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Résumé de l'article

La Fédération des enseignants de la Colombie-Britannique (bctf) est l'un des syndicats les plus grands et les plus puissants de la province, représentant tous les enseignants aux niveaux élémentaire et secondaire des conseils scolaires publics. La bctf s'efforce toujours d'obtenir des droits légaux, permettant la négociation collective de pleine étendue et l'accès sans restrictions au mécanisme de grève au niveau des conseils. Pour atteindre ses objectifs, elle a aussi suivi une série de stratégies sophistiquées, adaptant rapidement à son milieu politique et juridique. La bctf a eu des succès remarquables en faisant avancer son programme relatif aux relations de travail et a établi un différent trajet pour ses enseignants par rapport à la plupart des travailleurs du secteur public au Canada. Cet article trace la stratégie de relations de travail de la bctf dans son contexte juridique et politique, depuis sa création jusqu'à présent. Il soutient qu'étant donné les facteurs ci-haut mentionnés, les enseignants de la Colombie-Britannique ont vécu une expérience de relations de travail différente de la majorité des travailleurs de secteur public canadien. En s'appuyant sur les œuvres de Rose en matière de relations de travail dans le secteur public, cet article identifie les époques suivantes des relations de travail des enseignants de la Colombie-Britannique : époque d'exclusion (jusqu'à 1982); résistance et revitalisation (1982-1986), expansion (1987-1993), réforme (1994), répit (1994-2001); contrainte et consolidation (2002-2007), et, finalement, une époque de réalignement, débutant en 2007.

ARTICLE

Structuring Reality So That the Law Will Follow: British Columbia Teachers' Quest for Collective Bargaining Rights

Sara Slinn

Introduction

The British Columbia Teachers' Federation (BCTF), representing all public elementary and secondary school teachers in the province, is one of the largest and most powerful unions in British Columbia (BC). From the early days of its existence, BCTF has sought to negotiate a full array of issues on behalf of teachers, and do so with an unrestricted ability to strike at the individual school district (or local) level. It has employed a sustained, sophisticated series of strategies to achieve these objectives, quickly adapting to changing political and legal environments. The BCTF has had significant success in advancing its labour relations agenda, establishing a different trajectory for teachers than for most public sector workers in Canada.

The experience of public sector unions in BC is often characterized as a series of struggles against repressive, right-wing provincial governments. BC has certainly had a series of overtly anti-worker and anti-union governments, first under the Social Credit (Socred) Party and, since 2001, the Liberals. However, BCTF's conflict and struggle has spanned virtually every government in this province from the time of W.A.C. Bennett's Socreds to today, including the labour-friendly New Democratic Party (NDP) and the current Liberal government.

The perspective this article takes is that this experience is rooted in BCTF's determination to achieve and exercise full labour relations rights and obtain the collective agreement benefits accruing from the bargaining power that it has developed, contrasted with the fundamental difficulty government faces

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in providing public services with limited resources. It is essentially a practical and pragmatic dispute, rather than an ideological conflict. Therefore this article maps BCTF's strategies, struggles, achievements and setbacks in its labour relations agenda against the backdrop of the political and legal environments, and the actions and responses of successive BC governments.

This article begins by laying out the characteristics of public sector labour relations relevant to this history. It then reviews the accepted developmental stages of Canadian public sector labour relations, and offers a different account of BC teachers' experience. Each of these periods of development in BC teachers' labour relations experience is examined.[1] A final section addresses the recurring themes appearing in BCTF's labour relations strategies.

Public Sector Labour Relations

Government's role in public sector labour relations is complicated by two sets of dualities. First, government is responsible to public employees, as their ultimate employer. But it is also responsible to the public to protect its welfare and be accountable. Both sets of responsibilities shape government's role and its labour relations responses, and Swimmer and Thompson characterize this dichotomy as "by far the most intriguing element of public sector management."[2] These often conflicting responsibilities, and the decisions they demand about allocating limited public resources and protecting the public from unreasonable harm from labour disputes, while preserving a legitimate and functioning collective bargaining system in the public sector, produce dilemmas underlying much of government intervention in public sector collective bargaining.

The nature and extent of public service provision is being transformed as governments rethink their role as public service providers and shift towards creating an environment fostering provision of services rather than providing these services directly. Thompson and Jalette suggest that the practical constraints of recent recessionary periods have reinforced this redefinition of governments role.[3] This shift is also occurring in public primary and

1. This research includes confidential semi-structured interviews with several key informants, conducted between winter 2008 and spring 2011. These include past BCTF Presidents Irene Lanzinger (2007–10), Jinny Sims (2004–07), and Larry Kuehn (1981–84, currently BCTF Director of Research and Technology); British Columbia Public School Employers' Association's Chief Executive Officer, Hugh Finlayson; Kenneth Halliday, a labour relations expert who has negotiated on behalf of school boards; and an anonymous interviewee who has also negotiated for school boards.

2. Gene Swimmer and Mark Thompson, "Collective Bargaining in the Public Sector: An Introduction," in Gene Swimmer and Mark Thompson, eds., *Public Sector Collective Bargaining* (Kingston 1995), 1–19, 6.

3. Mark Thompson and Patrice Jalette, "Public Sector Collective Bargaining," in Morley Gunderson, Allen Ponak, and Daphne G. Taras, eds., *Canadian Labour Relations:*

secondary education. In the context of recommendations for federal civil service reorganization, Fryer describes this as government now "steering, not rowing" the boat.[4] While government's dual responsibilities may be the most intriguing aspect of public sector labour relations, government's power to legislate is its most defining feature. This allows government to set the rules for public sector labour relations and to change them at will. This is particularly so where the governing party holds a great majority, as has recently been the case in BC. The labour relations system was constructed on the premise that government would act as "honest brokers, intervening on behalf of the public good."[5] However, as several scholars point out, governments have abandoned this neutrality, becoming partisan actors mixing their managerial and governance functions, and are frequently unable to resist the temptation to exercise legislative power to reset labour relations rules to favour their managerial interests.[6]

Governments in Canada have a long history of frequently using their legislative power to directly intervene in public sector labour relations. This has often included *ad hoc* legislation ending labour disputes with back to work legislation, commonly imposing collective agreement terms, or directing parties to interest arbitration. Also common have been legislative restrictions on the scope of public sector collective bargaining, removing issues from the bargaining table and converting them into unilaterally determined matters of public policy. Panitch and Swartz refer to this as a trend from temporary measures to "permanent exceptionalism" where state intrusion, to the repeated detriment of labour, has become increasingly normalized.[7]

However, an important change to the legal environment of public sector labour relations is the 2007 Supreme Court of Canada decision in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*.[8] This decision has reduced the availability of such legislative

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Understanding Union-Management Challenges and Choices, 6th ed. (Toronto 2008), 403–429, 427.

4. Canada, Advisory Committee on Labour Management Relations in the Federal Public Service, *Working Together in the Public Interest* (Ottawa 2001), 10.

5. Bernard Adell, Michel Grant, and Allen Ponak, *Strikes in Essential Services* (Kingston 2001), 2.

6. Adell et al, *Strikes in Essential Services*, 2; Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining," in Morley Gunderson, Allen Ponak, and Daphne Taras, eds., *Union-management Relations in Canada*, 5th ed. (Toronto 2005), 414–443, 426–7.

7. Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms*, 3rd ed. (Toronto 2003), 27–8.

8. *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia,* 2007 SCC 27; Eric Tucker, "The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of Canada," *Labour/Le Travail*, 61 (Spring 2008), 151–180.

tools. The Court redefined the *Charter* protection of freedom of association to include a right to the process of collective bargaining such that the right will be violated where state action constitutes "substantial inference" with collective bargaining. The scope and shape of this right will also be limited in certain contexts of "exigency and urgency."[9] This is a tremendous change because, previously, the Court had consistently and emphatically ruled that the *Charter* guarantee of freedom of association did not extend to either collective bargaining or strike activity.

Although the full implications of this decision remain to be determined, it clearly indicates that governments will be at risk of violating public sector workers' *Charter*-guaranteed freedom of association by passing legislation that imposes collective agreement terms, removes negotiated provisions from collective agreements, or removes certain matters from the scope of negotiations, absent exigent and urgent circumstances. As this article will show, governments in BC have frequently relied on legislative intervention of these types in the past to deal with teacher bargaining. This new limitation requires governments to rethink their dependence on legislative intervention.

Also relevant to teacher labour relations in BC is the role of media. Public sector labour relations has been described as "an exercise in political, not economic, power" with political considerations often as important as financial factors.[10] These political considerations create incentives for both parties to try to use the media in disputes, such that negotiations occur, in part, in the media in a contest over public opinion. Gunderson and Reid also note that strikes offer public sector unions a possible advantage, as a "strike (or threat of a strike) removes an asymmetry in access to the media. Governments can usually get media coverage for their views very easily while a public sector union has to pay for its propaganda – it can get free coverage only in a crisis."[11] Media also influences how parties frame their demands. Teachers, for instance, generally cast demands in terms of improved education rather than higher salaries and better working conditions, while government frames its demands and actions in terms of protecting the public interest. This often involves representing public workers as privileged and shielded from the economic hardships affecting those in the private sector.[12]

9. *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11; *Health Services,* para. 107.

10. Swimmer and Thompson, "Collective Bargaining in the Public Sector," 2; Adell et al, *Strikes in Essential Services*, 3.

11. Morley Gunderson and Frank Reid, "Public Sector Strikes in Canada," in Gene Swimmer and Mark Thompson, eds., *Public Sector Collective Bargaining in Canada: Beginning of the End or End of the Beginning?* (Kingston 1995), 135–163, 147.

12. Ponak and Thompson, "Public Sector Collective Bargaining," 426; Adell et al, *Strikes in Essential Services*, 3.

Stages of Public Sector Labour Relations Development

Rose identifies four distinct eras in the development of formalized public sector labour relations in Canada.[13] Before the formalized public sector bargaining of the 1960s, many groups of public workers had a long history of informal consultation, sometimes characterized as "collective begging."[14] The "expansionary" era occurred between the 1960s and the early 1980s. During this period public sector employment and unionization expanded quickly, as public workers gained access to formal collective bargaining. This period is associated with high levels of work stoppages and wage settlements, as public employees sought to achieve parity with private sector compensation. In a backlash against what governments regarded as the excesses of the preceding era, and fueled by recession, the era of "restraint" spanned the 1982 to 1990 period. Public sector unionization reached saturation levels, and government legislation limited public sector collective bargaining, access to strikes, and imposed wage restraints. Declines in work stoppages were not reversed until the late 1990s.[15]

Rose refers to the 1990 to 1997 period as an era of "retrenchment." The deep recession of the early 1990s prompted governments to cut spending through significant public sector restructuring, which led to substantial downsizing, reduced public employment, and greater reliance on privatization and contracting out.[16] This was accompanied by more restrictive restraint legislation and broader, and more permanent, limits on public sector bargaining than in the previous era. These changes substantially weakened public sector unions, leading to public sector wages lagging behind those in the private sector and a continued decline in strike activity.

A period of "consolidation" began in about 1998, during which governments sought to secure the gains they had made in controlling public sector labour relations, even though the economic urgency had abated. Consequently governments continued with hard bargaining and use of legislative intervention to limit public sector gains. In spite of the continued restrictive approach to public sector collective bargaining and access to strikes, strike activity rose during this period. Though the consolidation period is generally regarded as continuing to the present, that era is characterized by continued vigorous

13. Joseph B. Rose, "Public Sector Bargaining: From Retrenchment to Consolidation," *Relations industrielles/Industrial Relations*, 59 (Spring 2004), 271–94; Joseph B. Rose, "Regulating and Resolving Public Sector Disputes in Canada," *Journal of Industrial Relations*, 50 (September 2008), 545–559.

14. Morley Gunderson, "Collective Bargaining and Dispute Resolution in the Public Sector," in *Oxford Handbook of Canadian Public Administration*, ed. C. Dunn (Oxford 2002), 517–532, 518–519.

15. Thompson and Jalette, "Public Sector Collective Bargaining," 427; Rose, "Regulating and Resolving Public Sector Disputes in Canada," 547–9.

16. Ponak and Thompson, "Public Sector Collective Bargaining," 548.

government use of legislative restrictions, including reducing the scope of negotiable matters, imposing collective agreement terms or interest arbitration. As noted above, these legislative tools are not as readily available following the 2007 *Health Services* decision. It remains to be seen how much this substantial *Charter* limit on government actions will affect public sector labour relations. Indications from the first wave of cases applying this decision suggest that its effects will be substantial.[17] This likely marks the beginning of a new era of public sector labour relations, an era of realignment as government is forced to rethink how to renegotiate its multiple responsibilities in a more restrictive constitutional environment.

Stages of Development in BC Teacher Labour Relations

In contrast with the developmental eras Rose identifies, this article regards BC teachers as having followed a distinct labour relations path since the mid-20th century, comprised of different eras covering different time periods. An era of exclusion stretched from BCTF's inception to 1982. Next a period of resistance and revitalization followed from 1982 to 1986, and then an era of rapid expansion of labour rights from 1987 to 1993. A period of reform in 1994 was followed by a period of reprieve, lasting until 2001. Teachers experienced serious restraint of their labour relations rights later than other public sector workers, joining the era of consolidation in 2002 which continued until the post-*Health Services* era of realignment began in late 2007. The following sections provide a fuller explanation of each era and BCTF's labour relations strategies.

