

***A Report to the
Honourable Dr. Margaret MacDiarmid
Minister of Labour, Citizens' Services and
Open Government***

**An Inquiry into the Status of Collective Bargaining
between the
B.C. Public School Employers' Association
and the
British Columbia Teachers' Federation**

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February 23, 2012

I. Introduction:

On February 9, 2012, the Minister of Labour, Citizens' Services and Open Government, the Honourable Dr. Margaret MacDiarmid, wrote me asking that I inquire into the status of collective bargaining between the B.C. Public School Employers' Association (BCPSEA) and the B.C. Teachers' Federation (BCTF). Minister MacDiarmid explained that the Minister of Education, the Honourable George Abbott, had asked her to inquire into the circumstances as a result of his concerns about, among other things, the negative educational impact that the teachers' job action is having on students and the lack of reporting of student progress to both students and parents. In her letter, Minister MacDiarmid outlined the following specific direction to me:

“As a result of the Minister's concerns, I am appointing you to inquire into the dispute and provide to me your expert assessment of the likelihood of a voluntary settlement between these parties. I ask that you meet with the parties as soon as possible so that you can issue a report to me by February 23, 2012.”

My appointment is not as a fact finder under Section 77 of the *Labour Relations Code* (Code). However, my role was similar to that performed by a fact finder in that I met with the parties (Appendix I), inquired, and prepared a report.

II. Guiding Principles:

In conducting my task on behalf of the Minister, I was guided by the following key principles which I communicated to both parties:

- The Ministry of Labour is neutral in the context of collective bargaining. The Ministry is not involved in the development of or the setting of collective bargaining mandates and is not at the bargaining table. The focus for the Ministry is on providing a balanced labour relations regulatory regime which includes mechanisms in the Code that enable the parties to reach voluntary agreements on their own. As a result, I indicated to the parties that I would be balanced and objective in inquiring and reporting on the status of bargaining between them.
- I received no instruction from and did not meet with the Minister or the Ministry of Education. My only instructions are in Minister MacDiarmid's appointment letter.
- It was not my intention to pass any judgement or make any recommendations about the conduct of collective bargaining between these parties. That is, I was to inquire and report on the status of collective bargaining, not assess the actions of either party in relation to their inability to achieve a renewal collective agreement.
- I indicated it was not my role to assist bargaining between them, including by facilitation, mediation, or arbitration. [Note that BCTF's application for mediation at the B.C. Labour Relations Board (LRB) on February 20, 2012 noted I was not appointed to mediate.]

III Background and Context:

The Parties:

BCPSEA was established in 1994 as a result of the enactment of the *Public Education Labour*

Relations Act (PELRA). BCPSEA, as an accredited employers' association, is the bargaining agent for all 60 public school boards of education in the province. One of BCPSEA's roles is to conduct collective bargaining with BCTF for a provincial collective agreement. BCPSEA also coordinates collective bargaining at the local level between the school boards and local teachers' associations and between the school boards and support staff (represented by a number of unions, including CUPE). BCPSEA is governed by a Board of Directors that includes 9 school trustees who are elected as representatives from the 60 boards of education and 4 government representatives. The Chair of the BCPSEA Board is Melanie Joy, Hugh Finlayson is the Chief Executive Officer, and Jacque Griffiths is the Associate Executive Director.

BCTF is the union of professionals representing 41,000 public school teachers in the province. All public school teachers belong to BCTF and their local teachers' association. BCTF focuses on advocating for the rights of teachers and students and promoting public education. BCTF is a democratic organization that relies on its members to determine its decisions and directions. BCTF has an 11-person Executive Committee which is elected by the union's members at its Annual General Meeting. Three of these members serve in a full-time capacity: the President Susan Lambert, 1st Vice-President Jim Iker, and 2nd Vice-President Glen Hansman.

History of Collective Bargaining Prior to 2011:

Prior to 1987, teachers were excluded from the Code, able to negotiate only salary with school boards. In 1987, teachers were provided the right to unionize and access to full-scope collective bargaining. All 76 local teachers' associations elected to be represented by BCTF for the purposes of collective bargaining. From 1987 to 1994, collective bargaining occurred between local school districts and BCTF. In 1994, in addition to creating BCPSEA, PELRA created provincial collective bargaining and established one bargaining unit for all public school teachers with BCTF as the bargaining agent. In addition, PELRA established a collective agreement that required negotiation of cost provisions at the provincial level (between BCPSEA and BCTF) and local matters be negotiated at each school district (between the school districts, based on delegation of authority by BCPSEA, and BCTF).

There is a long history of collective bargaining between these parties since 1987 with commentary available on the internet about the successes and failures. In the interest of brevity, it is, however, useful to note the outcome of the last 2 rounds of collective bargaining prior to the current round. In October 2005, following failed negotiations and a strike vote by teachers, government enacted the *Teachers' Collective Agreement Act* which extended the collective agreement that expired on June 30, 2004 to June 30, 2006. BCTF opposed this legislation and its members protested against it, including by way of a walkout that was prohibited by the legislation, for approximately 2 weeks. With the assistance of Vince Ready (appointed as an Industrial Inquiry Commission (IIC) under the Code), a settlement was reached that resulted in a return to work. On June 30, 2006, the parties successfully concluded, with the assistance of a Facilitator/Mediator, a renewal collective agreement that expired on June 30, 2011. While some may observe that the 2006 renewal was negotiated because of the money placed on the table (wage increases and a signing bonus), it is significant to note that the parties achieved a renewal collective agreement on their own.

