation of provincial and local matters (See Letter of Understanding No. 1).*
 - ii. *The parties may agree to another designation which is consistent with the Public Education Labour Relations Act.*

Prior to commencing bargaining for the first provincial collective agreement, the BCTF and BCPSEA had to agree which issues were "provincial matters" for the provincial parties to negotiate, and which issues were "local matters" for the local and the district to negotiate.

The conclusion of this preliminary step was recorded in several letters of understanding and two appendices, which continue to be in effect; these documents in total comprise Letter of Understanding No.1, a complete copy of which may be found in the Letter of Understanding section of this manual.

Some clarifications have subsequently occurred, and clause A.1.5.c.ii allows for the BCTF and BCPSEA to agree on further changes, provided that such changes are consistent with the *Public Education Labour Relations Act*.

❖ Implementation

Many changes to the previous collective agreement have been awarded or negotiated, and will either supersede or work alongside existing provisions.

In relating each provincial article to the equivalent local agreement, administrators should err on the side of caution and seek guidance from their labour relations liaison at BCPSEA if they have any doubt what the provincial language should replace, or what action is required.

At a minimum, the complete, updated agreement consists of the Previous Local Agreement (1992), as amended by the following:

- The Transitional Collective Agreement in 1996
- The Agreement in Committee in 1998
- The *Education Services Collective Agreement Act* in 2002, and resulting changes pursuant to the *Education Services Collective Agreement Amendment Act* in 2004
- The provisions for Teacher on Call seniority and salary harmonization as set out in Vince Ready's recommendations of October 20, 2005 and the subsequent awards
- This negotiated agreement (2006-2011).

In addition, amendments may result from approved mid-contract modifications, local bargaining, or certain arbitration awards. BCPSEA will prepare a "working document" for each school district to update the provincial collective agreement as it applies in that district. Each district should meet with its local association to review and discuss how the new provincial language affects the language in the previous collective agreement. If the district and the local disagree on what to include in the printed document that is to be made available to administration and teachers, the district and the local should refer the issue to BCPSEA and the BCTF.

❖ Relationship to Other Articles

Letter of Understanding No. 8 Re: Updating the Provincial Collective Agreement Mid-Contract Modification Process provides for a modified mid-contract modification process when updating the local working document. Specific criteria are set out for the application of this LOU, and any disagreements on whether a specific agreement falls within the identified criteria can be referred to expedited arbitration for resolution.

See also the Responsibilities section of this manual for a more complete explanation of the processes involved in inclusions, mid-contract modifications and local bargaining.