Era of Exclusion

For most public sector workers informal consultation began to be replaced with formal, statutory, collective bargaining following the 1967 *Public Sector Staff Relations Act*, and by the mid-1970s most public employees were eligible to bargain collectively. British Columbia's teachers experienced an extended period of being almost wholly excluded from formal labour relations. The BCTF has been the primary vehicle for teacher negotiations since its establishment in 1911.[18] In this earliest period, the *Public Schools Act* (*PSA*) governed

17. See e.g. Brian Etherington, "The B.C. Health Services and Support Decision – The Constitutionalization of A Right to Bargain Collectively in Canada: Where Did it Come From and Where Will it Lead?," *Comparative Labor Law & Policy Journal*, 30 (Summer 2009), 715–749; John P. McEvoy, "*B.C. Health Services*: The Legacy After 18 Months," *University of New Brunswick Law Journal*, 59 (Annual 2009), 48–66.

18. Pursuant to *An Act to incorporate Benevolent and other Societies,* R.S.B.C. 1911, c. 19. For a detailed history of this period see Francis H. Johnson, *A History of Public Education in British Columbia* (Vancouver 1964) and Albert A. Blum, ed., *Teachers Unions and Associations: A Comparative Study* (Urbana and Chicago 1969).

teacher employment and permitted limited collective bargaining by teachers; other collective bargaining legislation had no application to teachers.[19] The legislation permitted school boards and local teachers' associations to negotiate only salary and bonuses, though they were not obliged to do so. Under this system, many school districts used a "two-tier" approach to salary determination. Minimum salaries were set through collective bargaining, but a teacher could seek a higher salary in his or her individual employment contract with the district.[20]

The *PSA* was amended several times over the next decades to impose ever stricter limits on the bargaining process. Voluntary interest arbitration was introduced in 1919, arbitration at the request of one party in 1937, and finally a strict annual bargaining schedule combined with compulsory conciliation and binding arbitration of salary and bonuses was implemented in 1958.[21] This legal framework for teacher collective bargaining persisted, with little modification, until the late 1980s.

Dave Barrett's New Democratic Party (NDP) ousted W.A.C. Bennett's long-ruling Socred government in the 1972 election. The Barrett government held power for only three years, to December 1975, before a new Socred government under Premier Bill Bennett, W.A.C. Bennett's son, came to power. During the NDP's brief reign, it passed the *Labour Code* and the *Public Service Labour Relations Act* in 1973, marking a new era for public sector labour relations in the province, significantly broadening access to the general labour legislation and collective representation for public employees, and generating a wave of public sector unionization.[22] However, teachers remained excluded, and had to wait another decade-and-a-half before gaining access to mainstream labour relations legislation.

In this very limiting environment, BCTF and its locals embarked on coordinated efforts to shape negotiations and exercise full labour rights, even in the absence of supportive legislation. In the 1950s teachers achieved a common salary grid recognizing experience and certification.[23] BCTF then sought to

19. *The Public Schools Act*, R.S.B.C. 1911, c.206.

20. Mark Thompson and James F. Cairnie, "Compulsory Arbitration: The Case of British Columbia Teachers," *Industrial & Labor Relations Review*, 27 (October 1973), 3–17, 5.

21. *An Act to amend the "Public Schools Act"*, S.B.C. 1919, c. 75, s. 6; *Industrial Conciliation and Arbitration Act*, S.B.C. 1937, c. 31, ss. 1, 4, 5, 17; *Public Schools Act Amendment Act, 1937,* R.S.B.C. 1937, c. 68, s.3; *Public Schools Act*, S.B.C. 1958, c.42, ss.137–143; British Columbia, British Columbia Public School Employers' Association, *Teacher-Public School Employer Collective Bargaining in BC: Historical Perspectives,* 2006, 5 <http://www.bcpsea.bc.ca/documents/Publications-ResourceDiscussionDocs/historicalperspective2010.pdf> (1 February 2011).

22. *Labour Code,* S.B.C. 1973, c. 122; *Public Service Labour Relations Act*, S.B.C. 1973, c. 144.

23. BCTF, *The Steps Leading to Full Bargaining Rights,* n.d. <http://bctf.ca/AboutUs.aspx?id=18892&printPage=true> (1 February 2011).

negotiate terms and conditions with school districts beyond the statutory limits, especially class size reductions.[24] However, between 1968 and 1975 BCTF succeeded in negotiating these "working and learning condition" contracts (WLCs) in only six of the hundreds of school districts then existing across the province, and most of these were in the relatively populous and urban Lower Mainland.[25] Although these WLCs were not legally enforceable, no school board challenged their legitimacy.[26]

Even though teachers had no clear legal right to strike, and compulsory arbitration was prescribed in cases of bargaining impasse, teachers and their locals used mass resignations, strikes, participated in work-to-rule campaigns, and issued "in-dispute" declarations throughout this period as negotiation pressure tactics.[27] This unfettered ability to strike – whether technically legal or not – was explicitly restricted in 1978 following a two-and-a-half month strike in the Kootenays, when the Socred government amended the *Essential Service Disputes Act* (*ESDA*) to regulate work stoppages in education.[28]

BCTF also sought mandatory membership for teachers in the central BCTF. Larry Kuehn notes that in the late 1930s and 1940s, many in BCTF opposed compulsory membership until at least 90 per cent of teachers had joined voluntarily.[29] By 1947, when the government acceded to BCTF's request for mandatory membership for teachers, 93 per cent of teachers in the province had voluntarily signed up with the organization. Kuehn credits this strong organizing tradition with BCTF's later strength.[30]

As other commentators observe, beginning in the late 1960s the relationship between BCTF and the Socred provincial government became highly politicized and confrontational as a result of BCTF's rapidly emerging militancy and partisan politics.[31] BCTF's well-organized and vigorous campaign

24. Larry Kuehn, interview by author; BCTF, *The Steps*.

25. BCTF, *History of Teacher Collective Bargaining 1917–2002*, 26 September 2003, <http://www.labour.gov.bc.ca/pubs/teacher/appb_bctf.pdf> (1 February 2011), 2.

26. Kuehn, interview.

27. BCTF, *History of Teacher Collective Bargaining*, 4.

28. Human Resources and Skills Development Canada, special data request; *West Kootenay Schools Collective Bargaining Assistance Act*, S.B.C. 1978, c. 42, s. 11 amended the *Essential Service Disputes Act*, S.B.C. 1977, c. 83, s. 8(b) to regulate "a substantial disruption in the delivery of educational services in the province."

29. Kuehn, interview.

30. *Public Schools Act Amendment Act*, *1947,* R.S.B.C. 1947, c. C-79, s.101; Kuehn, interview; BCTF, *History of BCTF,* n.d., <http://bctf.ca/uploadedFiles/About_Us/HistorySummary.pdf> (1 February 2011), 3.

31. See Thomas Fleming, "From Educational Government to the Government of Education: The Decline and Fall of the British Columbia Ministry of Education, 1972–1996," *Historical Studies in Education, 15 (Fall 2003), 210–36*, 271; Marlene Ingrid Yri, "The British Columbia Teachers' Federation and its Conversion to Partisanship, 1966–1972," MA thesis, University of

against the Socred government and its policies played a significant role in the 1972 change in government. These political efforts included a Teacher Political Action Committee, and BCTF's 1969 "apple" campaign contesting government's education funding policies, supporting candidates whose positions matched those of the Teachers' Federation. In 1977 a group of radical teachers formed the "Teachers' Viewpoint," a progressive caucus within BCTF. Several executive members, and three presidents, including Larry Kuehn, were Viewpoint members.[32] Objection to the government's education policy and reforms to teacher pensions culminated in a province-wide, political, teachers' strike on 19 March 1971. Shortly thereafter, in what was seen as retribution for this public opposition, the Socred government removed BCTF membership as a condition of employment for teachers.[33] Reflecting the rancour of the government-BCTF relationship, Patrick McGeer, then Liberal Party leader, asked the Legislature: "Is it possible, Mr. Speaker, at some future time, that a condition for not being hired by a school board will be membership in the B.C. Teachers' Federation?"[34]

Though the succeeding NDP government restored compulsory BCTF membership, in the meantime the Teachers' Federation mounted a successful membership drive, getting all but 69 of the province's 22,000 teachers to join or retain their membership.[35] Notably, Anthony Brummett, later Socred Minister of Education under Premier Vander Zalm, was among the few teachers who did not join BCTF at this time.[36] This was the first of several times a provincial government would attack BCTF by trying to weaken its membership. Each time BCTF would achieve near-total support from teachers.

In sum, although teachers did not participate in the expansion of rights enjoyed by much of the public sector in the pre-1980 period, BCTF did successfully assume broader access to bargaining and striking before any statutory grant of rights. It also reoriented itself as an aggressively political organization, showing tremendous capacity to organize and coordinate locals, and to initiate and set the course for labour relations change.

British Columbia, 1979.

32. Fleming, "From Educational Government to the Government of Education," 271.

33. *An Act to Amend the Public Schools Act*, R.S.B.C. 1971, c. C-47; Legislative Assembly of BC, *Proceedings of the 29th Parliament, 2nd Session,* 15 March 1971, 688; Kuehn, interview.

34. Legislative Assembly of British Columbia, *Proceedings of the 29th Parliament, 2nd Session,* 15 March 1971, 688.

35. *An Act to Amend the Public Schools Act*, R.S.B.C. 1973, c. C-142, s. 144; BCTF, *History of BCTF.*

36. Kuehn, interview.

Era of Resistance and Revitalization: 1982 to 1986

By the early 1980s teachers remained excluded from mainstream labour relations, and also participated little in the conventional labour relations community. This was about to change. The 1980s brought significant public sector labour reforms prompted, in part, by widespread labour unrest following rapid expansion of public sector unionization in the 1970s. BC also suffered a protracted and serious economic recession in the 1980s. The relationship between public sector unions and Premier Bill Bennett's Socred government became increasingly volatile and antagonistic. Premier Bennett was seen to hold a deep disdain for education and teachers, and one commentator characterized Premier Bennett's treatment of teachers during this time as a "'double punishment' ploy", reflecting both his contempt for formal education and his anger at the growing "radicalism and left-wing orientation at the executive level of the BC Teachers Federation." [37]

After finding that it could not secure WLCs in more than a handful of school districts, in the early 1980s BCTF set the explicit target of achieving full, formal, bargaining rights.[38] Kuehn explains that:

> [T]he key to our strategy was to restructure ourselves in a way which assumed that we had the right to bargain the whole range of things and then to try to take that into the bargaining arena … the strategic view was that if we did that for a period of time and we have restructured the reality then the law would follow.[39]

BCTF restructured its committees, developed strategies for influencing school board budgets, established a unilateral WLC grievance procedure, and adjusted the demands it tabled. As Kuehn recalls, then in his first year as BCTF President, in the 1981 bargaining round "we didn't put money on the table at all … we only talked about working and learning conditions and … at no time did I ever talk about salaries."[40]

This strategy had limited success in widening the scope of bargaining. Kuehn describes the progress made as "Very little. In a patchwork of things in contracts."[41] However, teachers did win substantial salary increases. Kuehn recalls: "the [school] boards just kept putting more money on the table. They would say 'no we can't talk about this' " when the association raised non-salary

37. Alan Twigg, *Vander Zalm: From Immigrant to Premier* (Madeira Park 1986), 94.

38. Kuehn, interview; BCTF, *The Steps*.

39. Kuehn, interview.

40. Kuehn, interview.

41. Kuehn, interview. The frequency of WLCs on specified issues among the 75 locals, between 1980–85 was: 27 on elementary preparation time; 30 on noon hour supervision; 12 on transfers; 19 on personnel practices; 36 on leaves; 42 on professional development; 11 on educational leave; and, 27 on grievance procedure (BCTF, *History of Teacher Collective Bargaining*).

matters in bargaining, and would make a higher salary offer.[42] This established a wage settlement pattern that was then adopted in arbitration decisions for other districts.[43] BCTF suggests that these rich salary agreements weakened teacher support for formal strike access, leading to teachers voting 60-40 against a February 1982 proposal to call for legislation allowing teacher locals the option of striking rather than going to arbitration to resolve bargaining disputes.[44]

Until the early 1980s BCTF had relied on a telephone network for communications, with volunteer regional coordinators maintaining ongoing communication between local negotiators and the central BCTF. Thinking ahead to hoped-for fuller bargaining, Kuehn said "we knew … that it would be more complex once we got into dealing with things other than salaries and benefits that we had to have a system that would allow us to provide more information."[45] BCTF invested heavily in a computer network, and in 1981 BCTF was the first union in the world to establish an online labour network.[46] Kuehn says that a computer network struck him as a valuable investment because "the core of our strategies was communications."[47] After two years of successful use by the Executive Committee, in 1983 BCTF expanded the network, providing every local with a terminal and training on the network. Kuehn credits this with enabling the BCTF to not only survive the Socred attacks but to thrive during the 1980s.[48] This network would later give BCTF a significant advantage over school boards in organizing, negotiating and striking, when it achieved expanded formal bargaining rights later in the decade.

In 1982 the Bennett government began implementing its anti-worker agenda in earnest. The first wave of measures included the 1982 *Interim Education Finance Act* and *Compensation Stabilization Act,* introducing ceilings on school board expenditures and wage controls.[49] Although school boards had local taxation authority at this time, these changes transferred financial control to the provincial government, depriving school boards of real bargaining power.[50] This prompted BCTF to join other workers and students to

42. Kuehn, interview.

43. Kuehn, interview.

44. BCTF, *The Steps*; Kuehn, interview.

45. Kuehn, interview.

46. Eric Lee, *The Labour Movement and the Internet: The New Internationalism* (Chicago 1997), 88, provides a detailed history of BCTF's technological development; Kuehn, interview.

