

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

**Arbitration Award: Bill 33 — Class Size and Composition,
2006-07 and 2007-08 School Years**

August 24, 2009

On August 21, 2009, the BC Public School Employers' Association (BCPSEA) and the BC Teachers' Federation (BCTF) received Arbitrator Dorsey's award concerning class size and composition grievances for the 2006-2007 and 2007-2008 school years. We have recently received a number of requests for an overview of the award. The following should be read in conjunction with BCPSEA @issue No. 2009-26 dated August 24, 2009, Arbitration Award: Bill 33 — Class Size and Composition, 2006-07 and 2007-08 School Years (available on the BCPSEA website at <http://www.bcpsea.bc.ca/access/publications/aissue/2009/ai2009-26.pdf>).

BCPSEA Chair Ron Christensen noted the length and complexity of the proceeding. "This arbitration involved 54 days of hearings and is one of the longest and most challenging arbitrations in the history of the K-12 public education sector," said Christensen.

Of the 157 schools identified in the BCTF grievances, representing 1,622 classes, the parties agreed to arbitrate 81 classes that were grieved in seven representative schools in school districts 5 (Southeast Kootenay), 36 (Surrey), 39 (Vancouver), 58 (Nicola-Similkameen), 63 (Saanich), 69 (Qualicum) and 82 (Coast Mountains).

"Due to the complexity, we have seen some media reports that have mis-stated the arbitrator's findings," Christensen said. "Specifically, some reports have stated that, *'The arbitrator examined 81 classes over two years and found close to 25% had either too many students or had too many special needs students.'* That statement is incorrect. While Arbitrator Dorsey found 21 of the classes to be in violation of the *School Act*, he found only two of the 81 classes — or 2.5% — to be inappropriate for student learning due to their size or number of designated special needs students. It's also important to remember that these are by no means the total number of classes in the seven representative schools addressed by Arbitrator Dorsey, but these 81 classes, a sample only, were all grieved by the BCTF as being inappropriate for student learning."

"Labour arbitrations typically become the final word on a subject," continued Christensen. "That won't be the case here. This matter is made even more complex by the political overtones. The BCTF has opposed government legislative initiatives over many years and has found itself at arbitration on this issue."

Arbitrator Dorsey found that 69 of the 81 classes that had been grieved had met the requirement of the principal and the superintendent holding the opinion that the classes were appropriate for student learning and that 67 of the 81 classes that had been grieved had met the consultation requirement under Bill 33.

Twenty-one* classes were found to be in violation of Bill 33 for the following reasons:

- **Preparation Relief Teachers (six classes)**
The arbitrator ruled that although the consultation with the assigned teacher of the class met the requirements of the legislation, there was also a requirement to consult with the preparation relief teacher of the class, which had not occurred.
- **Job Share and Related Teachers (one class)**
The arbitrator ruled that although the consultation with the teacher who taught the class five days of a six-day cycle met the requirements of the legislation, there was also a requirement to consult with the teacher who taught this class for one day in a six-day cycle, which had not occurred.
- **Group Consultation (seven classes)**
The arbitrator ruled that although there was agreement with the union to conduct a group consultation, the consultation requirements of Bill 33 had not been met for these classes, as the group consultation centered around the resource issues of the school rather than that of the individual classes.
- **Date by Which Classes Must be Deemed “Appropriate for Student Learning” (10 classes)**
The arbitrator ruled that although the principal arrived at his opinion that the classes were appropriate for student learning later in the fall, there had been a violation of Bill 33 as the principal had not reached this opinion by September 30.
- **Classes Deemed by Arbitrator as “Not Appropriate for Student Learning” (2 classes)**
Although the principal and superintendent were of the opinion that these classes were appropriate for student learning, the arbitrator found that these were not situations where there was a reasonably held opinion of the principal demanding deference from the arbitrator.

**The total is 21 not 26 classes as a result of the arbitrator ruling that five of the classes were found to be in violation of both conditions.*

By agreement, no evidence was adduced or submissions made on remedy at the hearing. Any remedy issues will be addressed after the BCTF and BCPSEA have discussed the application of this decision to the other classes grieved in the 2006-07 and 2007-08 school years.

With respect to the seven classes where it was found that the group consultation had not met the requirements under Bill 33, Arbitrator Dorsey specifically commented that:

“... any issues about the manner in which union staff representatives participated with the principal in the organization of the consultation process or identification of teachers required to be consulted mitigating a principal’s failure to consult as required by the *School Act* are matters to be addressed when remedy is decided.”

With respect to the 10 classes where it was found that the opinion of the principal after September 30 had not met the requirements under Bill 33, Arbitrator Dorsey commented that:

“Events after September 30th might be relevant to issues of remedy, but they are not relevant to determining compliance with the class size and composition standard as of September 30th”

“Schools will open as usual in September,” said Christensen. “We continue to review the arbitration award and will work together with the BCTF on implementation of Arbitrator Dorsey’s findings.”