On February 2, 2007, Mr. Ready, a respected veteran arbitrator/mediator in B.C. and across Canada, in conclusion of his task as IIC, submitted a report to the parties and the Minister. He made recommendations designed to assist future rounds of bargaining building on the 2006 success. The recommendations included each party establishing bargaining objectives 8 months in advance of the collective agreement expiry and appointing a Facilitator/Mediator to work with them through the entire bargaining process. He also recommended a process for the parties to develop a common understanding of data, including costing the collective agreement. Finally, Mr. Ready recommended that a senior government official serve on BCPSEA's bargaining committee to represent government's public policy and other interests. Government and BCPSEA accepted the recommendations, which were not binding, but BCTF chose not to accept them. As a result, the process recommended by Mr. Ready was not followed by the parties in the current round of bargaining (although government did appoint Claire Avison, Assistant Deputy Minister in the Ministry of Education, to serve on the BCPSEA bargaining committee).

B.C. Supreme Court Decision on Bill 28-2002 (April 13, 2011):

In January 2002, government enacted the *Public Education Flexibility and Choice Act* (Bill 28-2002). The legislation removed the right of BCTF to negotiate and include in collective agreements provisions relating to class size, class composition, and teacher-to-students ratios. In addition, the legislation voided provisions in collective agreements that dealt with these matters. An arbitration process was established in the legislation to determine which provisions of the collective agreements were voided; however, an arbitration decision outlining the deletions was quashed as a result of judicial review. Following this decision, in 2004 government enacted the *Education Services Collective Agreement Amendment Act* which resulted in the deletion of the provisions the arbitrator had identified. The practical effect of these pieces of legislation was to remove class size and composition issues from collective agreements and collective bargaining and place these issues in a public policy context involving all the stakeholders of the public education system.

BCTF objected to Bill 28 and filed a challenge in the B.C. Supreme Court asserting a breach of certain rights under the *Canadian Charter of Rights and Freedoms*. On April 13, 2011, the Court, applying the decision of the Supreme Court of Canada in the Health Services case of 2007, found that certain provisions of Bill 28 were unconstitutional as they violated the *Charter's* Section 2 (d) freedom to associate and engage in collective bargaining. The Court suspended the declaration of the invalidity of the provisions of Bill 28 that were in violation of the *Charter* for 12 months to give government time to address the repercussions of its decision.

Government engaged BCTF regarding the impact of the Court decision. BCTF characterizes the meetings as discussions while government describes them as consultations. The meetings occurred during the same period that collective bargaining was occurring between the parties. Government's stated objective was to achieve certain educational policy outcomes through the most efficient allocation of resources. Government tabled a proposal in October 2011 to establish a learning improvement fund of \$165 million over a 3-year period followed by annual funding of \$75 million. The fund is designed to assist teachers in classrooms with difficult

composition issues. Unfortunately, and despite a return to Court to seek clarification on its decision, no agreement has been reached. Government advised BCTF in November 2011 that it would begin preparing legislation to address the April 2012 deadline set out in the Court decision and that BCTF was entitled to continue to propose options to address government's policy objectives. Government has not yet tabled remedial legislation.

BCTF pointed out the issues related to Bill 28 are at a separate table, not relevant to the bargaining dispute, and that it has no proposals on the bargaining table related to them. However, BCPSEA advises there are local proposals on class size and composition tabled by local teachers' associations. When I reviewed the detail of BCTF's proposal U75 (see Appendix III), I find they propose adding "class size and class composition" to the list of matters to be negotiated locally. So while BCTF technically does not have a proposal to negotiate these issues at the provincial bargaining table, they do wish to negotiate them locally if, as they stated to me, negotiations over these issues are allowed in the future. BCPSEA does not agree that negotiations on these issues can happen locally, in part because employers cannot negotiate over them as Bill 28 is still in place until April 13, 2012 at the latest. The parties also do not agree about what to do with certain collective agreement provisions removed in the Bill 28 process that government says should be subject to bargaining. BCPSEA wants to engage in negotiations regarding the language while BCTF advised BCPSEA on February 17, 2012 the voided language should be restored and no bargaining will occur on it.

Collective Bargaining in the Public Sector:

Negotiations between these parties have not occurred in a vacuum. Public sector employers and unions have been engaged in bargaining at the same time as these parties. During this time, a majority of public sector collective agreements have been renewed in accordance with government's "net zero" mandate (explained in detail below). As of February 15, 2012, based on data provided by the Public Sector Employers' Council (PSEC), 61 of 176 public sector collective agreements have been ratified consistent with the "net zero" mandate and a further 28 tentative agreements await ratification. There are also 41 collective agreements where there is agreement in principle (no tentative agreement) consistent with the mandate. These 130 agreements cover 75% of almost 300,000 unionized public sector employees and 75% of public sector collective agreements negotiated under the "net-zero" mandate. Most of these collective agreements include what is colloquially referred to as a "me too" clause. The clause provides that if the mandate is modified during the time it is applicable, a concluded collective agreement must be re-opened to allow negotiations over total compensation for the remainder of its term.

IV: The Current Round of Collective Bargaining:

After a description of process, I will set out the objectives each party has identified to the other for the current round of bargaining. I will also address the views of each party with respect to, in bargaining parlance, the "pre-conditions" of the other party. I will describe the commencement of the union's legal strike and then outline in summary form the outstanding proposals between the parties. Finally, I will comment on the issue of the costing of bargaining proposals.

