

**IN THE MATTER OF AN  
INDUSTRIAL INQUIRY COMMISSION  
TO INQUIRE INTO LABOUR RELATIONS MATTERS**

BETWEEN:

BC PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

(the "BCPSEA")

AND:

BC TEACHERS' FEDERATION

(the "BCTF")

**Final Report for Collective Bargaining Options  
Submitted to The Honourable Olga Ilich,  
Minister of Labour & Citizens' Services,  
Province of British Columbia**

Submitted by

Vincent L. Ready  
Industrial Inquiry Commissioner

February 2, 2007

## **BACKGROUND**

The time has come for this Industrial Inquiry Commission to complete its work by making final recommendations to The Minister of Labour and Citizens' Services (the "Minister") with respect to the approach to labour relations and collective bargaining in the British Columbia public school education system, specifically, between the British Columbia Teachers' Federation and the British Columbia Public School Employers' Association.

On October 10, 2005, I was first appointed as the Industrial Inquiry Commission to facilitate the next round of collective bargaining between the BCTF and BCPSEA. On October 17, 2005, my mandate was expanded to include facilitating a return to work involving a dispute which had developed between the BCTF and BCPSEA. On October 20, 2005, I made recommendations to end the walkout which were accepted by the Government and the BCTF and the system returned to normal on October 24, 2005.

On January 27, 2006, I reported on an Interim Basis to the Minister. At that time, I commented that the evidence was overwhelming that:

...the parties have not concluded 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 time frames. 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.

As a consequence of these conclusions, I suggested that more time would be needed by the Commission to prepare final recommendations. This additional time was granted. Subsequently, the Commission requested and received a significant number of thoughtful submissions from the BCTF, BCPSEA and from other interested organizations. I have analyzed and considered these submissions carefully as well as having reviewed collective bargaining models which exist in other jurisdictions.

The most important event which has influenced the Commission is the successful set of bargaining which occurred between the BCTF and the BCPSEA in 2006. For the first time since the current bargaining model was established, the parties were able to enter into a collective agreement through direct negotiations.

To underline the significance of this achievement, it is sufficient to simply refer to the unsuccessful collective bargaining history of the last ten years. In 1998, a collective agreement was imposed through the *Public Education Collective Bargaining Act*. In 2002, the Legislature, through the *Education Services Collective Agreement Act*, once again imposed a collective bargaining agreement on the parties. Through a separate piece of legislation, the *Public Education Flexibility and Choice Act*, the Legislature made it no longer permissible for the parties to negotiate with respect to class size, work load, and staffing ratios.

In the Fall of 2005, the previously legislated collective agreement was extended through further legislation until June 30, 2006. A province-wide walkout of teachers resulted, in part, from the passage of this legislation which

resulted in the dispute which was resolved on October 24, 2005, following my Recommendations with respect to a settlement and return to work.

Against the backdrop of this sorry history, it has been necessary for the Commission to determine whether the voluntary settlement was a significant event and whether any lessons have been learned.

The Commission, having completed its work, is now ready to make its final report.

### **RESPONSIBILITY OF THE COMMISSION**

I do not intend to set out the Amended Terms of Reference under which the Commission is working as they are included in my previous Reports. However, in summary, the Commission was directed to consider what matters, if any, should be concluded at local bargaining; what matters should be concluded through a Provincial Master Collective Agreement, and what bargaining structure should be adopted in collective bargaining between the parties.

Additionally I have observed during my involvement in this and other teachers' disputes I have worked on in the past, that the parties have been unable to agree on costing and other data related to collective bargaining. I will be making a recommendation on this matter.

The separate responsibility of the Commission with respect to the harmonization of compensation structures between the various school districts was satisfied by an earlier report and has been the cause of subsequent work between the parties.

Therefore, this Report will be restricted to the fundamental three questions identified above as well as the matter of costing.

## **WHAT WORKED IN 2006**

As stated above, no collective bargaining system will succeed unless both parties are fully committed to achieving a collective agreement. At the very heart of the labour relations system which governs participants in collective bargaining is the need to compromise, to seek new and creative solutions and to take a pragmatic and disciplined approach to differences which develop in the relationship.