47. Kuehn, interview.

48. Lee, *The Labour Movement and the Internet,* 46, 49, 51, 53.

49. *Education (Interim) Finance Act*, S.B.C. 1982, c. 2; *Compensation Stabilization Act*, S.B.C. 1982, c. 32. Introduced as a two-year program, it remained in effect until late 1987.

50. BCTF, *History of Teacher Collective Bargaining*, 5.

establish the political pressure group: "Defend Education Services Coalition."[51] Incongruously, in the midst of this, Bill Vander Zalm, then Minister of Education, initiated informal discussions with BCTF about extending formal bargaining rights to teachers. BCTF could not accept the proposal, which the Premier also rejected, because it excluded administrators. Kuehn claims that BCTF couldn't agree to anything that didn't include all of its members.[52]

The following year the government introduced a "restraint program" of 26 bills introduced on 7 July 1983. Much of this legislation targeted the public sector and public sector labour relations, removing seniority rights and the ability to negotiate working conditions, and centralizing administrative and fiscal power from local and elected government bodies such as school boards to the cabinet and its agencies. Several of these bills directly affected teachers but the majority were directed at the BC Government Employees' Union (BCGEU) and its members.[53] The government engaged in no consultation before introducing this legislation and invoked closure 21 times during debate on the Bills – the first time closure had been used in the province.[54]

Opposition to the government's program was organized almost immediately by the Vancouver and District Labour Council, which quickly established a coalition of unions and community groups.[55] An 11 July 1983 meeting of these organizations and groups produced a series of resolutions and called on the British Columbia Federation of Labour (BCFL), headed by Art Kube, to lead a provincial protest on 23 July.[56] Despite the reported lack of enthusiasm of the BCFL's leadership and Kube for these opposition actions, BCFL agreed to organize and lead the opposition.[57] It announced formation of the "Operation Solidarity" coalition in early August 1983, and a province-wide movement protesting the budget and government actions, the "Solidarity Coalition," was formed in mid-August.[58] Larry Kuehn became centrally involved in both

51. BCTF, *The Steps*.

52. Kuehn, interview.

53. Bills affecting teachers included: Bill 3, *Public Sector Restraint Act,* S.B.C. 1983, c. 26 (granting wide latitude for terminating public employees upon collective agreement termination); Bill 6, *Education (Interim) Finance Amendment Act,* S.B.C. 1983, c. 14 (affected school board taxing authority and centralizing budget authority); and, Bill 11, *Compensation Stabilization Amendment Act,* S.B.C. 1983, c.13 (wage control legislation).

54. Mark Thompson, "Restraint and Labour Relations: The Case of British Columbia," *Canadian Public Policy*, 11 (June 1985), 171–179, 172, 174; Bob Plecas, *Bill Bennett: A Mandarin's View* (Vancouver 2006), 214, 218.

55. Bryan D. Palmer, *Solidarity: The Rise & Fall of an Opposition in British Columbia* (Vancouver 1987), 27.

56. Palmer, *Solidarity*, 27.

57. Palmer, *Solidarity*, 28.

58. Palmer, *Solidarity*, 34–5. These movements are well documented in Palmer, *Solidarity*; Peter Poole, "Organized Labour vs. the State in British Columbia: The Political Limitations of

branches of this movement. Solidarity initiatives included mass demonstrations, occupying Cabinet offices, and several public sector strikes, including two weeks of escalating work stoppages. These stoppages began with a 1 November 1983 legal walkout by 35,000 provincial government workers whose collective agreement had expired. This was followed by strikes by other public sector groups, scheduled to take place in sequence, including a three-day teacher strike commencing on 8 November.[59]

The teachers' threatened walk-out became a crucial event in the Solidarity dispute, with other unions and government skeptical that teachers would actually go out.[60] Only 60 per cent of teacher votes cast supported striking.[61] Unions knew that a failed teachers' strike would be a tremendous blow to Solidarity. The government was counting on this, and added pressure by threatening teachers with loss of their teaching certificates if they struck.[62]

On 7 November, with the teachers poised to walk out, Solidarity and the government nearly struck a deal to end the escalating job action. One element of the deal was approval of an agreement reached between teachers and the school board in North Vancouver.[63] Collective agreement negotiations had been underway in the district and the parties had agreed on a seniority lay-off provision. Kuehn claims that "at the last minute … the Minister said no, that [provision] wouldn't be acceptable."[64] This rejection, coupled with government's refusal to exempt BCGEU from the certain restraint legislation, caused the potential deal to collapse.[65]

To the surprise of many, on 8 November 1983, over 85 per cent of teachers participated in the illegal walk-out.[66] Kuehn credits BCTF's computer network as important to the success of this strike, saying that it helped build a sense of camaraderie in the lead up to the strike and in the strike itself.[67] The teachers' action was over quickly, with most teachers returning to work the following day in the face of injunctions restraining picketing, cease and desist orders, and illegal strike declarations. School districts successfully characterized

Trade Unions," MA thesis, Simon Fraser University, 1987; and, Plecas, *Bill Bennett*.

59. Thompson, "Restraint and Labour Relations," 172; BCPSEA, *Historical Perspectives*, 5; William K. Carroll and R.S. Ratner, "Social Democracy, Neo-Conservatism, and Hegemonic Crisis in British Columbia," *Critical Sociology*, 16 (Spring 1989), 29–53, 39–40.

60. Palmer, *Solidarity*, 65–66.

61. BCTF, *The Steps*.

62. Palmer, *Solidarity,* 65–66.

63. Palmer, *Solidarity,* 66.

64. Kuehn, interview.

65. Palmer, *Solidarity*, 66.

66. Palmer, *Solidarity*, 66.

67. Kuehn, interview.

teachers' actions as an illegal sympathy strike, rather than a political strike which would have been outside the LRB's jurisdiction to restrain, by inducing teachers on picket lines to make statements suggesting that their action supported BCGEU's legal strike.[68] As brief as the teachers' action was, it was powerful. As one commentator notes, the teachers had "forced the Social Credit government to negotiate its legislation."[69]

Nevertheless, by this point the Solidarity leadership was anxious to settle, as both it and the government recognized that Operation Solidarity would not succeed.[70] Although the BCFL and unions took over a lead role in Solidarity actions, some involved at the time contend that it did so in order to control and limit the action.[71] Jack Munro, regional vice–president of the IWA, one of the largest private-sector unions, and ultimately the key figure in bringing an end to Solidarity later wrote that, while Solidarity had substantial grassroots support, "Privately, the overwhelming opinion of the majority of the labour leadership … was that we could not sustain this, that we had to stop it."[72] Seeking to end the Solidarity action in early November, prior to the teachers' walk-out and without Solidarity's knowledge, Munro contacted Jim Matkin, head of the BC Employers' Council and former deputy minister of labour to discuss a settlement.[73] Shortly thereafter, Munro recalls "we moved in to derail this thing. It was getting pretty damn close to the time when the private sector unions were supposed to go out. And my members weren't going anywhere."[74]

Solidarity concluded on 14 November 1983 with a verbal agreement between Premier Bennett and Munro, representing Operation Solidarity, in the infamous "Kelowna Accord." The Accord provided that Bill 2, limiting the scope of matters BCGEU could bargain, would be eliminated; public sector unions could negotiate exemptions from Bill 3; there would be no striker reprisals; the millions in savings resulting from the teachers' strike would be retained for education; education funding would remain near 1983 levels; and advisory committees would be struck regarding human rights, tenancy and labour legislation.[75]

68. Palmer, *Solidarity*, 68.

69. Palmer, *Solidarity,* 79.

70. Plecas, *Bill Bennett,* 228; Palmer, *Solidarity,* 69.

71. Palmer, *Solidarity,* 28–9.

72. Jack Munro and Jane O'Hara, *Union Jack: Labour Leader Jack Munro* (Vancouver and Toronto 1988).

73. Munro & O'Hara, *Union Jack*, 8.

74. Munro & O'Hara, *Union Jack*, 9.

75. Palmer, *Solidarity,* 79.

Teachers' central role in Solidarity inspired the government to punish teachers after the dispute. As Palmer describes it, Bennett led "a personal crusade" against Kuehn, and reneged on the Accord's funding commitments to teachers. Moreover, Minister of Education Jack Heinrich maintained that Munro had agreed that teachers would make up the strike days.[76]

While Solidarity is widely regarded as a failure, the Kelowna Accord a capitulation if not a betrayal of the province's workers by labour leaders, and teachers are seen as having suffered among the worst fallout of the Accord, Kuehn offers an optimistic view of the longer-term effects of the Solidarity experience for teachers. He maintains that the Solidarity strike was the real turning point in teachers' efforts to expand bargaining rights, crediting it with triggering a "psychological change in teachers" crucial to achieving broader bargaining and access to strikes in the coming years.[77] As evidence of this change, Kuehn points out that BCTF's 1982 referendum on pursing strike rights had been defeated by a 60 to 40 vote. Just the next year, teachers voted 60 to 40 in favour of going out on strike for Solidarity, and over 85 per cent of teachers struck. As Kuehn describes it: "essentially we had a shift in that middle group there from one side to the other in terms of action" and "Solidarity showed that – for those who feared that striking would be the end of the world – it clearly wasn't."[78]

It is also the case that after Solidarity BCTF did achieve a breakthrough in expanding the scope of negotiable matters under WLC contracts. BCTF considered getting seniority layoff provisions in negotiated contracts to be essential. It had prioritized securing that provision in at least one school district during that year's round of bargaining. The first district to agree had been North Vancouver in November 1983. Although the Minister had rejected this provision just before the teachers' Solidarity strike, the parties later renewed agreement on that provision and the Ministry accepted it. This opened the door to BCTF securing job obtaining provisions in locals throughout the province. These provisions were valuable during the post-Solidarity layoff of 600 teachers, first applied in Abbotsford School District, where the local BCTF president was among the first teachers slated for termination.[79]

Era of Expansion: 1987 to 1993

For most of the public sector, the restraint era continued through the 1980s to 1990, and the even more restrictive period of retrenchment lasted from 1990 to 1997. For teachers, however, the 1987 to 1993 period was their era

76. Palmer, *Solidarity*, 79.

77. Kuehn, interview.

78. Kuehn, interview.

79. Kuehn, interview.

of expansion, during which they realized fuller labour relations rights than at any time before or since: broad scope, local bargaining, and access to strikes, though subject to essential service limits. To this day, BCTF remains determined to return to this golden era of teacher negotiations.

In October 1986, new Socred leader Bill Vander Zalm became Premier. A charismatic, grassroots politician, well known for his strong religious and socially conservative views, Vander Zalm had a fractious relationship with the BCTF dating back to his brief time as Minister of Education in 1982. Anthony Brummett, a former teacher and one of the few who had refused to join BCTF during its 1972 membership drive, was Minister of Education during the critical period from August 1986 to December 1990. BCTF had not forgotten Brummett's earlier rejection and it coloured their relationship. Kuehn recalls: "Brummett had a sense of regret, I think, that we would never talk to him. He felt he had so much to do and offer and we always ignored him."[80]

Though BCTF won greater informal scope for negotiations from the government, it continued to seek full access to collective bargaining and striking under the *Labour Code,* which excluded teachers at that time. BCTF successfully, though to no effect, contested this exclusion as violating Canada's commitments to freedom of association, in a complaint to the International Labour Organization (ILO).[81]

Ironically, it took a legal miscalculation in another case to ultimately propel teachers into mainstream labour legislation. BCTF had filed a *Charter* challenge contending that teachers' statutory exclusion from the *Labour Code* unjustifiably violated their rights of free association, liberty and security of the person, and equality.[82] Legal advice that the *Charter* challenge would likely succeed prompted the government to pre-empt a court decision by amending the legislation to grant teachers access to mainstream collective bargaining rights, including striking. By acting before being forced to by the courts, the government calculated that it could ensure that "certain safeguards" were in place.[83] In mid-1987 it passed the *Industrial Relations Reform Act* (Bill 19) and the *Teaching Profession Act* (Bill 20), rendering the Charter challenge moot.[84] Soon after, and surely to the government's dismay, the Supreme Court of Canada issued a trilogy of decisions in which the majority rejected any

80. Kuehn, interview.

81. ILO Committee on Freedom of Association, *Report No. 243: Canada* (Geneva 1986), Dec. 1350.

82. See *BCTF v. BC*, [1985] B.C.J. No. 3011.

83. Bill Vander Zalm, *For the People: Hindsight, Insight, Foresight: the Autobiography of British Columbia's 28th Premier* (Vancouver 2008), 271.

84. *Industrial Relations Reform Act, 1987,* S.B.C. 1987, c. 24; *Teaching Profession Act*, S.B.C. 1987, c. 19.

Charter protection for access to collective bargaining or striking.[85] In fairness to the government and its lawyers, these decisions were widely considered to have been unexpected results. This remained the state of the law for 30 years, until the 2007 *Health Services* decision.[86]

Bills 19 and 20 incorporated teachers into the general labour relations statute, marking the start of the modern era of education labour relations in BC. Bill 19 was a broad piece of legislation, replacing the *Labour Code* and Labour Relations Board with the *Industrial Relations Act* (*IRA*) and the Industrial Relations Council (IRC). While it expanded teachers' access to collective bargaining, it also introduced many anti-labour features to the general labour relations system.[87] Therefore, teachers were the only segment of labour in the province to benefit from Bill 19. Bill 20 exclusively addressed teacher regulation.