Process of collective bargaining:

On March 1, 2011, the parties began collective bargaining and, in the nearly one year period since, have engaged in 78 days of face-to-face negotiations. I have included in Appendix II a chronology of key events surrounding the negotiations. The parties schedule dates for bargaining and alternate the location between the BCTF and BCPSEA offices. Each organization has a small bargaining team (7 members for BCTF; 6 for BCPSEA) with a chief spokesperson and committee members representing employers and teachers across the province. On February 8, 2012, BCPSEA wrote to BCTF outlining that from that date forward, it is only prepared to meet "...when it is clear, through an agenda process, what the parties intend to address on any particular day of bargaining". BCPSEA explained to me that it wrote this letter as a result of its view that BCTF is refusing to engage on any of its issues and its frustration over what the parties are going to discuss at the table. While BCTF did not reply in writing, bargaining has continued and the parties discuss an agenda in advance of meeting.

BCTF expressed concern with the "co-governance" model of BCPSEA. It believes that at times it feels it is in collective bargaining with BCPSEA and at other times with government because of the presence of Ms. Avison at the bargaining table who is there to speak to government's policy objectives for education. As detailed above, BCPSEA's Board of Directors includes government representatives and, as described below, government has an enormous fiscal commitment in this sector. Ultimately it is BCPSEA that has the authority to negotiate and conclude a renewal collective agreement subject to the "net zero" mandate. BCTF stated its concern, in person and in a letter to me dated February 21, 2012, that as a result of this governance model, BCPSEA has no incentive to reach a negotiated agreement. BCTF bases this concern on statements made by Minister Abbott about the possibility of legislation in the event the parties are unable to reach agreement. BCPSEA works within the governance model established by government.

Collective bargaining objectives:

Employers and unions, in advance of collective bargaining, typically engage in a process to identify the priorities to be achieved in bargaining. What often results is a list of objectives which relate to provisions that the parties believe need to be added to or amended in the collective agreement. Both BCPSEA and BCTF engaged their respective constituencies in this pre-bargaining process and shared these objectives at the bargaining table in the hope that discussions would be had and consensus reached on how to achieve them. BCPSEA's objectives were developed based on input from its employer members, but also from the Ministry of Education which has significant educational policy objectives that it seeks to achieve for the improvement of the delivery of education.

In May 2011, Deputy Minister of Education James Gorman presented the government's vision for the future of education at the bargaining table. BCTF did not pose any questions or engage in any discussion. The vision was expanded in October 2011 when government released its education plan (publicly and at the table) which includes, among other things, quality teaching and learning, flexibility and choice, and high standards. To support that plan, the Ministry and BCPSEA identified to BCTF at the bargaining table the need to achieve collective agreement changes to reflect best practices in human resources in support of teacher excellence, including

in professional growth and development, mentorship, performance evaluation and feedback, post and fill (job selection), transfer, layoff/recall, and alternate school calendar.

BCTF identified to me that their bargaining objectives are to address priorities in working conditions for teachers, learning conditions (as measured by preparation time), and respect of and value for the teaching profession. BCTF prioritized their objectives based on improvements to salary, benefits, hours of work, and paid leaves. BCTF emphasized that all objectives are negotiable and expressed concern that BCPSEA's education policies are non-negotiable.

"Pre-conditions" to a Negotiated Agreement:

As noted above, each party has objectives that it wants to achieve in this round of bargaining. To support its objectives, each party has established terms or conditions that it believes the other party must accept before a negotiated agreement can be reached. In this case, each party has articulated what can be called "pre-conditions" to a negotiated agreement.

BCPSEA identified to me that it is of the view that BCTF has 5 pre-conditions that must be met before a renewal collective agreement can be concluded. First, government must drop or amend the "net zero" mandate to allow for negotiations over a wage increase. Second, BCPSEA must drop any of its proposals that BCTF characterizes as strips or concessions to the collective agreement. Third, BCPSEA must be prepared to negotiate improvements to working conditions for teachers. Fourth, BCPSEA must agree to BCTF's proposal to change the "split of issues" (provincial vs. local). And fifth, BCPSEA must agree to negotiate class size and composition issues in this round of collective bargaining. BCTF, as noted above, took issue with the fifth pre-condition.

BCTF identified to me that BCPSEA has one pre-condition – the "net zero" mandate. This mandate is the bargaining mandate for the provincial public sector. Government's direction to public sector employers in 2009, including to BCPSEA on behalf of school boards, was to negotiate 2-year renewal collective agreements that provide for no net increase in total compensation; however, parties are free to negotiate how existing compensation is spent within the collective agreement in an attempt to create savings in one area to apply in another area. For example, if the parties are able to achieve savings in the cost of health and welfare benefit plans, those savings could be applied to provide a wage increase. BCTF asked that I confirm whether the mandate is established by statute or whether it is a policy decision. Upon my request, PSEC confirmed that the mandate is established as a policy decision of Cabinet. BCPSEA agreed that "net zero" was a pre-condition but also noted the importance of changes to the collective agreement to support government's and employers' education policy agenda.

It is important at this point to comment about the "net zero" mandate. BCTF is, to put it mildly, very frustrated by the mandate. In my meetings with them, they characterized the mandate as a "wall" that provides for "no ability to compromise". BCTF was also of the view that the mandate was a far greater impediment to a collective agreement than what BCPSEA has characterized as BCTF's pre conditions. Finally, BCTF asserted that the mandate was proof that BCPSEA is the only intractable party in the negotiations as BCTF has moved substantially. When I tested

this with BCPSEA, its position is that there is no ability to move off the mandate as not only has it been set by Cabinet, it has, as outlined above, not impaired the ability of other employers and unions in the public sector from reaching voluntary renewal agreements. BCPSEA does say, however, that the mandate allows for negotiations and compromise. In other words, to reach agreement, BCTF needs to accept the principle of “net zero” and come to the table prepared to negotiate how money can be moved around to potentially address monetary priorities identified by the parties. BCTF, as is its right, will not accept the mandate or negotiate within it. BCTF expressed the view that there have been ways around the mandate and that I should see if that is possible in this case. I advised BCTF that is not what I have been tasked to do.