These parties were subject to the searching scrutiny of the Wright Commission which preceded my work. The *Wright Commission Report, Voice, Accountability and Dialogue: Recommendations for an Improved Collective Bargaining System for Teacher Contracts in British Columbia* (the “Wright Report”) was published in December, 2004. The Report made twelve Recommendations aimed at leading the parties towards “mature collective bargaining”. The Report recommended that a Provincial Collective Agreement be negotiated and an Industrial Inquiry Commissioner be appointed “to supervise the establishment of a notional Provincial agreement”. In addition, the Report highlighted the need for useful, productive dialogue between the parties in order to move towards “mature collective bargaining”.

I found the Recommendations of the Wright Report to be thoughtful and helpful, however, the Wright Report itself found that:

...recommendations will not significantly improve the state of collective bargaining, unless there is an attitudinal and behavioral change on both sides.

It needs to be said that, while the Wright Report received positive support from the Education Sector, the recommendations were negatively received by the BCTF.

With this background, it was my conclusion in early 2006, that the collective bargaining which was about to take place in that year should be surrounded with certain new elements. On April 6, 2006, I submitted my Interim Report #2 for Transitional Negotiations. In that Report, I stated:

...a more prudent course of action is for the parties to enter into meaningful negotiations with the assistance of a mediator with a view to concluding a collective agreement prior to June 30, 2006 in accordance with the guidelines set out below.

I also strongly recommend that, at least during these negotiations, the Government appoint at least one senior representative to act on its behalf to convey the Government position on mandates and policy issues relative to labor relations. This participation would not be inconsistent with what has happened in other negotiations recently concluded in the public sector in British Columbia.

For these considerations, I recommend the following guidelines be adopted by the parties and the Government for the upcoming negotiations.

I then made the following specific recommendations:

- The BCPSEA and the BCTF shall each appoint bargaining committees of a maximum of five representatives each. The Government shall appoint at least one senior representative to act on its behalf to convey Government's position on mandates and on policy issues relative to collective bargaining.
- Appoint Ms. Irene Holden as a facilitator/mediator to assist the parties with negotiations.
- The BCPSEA and the BCTF shall develop and exchange realistic bargaining proposals prior to April 15, 2006, and shall immediately commence collective bargaining.
- The BCPSEA, in conjunction with the Government representative referred to above, shall prepare a serious settlement offer no later than May 15, 2006.

- In the event that a settlement is not reached prior to June 1, 2006, the mediator will issue a report to the Minister and the parties identifying the issues resolved and in dispute.
- By agreement of the parties or at the request of the Minister, the Commission or another third party may be requested to become involved in providing further assistance in settling matters in dispute.
- Nothing in the foregoing procedure prohibits or precludes either party from exercising their right to strike or lockout under the provisions of the *Labour Relations Code*.
- The parties to the recently established Learning Roundtable will continue their discussions with a view of resolving the issues of class size, class composition and the other matters being dealt with within the same time frame as the collective bargaining process outlined above; however, this process should not interfere with bargaining.”

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.

## **RECOMMENDATIONS**

I hereby recommend:

- a) Both parties establish their bargaining objectives through the mechanisms which exist within each organization, no later than eight months prior to the expiry of the current Collective Agreement.
- b) Eight months prior to the expiry of the Collective Agreement, a Facilitator/Mediator be appointed by agreement of the parties and failing agreement, the Minister of Labour shall appoint the Facilitator/Mediator. This person would have authority to continue as Facilitator/Mediator

throughout the whole collective bargaining process and will begin to meet immediately with the parties. The Facilitator/Mediator may, from time to time, make recommendations to the parties which the Facilitator/Mediator deems appropriate to assist the parties in reaching agreement.

- c) A Government official be appointed to serve directly on the Bargaining Committee of BCPSEA and to participate in all of the activities of the Bargaining Committee. The official should be senior enough to effectively represent the public policy and other interests of the Government. The BCPSEA should treat this person as any other member of their Bargaining Committee so that they have the advantage of any discussion and debate which might exist within BCPSEA.
- d) Finally, I recommend that the parties develop a common understanding of the data related to all collective bargaining matters, e.g.:
- total cost of compensation;
  - benefit costs;
  - teacher demographics (including, but not limited to, the number and distribution of FTEs and employees)
  - TOC's
  - labour market issues (including, but not limited to, teacher supply, demand, and recruitment and retention matters).

All of which is respectfully submitted this 2<sup>nd</sup> day of February, 2007.



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Vincent L. Ready