Together, Bills 19 and 20 brought teacher collective bargaining within mainstream labour regulation under the general labour legislation: the new *IRA*. The mandatory annual negotiation schedule and mandatory conciliation and compulsory arbitration deadlines were removed. Teachers now had broad scope collective bargaining, covering both salary and working conditions except for teacher appointments, appointments of education support workers, and assigning teaching duties to administrators. However, principals and vice-principals were excluded from teacher bargaining and BCTF membership.[88] Strikes and lockouts, which continued to be at the local level, were now regulated by the *IRA*, and subject to the *IRA*'s essential services clause. This authorized the new IRC to designate educational services an "essential service" and limit work stoppage activity if the dispute posed a "threat to the economy of the province or to the health, safety or welfare of its residents or to the provision of educational services in the province."[89]

From teachers' perspectives, the most controversial aspects of these Bills were Bill 20's creation of the British Columbia College of Teachers (BCCT) to act as the qualification, certifying and professional body for teachers, and removal of compulsory BCTF membership. The latter effectively required BCTF to certify each local association under the *IRA* union certification process in order to continue representing teachers in the school district. This meant that teachers in each school district had to decide whether or not to be represented

85. *Professional Institute of the Public Service of Canada,* [1987] 1 S.C.R. 313 (Can.); *PSAC v. Canada,* [1987] 1 S.C.R. 424 (Can.); *RWDSU v. Saskatchewan* [1987] 1 S.C.R. 460.

86. *Health Services & Support – Facilities Subsector Bargaining Assn v. British Columbia*, 2007 SCC 27 ("*Health Services*").

87. *Industrial Relations Act,* S.B.C. 1987, c. 24.

88. Bill 20, ss. 1(1), 44(a), 69, 70–71, 78; *School Act*, ss. 104, 131.2, 133–137, 141.

89. Bill 19 repealed the *ESDA*, incorporating its essential service provisions into *IRA* s.137.8.

by BCTF.[90] If teachers chose the BCTF certification option, that would bring *IRA* coverage and the attendant access to broad scope bargaining and strikes subject to essential service designations. If teachers in a local did not certify, choosing the professional association option, they would have no ability to strike, and binding arbitration would be the dispute resolution mechanism for a limited array of bargainable matters.[91]

Fleming describes the government's agenda, reporting that by creating BCCT Cabinet hoped that it would become the public voice of teachers, and that this voice would be more professional and less militant; that BCCT might divide the more radical from the moderate teachers, weakening the more militant influences and lessen BCTF's power. Moreover, removing principals and vice-principals would "shore up management's control of the schools."[92]

Bills 19 and 20 significantly affected labour relations in the province. Most broadly, they renewed the general and teacher-specific antagonism between labour and government, creating long-lasting labour unrest in the province. While the Bills reinvigorated BCTF, they also ignited enduring BCTF resistance to the BCCT, and established a poorly thought-out teacher bargaining system that led to contentious, conflict-ridden negotiations, many and lengthy work stoppages, and claims of unfair pressure on local school boards to agree to unaffordable provisions.

The Bills sparked a general strike of some 300,000 workers on 1 June 1987. The BCFL also initiated a broader "Program of Action," which urged unions to withdraw from all tripartite initiatives and to boycott the IRC. It also organized Bill 19 protests. BCTF's immediate response to the introduction of Bill 20 was to conduct a province-wide vote of teachers, then to initiate a political strike, closing schools by holding study sessions and rallies in several cities on 28 April 1987.[93] BCTF also planned an instruction-only campaign to follow a one-day Bill 20 walkout.[94]

BCTF regarded the creation of BCCT as an effort to weaken teacher unionism by removing its professional regulation role, leaving it with a collective bargaining role that it could only continue to exercise if it was able to certify in each school district. BCTF viewed this as a "direct attack" on teachers, meant to split teachers' loyalty and undermine BCTF.[95] Some commentators

90. Ken Halliday, interview by author.

91. Ken Novakowski, "Gaining Full Bargaining Rights," *Teacher Newsmagazine*, 12:6 (5 April 2000), <http://www.bctf.ca/publications/NewsmagArticle.aspx?id=12818> (1 February 2011), 5; BCPSEA, *Historical Perspectives*, 12; Bill 20, ss. 67–69, 73.

92. Fleming, "From Educational Government to the Government of Education," 231–2.

93. BCTF, *The Steps;* Novakowski, "Gaining Full Bargaining Rights," 5.

94. Carroll and Ratner, "Hegemonic Crisis," 44.

95. Novakowski, "Gaining Full Bargaining Rights," 5; BCTF, *The Steps*; Charles S. Ungerleider, "Globalization, Professionalization, and Educational Politics in British Columbia," *Canadian*

describe it as retribution for the BCTF's militant opposition to the government in 1983.[96] This ignited decades of conflict between the union and the college, culminating in a 2010 fact-finder's report offering a scathing assessment of BCTF's influence on BCCT's activities.[97]

However, once again BCTF quickly mobilized, signing up 98 per cent of the province's public school teachers, and certifying its locals in each of the province's 75 school districts.[98] Kuehn believes that this experience ultimately strengthened BCTF:

> [T]o some degree it was the choice mechanism that actually strengthened us. You know, taking away your membership and having to make a choice, made us go out and talk to every single person about what the implications were – each of the options there.[99]

In the view of several employer negotiators, the government had been so convinced that teachers would abandon the BCTF that it had not given sufficient thought to how local collective bargaining would operate among 75 separate bargaining units, with highly coordinated BCTF locals bargaining against uncoordinated, and often highly teacher-sympathetic school trustees, if BCTF did certify.[100]

Why the government was so certain that teachers would reject BCTF is bewildering. Labour relations experts were convinced at the time that there was no chance that a significant proportion of teachers would reject their union.[101] Ken Halliday recalls discussing the predicted BCTF rout with Bud Gallagher, then LRB Chair, after some Ministry representatives had visited Gallagher:

> [Gallagher said] they were all convinced there was going to be a number of the districts that would kick out the BCTF and either have another union or no union. And he said he couldn't believe it, but some of these guys had double digit numbers. I said like one, maybe. We both laughed because there was no chance in hell.[102]

The explanation for this miscalculation likely lies in the backroom manner in which the legislation was formulated, the Premier's general tendency to reject contrary views, and the limited input he therefore received on the legislation

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Journal of Educational Administration and Policy, 9 (December 1996), 5 <www.umanitoba.ca/publications/cjeap/ articles/ungerlieder.html> (10 March 2011).

96. Carroll & Ratner, "Hegemonic Crisis," 42.

97. British Columbia. Ministry of Education, *A College Divided: Report of the Fact Finder on the BC College of Teachers*, October 2010, <http://www.bced.gov.bc.ca/pubs/2010_factfinder_report_bcct.pdf> (20 December 2010).

98. Ungerleider, "Educational Politics in British Columbia"; BCPSEA, *Historical Perspectives*, 12.

99. Kuehn, interview.

100. Halliday, interview; Hugh Finlayson, interview by author.

101. Halliday, interview; Finlayson, interview.

102. Halliday, interview.

and teachers' attitudes. These Bills were not the product of broad consultation, but were drafted under the Premier's direction by a small working group of primarily private firm lawyers, in secret, without public consultation, and without the Minister of Labour's knowledge or participation. This was occurring at the same time the Premier had tasked the Minister with developing recommendations for *Labour Code* reform. The Minister was engaging in public hearings and meetings, while the working group met secretly. As Deputy Minister of Labour at the time, Graham Leslie says, all of the Minister's work was "a farce."[103] Leslie is highly critical of the working group and later described the legislation as "the product of too few and too narrow minds … constructed without the benefit of meaningful input from knowledgeable, practical people within the employer and trade union communities."[104] Kuehn also suggests that Minister Brummett, with his history of disconnection from majority teacher views, may have strongly influenced Vander Zalm.[105]

The local bargaining structure established by Bills 19 and 20 operated between 1987 and 1993, with most school boards bargaining three rounds of multi-year, broad-scope collective agreements with local teachers' associations during this period. The first round of negotiations, in 1988, occurred under a Socred government. In fall 1991, in the midst of most districts' second round of negotiations, the NDP came to power under Premier Mike Harcourt, winning 51 of the 75 seats in the Legislature, while the Socreds were reduced to seven seats. The final round of negotiations, in 1993, took place under an NDP government. BCTF described local bargaining and its outcomes as "a wonderful victory for teachers … using their newly acquired rights to overturn decades of unilateral actions by boards"[106] and declaring that "collective bargaining had truly come of age for teachers. Teachers finally had an appropriate vehicle to exercise their collective will within the public system."[107]

Teachers made the most of the expanded scope of bargaining and secured several important gains under local bargaining. In the first round, existing practices and procedures were widely incorporated into collective agreements, and many locals secured class size limits and significant salary increases. In subsequent rounds more locals obtained these provisions, and some won limits on class composition.[108] In a final blow to the Socred government's earlier removal of statutorily mandated BCTF membership, most teachers' locals negotiated closed-shop provisions, requiring that teachers join

103. Graham Leslie, *Breach of Promise: Socred Ethics under Vander Zalm* (Madeira Park 1991), 38, 49.

104. Leslie, *Breach of Promise,* 53.

105. Kuehn, interview.

106. BCTF, *The Steps.*

107. BCTF, *History of BCTF*, 5.

108. BCTF, *The Steps.*

and maintain BCTF membership.[109] BCTF characterized the salary increases as large enough that they "allow[ed] us to not only keep up with inflation, but also to recover some of the losses we had experienced as a result of the wage control program of the eighties."[110]

BCTF established a "war room" to coordinate its province-wide bargaining agenda across locals. It created a collective agreement provision database, trained negotiators for local teachers' associations, and required locals to submit bargaining proposals for central approval.[111] BCTF's computer network was again proving its usefulness. BCTF also developed a sophisticated form of simultaneous whipsawing in negotiations.[112] It would target a particular school board it viewed as the "softest" on a given bargaining issue, prioritize that issue and, as soon as it obtained a favourable agreement on that provision, would pursue it in other districts.[113] Kuehn recalls that "we had what I called a rolling pattern bargaining system. After every single bargaining session where somebody in some local got something, they put it on to the network which then became a bottom line for everybody on those issues."[114] Because teachers in one local could then argue that they were only bargaining for what other locals had already agreed on, this was a powerful bargaining strategy that attracted support among teachers for striking, and was also compelling to third parties involved in settling negotiations.[115] One employer later described the bargaining experience as being like "the local pick-up team (the school board) playing the travelling all stars (the BCTF). Guess who won every game?"[116]

These experiences created a strong feeling among school boards that the local bargaining structure was tilted in favour of teachers and that as a result school boards were being forced into collective agreements that the districts did not have the resources to fund, and which went too far in limiting school boards' managerial role.[117] This perception of unfairness, and school boards' inability to match BCTF's bargaining prowess, later became an important

109. Lawton et al., *Teachers' Unions in Canada*, 91. A teacher deemed to have resigned after refusing to join BCTF challenged this action and related *IRA* provisions as contrary to the *Charter*, but ultimately withdrew the claim (*Janzen v. British Columbia (Attorney General)*, [1993] B.C.J. No. 2682).

110. BCTF, *History*.

111. Halliday, interview.

112. Kuehn, interview.

113. Halliday, interview.

114. Kuehn, interview.

115. BCPSEA, *Historical Perspectives*, 15.

116. British Columbia, *Towards a Better Teacher Bargaining Model,* 4.

117. BC, *The Public Sector in British Columbia,* F20; British Columbia, *Towards a Better Teacher Bargaining Model,* 3; BCPSEA, *Historical Perspectives*, 15.

factor in the NDP government's decision to restructure public sector negotiations to make it more accountable.

However, rather than a product of the local bargaining structure, this unequal bargaining power largely reflected the parties' relative levels of coordination and preparedness. As an education employer's representative says, employers "were simply outmaneuvered by the BCTF with its effective organizational, training, and coordinating abilities."[118] BCTF locals were generally more prepared and informed than the school boards they were negotiating with, which had no coordinated system of information sharing.[119]

In addition to lack of coordination and preparation, school boards also faced other difficulties as negotiators, primarily arising from the constituencies they were accountable to, and school trustees' relationships with teachers. Several commentators note that instead of having a provincial perspective on bargaining, as did BCTF, school boards were accountable to and thus oriented towards their local communities. Therefore, school boards were not primarily concerned with the province-wide precedents they might set.[120] This perspective was often heightened by school boards' desire for autonomy.[121] Moreover, trustees had little bargaining experience, and many principals and vice-principals who had, until recently, been members of the local associations they now bargained against, found it difficult to negotiate.[122] This disregard for the broader implications of local agreements, in conjunction with school boards' bargaining inexperience and sympathy for teachers, meant that local trustee-board negotiators fared poorly against BCTF's coordinated, province-wide strategy.[123]

Multiple work stoppages marked each of the three rounds of negotiations. Overall more than 50 work stoppages, including "work-to-rule" campaigns, full strikes, and lockouts occurred.[124] Even though school boards later complained about the serious disruption,[125] few school districts made essential service applications to the LRB, and none were pursued to the point of the LRB making a designation. A school district representative involved in bargaining during this period explained that many school boards were probably not even

118. BCPSEA, *Historical Perspectives*, 15.

119. Lee, *The Labour Movement and the Internet*, 52–53; Halliday, interview.

120. British Columbia, *Towards a Better Teacher Bargaining Model,* 3–4; BCPSEA, *Historical Perspectives*, 15.

121. Halliday, interview.

122. Gene Geisert and Carol Chandler, "Learning the ABC's the Hard Way: Teacher Unionism in the 1990's," *Government Union Review,* 12 (Spring 1991), 1–23.