In its public statements about the “net zero” mandate, BCTF reports that not everyone in the public sector has been subject to it. It says other public sector employees have received wage increases during the time of “net zero”, including nurses, police and fire fighters, and support staff locals (primarily CUPE) in the education sector. On the basis of advice received from PSEC, I explained to BCTF that the mandate does not apply to police and fire fighters as they are municipal employees outside the provincial public sector. BCTF is correct, however, that the B.C. Nurses’ Union achieved a 2-year renewal collective agreement providing for wage increases in the form of a market adjustment prior to the establishment of the mandate. I am advised the money for support staff in education is allocated from the learning improvement fund (proposed in the Bill 28 process) plus policy money from the Ministry of Education and is, as a result, not money for total compensation (and thus consistent with the “net zero” mandate).

BCTF’s Phase I Legal Strike:

On September 6, 2011, BCTF commenced legal job action by implementing Phase I of its strike plan. The most common form of a strike involves employees downing tools, walking off the job, shutting down the employer’s operation, and establishing a picket line. The purpose of a strike is to try to force the employer to amend its position at the bargaining table to achieve a renewal collective agreement. There has not been a full-scale walkout in this case for 2 reasons. First, educational programs to students and eligible children under the *School Act* have been designated as essential services. This means that a full-scale walkout cannot occur until the parties have, through negotiation, mediation, and adjudication at the LRB, established the level of essential services and staffing necessary to prevent immediate and serious disruption to the provision of educational programs. Second, BCTF has made the decision to minimize the impact on children by implementing a limited strike involving a refusal to perform certain administrative tasks. The most noteworthy of the tasks that teachers are refusing to perform is the completion of report cards. BCTF states that the non-performance of this task is not disruptive as BCTF believes that teachers are still reporting directly to parents about the progress of children. In contrast, Minister MacDiarmid’s letter to me states that the Minister of Education is troubled by the lack of reporting of student progress and that he believes the dispute is inhibiting the collaboration necessary to create supportive learning environments. There is no obligation on BCTF to escalate its job action and BCTF has publicly stated it has no intention at this time to escalate it. There can be no doubt the strike is having an impact on the educational system, which is what it is designed to do. However, there also can be no doubt that after almost 6 months, the strike is not creating the pressure on both parties necessary to

change their positions at the bargaining table. As BCPSEA noted to me, teachers are on strike and not performing their full scope of duties, yet continue to receive full salary and benefits.

Status of Bargaining Proposals:

It will come as no surprise that there has been a large volume of material exchanged across the bargaining table in the span of almost one year. Both parties provided to me, at my request, a copy of the proposals they have exchanged. At this point, my intention is to focus on where the parties are now in terms of the proposals they still have on the table. I set out in summary form in Appendix III and Appendix IV the latest position on outstanding items tabled by each party. It is important to add the parties have the right to amend their respective list subject to any errors or omissions I may have made.

BCTF tabled a comprehensive package at the provincial bargaining table on January 17, 2012. It is summarized in a one-page document that it prepared for its members (see Appendix V). BCTF described the package as a substantial revision from items tabled up to that point. BCTF stated that it is prepared to negotiate over all of the items in its package and even provided me an indication of which items it views as possibly non-contentious (see Appendix III). BCPSEA noted a concern that this package was presented in the media before it was tabled with BCPSEA. In addition, BCPSEA outlined to me that BCTF's package does not include reference to over 1,100 outstanding proposals that BCPSEA says should be tabled at the provincial table (and not at local tables where they are now). This item will be addressed in more detail below. BCTF noted that it has dropped proposals relating to: inflation adjustment account; professional activities leave; fees for professional certification; and early retirement incentive plan.

On February 1, 2012, BCPSEA tabled its latest comprehensive settlement package which was in response to the BCTF's January 17 package. BCPSEA noted to me that it has room to move on all of its proposals subject to the "net zero" mandate. Since the tabling of this package on February 1, 2012, the parties have engaged in bargaining on a mini-package that includes the 4 *italicized* items in Appendix IV. No agreement has been reached on the entirety of the mini-package although BCTF believes BCPSEA should be able to sign off the one item where they have reached agreement (Compassionate Care Leave). BCPSEA noted that it has dropped proposals relating to: harassment/sexual harassment; leave for provincial contract negotiations; President/Officer leave; leave for local, BCTF/CTF/ education international; leave for B.C. College of Teachers; seniority; discretionary leave; hours of work (including preparation time); sick leave; and grievance procedure.

I noted under the description of the BCTF proposals that more would be said about the over 1,100 outstanding proposals (entitled "Designation of Local and Provincial Matters" and underlined in both Appendix III and Appendix IV). This matter is more commonly referred to by the parties as the "split of issues". This item is rooted in the provisions of PELRA which, as noted earlier, establish that cost issues must be negotiated provincially while all others are negotiated locally. When PELRA was enacted, it required the parties negotiate the designation of provincial and local matters (subject to the cost provision requirement). They accomplished this designation in a Letter of Understanding (LOU) which has been unchanged since the mid-

1990s. At the start of the current round of bargaining, BCTF outlined its intention to negotiate only compensation items (salary, benefits, paid leaves, and hours of work – the “PELRA 4”) at the provincial table and all other items locally. BCPSEA argued that in order to do so, the parties needed to agree to amend the LOU – and BCPSEA, as its right, refused to agree. Over 1,100 proposals on items (or categories of items) agreed as provincial in the LOU were submitted by BCTF through local teachers’ associations at local bargaining tables. This resulted in a dispute that was referred by agreement to arbitrator Marguerite Jackson who, commencing on August 28, 2011, issued 3 arbitration awards designed to assist the parties and move collective bargaining along. Ms. Jackson decided that neither party can unilaterally delegate provincial matters to local tables (meaning agreement must be reached before items can be moved to local bargaining). Further, Ms. Jackson confirmed that BCTF can take the position in collective bargaining that the renegotiation of the LOU is required. It should also be noted that BCPSEA has a series of proposals to amend the LOU and those remain outstanding.

