Updating the Provincial Collective Agreement Mid-Contract Modification Process

❖ Overview

This letter of understanding establishes a separate and distinct mid-contract modification process to allow for the updating of stale-dated language in working documents. The parties agreed that the process would commence July 1, 2007. The updating process agreed to in this letter of understanding is not an expanded form of local bargaining; nor is it a replacement of the Standard Mid-contract Modification process. This is an optional process with no resolution mechanism if the parties do not agree.

❖ Letter of Understanding No. 8
Re: Updating the Provincial Collective Agreement Mid-Contract Modification Process

1. *Further to our discussions of June 25, 2006, we write to confirm that we have jointly agreed that effective July 1, 2007 or at an earlier time agreed to by the local and the employer, and continuing until 3 months prior to the expiry of this collective agreement, both parties will amend their respective mid-contract modification processes. Specifically, we have agreed that neither BCPSEA or the BCTF will reject any mid-contract modifications proposed by the local parties which achieve one or more of the following purposes (and no other purposes):*

    a. *The elimination of out-of-date references to terms, dates or other matters;*

    b. *The updating of collective agreement language that is either no longer relevant or functional; or*

    c. *The resolution of internal inconsistencies and incongruities within individual agreements.*

2. *As discussed, nothing in this letter permits the local parties to make amendments to common provincial language.*

3. *Finally, we confirm that any disputes regarding the rejection by one of the provincial parties of a proposed change on the basis of non-compliance with paragraph 1 parts a, b & c above shall be referred to Irene Holden for facilitation and resolution.*

❖ Explanation

8.1 *1. Further to our discussions of June 25, 2006, we write to confirm that we have jointly agreed that effective July 1, 2007 or at an earlier time agreed to by the local and the employer, and continuing until 3 months prior to the expiry of this collective agreement, both parties will amend their respective mid-contract modification processes. Specifically, we have agreed that neither BCPSEA or the BCTF will reject any mid-contract modifications proposed by the local parties which achieve one or more of the following purposes (and no other purposes):*

a. The elimination of out-of-date references to terms, dates or other matters;

b. The updating of collective agreement language that is either no longer relevant or functional; or

c. The resolution of internal inconsistencies and incongruities within individual agreements.

This confirms that for a limited period of time, BCPSEA and BCTF have given the local parties greater latitude to amend certain provisions in their working documents, subject to those changes falling within clearly defined criteria which are set out below. Discussions for this purpose may start July 1, 2007 (or earlier if agreed) and may end no later than March 31, 2011.

This paragraph also records the agreement that neither BCPSEA nor the BCTF will reject any modification if it is for the specific and limited purpose of:

- Eliminating out of date references, dates, etc.
- Updating language which is no longer relevant or functional
- Resolving internal inconsistencies and incongruities

A district which is asked to participate in discussions under this letter of understanding should contact their BCPSEA liaison to review the proposed language the local is seeking to amend in light of the criteria. A more complete explanation of the criteria and some examples of each criterion follow.

Out of date references

a. The elimination of out-of-date references to terms, dates or other matters;

Examples of appropriate changes under this criterion would be the updating of legislative references, the deletion of effective dates that have passed, etc. Note the following possibilities:

- *Human Rights Code* rather than the *Human Rights Act*
- Maternity and parental leave provisions now fall under Part 6 of the *Employment Standards Act*; they used to be found under Part 7

No longer relevant or functional

b. The updating of collective agreement language that is either no longer relevant or functional;

Language which is no longer relevant or functional is normally the result of an event having occurred (i.e., new or amended legislation, restructuring within the school district, timing issues, etc).

Examples of changes to legislation which have impacted teacher agreements are:

- The elimination of accreditation
- *Employment Standards Act* changes in pregnancy/parental leave requirements
- The elimination of the term administrative officer (AO).

Current language may have been rendered no longer relevant or functional through these examples of school district restructuring:

- The closure of a school which ran on a different bell schedule or school calendar
- The elimination of a school program cited in the agreement

Internal Inconsistencies and incongruities

c. The resolution of internal inconsistencies and incongruities within individual agreements.

In some agreements, there are current provisions which have competing or conflicting interpretations that cannot be reconciled or where the current language has competing interpretations with new legislation.

A frequently occurring example of competing/conflicting language within a collective agreement is where:

i. Layoff and recall language requires that a vacancy first goes to an employee on recall, while

ii. Post and fill articles give first priority to a continuing teacher, or to a teacher returning from leave, and recall is in a lower band.