123. Halliday, interview.

124. Human Resources and Skills Development Canada, special data request.

125. British Columbia Public School Employers' Association, *A Report to the Minister from the Chair* (Vancouver 1993), 9.

aware that they could make an essential service application to the LRB to limit strike activity.[126]

The first two rounds of negotiations resulted in negotiated settlements in each school district, although third party assistance, such as mediation, was common. The final round of bargaining, in 1993, encountered more difficulty, and financial resources were the key sticking point. The Ministry of Education's position was that, in the weakened economy, school boards would be expected to restrain costs.[127] The BCTF also faced greater obstacles in pressing its demands. By its own account, teachers were less supportive of striking, and the public was less sympathetic to teachers' positions than in earlier rounds.[128] By late in the 1993 school year, lengthy negotiations in numerous districts had yet to produce agreements.

The NDP government responded to a lengthy strike in the Vancouver School District with the *Educational Programs Continuation Act* (Bill 31), introduced and passed on Sunday, 30 May 1993. Bill 31 ordered teachers back to work the following day and imposed binding arbitration.[129] It also provided "notice," as the Minister of Labour characterized it, to other ongoing teacher disputes by permitting the government to appoint a special mediator and authority to deem the special mediator's report the collective agreement. Employers later reported that Bill 31 did encourage settlements in other districts.[130] In introducing the Bill, NDP Minister of Labour Moe Sihota explained that public sector collective bargaining differs from that in the private sector, and is a limited right that sometimes must give way to social responsibilities and public welfare, and that in this case the continuing strike threatened students' ability to complete the year and graduate and the government was intervening to protect the public interest.[131] This marked the first time the government – and an NDP government at that – directly intervened to end a teachers' dispute in BC.

126. Finlayson, interview. Work stoppages in education were subject to essential service restrictions for all but a short time between 1987 and 1993. In 1993, the NDP government replaced the *IRA* and IRC with the *Labour Relations Code* (LRC) and the Labour Relations Board (LRB), reversing many of the anti-labour features of the *IRA*. Most relevant to teachers was that the explicit reference to education was removed from the essential service restrictions (LRC, s.72). However, this unfettered access to work stoppages was short-lived. Later that year the LRB ruled that the amended provision still encompassed educational services, though permitting a wider scope of strike activity (*School District No. 54 (Bulkley Valley),* BCLRB No. B147/93).

127. Legislative Assembly of British Columbia, Proceedings of the *35th Parliament, 2nd Session,* 30 May 1993, 6625–76, 6627.

128. BCTF, *The Steps*

129. *Educational Programs Continuation Act, 1993,* S.B.C. 1993, c. 3.

130. BCPSEA, *Report to the Minister*, 9.

131. Legislative Assembly of British Columbia, Proceedings of the *35th Parliament, 2nd Session,* 30 May 1993, 6626, 6627.

Era of Reform: 1994

Bill 31 was part of the NDP government's fundamental reorganization of public sector labour relations in 1994. The NDP government was not immune to one of the fundamental difficulties of governing: providing public services with limited financial resources. The government sought to increase public sector accountability with these changes. This introduced a delayed era of restraint for teachers. It was the first step in what continues to be the progressive reduction of teacher labour relations rights in BC.

In 1992 the NDP government struck the Commission of Inquiry into the Public Service and Public Sector, under Commissioner Judi Korbin. The Commission was tasked with examining the province's public sector human resources practices, and recommending a new framework for balancing the public's demands for services with government's fiscal limitations.[132]

The perception of a power imbalance between BCTF locals and school boards in local negotiations was a key issue before the Commission.[133] School boards sought more centralized bargaining, while BCTF strongly urged continuation of local bargaining, arguing that centralization would harm management and teachers. BCTF contended centralization would reduce flexibility at the local level, reduce autonomy of management and teachers, potentially remove any meaningful role for trustees, and reduce worker participation, thus alienating and frustrating teachers and reducing productivity. BCTF warned this would make job action – legal and illegal – more likely.[134]

In its 9 July 1993 final report, the Commission did not propose a specific bargaining structure for K–12 education, but did recommend greater central coordination and control of bargaining.[135] A few weeks later the NDP government legislated widespread changes to public sector labour relations, including the K–12 education sector. The Minister of Labour explained that the purpose of the restructuring was to provide a "framework of coordination and accountability to the government."[136]

Regarding this change from local to province-wide bargaining, a labour relations expert later offered the following evaluation:

> Whether or not the prescription of province-wide bargaining between the BCTF and BCPSEA was the right thing to do, it is significant that the government of the day [the NDP] chose to do so. That a government which had received significant support from teachers in the previous election chose to proceed over the objections of the BCTF speaks to elements

132. BC, *The Public Sector in British Columbia,* Terms of Reference.

133. BC, *The Public Sector in British Columbia,* F20.

134. BC, *The Public Sector in British Columbia,* F17.

135. British Columbia, *Towards a Better Teacher Bargaining Model,* 5; BC, *The Public Sector in British Columbia,* C11.

136. Legislative Assembly of British Columbia, Proceedings of the *35th Parliament, 2nd Session,* 21 July 1993, 9017.

which transcend partisan politics, left-right labels, and pro-labour versus pro-management sympathies. There is something about the reality of providing public education, and what the public expects of its government, that exerts a powerful influence on how any government behaves.[137]

A package of legislation established the Public Sector Employers' Council (PSEC) and employers' associations in six sectors of the public sector, including the BC Public School Employers' Association (BCPSEA).[138] PSEC's role was to "set and coordinate strategic directions in human resource management and labour relations" and to "provide ongoing consultation between public sector employers and representatives of public sector employees on policy issues."[139] Sectoral employers' associations were charged with coordinating labour relations and human resource issues among members, and membership was mandatory for public sector employers. BCPSEA was made the statutory bargaining agent for all school boards and BCTF the statutory agent for all teachers.[140] In order to take "the pressure … off" school boards, the legislation prohibited local strikes and permitted only provincial work stoppages.[141]

The legislation provided that all cost provisions would be negotiated provincially, specifying that this included salaries, benefits, workload, working time and paid leave, where these affected the costs of the collective agreement.[142] BCTF and BCPSEA were then left to agree on where to negotiate the remaining, non-cost, issues: at the provincial or local tables.[143] BCPSEA and BCTF quickly came to agreement in April 1995 about the location of bargaining for all but one matter, performance evaluations, which was resolved by arbitration.[144] The parties agreed on a predominantly provincial split of issues. All substantive matters, including monetary provisions, would be negotiated provincially.[145] Only matters with limited importance and no monetary impact would be negotiated at local tables.[146] A former BCTF President says, "The fact

137. British Columbia, *Towards a Better Teacher Bargaining Model,* 5–6.

138. *Public Sector Employers Act*, S.B.C. 1993, c. 65; *Public Education Labour Relations Act*, S.B.C. 1994, c. 21 (PELRA).

139. Legislative Assembly of British Columbia, Proceedings of the *35th Parliament, 2nd Session,* 21 July 1993, 9017.

140. PELRA.

141. BCTF, *History,* 5.

142. PELRA, ss.7(3)-7(4).

143. PELRA, s. 7(2).

144. BCPSEA, *Public Policy: Teacher-Public School Employer Bargaining Process Integration 2011, Discussion Paper,* 16 March 2010, 3.

145. BCPSEA, *Letter of Understanding 1: Designation of Provincial and Local Matters,* n.d., http://www.bcpsea.bc.ca/documents/LoU%20No%20%201%20-20Appendices%201-2%20-%20Split%20of%20Issues.pdf (1 February 2011).

146. BCPSEA, *Letter of Understanding 1.*

is that we really have provincial bargaining because all of the important issues are at the provincial table," and a former negotiator agrees that "anything of any consequence is provincial really."[147] A BCPSEA representative says that he was told that both parties were reluctant to leave the remaining issues to be negotiated by the local bodies.[148]

Today, the provincial-local split of issues remains as set out in the original Letter of Understanding. BCTF's apparent willingness to agree to predominantly provincial negotiations appears puzzling at first, because its determination to return all matters to local-level bargaining has characterized its position ever since. In recent pre-bargaining discussions, the BCTF President has called BCTF's agreement on the split of issues a mistake.[149] However, predominantly provincial bargaining of important issues is consistent with BCTF's history of highly coordinated, centralized bargaining with a province-wide agenda. BCTF's regret may be that it miscalculated BCPSEA's greater effectiveness as a bargaining opponent, compared to the more tractable school boards, when agreeing to the split of issues.

Era of Reprieve: 1994–2001

Rose describes the public sector, generally, as subject to a period of retrenchment beginning in 1990, with governments consolidating earlier restrictions in the years after 1998. BC teachers had a markedly different experience between 1994 and 2001. Following the 1994 public sector labour relations reorganization, rather than enforcing this new accountability and cost-control structure on teachers, the NDP offered BCTF "a reprieve" in the next two bargaining rounds. Critics regarded these as special deals for the NDP's friends, and this would colour the succeeding Liberal government's approach to teacher negotiations. Between 1994 and 2001, two rounds of negotiations took place under this new provincial bargaining model, both involving government intervention. It is noteworthy that these two sets of negotiations occurred under NDP governments, the first held in the shadow of an upcoming provincial election, and the second after the NDP was re-elected by a slim margin.

Conveniently, most local teachers' agreements expired 30 June 1994, dovetailing with the new public sector bargaining legislation coming into force.[150] A significant challenge facing this first round of two-tier negotiations was that the legislation offered no guidance for transforming the 75 existing local agreements into a single province-wide agreement. Nor did it require that this

147. Irene Lanzinger, interview by author; Anonymous, interview by author.

148. Finlayson, interview.

149. Finlayson, interview.

150. BCPSEA, *Historical Perspectives*, 22.

round of bargaining produce a single provincial contract.[151] The two bargaining agents had very different expectations about the starting point for this first round of negotiations under the new centralized structure. From the outset, PSEC made clear that it had allocated limited funds for a settlement in education.[152] BCPSEA took what it described as a "blank slate" approach, reflecting its view that "the parties were essentially creating a first collective agreement."[153] A member of the negotiating team characterizes the approach as an effort to "gut every significant provision of a collective agreement."[154] Another BCPSEA representative explained that school boards, feeling they had been victims in local bargaining, mistakenly viewed this first two-tier round as "an opportunity … to level that playing field."[155] At the same time, school boards wanted to take an interest-based approach to negotiations to improve relations with teachers. As one BCPSEA negotiator described it, their approach was that "we wanted to gut their collective agreements and hug them as we're doing it."[156]

In contrast, the BCTF adopted a "no concessions" approach, taking the earlier local collective agreements as their starting point for negotiations.[157] Some commentators interpret BCTF's demands for "best benefits for all" as a reflection of BCTF's inability to manage differences among locals unwilling to trade-off any gains they had achieved at local bargaining.[158]

Negotiations commenced in May 1995 and continued through April of the following year, with little progress. In the meantime, in February 1996, NDP Premier Michael Harcourt resigned, and Glen Clark stepped in as Premier. With a support-staff strike imminent in Surrey School District, growing labour disputes with the province's nurses and college instructors, and a May provincial election looming, the NDP government passed emergency legislation in April to end the Surrey dispute. Bill 21, applying to education and health care, deemed recommendations of an LRC-appointed industrial inquiry commissioner or mediator to be the collective agreement, subject to any matters the parties had agreed to, or subsequently agreed to vary.[159] Finance Minister Elizabeth Cull explained that Bill 21 was meant to ensure that "kids could go

151. Halliday, interview. In contrast, the health sector was statutorily required to achieve a single provincial collective agreement in its first round of provincial bargaining.

152. Lawton et al., *Teachers' Unions in Canada*, 95.

153. BCPSEA, *Historical Perspectives*, 23.

154. Halliday, interview.

155. Finlayson, interview.

156. Halliday, interview.

157. BCPSEA, *Historical Perspectives*, 23.

158. Lawton et al., *Teachers' Unions in Canada*, 95–6.

159. *Education and Health Collective Bargaining Assistance Act,* S.B.C. 1996, c. 1. Self-repealed 30 June 1996 (*EHCBA*).

to school and patients could get health care" while the legislature was unavailable during the election period.[160] Critics, including many school boards, regarded the Bill as a crude ploy to avoid labour disruption and attendant bad publicity during an election, and charged that the province couldn't afford these "rich settlements" granted to the NDP's union supporters.[161] Perhaps tellingly, Bill 21 was "only mildly criticized by labor."[162]

Against this backdrop of threatened contract imposition the government engaged in direct discussions with BCTF offering a modest, two per cent salary increase. Some commentators suggest BCTF accepted this deal because it recognized that teachers would benefit from an NDP reelection.[163] The resulting "Transitional Collective Agreement" (TCA) was not really a provincial collective agreement. It simply provided that the pre-existing local agreements would remain in force, except for certain wage and salary provisions.[164] Class-sizes would be addressed later in a committee chaired by the Deputy Minister of Education. BCPSEA and BCTF promoted the TCA as a means of avoiding a destructive labour dispute and giving the parties a period of stability to negotiate a new provincial agreement, and recommended that their members accept the agreement.[165] Many school boards vehemently and publicly opposed the proposal and its significant cost implications, but ultimately voted 54 per cent in favour of accepting the transitional agreement.[166]

Teacher negotiations resumed in March 1997, as required by the TCA, and well before its 30 June 1998 expiry. The NDP remained in power, though re-elected with only six more seats than the Socred Opposition in the May 1996 election. The parties resumed their "blank-slate" and "no concessions" positions in this round of negotiations, and BCTF remained determined to use existing local agreements, and therefore the TCA, as the baseline for bargaining.[167] The pre-existing problem of converting the local agreements

160. Frank Luba and Barbara McLintock, "Sweeping Labor Law Attacked by Liberals," *The Province, 28 April 1996,* http://www.proquest.com.ezproxy.library.yorku.ca/ (1 April 2011).