The significance of the “split of issues” is that no discussion is happening between the parties on over 1,100 proposals. BCPSEA believes BCTF must negotiate changes to the LOU in order to move discussions on these issues to local bargaining tables while BCTF is pursuing a hard-bargaining position to move these issues locally. Both parties have interpreted the Jackson decisions as legitimizing their respective positions.

It is important to note that despite being apart on many issues, the parties were able to reach agreement on the following 9 specific items during collective bargaining:

- LOU No. 3.b Re: Section 27.4 *Education Services Collective Agreement Act*.
- LOU Re: Recruitment and Retention for Teachers at Elementary Beaverdell and Big White Elementary School.
- Article B.6 Salary Indemnity Plan Allowance.
- Article B.12 Category 5+.
- Article D.5 Middle Schools.
- Renewal of LOU No. 6 Re: Employment Equity – Aboriginal Employees.
- Renewal of LOU No. 15 Re: Article C.2 – Porting of Seniority – Separate Seniority Lists.
- Renewal of LOU No. 16 Re: Article C.2 – Porting of Seniority & Article G.1 Portability of Sick Leave – Simultaneously Holding Part-Time Appointments in Two Different Districts.
- Deletion of LOU’s No. 4, No. 5, No. 9, No. 10, No. 11, No. 13, and No. 14.

Costing of Proposals:

As noted above, in 2007, Mr. Ready recommended a process for the parties to develop a common understanding of collective bargaining data, including costing the collective agreement. He made this proposal because the parties have been unable to agree on such data in the past. In addition, BCPSEA noted that BCTF does not agree with its costing methodology or the actual costing of proposals. BCTF has publicly explained its view that its January 17, 2012 proposal costs \$565 million over 3 years (\$305 million in year one and \$130 million in each of years 2 and 3). BCPSEA disagreed with the costing and explained its view that the total cost was in the order of \$2.0 billion over 3 years. These are significant amounts but it should be noted that total compensation for teachers, including salary and benefits, is, according to BCPSEA, \$2.913

billion (of public funds) annually.

V: Analysis:

Prior to setting out my analysis, it is important to note that both parties were unequivocal with me that they have the desire and objective to achieve a voluntary renewal collective agreement. They have the expertise and the resources to get the task done. And, as set out above, they were able to achieve the task successfully the last time they came together in 2006. Despite these factors, however, the parties remain apart at the bargaining table and teachers remain engaged in a legal strike. This led to my appointment to inquire and assess the likelihood that these parties can reach a voluntary settlement.

My meetings with the parties and my review of the material they provided to me results in the following observations:

- Neither party views the other party as anywhere close to what is commonly referred to as the “settlement zone” – that is, the parties have narrowed the issues and interests to the point they are making progress or likely to make progress to a voluntary settlement. BCPSEA says that BCTF refuses to identify priorities among its outstanding proposals. BCPSEA’s interpretation is that all of BCTF’s proposals are priorities making it difficult for BCPSEA to identify areas where specific focus is required and where there might be room to move. BCPSEA’s view is that its proposals are consistent with BCTF’s bargaining objectives (working conditions, learning conditions, and respect for teachers) but that BCTF’s proposals are inconsistent with its own objectives. BCTF says that the union is prepared to negotiate everything but BCPSEA is only prepared to negotiate on what BCTF calls BCPSEA’s concessionary proposals. BCTF says that BCPSEA is intractable, unwilling to move, and “not in a settlement zone”. In BCTF’s news release of February 20, 2012 in which they announce an application for a mediator, it notes that “everybody knows the two parties are far apart”.
- The “net zero” mandate is a fundamental obstacle in this set of bargaining. The mandate exists as a result of a Cabinet decision. BCPSEA has no ability to change or move off of the “net zero” mandate. Government has publicly stated it has no intention to move off of the mandate both for economic policy reasons and because others in the public sector have negotiated within it (notwithstanding some who expressed unhappiness with it). BCTF is under no obligation to accept the policy decision respecting the “net zero” mandate. They are free to object to it and to engage in hard bargaining, political action, and job action against. However, as long as BCPSEA has the “net zero” mandate (0% for a 2-year deal based on no new money) with BCTF refusing to accept negotiating within it and insisting on new money for salary (15% over 3 years) and benefits, the parties will remain fundamentally and significantly apart.
- The issues associated with Bill 28 have had an impact on collective bargaining, particularly with a Court decision being issued 6 weeks after the commencement of bargaining and a process to address it that ran contemporaneously. When I pressed BCTF on its contention that Bill 28 matters are at a separate table, particularly as BCPSEA identified to me its understanding that class size and composition negotiations

are a pre-condition to a negotiated agreement for BCTF, BCTF stated that cannot be the case as they do not have any proposals related to those matters at the provincial bargaining table. As noted above, BCTF has a proposal on the provincial table regarding the “split of issues” in which they propose adding “class size and class composition” to the list of matters to be negotiated locally while BCPSEA says that it does not agree negotiations on these items can occur while Bill 28 is still in place.