An example of collective agreement language which is inconsistent with legislation is:

i. The seniority article limits the accrual of seniority for employees on leave to only a few limited types of leave, while

ii. The new *Employment Standards Act* provision for Compassionate Care Leave provides that seniority will accrue during such leaves as it is a plan beneficial to an employee.

It should be noted that this is not a bargaining exercise; rather, it is an administrative one that does not entail either party gaining on substantive issues as would be the case in bargaining.

Both of the local parties must agree to amend a specific provision. This letter of understanding does not require either the local or the district to negotiate changes to any provision if they do not choose to do so. Moreover, there is no dispute resolution mechanism if one party wishes to amend a provision and the other does not, nor if both parties would like to amend the provision but cannot agree on the amending language.

This LOU does have a limited application. For changes to other provincial matters articles, please refer to Relationship to Other Articles below.

8.2 *2. As discussed, nothing in this letter permits the local parties to make amendments to common provincial language.*

Clarifies that locals and districts shall not make changes to any items negotiated by the provincial parties. For example, all articles set out in this manual's Table of Contents are common provincial articles, which are outside the scope of this LOU.

This process is also not intended for the local parties to amend language stemming from Vince Ready's Recommendations of October 2005, or to language that interfaces with language from the Ready award or other provincially negotiated language.

8.3 *3. Finally, we confirm that any disputes regarding the rejection by one of the provincial parties of a proposed change on the basis of non-compliance with paragraph 1 parts a, b & c above shall be referred to Irene Holden for facilitation and resolution*

If there is a disagreement as to whether the local parties have properly or improperly negotiated changes to a provincial matters article in the collective agreement, the dispute shall be referred to Arbitrator Irene Holden for resolution. Irene Holden's scope is limited to whether or not the change agreed to by the local parties meets the test set out in paragraph 1 of this LOU. She does not have the authority to make changes to what has been negotiated, nor does she have the authority to force a party to negotiate any provision that it does not wish to address.

❖ Implementation

This letter will be effective for locals and districts on July 1, 2007, unless there is mutual agreement to commence at an earlier date.

Parties would commence this process at an earlier time only when there is an operational imperative to do so – for example, an identified need to reconcile the posting and filling of priority bands with layoff and recall provisions prior to an anticipated spring layoff.

It should be noted that this is an administrative rather than a bargaining exercise, and therefore neither the district nor the local requires a "bargaining team." Local articles which provide for paid time off to union officials to conduct negotiations do not apply.

As previously noted, district personnel are advised to contact their BCPSEA liaison prior to engaging in discussion with the local on matters arising from this letter of understanding. In addition, BCPSEA and the BCTF must formally approve the change(s) by signing the MCM.

❖ Relationship to Other Articles

LOU No. 1 sets out which collective agreement matters are provincial and which are local. Appendix 1 in LOU No. 1 lists provincial matters that fall within the bargaining authority of the provincial parties; Appendix 2 in LOU No. 1 details the local matters that fall within the bargaining authority of the local parties.

This LOU should be read in conjunction with the Responsibilities section of this manual and the parameters for all other mid-contract modifications. The scope of the process set out in LOU No. 8 is limited to updating language only. All other mid-contract modifications will follow the established process outlined in the Responsibilities section.

In terms of collective agreement changes, there are three distinct processes:

1. **Local Bargaining** (on local matters only)
   Given that the established bargaining structure remains unchanged, any items your local proposes to discuss and that do not fit within the parameters of Appendix 2 in LOU No. 1 should not be discussed when local bargaining occurs. It is important to remember that this process is separate and distinct from the amended mid-contract modification process that has been agreed to commence on July 1, 2007.

2. **Standard Mid-Contract Modification Process**
   This is the established process for modifications to all provincial matters language in a Previous Local Agreement and it still applies. It is subject to the usual criteria (see the Responsibilities section in the manual).

3. **Updating of the Provincial Collective Agreement Mid-Contract Modification Process (commencing July 1, 2007)**.
   As well as the Standard Mid-contract Modification process used to modify provincial language in Previous Local Agreements, the parties agreed to an additional process in this round of bargaining. This process is separate and distinct from the local bargaining that occurred in conjunction with the recently concluded round of provincial bargaining, and it is not intended to replace the existing mid-contract modification process. Prior to proceeding with the process, local parties should have an established working document for PCA 2 (2001-2004) and the provincial parties should have completed the provincial housekeeping work that will allow the local parties to incorporate changes from the June 30, 2006 framework agreement in a seamless fashion.