161. Luba and McLintock, "Sweeping Labor Law Attacked by Liberals"; Justine Hunter and Tom Barrett, "New Labor Law Promises Peace During Election: Opposition Members Say the Legislation Allows the NDP to Give its Friends in the Unions Favorable Contract Settlements," *The Vancouver Sun, 27 April 1996,* http://www.proquest.com.ezproxy.library.yorku.ca/ (1 April 2011). Years later, in the context of a court proceeding, representatives of the successor Liberal government contended that the TCA was only for the purpose of getting through the election period without a labour dispute (*BCTF v. BC* 2011, para. 95).

162. Hunter & Barrett, "New Labor Law Promises Peace During Election."

163. Lawton et al., *Teachers' Unions in Canada*, 95.

164. BCPSEA, *Historical Perspectives*, 24.

165. William Boei, "Two Union Votes to Test Clark's Will: Health-care, Education Pacts on the Line," *The Vancouver Sun, 30 May 1996.*

166. Boei, "Two Union Votes to Test Clark's Will."

167. BCPSEA, *Historical Perspectives*, 25.

into a single provincial agreement was exacerbated by the December 1996 amalgamation of 75 districts into 59 and addition of a Francophone Education Authority.[168] This compounded the difficulty of achieving a true provincial agreement rather than a collection of local ones, because now many of the newly-defined districts faced the additional challenge of dealing with multiple local teacher agreements in a single district.[169]

In February 1998, the NDP government and PSEC again bypassed BCPSEA, this time negotiating directly with BCTF and without the knowledge or participation of BCPSEA.[170] Accounts differ about how this came about: whether arising from a request by, or an offer to, BCPSEA for bargaining assistance, or whether both parties invited government involvement.[171] An employers' negotiator attributes this intervention to the NDP government's determination to achieve a patterned settlement throughout the public sector. K–12 education was the first sector contract to expire, therefore the government wanted to use these negotiations as the model to establish its desired compensation pattern.[172] Similarly, a BCPSEA representative says the government had three goals for this round of teacher bargaining: getting a deal, getting bargaining over with, and setting the stage for its compensation mandate.[173]

On 17 April 1998 the BCTF and PSEC signed two documents: an Agreement in Committee (AIC) and a Memorandum of Agreement in K–3 Primary Class Size (MOA).[174] One of the BCPSEA negotiators recalls that the government had invited BCPSEA representatives to attend a meeting in Victoria that day and, just before the meeting, BCPSEA's Executive Director received a phone call telling him that there had been an announcement on the news that PSEC and BCTF had an agreement. This negotiator says that was "news to us" and "so the meeting was to tell us what was in the agreement."[175]

The AIC included all provisions of the TCA except those expressly amended.[176] The MOA, with a 30 June 2001 termination date, provided fixed class

168. Done by an Amalgamation Order of the Lieutenant Governor in Council under s. 190 of the *School Act,* abolishing currently existing school districts and establishing a new school district. See *Miscellaneous Statute Amendment Act, 1996*, S.B.C. 1996, c. 13, s. 29.

169. Halliday, interview.

170. Halliday, interview. See BCTF, *Bargaining Bulletin #25*, 6 March 1998, <http://bctf.ca/publications/BargainingBulletin.aspx?id=1742> (1 February 2011), reporting that BCPSEA requested this assistance. BCPSEA, *Historical Perspectives*, 25.

171. Halliday, interview; *BCTF v. BC* 2011, para. 99.

172. Halliday, interview.

173. Finlayson, interview.

174. BCTF, *Bargaining Bulletin #27*, 20 April 1998, <http://bctf.ca/publications/BargainingBulletin.aspx?id=1746> (1 February 2011); Finlayson, interview.

175. Halliday, interview.

176. BCTF, *Bargaining Bulletin #27*; BCTF, *The Steps.*

sizes for kindergarten to grade three, and funding for reduced class sizes.[177] BCTF described the AIC as meeting its key objective of preventing "contract stripping," and recommended ratification to its membership.[178] In contrast, BCPSEA opposed the AIC and urged school districts to reject the agreement. One BCPSEA negotiator says he had "never seen an agreement as poorly conceived as this … but [the government] got a deal. And they got a deal that fit the pattern that the government was trying to establish."[179] Primary among school board concerns were that the terms tied their hands, ignored their concerns, and lacked certainty and regulation of costs: school boards voted 86 per cent in favour of rejecting the agreements.[180]

However, BCTF refused to renegotiate and threatened to call a strike.[181] Shortly thereafter the government introduced Bill 39, deeming the AIC terms to be the provincial collective agreement and carried over the class size MOA, in force from 1 July 1998 to 30 June 2001.[182] The Minister of Education explained that with the new school year only 76 days away, government intervention was needed to protect students.[183]

Joining the Era of Consolidation: 2001 to 2006

On 16 May 2001 the Liberals captured all but two seats in the Legislature in the provincial election. This change in government brought the era of reprieve for teachers to an end, and teachers joined other public sector workers in an era of consolidation. Premier Gordon Campbell's new government was determined to exert strong control over fiscal, labour, and education policy matters. This occurred in the broader context of a faltering provincial economy, producing a particularly negative fiscal and economic environment for public sector bargaining. Labour relations reform also featured prominently in Campbell's "New Era" agenda, and the government quickly introduced wide-ranging changes to labour relations. Among the first of these were the August 2001 amendments to the LRC, which included reintroducing explicit essential

177. Finlayson, interview. The parties later agreed to renew the MOA, effectively removing this termination date.

178. BCTF, *Bargaining Bulletin #27.*

179. Halliday, interview.

180. Bolan, "Minister's Move to Impose Teachers' Deal Draws Fire"; Halliday, interview; BCPSEA, *Historical Perspectives*, 26.

181. BCTF, *Bargaining Bulletin #46.*

182. 182. *Public Education Collective Agreement Act,* S.B.C. 1998, c. 41 (Bill 39). The government later unsuccessfully tried to argue that because it, rather than BCPSEA, negotiated the agreement and because the agreement was ultimately legislated it was not a freely negotiated collective agreement and, therefore, not subject to *Charter* scrutiny (*BCTF v. BC* 2011, paras. 105, 201).

183. Bolan, "Minister's Move to Impose Teachers' Deal Draws Fire."

service restrictions for education.[184] The first round of teacher negotiations in this new era also marked the beginning of a new set of BCTF tactics characterized by a very aggressive, multi-faceted, long-term political and legal strategy.

In February 2001 BCTF and BCPSEA signed an amended MOA incorporating class size provisions for kindergarten to grade three into the existing collective agreement. BCTF wanted to ensure that these class size limits were included in the collective agreement, itself, so that it would become part of the upcoming bargaining. The government had pressured BCPSEA to agree by suggesting that, if it refused to incorporate the MOA into the collective agreement, the government might withdraw $43 million in funding earmarked for school districts based on the class size MOA. BCPSEA did agree, and 80 per cent of school districts voted to ratify the amendment.[185]

Bargaining began in March 2001, and BCPSEA's negotiating position was shaped by its view that it needed to restore flexibility and discretion for school boards that had been removed by the two earlier bargains with the NDP government.[186] Negotiations soon faltered, with BCTF characterizing BCPSEA's positions as "concessionary" and "contract-stripping."[187] In September, BCTF threatened a strike vote unless there was substantial progress in bargaining.[188] Unlike the NDP, a strike threat did not prompt this government to settle, although one difference was the time of year: this dispute occurred in early fall, posing little threat to students' school year. Instead, BCPSEA sought LRB essential service designations to limit strike action. Although essential service provisions had long been available in teacher disputes, this would be the first time they were actually applied. BCTF served strike notice on 5 November and its multi-stage job action commenced with withdrawal of non-essential services on 8 November. In early December BCTF announced that, beginning 7 January 2002, it would expand job action to include all voluntary activities.[189]

By late November 2001, negotiations had stalled. The government appointed Richard Longpre, Assistant Deputy Minister of Labour and a former BCLRB

184. *Skills Development and Labour Statutes Amendment Act, 2001,* S.B.C. 2001, c. 33; *Labour Relations Code*, R.S.B.C. 1996, c. 244, s. 72.

185. *BCTF v. BC* 2001, paras. 111, 113–4. The government later argued that this was not a freely negotiated agreement because BCPSEA only agreed under threat of losing funding. Rejecting this argument, and noting that BCPSEA could have refused, the BC Supreme Court observed that "It seems a strange position for the government to take: that it forced BCPSEA to sign an agreement against its will." (*BCTF v. BC* 2011, paras. 205–6).

186. BCPSEA, *Historical Perspectives*, 28, 29, 32.

187. BCTF, *Bargaining Bulletin #25;* BCTF, *The Steps.*

188. BCTF, *Bargaining Bulletin #33*, 4 September 2001, <http://bctf.ca/ publications/ BargainingBulletin.aspx?id=1852> (10 March 2011).

189. *BCPSEA,* [2001] BCLRB Nos. B383/2001, B431/2001; BCTF, *Bargaining Bulletin #73*, 22 November 2001, <http://bctf.ca/publications/BargainingBulletin.aspx?id=1932> (10 March 2011).

Vice-Chair, as a fact-finder. BCTF questioned Longpre's neutrality and charged that this intrusion into bargaining would hamper negotiations.[190] After unsuccessful meetings with Longpre the parties met separately several times with facilitator Stephen Kelleher, former acting LRB Chair, to little effect.[191] In January, BCTF filed an LRB complaint, charging BCPSEA and the government with bad faith bargaining.[192] This complaint was quickly rendered moot by government intervention.

On 18 January 2002 Premier Campbell issued an ultimatum, warning that the dispute would be resolved by the end of the next week, and that he had instructed the Minister of Labour to deal with the matter.[193] A few days later, on 23 January 2002, Labour Minister Graham Bruce declared there was no hope for a negotiated settlement, saying that "it's just not in the realm of possibility."[194] After more than 60 negotiating sessions, the parties had agreed on only a handful of minor items.[195] That same day, thousands of students walked-out of classes across the province, protesting teachers' earlier announcement of withdrawal of extra-curricular activities.[196]

The government now took action. On Friday, 25 January 2002, it introduced a series of bills addressing public sector labour relations and the teachers' dispute specifically. All were passed by the end of the Legislature's weekend sitting.[197] Bill 27 imposed a new collective agreement for teachers, rolling-over the expired agreement to 30 June 2004, including all terms agreed to during negotiations and a 7.5 per cent salary increase over the three years of the agreement.

190. BCTF, *Bargaining Bulletin #74*, 23 November 2001, <http://bctf.ca/ publications/ BargainingBulletin.aspx?id=1934> (10 March 2011).

191. BCTF, *Bargaining Bulletin #74*; BCTF, *Bargaining Bulletin #77*, 29 November 2001, <http://bctf.ca/ publications/BargainingBulletin.aspx?id=1940> (10 March 2011); BCTF, *Bargaining Bulletin #80*, 12 December 2001, <http://bctf.ca/ publications/BargainingBulletin.aspx?id=1946> (10 March 2011).

192. BCTF, *Bargaining Bulletin #86*; 22 January 2002, <http://www.bctf.ca/publications/ BargainingBulletin.aspx?id=1958> (10 March 2011); *BCPSEA*,[2002] BCLRB No. B340/2002.

193. BCTF, *The Steps*; Janet Steffenhagen, "Campbell to Educators: Settle by Friday," *The Vancouver Sun*, 19 January 2002.

194. Craig McInnes, "Legislature to Resolve B.C. Teachers' Dispute'," *The Vancouver Sun*, 24 January 2002.

195. Janet Steffenhagen, "Teachers' Action Plan Halts LRB Challenge," *The Vancouver Sun*, 5 February 2002.

196. Janet Steffenhagen, "Thousands of students walk out: They huddled in the cold to protest teachers' contract impasse," *The Vancouver Sun*, 24 January 2002.

197. *Education Services Collective Agreement Act*, S.B.C. 2002, c. 1 (Bill 27); *Public Education Flexibility and Choice Act*, S.B.C. 2002, c. 3 (Bill 28); *Health and Social Services Delivery Improvement Act*, 2nd Sess., S.B.C. 2002, c. 2 (Bill 29).

Bill 28 substantially reduced the scope of teachers' bargaining. It explicitly provided that the employers' right to determine matters including class size and composition, course assignment, length of instructional day and year, and workload and staffing ratios, would prevail over any collective agreement or legislative provisions.[198] Though disputes arising from Bill 28 were to be determined by arbitration, these rights could not be restrained by an injunction, prohibition or stay of proceedings of an arbitrator or the LRB, and these amendments would prevail over any inconsistent LRC provisions.[199] With Bill 28, government used its legislative power to permanently remove some of the most contentious issues from the realm of negotiations. This government action was not so much about cost control, but an attempt to finally end what had been an ongoing struggle between governments of all stripes and the BCTF for control over what the government regarded as matters of managerial discretion and public policy, and which BCTF considered vital bargaining issues representing teachers' fundamental working conditions. These Bills were met with widespread and angry reaction from public sector unions, including a province-wide, illegal teachers' strike on Monday, 28 January 2002.[200] This also marked a new phase in BCTF's labour relations strategies. It established a multifaceted five year plan, gauged to extend beyond the next election, which Sims describes as "legal, political, internal and external."[201] BCTF's "Action Plan" called on teachers to participate in ongoing job action in the schools, such as refusing to purchase school supplies, provide report cards, or mark standardized exams.[202] A longer-term "fight-back" campaign allocated $4 million to pursue a broad political campaign against the Liberal government, in alliance

198. *Public Education Flexibility and Choice Act,* s. 2.