- The outstanding “split of issues” between provincial and local bargaining is another fundamental obstacle considering the parties have been unable to make progress despite the assistance of 3 arbitration decisions. While the list of proposals in Appendix III and Appendix IV show one outstanding issue (“LOU No. 1 Designation of Provincial and Local Matters”), it is critical to understand that behind that proposal are over 1,100 proposals. As noted above, as long as both parties claim the Jackson decisions confirm their approach, they will make no progress on either the status of LOU No. 1 or the over 1,100 outstanding proposals that have yet to be discussed.
- In almost one year of collective bargaining, the parties have reached agreement on only 9 items. They have had 78 face-to-face bargaining sessions. The bargaining process is starting to break down between the parties. On February 8, BCPSEA outlined in a letter to BCTF frustration over what the parties are going to discuss at the table.
- BCTF’s members have been on strike, albeit not a full-scale walkout, for almost 6 months. This limited or controlled strike puts pressure on excluded administrators who must perform duties teachers are legally not performing. BCTF outlined to me there is huge pressure on them in relation to the management of their strike and even from the media. However, the pressure is not working in this case, even with the possibility of the strike lasting for the full school year. A strike of 6 months is not common because the whole purpose of the strike is to put economic pressure on both parties to force a change in positions that motivates the parties to get a deal.
- There are process elements that seem to be in the way of the parties making progress or creating momentum. Some of these elements relate to how the parties are engaging in bargaining. For example, BCTF expressed frustration with bargaining over packages of proposals and with BCPSEA’s co-governance model. BCPSEA expressed frustration that BCTF convened a media briefing on its January 17 comprehensive proposal before tabling it. Other process elements relate to more complicated issues such as the PELRA “split of issues”.
- The parties deserve credit for continuing to bargain while also assisting me with this inquiry. However, despite 4 meetings and back-and-forth over a mini-package of 4 proposals, the parties made no progress in that no items were concluded. BCTF will suggest that the Compassionate Care Leave item is concluded, but BCPSEA will note that it is part of a mini-package requiring agreement on all items. Technically they are both correct. But my point is that I had hoped my appointment and the increase in public profile of this dispute would help to motivate the parties to want to show government that progress was being made towards voluntary settlement. Unfortunately that is not the case which makes it difficult to see how the parties will be able to make progress on the more difficult outstanding issues.

VI: Conclusion:

It is my assessment that unfortunately it is very unlikely that BCPSEA and BCTF will be able to reach a voluntary settlement. My assessment is based on my findings that the parties are not narrowing the issues in dispute despite over 75 bargaining sessions and an almost 6-month long limited strike. In addition, I also find that the “net zero” mandate and the outstanding “split of issues” between provincial and local bargaining are fundamental obstacles to the parties being able to reach a voluntary settlement.

I wish to acknowledge that BCPSEA and BCTF were very respectful of me, my mandate from you, and the time frame for the completion of my inquiry. They were helpful making themselves available at the same time they were engaged in bargaining to provide me with detailed material outlining their proposals and their perspectives on the status of bargaining between them.

Thank you for asking me to conduct this inquiry and prepare this report.

Respectfully submitted,



Trevor Hughes
Assistant Deputy Minister, Industrial Relations
Ministry of Labour, Citizens' Services and Open Government

cc: Kim Henderson
Deputy Minister
Ministry of Labour, Citizens' Services and Open Government

Appendices:

Appendix I – Meetings with the Parties.

Appendix II – Chronology of Key Events.

Appendix III – BCTF's Outstanding Bargaining Proposals.

Appendix IV – BCPSEA's Outstanding Bargaining Proposals.

Appendix V – Summary of BCTF's January 17, 2012 Package Bargaining Proposal.

Appendix I Meetings with the Parties

Upon receipt of direction to inquire from the Minister, I contacted the parties and asked to meet with them. The meetings occurred in no specific order and subject to their availability.

- February 9, 2012: **British Columbia Public School Employers' Association.**
8:45 a.m. Hugh Finlayson, Chief Executive Officer.
Jacquie Griffiths, Associate Executive Director.
Renzo Del Negro, Senior Labour Relations Consultant.
- February 14, 2012: **British Columbia Teachers' Federation.**
10:30 a.m. Susan Lambert, President.
Jim Iker, 1st Vice-President.
Glen Hansman, 2nd Vice-President.
Marie Franco, BCTF staff.
Richard Hoover, BCTF staff.
Maira Mackenzie, BCTF staff.
John Wadge, BCTF staff.
- February 16, 2012: **BCPSEA.**
2:30 p.m. Melanie Joy, Chair, Board of Directors.
Allen Chell, Vice-Chair, Board of Directors.
Hugh Finlayson and Jacquie Griffiths.
- February 17, 2012: **BCTF.**
1:00 p.m. Susan Lambert, Jim Iker, Glen Hansman, Marie Franco, Richard Hoover,
Maira Mackenzie, John Wadge.
- February 20, 2012: **BCTF.**
10:30 a.m. Susan Lambert, Jim Iker, Glen Hansman, Marie Franco, Richard Hoover,
Maira Mackenzie, John Wadge.

Appendix II Chronology of Key Events

- February 2, 2007: Vince Ready issues non-binding recommendations to assist collective bargaining in a report to the parties and to the Minister of Labour.
http://www.labour.gov.bc.ca/pubs/teacher/07_bargaining_options.pdf
- March 1, 2011: Parties commence collective bargaining.
- March 31, 2011: BCTF present proposal to re-designate the “split of issues” which would result in the move of more issues to the local bargaining table.
- April 13, 2011: B.C. Supreme Court issues decision on Bill 28-2002.
- May 20, 2011: Government and BCTF begin meetings regarding Bill 28-2002 decision.
- May 24, 2011: Parties exchange themes and objectives for collective bargaining.
- June 29, 2011: BCTF announces the results of its strike vote (90% in support).
- June 30, 2011: The 2006-2011 collective agreement expires.
- August 28, 2011: Arbitrator Marguerite Jackson issues decision regarding the “split of issues”. <http://www.bcpsea.bc.ca/documents/Publications-TeacherCollectiveManualDocs/No%2011-JG-Attachment-Decision%20of%20Arbitrator%20Jackson.pdf>
- August 31, 2011: BCTF issues 72-hour advance written notice of its intention to strike.
- September 2, 2011: Arbitrator Jackson issues 2nd decision regarding the “split of issues”.
- September 6, 2011: Start of new school year. Start of Phase I of legal strike (ban on administrative/non-teaching duties).
- September 17, 2011: Arbitrator Jackson issues 3rd decision regarding the “split of issues”.
<http://www.bcpsea.bc.ca/documents/teacher%20bargaining/Bargaining%20Bulletin/No%2015-Attachment%20Arbitrator%20Jackson%20Decision%20Sept%2017%20011.pdf>
- November 22, 2011: BCPSEA tables a comprehensive settlement package (15 items). BCPSEA withdraws 8 items.
- November 28, 2011: Consultations regarding repercussions of Bill 28-2002 decision end without agreement. Government advises BCTF that it will proceed to develop corrective legislation which must be enacted by April 13, 2012.
- December 14, 2011: BCPSEA and representatives from support staff unions reach a framework for a renewal collective agreement. Ratification to follow by February 29, 2012.
- January 17, 2012: BCTF tables a reduced package to “kick-start” negotiations which includes, for the first time, a specific wage increase proposal.
- February 1, 2012: BCPSEA tables a revised comprehensive settlement package (15 items), including 3 items from BCTF package.
- February 9, 2012: Minister MacDiarmid appoints Trevor Hughes to inquire into the likelihood of a voluntary settlement between the parties.
- February 20, 2012: BCTF applies for mediation at the B.C. Labour Relations Board under Section 74 of the *Labour Relations Code*.
- February 22, 2012: Parties engage in 78th bargaining session (note BCPSEA count of days).

Appendix III
BCTF's Outstanding Bargaining Proposals

Set out below are the outstanding items from BCTF's January 17, 2012 package proposal and, where possible, comments on the significance of the proposal.

BCTF Outstanding Proposal	Comment
U74 – Term of agreement	BCTF seeks a 3-year renewal agreement.
<u>U75 – Designation of local and provincial matters</u>	This is the item referred to above as the “split of issues”.
<u>U76 – Matters tabled pursuant to Jackson</u>	This item is linked to U75.
U77 – Article B.1 – Salary	BCTF tabled for the first time its specific wage proposal of 3% cost-of-living adjustment in each year of a 3-year agreement plus a 3% market adjustment in years 2 and 3. BCTF noted that its salary proposal is connected to respect for teachers, its view that teachers in B.C. are 9 th in compensation compared to other provinces, and others have received market adjustments (nurses in B.C., teachers in Saskatchewan).
U78 – Article B._ – Grid Reduction	BCTF wishes to reduce the number of steps from 11 to 8 to bridge the gap on differentials in pay based on experience. This is a move from its position of 6 steps.
U79 – Article B._ – Increment Dates *	BCTF seeks personalized increment dates.
U80 – Article B.1 – Restoration of Categories Deemed Anomalous in Burnaby, Richmond, and Gulf Islands *	BCTF seeks restoration of salary categories for certain teachers.
U81 – Salary – Adult Education, Distributed Learning, and Summer School	BCTF seeks no distinction in salary between K-12 teachers and these other categories of teachers.
U82 – Article B._ – Calculation of Increments and Increment Dates for TTOCs	BCTF seeks improvements for Teachers Teaching On-Call.
U83 – Article B.2 – Teacher Teaching On Call Pay	BCTF seeks improvements to pay for Teachers Teaching On-Call. BCTF noted that it has dropped elements of an earlier proposal.
U84 – Article B._ – Adult/Continuing/Summer School Class Cancellation *	BCTF seeks payment for employees where a class is cancelled or hours are involuntarily reduced.
U85 – Article B.16 – Benefits	BCTF says negotiations are possible on this item and that it has room to move. It says that other than the addition of the lifetime maximum in extended health in 2006, there have been no improvements in benefits since 1992. BCPSEA has a proposal to standardize benefit plans.
U86 – Article D.4 – Preparation Time	BCTF says there has been no improvement in teacher preparation time since 1992. The average for B.C. elementary teachers is 90 minutes. BCTF seeks increase to 150 minutes (despite Ontario at 240 and Manitoba at 180). BCTF dropped preparation time for report cards.
U87 – Article D.7 (a) – Duration of the Instructional Day *	BCTF seeks to define the length of the instructional day for all employees.
U88 – Article D._ – Release Time for Meetings *	BCTF seeks release from teaching for teachers who are required to attend specified meetings.
U89 – Article D._ – Regular Work Year for Employees *	BCTF seeks to define the work year, including a certain number of professional days and parent/teacher interactions.

BCTF Outstanding Proposal	Comment
U90 – Article G._ – Bereavement Leave *	BCTF noted it has moved from 10 days to 5 days of paid leave.
U91 – Article G.2 – Compassionate Care Leave *	BCTF noted it has moved from 26 to 8 weeks of paid leave. BCTF also notes this item is agreed between the parties but is not signed off because it is part of a mini-package of other proposals.
U92 – Article G._ – Family Responsibility Leave *	BCTF noted it has dropped demand for 5 days of paid leave for care of a third party.
U93 – Article G._ – Sick Leave *	BCTF seeks to use paid sick leave to care for an ill immediate family member.
U94 – Article G._ – Discretionary Leave *	BCTF seeks a certain amount of discretionary leave to be determined by the employee.
U95 – Article G._ – Pregnancy (Maternity), Parental, and SEB Plans	BCTF noted it has reduced its proposal for SEB pay.
U96 – Article G._ – Leave for Union Business *	BCTF seeks amendments to the conditions for leave for union business.
U97 – Superior Provisions	BCTF seeks retention of all superior provisions from previous collective agreements.
U98 – Proposals that may arise from legislative change and repercussions of Bill 27 and 28 decision	This item exists to deal with future legislative change, including Bill 27 and 28.
U99 – Letter of Understanding (LOU) No. 12 Re: Teacher Supply and Demand Initiatives *	BCTF seeks clarification of the application of the remote recruitment and retention allowance.