199. BCTF later successfully challenged the Bill 28 arbitration under judicial review. However, the government simply passed legislation enacting the quashed arbitral award (*BCTF v. BCPSEA*, 2004 BCSC 86; *Education Services Collective Agreement Amendment Act, 2004,* S.B.C. 2004, c. 17 (ESCAA)). Ultimately, in 2011, the BC Supreme Court struck down Bill 28 and the ESCAA as unconstitutional (*BCTF v. BC,* 2011 BCSC 469).

200. BCTF, *Negotiations 2001 to 2002,* 2008, <http://bctf.ca/AboutUs.aspx?id=18888&printPage=true> (10 March 2011); BCPSEA obtained an LRB interim order enjoining the planned illegal strike (*BCPSEA*, [2002] BCLRB No. B34/2002, upheld on judicial review: *Hospital Employees' Union v. Health Employers' Assn. of British* Columbia, 2007 BCSC 372.

201. Jinny Sims, "Labour Rights and the Public" (plenary presentation at the Jobs & Justice Conference, Burnaby, BC, March 29–31, 2007) <http://www.workingtv.com/jobs&justice.html> (10 March 2011).

202. Steffenhagen, "Teachers' Action Plan Halts LRB Challenge."

with other labour and social groups.[203] BCTF also sought to strengthen ties with the BCFL and other social agencies.[204]

An additional BCTF strategy was to start talking to teachers about how to respond to future government legislative interventions. This became what former President Irene Lanzinger calls a "three year conversation" BCTF had with teachers in preparation to defy future back-to-work legislation.[205] To build teachers' confidence, BCTF prepared fold-out speaking notes addressing issues of class size, salaries, bargaining, what BCTF had lost in 2002, and suggested questions and answers. BCTF asked teachers to approach five people a week to discuss these issues. Sims says teachers "began to feel good about that and they kind of liked it. People didn't dump on them."[206] BCTF also organized a "Charter" group to travel the province, engaging the public in discussions about the value of public education and providing a forum for teachers to hear from supportive community members.[207]

In May 2002 BCTF filed a *Charter* challenge of Bills 27, 28, 19 and 33 and the Bills' removal of working and learning conditions from a negotiated collective agreement and the scope of bargaining. [208] BCTF also joined other organizations to launch a series of ILO complaints over the government's public sector legislation. In spring 2003 the ILO concluded that all six statutes violated freedom of association and requested that the government amend Bills 27 and 28, and amend or repeal other statutes.[209]

BCPSEA's bargaining strategy during this round had been influenced by its discovery that there was strong support within the government to statutorily remove class size, composition and non-enrolling ratios from the scope of bargaining. By November 2001, unbeknownst to BCTF, BCPSEA was discussing this draft legislation with government.[210] In spite of this close and regular communication about education policy between BCPSEA and the government

203. BCTF, *Bargaining Bulletin #87*, 4 February 2002, <http://bctf.ca/ publications/ BargainingBulletin.aspx?id=1960> (10 March 2011); Jeff Rud, "Teachers Soften Contract Demands," *Times Colonist*, 1 September 2005; Janet Steffenhagen, "BCTF Organizing for Long Battle with Government: 'Teaching for Social Justice' to Become a More Important Part of Instructors' Practice," *The Vancouver Sun*, 8 March 2002.

204. Sims, "Labour Rights and the Public."

205. Lanzinger, interview.

206. Sims, "Labour Rights and the Public."

207. Sims, "Labour Rights and the Public."

208. The claim was later amended to challenge BCPSEA's refusal to negotiate working and learning conditions in the next round of negotiations. Finally heard by the Supreme Court in November 2010, the decision was issued on 13 April 2011 (*BCTF v. BC*, 2011) and is discussed later in this article.

209. ILO Committee on Freedom of Association, *Report No. 330: Canada* (Geneva 2003), Dec. 2166, 2173, 2180, and 2196.

210. *BCTF v. BC* 2011, paras. 170–2.

throughout negotiations, a decade later, the BC Supreme Court rejected BCTF's allegation that the government had acted in concert with BCPSEA to cause it to negotiate in bad faith. The Court found no evidence that the government either directed BCPSEA's negotiations or directed BCPSEA to undermine negotiations.[211] However, the Court did find that BCPSEA was aware during negotiations that government would likely pass legislation in its favour affecting class size, composition and non-enrolling ratios. As a result, BCPSEA had little incentive to compromise and was likely engaging in hard bargaining. The court concluded that "This most likely was a key contributing factor for the lack of progress in collective bargaining in 2001," but that this government conduct was not properly characterized "acting in concert with BCPSEA to engage in bad faith bargaining."[212]

When bargaining resumed in November 2004, BCTF's anti-Liberal campaign was fully underway in preparation for the upcoming provincial election. In the 28 days before the 17 May 2005 election, BCTF spent about $875,000 on advertising, making it the highest-spending registered election advertising sponsor in the province.[213] BCTF was determined to regain full scope of bargainable issues in this round and restore working and learning condition provisions that Bill 28 had "stripped" from the collective agreement, and win a substantial salary increase.[214] BCPSEA's position was that it could not negotiate matters removed from bargaining by Bill 28. Moreover, PSEC had set a "net zero" compensation mandate across the public sector despite the healthy economy and large predicted surplus.[215] Therefore, from the very beginning of this round, BCTF was demanding that BCPSEA negotiate both outside its fiscal mandate and outside its legal authority. BCTF simultaneously attacked BCPSEA for its position and appealed to it as an advocate for teachers.[216] In the midst of bargaining, the Liberals won the May election, though with a significantly reduced majority.

Frustrated with BCPSEA's refusal to negotiate excluded matters, by September 2005 BCTF was seeking parallel discussions with government about working and learning conditions, rather than trying to return these matters to the

211. *BCTF v. BC* 2011, paras. 180–1.

212. *BCTF v. BC* 2011, paras. 183, 185.

213. *BCTF v. British Columbia (Attorney General)*, paras. 4, 139.

214. BCTF, *Bargaining Bulletin #15,* 6 June 2005, <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2094> (1 February 2011).

215. BCPSEA, *Historical Perspective,* 39.

216. BCTF, *Bargaining Bulletin #3,* 25 January 2005, <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2070> (1 February 2011); BCTF. *Bargaining Bulletin #6,* 17 February 2005, <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2076> (1 February 2011).

bargaining table.[217] This contrasts with bargaining under the NDP government, in which it was the government rather than the teachers that bypassed BCPSEA for direct negotiations. Education Minister Shirley Bond agreed to meet to discuss classroom conditions, but would not agree to a "special negotiating track" and would not revisit the question of returning class size to the negotiations.[218] All involved – BCPSEA, BCTF, and the government – were losing patience and by September 2005 it was evident that there was little prospect of a voluntary resolution to this impasse.[219]

On 19 September the Minister appointed a fact-finder, Associate Deputy Minister of Labour Rick Connolly, to assess the prospect of success of further negotiations. Connolly's 30 September 2005 report concluded that there was no prospect for a voluntary resolution of these negotiations because of the parties' differences on the issues of compensation and negotiability of working and learning conditions.[220]

Meanwhile, BCTF had held a strike vote, with 88.4 per cent of teachers voting to strike. The first part of BCTF's three-phase plan for job action commenced September 28, with teachers withdrawing from specific administrative duties, subject to Labour Board essential service orders.[221] Again BCPSEA applied for essential service restrictions.

The Minister of Labour blamed the bargaining structure for the negotiations breakdown, contending that the Connolly report "confirmed that we have a broken bargaining system and we will not see negotiated settlements until that system is fixed."[222] On 3 October 2005 the government introduced

217. BCTF, *Bargaining Bulletin #15,* 6 June 2005, <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2094> (1 February 2011); BCTF, *Bargaining Bulletin #18,* 23 June 2005, <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2100> (1 February 2011); BCTF, *Bargaining Bulletin #20,* 14 September 2005, <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2104> (1 February 2011); BCTF, *Bargaining Bulletin #1,* 9 December 2004 <http://cms.bctf.ca/publications/BargainingBulletin.aspx?id=2066> (1 February 2011); Jinny Sims, "Teachers Will Keep Pressing for Better Learning Conditions," *The Vancouver Sun,* 6 September 2005.

218. Jeff Rud, "Teachers Soften Contract Demands," *Times Colonist*, 1 September 2005.

219. Janet Steffenhagen, "Teachers' Contract Dispute Irreconcilable, Employer Says," *The Vancouver Sun, 16 September 2005;* Glenn Bohn, "Labour Minister to Meet With Teachers, Employers," *The Vancouver Sun, 17 September 2005;* British Columbia. Ministry of Labour and Citizen's Services, *A Fact Finding Report on the Current Collective Bargaining Dispute Between the BC Public School Employers' Association and the BC Teachers' Federation* (Victoria 2005), 4.

220. British Columbia, Ministry of Labour and Citizen's Services, *A Fact Finding Report on the Current Collective Bargaining Dispute Between the BC Public School Employers' Association and the BC Teachers' Federation* (Victoria 2005), 4.

221. BCTF, "Teachers' Strike Vote a Resounding 'Yes'," 23 September 2005 <http://bctf.ca/NewsReleases.aspx?id=1624> (10 March 2011); *BCPSEA*, BCLRB Decisions No. B255/2005 and B262/2005.

222. British Columbia, Ministry of Labour and Citizens' Services, "Long-Term Solution Sought

Bill 12, the *Teachers' Collective Agreement Act* and it was passed four days later. Bill 12 renewed the expired collective agreement until June 30, 2006.[223] The Minister explained that this was meant to give the parties "breathing space" and time for a new bargaining process to be formulated before bargaining resumed.[224] The Minister announced that an Industrial Inquiry Commissioner would be appointed to develop a new bargaining process to be instituted for the resumption of negotiations, soon appointing Vince Ready, a respected arbitrator, Commissioner.[225]

In an effort to keep working and learning conditions out of bargaining, the Minister of Education then announced creation of a "Learning Roundtable" as a permanent, non-bargaining, multi-stakeholder forum for discussion of class size, composition and related issues. However, BCTF refused to participate. The Minister also announced an annual Teachers' Congress as a forum for teachers and others to have direct discussions with government.[226]

The BCTF immediately responded with a 5 October 2005 membership vote, producing 90.5 per cent of votes cast in favour of taking "a stand in protest against Bill 12."[227] Lanzinger credits the even higher teacher support for Bill 12 action than in the earlier strike vote to BCTF's years of preparing teachers to defy back-to-work legislation, saying: "It was almost like a slam-dunk … because we'd had this three-year conversation … people were just ready…."[228]

BCTF then led a province-wide, illegal teachers' strike that began on 7 October and continued for ten school days, to 23 October 2005. This was the largest teacher work stoppage in BC's history and among the largest teachers' work stoppages in any province, resulting in 380,000 lost working days.[229] BCTF

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for Teacher Bargaining," 3 October 2005, <http://www2.news.gov.bc.ca/news_releases_2005-2009/2005LCS0014-000888.htm> (10 March 2011).

223. *Teachers' Collective Agreement Act*, S.B.C. 2005, c. 27.

224. British Columbia, Ministry of Labour and Citizens' Services, "Long-Term Solution Sought for Teacher Bargaining," 3 October 2005, <http://www2.news.gov.bc.ca/news_releases_2005-2009/2005LCS0014-000888.htm> (10 March 2011).

225. British Columbia, Ministry of Labour and Citizens' Services, "Commission Appointed to Improve Teacher Bargaining," 6 October 2005, <http://www.bcpsea.bc.ca/access/emplgroups/teacher/bargreview_wr/ready/newsbgdrissuevr/ministrynews-oct0605.pdf> (10 March 2011); British Columbia. Ministry of Labour and Citizens' Services, "Industrial Inquiry Commissioner Terms of Reference," 6 October 2005, <http://www.bcpsea.bc.ca/access/emplgroups/teacher/bargreview_wr/ready/newsbgdrissuevr/reference-oct605.pdf> (10 March 2011).

226. British Columbia, Ministry of Education, "Government Commits to New Learning Roundtable," 6 October 2005, <http://www2.news.gov.bc.ca/news_releases_2005-2009/2005EDU0086-000908.htm> (10 March 2011).

227. BCTF, "Teachers Vote to Take a Stand in Protest of Bill 12," 5 October 2005, <http://bctf.ca/NewsReleases.aspx?id=1634> (1 February 2011).

228. Lanzinger, interview.

229. HRSDC, Special data request.

and its members defied an LRB order to return to work.[230] BCPSEA pursued civil contempt proceedings, resulting in a $500,000 fine against BCTF. A monitor was appointed, at BCTF's expense, and its assets were restrained, to ensure it complied with the Court's order. With BCTF's formidable $30 million in assets and $14.6 million collective bargaining defense fund, the Court warned that the fine could have been much higher.[231]

On 17 October 2005, Commissioner Ready's mandate was expanded to include facilitating teachers' return to work. Within a few days, the government, BCPSEA and BCTF had accepted his recommendations and teachers were back in their classrooms, with negotiations slated to resume that spring.

Public support for teachers' illegal action had been remarkable, and it grew rather than diminished over the course of the job action.[232] Many school boards were also supportive: 26 passed motions calling on the government to negotiate with teachers, and some urged the government to repeal Bill 12.[233] Lanzinger recalls "we didn't know [we would] win [the illegal strike] either, but we knew we had to do it. It's all you can do … there was other choice." She also emphasized that "it looked like we just made that decision" to ignore the back-to-work legislation and order, but it had its roots in BCTF's 2002 decision to begin preparing members to respond to such government action.[234] Sims, then BCTF President, says that the 2005 illegal strike "gave a generation of teachers who never participated in any kind of job action or negotiations a real feeling of power … that they weren't the victims, that they actually had something to say … gave them a feeling that they had a role to play."[235] Once again, BCTF had gained strength from adversity, and increased membership support through the experience.