Note that proposals marked with an * in the left-hand column above are ones that BCTF indicated to me it views as non-contentious.

BCPSEA explained that it is subject to the “net zero” mandate which means that it has no funding to increase the cost of total compensation to address the union’s monetary proposals. However, BCPSEA is prepared to engage BCTF in negotiations within the “net zero” mandate to identify how to address their respective monetary priorities within the existing level of total compensation.

Appendix IV BCPSEA's Outstanding Bargaining Proposals

Set out below are the outstanding items from BCPSEA's February 1, 2012 package proposal and, where possible, comments on the significance of the proposal.

BCPSEA Outstanding Proposal	Comment
Posting and Filling, Employee Assignment and Transfer	This proposal is designed to, among other things, make seniority the tie-breaker for filling vacancies where experience, performance, qualifications, and suitability for a position are equal among applicants.
Layoff/Recall	This proposal is designed to standardize layoff language and reduce the disruption caused by layoffs.
Performance Review Program, Professional Growth Plans and Mentorship	This proposal is designed to establish regular evaluations of teachers through an updated model that establishes professional growth program and mentorship.
Harmonization of Benefits	This proposal is designed to standardize and modernize health and welfare benefit plans. BCTF indicates that they want to engage the employer in a discussion on this item.
Pregnancy/Parental Leave	BCTF identifies this item as possibly non-contentious and one on which they will engage BCPSEA in discussions.
<i>Family Responsibility Leave</i>	<i>This item is a counter-proposal to BCTF proposal U92.</i>
<i>ToC's on Union Business</i>	
<i>Compassionate Care Leave</i>	<i>This item is a counter-proposal to BCTF proposal U91.</i>
Alternate School Calendar	BCTF advises that this item is related to Bill 28 and will likely be addressed in the remedial legislation to be enacted by government before April 13, 2012.
<u>Letter of Understanding No. 1 Designation of Provincial and Local Matters</u>	<u>This item is a counter-proposal to BCTF proposal U75.</u>
Term, Continuation and Renegotiation	BCPSEA seeks a 2-year renewal agreement. BCTF indicates that they want to engage the employer in a discussion on this item.
<i>Committee Membership</i>	
Letter of Understanding No. 7 Provincial Collective Agreement Housekeeping and Interfacing/Melding Committee	BCTF identifies this item as possibly non-contentious and one on which they will engage BCPSEA in discussions.
Letter of Understanding No. 8 Updating the Provincial Collective Agreement Mid-Contract Modification Process	BCTF identifies this item as possibly non-contentious and one on which they will engage BCPSEA in discussions.
Previously deleted clauses under Bill 19 proposed to be returned to the collective agreement	As noted above under the discussion of Bill 28, this item is very contentious.

BCTF views the first 3 proposals as concessionary (or "contract strips") because it views them as amendments to "hard-won" collective agreement language.

BCTF and BCPSEA have been engaged in discussions on the above *italicized* items, as part of a mini-package, particularly during the week of February 13, 2012.

Appendix V
Summary of BCTF's January 17, 2012 Package Bargaining Proposal
(from BCTF's website)

STAFF REP—PLEASE CIRCULATE COPIES TO MEMBERS

**Bargaining
Bulletin**

BARGAINING
FOR OUR FUTURE

Volume 10, No. 5
January 2012

BCTF tables reduced demands

A three-year term

Salary

- 3% cost of living increase in each year and a 3% market adjustment in years 2 and 3 (objective is to reduce the gap between BC teachers and most others across Canada)
- an eight-step grid, keeping the current starting and maximum salaries, and evening out the steps (previous proposal was six steps)
- TTOCs paid on scale for each day worked (withdrew TTOC stipend, minimum guaranteed wage of \$22,000)

Leaves

- five days of paid bereavement leave (initially ten days)
- one paid and three unpaid discretionary days (initially eight paid days)
- 100% pay for first two weeks of pregnancy leave, 75% top-up for the remaining 15 weeks (previous proposal: 100% top-up for 17 weeks)
- 100% pay for first two weeks of parental leave, top-up to 75% for the remaining 35 weeks (previous proposal: 100% top up for 37 weeks)

Benefits

- pay-direct drug plan (BlueNet card)
- \$600 every two years for glasses
- employer pays 100% of premium for MSP, 90% for Dental, EHB, group insurance (previous proposal was 100% of all premiums paid by employer)

Preparation Time

- 150 minutes' prep time for elementary teachers (previous proposal: 25% prep)
- 15% prep time for secondary (previous proposal: 25% prep)
- secondary teachers' instructional time is limited to six blocks out of eight

**In all cases, superior local provisions
will be maintained.**

In addition, we withdrew these significant proposals:

- the early retirement incentive plan, which was flatly rejected by BCPSEA despite our calculations that over 10 years there would be \$140 million in savings
- 10 days' paid leave for professional activities
- paid leave for compassionate care.

For the full package of proposals go to bctf.ca/myBCTF/content.aspx?id=23112

Distribution: School staffrooms, Executive Committee, Local Presidents

CCD12-0031



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