The spring 2006 negotiations were highly managed by Commissioner Ready and mediator / facilitator Irene Holden. Although a negotiated agreement was reached on 30 June 2006, all of the parties regarded this as artificial and an anomaly, reflecting the particular circumstances existing at the time, rather than an enduring change in relationships among government, BCPSEA and BCTF.

230. *BCPSEA*, [2005] BCLRB No. B295/2005.

231. *BCPSEA v. BCTF*, 2005 BCSC 1443; *BCPSEA v. BCTF*, 2005 BCSC 1446; *BCPSEA v. BCTF*, 2005 BCSC 1490.

232. Ipsos Reid Corporation, "BC Public Continues To Side With Teachers," 18 October 2005, <http://www.ipsos-na.com/news/pressrelease.cfm?id=2829> (10 March 2011).

233. BCTF, "Support Continues to Grow for Teachers," 13 October 2005, <http://www.bctf.ca/NewsReleases.aspx?id=1636> (10 March 2011); Lora Grindlay and Jack Keating, "Schools Remain Closed as Dispute Drags On," *The Province*, 11 October 2005; Janet Steffenhagen and Miro Cernetig, "B.C. Students Told to Stay at Home," *Leader Post*, 7 October 2005.

234. Lanzinger, interview.

235. Jinny Sims, interview by author.

Ready's October 2005 recommendations had removed some contentious issues from the table, and infused hundreds of millions of dollars into education. Also, in May 2006 Bill 33 established class size and composition limits.[236] All parties were optimistic that this would address teachers' demands to bargain class size and composition. Several external factors encouraged a speedy and peaceful settlement. Virtually all public sector contracts were expiring in 2006, and the government wanted to avoid labour disruptions during the 2009 provincial election and 2010 Vancouver Winter Olympics. It sought to ensure that public collective agreements expired after those events. Moreover, a large, unanticipated provincial surplus allowed PSEC to establish a favourable fiscal mandate, including substantial financial incentives such as signing bonuses for agreements reached before expiry of existing contracts.[237] A final important factor was likely Ready's skill and determination. Ready has a reputation for resolving the most intractable disputes. In this case, he reportedly told parties he was going to force them to negotiate if it was "the last thing he did", and he succeeded.[238]

In spite of an unsuccessful BCTF bad faith bargaining complaint against BCPSEA's refusal to negotiate class size and composition and an early June BCTF strike vote with 85.2 per cent of votes favouring a strike mandate, a five year agreement, running to 2011, was reached just hours before the deadline for forfeiting the signing bonus.[239] The resulting agreement was ratified by 98.7 per cent of votes cast by school boards, and by 93.4 per cent of teachers who voted.[240]

The Era of Realignment: 2007 Onwards

In June 2007 the balance between free collective bargaining and governments' power to legislate outcomes was suddenly upset with the Supreme Court of Canada's *Health Services* decision. To the surprise of many the Court overturned decades of jurisprudence to find that the *Charter*-protected freedom of association protects the process of good faith collective bargaining.[241] This

236. *Education (Learning Enhancement) Statutes Amendment Act, 2006,* S.B.C. 2006, c. 21.

237. British Columbia, Ministry of Finance, "Province Sets New Negotiating Framework," 30 November 2005, <http://www2.news.gov.bc.ca/news_releases_2005-2009/2005FIN0023-001112.htm> (10 March 2011).

238. Finlayson, interview.

239. *BCTF*, [2006] BCLRB No. B136/2006; BCTF, *Bargaining Bulletin, #19*, 9 June 2006, <http://bctf.ca/publications/BargainingBulletin.aspx?id=2116> (10 March 2011).

240. BCPSEA, *Historical Perspectives,* 66.

241. *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 paras. 19, 90 ("*Health Services*") affirmed by *Ontario (Attorney General) v. Fraser*, 2011 SCC 20. *Health Services* held that Bill 29, passed on the same day in 2002 as Bills 27 and 28, and which restricted collective bargaining in the health sector, was an unjustifiable, sub-

decision means that governments are prohibited from substantially interfering with collective bargaining, such as back-to-work legislation, imposition of collective agreement terms, or reducing the scope of bargaining except, perhaps, in situations of urgency or exigency. The years following *Health Services* have been a period of uncertainty and realignment, as governments adapt to the new constitutional reality that direct legislative intervention may not be available whenever the government finds it expedient to resort to it. By substantially limiting governments' frequently used power to simply legislate an end to disputes or protracted bargaining, or to impose agreements, this change promises to significantly change the character of, and governments' role in, public sector labour relations.

In this era of realignment, Bills 27, 28 and other associated legislation and government action have come under *Charter* scrutiny. In particular, BCTF has challenged government initiatives in removing working and learning conditions from teachers' collective agreements and prohibiting bargaining of such matters. Until the BC Supreme Court's April 2011 decision on the matter, the government continued to resist returning to the negotiating table those issues removed from bargaining by Bill 28. Meanwhile, BCTF continued to reject and resist non-bargaining alternatives for these matters. It has denounced the Learning Roundtable as a "PR exercise" for government, and has withdrawn its participation.[242] Although the Bill 33 class size legislation was greeted with optimism when passed in 2006, BCTF not only challenged Bill 33 in its *Charter* case, but has launched numerous grievances relating to what it alleges are thousands violations of statutory class size limits.[243]

In this challenge to Bills 27, 28 and the Education Services Collective Agreement Act (ECCA), the Court held that sections of Bill 28 and the ECCA limiting the scope of teacher collective bargaining by prohibiting collective agreement terms relating to class size or composition, student-teacher ratios, case and teaching loads and reinstating the arbitral decision on scope after it was overturned by the Court, are invalid as contrary to the *Charter* guarantee of the freedom of association, and not a limit demonstrably justified in a free and democratic society. The Court suspended the declaration of invalidity for 12 months to permit the government to address this decision. However, the Court found that the challenged provision of Bill 27, which provided for merger of local collective agreement schedules following a merger of school districts,

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stantial interference with collective bargaining.

242. BCTF, "Teachers Vote to Leave Premier's Failed Learning Roundtable," 16 March 2009 <http://www.bctf.ca/NewsReleases.aspx?id=17908> (10 March 2011).

243. For the 2006–7 and 2007–8 school years, BCTF filed grievances involving 157 schools in 18 school districts and 1699 classes. For 2008–09 it grieved 14,000 classes; and, has given BCPSEA notice that, instead of policy grievances, it will file class size grievances on a local level for the 2010–11 year (BCPSEA, *Post-Decision: The Emerging Class Size/Composition Resolution Process – Process and Consequences*, (Vancouver 2010).

did not violate the freedom of association. The government has chosen not to appeal this decision, instead undertaking a consultation process with BCTF to negotiate implementation of the Court decision.[244] BCTF has greeted this Court decision as a victorious end to the battle it has waged with the Liberal government since its 2002 enactment of Bills 27 and 28. However, it remains to be seen what real effect this will have on the scope of bargaining and negotiations outcomes. It is a strange irony that in 1987 fear of a *Charter* ruling that ended in an unexpected decision opened the door to full formal labour rights for teachers and now, more than 30 years later, it may again be a surprising *Charter* decision that restores those rights to teachers.

More generally, BCTF continues to demand a return to local-level bargaining and striking. It seeks funding for local negotiations, and to revisit the provincial/local split of issues, proposing moving all issues to the local table but for wages, benefits, hours of work and paid leave. BCTF has told BCPSEA that if it does not agree to its proposed split of issues, BCTF will achieve it through legal action.[245] Meanwhile, contending that BCPSEA engages in "incessant interference" in local matters, and unreasonably denies local modifications, BCTF has "gone underground" to reach informal arrangements with some school boards.[246] Teachers' locals are also making centrally-coordinated overtures to school boards, seeking their support for changing the local/provincial split of issues.[247] Once more BCTF is pursuing informal routes, and direct dealings outside of the formal bargaining structure, to further its labour relations agenda. Therefore, the latest round of teacher negotiations is freighted with tremendous uncertainty as well as ongoing disagreements between the parties about the fundamental structure of bargaining in this sector.

BCTF also continues its political efforts, spending approximately $200,000 on political advertising in each of its 2006 and 2007 fiscal years.[248] In anticipation of the 2009 provincial election, the Liberal government passed Bill 42 imposing third-party election advertising restrictions during 88 days prior to a provincial election.[249] BCTF and other public sector unions succeeded, in

244. British Columbia, Ministry of Education, "Consultation Begins on Bill 28 Ruling," 5 May 2011, <http://www2.news.gov.bc.ca/news_releases_2005-2009/2005LCS0014-000888.htm> (5 May 2011).

245. BCTF, "Bargaining 2011: Charting a new course," May/June 2010 <http://bctf.ca/publications/NewsmagArticle.aspx?id=21166 > (1 February 2011); BCPSEA "@issue 2010-26: BCTF Local Bargaining Initiative," 6 December 2010 <http://www.bcpsea.bc.ca/documents/20101228_104424010_ai2010-26.pdf> (1 February 2011); BCPSEA, *Public Policy: Teacher-Public School Employer Bargaining Process Integration 2011, Discussion Paper*, (Vancouver 2010), 2.

246. BCTF, "Bargaining 2011"; Sims, interview.

247. BCPSEA "@issue 2010-26: BCTF Local Bargaining Initiative."

248. *BCTF v. BC*, 2009, paras. 4, 139.

249. *Election Amendment Act, 2008*, S.B.C. 2008, c. 41.

part, in a *Charter* challenge, arguing that the Bill's real purpose was to "tilt the playing field in favour of the governing party by targeting unions."[250] The Court rejected the claim that Bill 42 infringed freedom of association, or the right to vote, but the province conceded that it violated freedom of expression, and the Court declared certain provisions of Bill 42 of no force and effect. Nonetheless, Premier Campbell's Liberals were re-elected to a third term in the 12 May 2009 provincial election.

Conclusion

The BCTF has employed an array of strategies to advance teachers' collective bargaining rights over the last difficult decades. Perhaps BCTF's defining strategy has been its readiness to seek to do informally that which teachers are legally restrained from doing formally, coupled with its willingness to deal directly with whichever level of government or organization serves its purposes, regardless of the formal structures. These are recurring themes in BCTF's bargaining history. This was BCTF's approach before 1987, when it held very narrow formal bargaining rights, yet dealt directly with school boards to reach informal, technically unenforceable agreements on matters beyond their legal scope of bargaining. BCTF has used similar strategies more recently, directly approaching government and school boards, rather than the statutory bargaining agent, to advance its labour relations goals. A second, related, theme has been BCTF's proactive approach to driving change in labour relations. As Kuehn said, describing BCTF's efforts to expand the reach of bargaining in the early 1980s, the plan was to "restructure the reality" so that "the law would follow."[251] BCTF also has a long history of effectively pursuing its labour relations agenda in multiple legal fora. It has achieved significant success among its many *Charter* challenges and its grievances challenging class size legislation may force the government to negotiate those issues, simply as a means of halting the overwhelming onslaught of litigation. In the process, the BCTF has also developed into an influential, media-savvy political force.

Overall, BCTF exhibits several organizational characteristics that have contributed to its success. It has shown a remarkable ability to coordinate and centralize its action, facilitated by its early adoption of communications technology. This makes it a formidable opponent. Second, BCTF takes the long view, setting and pursuing labour relations goals that it pursues consistently and unflaggingly. It has also shown itself to be a highly adaptable organization, altering its strategies to suit changing contexts, and somehow managing to draw strength from each set of adversities or setbacks in its history. Central to

250. *BCTF v. British Columbia (Attorney General)*, 2009 BCSC 436 (third party election spending limits); *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31 (transit authority's refusal to accept BCTF political advertising).

251. Kuehn, interview.

BCTF's success has also been its ability to muster grassroots teacher support. Several times in its history it has voluntarily, or out of necessity, managed to sign up a tremendous proportion of teachers. BCTF has also, and against expectations, successfully been able to call upon teachers to engage in legal and illegal strikes. The tremendous membership support BCTF is able to marshal is a key strength of its organization, and cultivating teacher support has become an important part of its strategy.

Partly due to BCTF's strategic success, BC teacher labour relations have followed a different trajectory than public sector workers have generally experienced since the mid-20th century. Teachers were granted full formal collective bargaining rights decades later than most public employees, in 1987, and their history continued to be distinct. First, teachers enjoyed their fullest labour relations rights during the late 80s and early 90s, when other public sector workers were in the grips of periods of restraint and consolidation. Although teachers were affected in BC's 1994 public sector restructuring, teachers did not feel its full effect for almost another decade. Instead, they enjoyed a period of reprieve lasting the remainder of the 1990s by going around the school boards' bargaining agent to negotiate directly with government. Not until 2002, and a new Liberal government, did teachers feel the weight of restraint and consolidation, which persisted until the new era of realignment beginning in 2007.

It remains to be seen how BCTF will fare as the new boundaries of government control over public sector labour relations continue to be clarified in this era of realignment. However, history suggests that, through its capacity to adapt to change and adversity, as well as its willingness to challenge conventional approaches to collective bargaining and its limitations, the BCTF will continue to be a staunch advocate of teachers' rights and entitlements. The British Columbia Teachers' Federation has proven to be an imaginative and effective voice within public sector unionism, often posing formidable challenges to provincial governments, whatever their political orientation.

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