



# Bill 29 Settlement

## **REPORT TO MEMBERS OF THE HOSPITAL EMPLOYEES' UNION**

*on the Bill 29 Settlement Agreement  
between the*

Facilities Bargaining Association  
and the  
Health Employers Association of British Columbia  
and the  
Government of British Columbia

**FEBRUARY 2008**



# Bill 29 Settlement

## Bill 29 Settlement Agreement means new rights, expanded options for HEU members

*HEU's Provincial Executive recommends that members vote yes; agreement provides certainty and puts union on stronger footing for 2010 bargaining*

On January 25, 2008, the Facilities Bargaining Association (FBA) reached a Settlement Agreement with the Government of B.C. and the Health Employers Association of BC (HEABC) on the implementation of the *Bill 29* Supreme Court of Canada decision of June 8, 2007.

The agreement provides important new rights for HEU members that will be used to protect health services and members' jobs and to provide expanded options for workers that are laid off due to contracting out, so that they can continue to be employed in the health care sector.

A \$75 million package negotiated by HEU and its FBA union partners will provide compensation (\$68 million) and re-training (\$2 million) for approximately 9,000 members and former members impacted by *Bill 29*.

In addition, \$5 million of the total package covers re-training costs for any members that may be laid off due to contracting out during the term of the current collective agreement under the cap of 700 full-time equivalent (FTE) positions.

And as a result of the agreement and last June's Court decision, the B.C. Liberal government has committed to introducing legislation in the upcoming session of the B.C. legislature that will remove *Bill 29* restrictions on HEU's right to negotiate on issues like contracting out.

The Provincial Executive of the HEU, with the full support of the Provincial Bargaining Committee, is recommending that union members in the facilities subsector vote yes to the labour adjustment measures contained in the Settlement Agreement.

HEU's secretary-business manager Judy Darcy, who led the FBA negotiating team, says that the agreement restores full collective bargaining rights to the HEU membership on contracting out and consultation.

"Six years ago, the BC Liberals imposed one of the most extreme anti-labour laws in Canadian history," says Darcy. "*Bill 29* has caused damage to public health care, destroyed the lives of thousands of workers and their families and undermined the notion of free collective bargaining.

### MAIN POINTS

#### Voting on the Settlement

- Facilities subsector members vote on labour adjustment provisions of the agreement
- HEU's PE recommends that members vote YES

#### Expanded Rights

- Right to negotiate on contracting out
- \$5 million to re-train workers laid off under current 700 FTE cap
- More posting options for laid-off workers
- Unions can propose alternatives to contracting out

#### Compensation and Redress

- \$70 million re-training and compensation package for *Bill 29*-impacted members

#### *Bill 37* and 2004 wage cuts

- This agreement does not deal with *Bill 37*

## WHAT'S ON THE BALLOT

**Are you in favour of the labour adjustment provisions\* of the Bill 29 settlement?**

\*Labour adjustment provisions are contained in Appendices A through E of the Settlement Agreement.

“But today, thanks to the tenacity of HEU members who fought for their rights all the way to the highest court in the land, collective bargaining is now protected for every Canadian worker under the *Canadian Charter of Rights and Freedoms*,” adds Darcy.

“We have reclaimed our right to negotiate on the critical issue of contracting out,” says Darcy. “And when this union sits down at the bargaining table in 2010, it won’t be with one hand tied behind our backs.

“We’ve also strengthened our ability to scrutinize contracting-out plans and protect jobs in the future. And we’ve ensured that laid-off workers will have every opportunity to continue to work in health care.

“Just as important, we’ve kept the faith for the thousands of HEU members who were tossed out on the street by this government,” says Darcy. “They paid a high price for the pro-privatization policies of the BC Liberals and now they have received recognition for the injustice they suffered.”

### ***The Supreme Court decision***

The Supreme Court of Canada issued its decision on June 8, 2007 after a five-year legal battle launched by HEU and other health unions just months after *Bill 29* was passed in 2002.

The Court found that **sections 6(2), 6(4) and 9** of *Bill 29* violated the freedom of association provision in the *Canadian Charter of Rights and Freedoms*.

**Section 6(2)** eliminated any contracting-out protections from health care collective agreements – past and future – affecting non-clinical services.

**Section 6(4)** eliminated any provisions that required consultation before contracting out non-clinical services.

**Section 9** restricted layoff and bumping language.

The Court found that these provisions violated workers’ right to engage in collective bargaining. Now, for the first time ever, collective bargaining is protected under the charter for all Canadian workers.

The Supreme Court suspended its declaration for one year – until June 2008 – so that the Government of B.C. could deal with the repercussions of the decision.

In its ruling, the Court was critical of government’s failure to hold meaningful consultations, or to produce evidence to support its actions, before imposing *Bill 29*. The clear direction from the Court was that government would be required to engage in meaningful consultations and good faith negotiations around the implementation of the ruling over the next year. That obligation also applied to affected health unions.

However, the Court did not specify an outcome or remedy. And it did **not** rule that contracting out was unconstitutional. Rather, it ruled that health care workers have a right to **negotiate language** in their collective agreements on issues as fundamental to their working lives as contracting out.

## ***The negotiation process***

Beginning in October, HEU and the FBA met with government and HEABC officials for about 14 weeks. The other health care bargaining associations representing registered nurses, health sciences professionals and community health workers also held meetings with government and employers during this period.

“The Court’s ruling left us with an obligation to work out the details with a government that not only insisted on retaining an unfettered right to contract out, but refused to acknowledge any retroactive obligation to provide compensation to workers harmed by *Bill 29* in the past,” says Darcy.

“But after 14 long weeks of negotiations, we secured expanded rights and more options for members who may be laid off due to contracting out over the next two years under the existing cap,” adds Darcy. “And we have obtained compensation for laid-off workers despite the government’s position that it had no such obligation.

“Also, very importantly, we have avoided the prospect of another piece of legislation that would have imposed new restrictions on our members’ rights, the likelihood of going to the bargaining table in 2010 with continuing restrictions on our bargaining rights, and another lengthy court battle with an uncertain outcome.”

## ***New rights and expanded options for members in the future***

The Settlement Agreement contains important new provisions that protect current HEU members during the term of the 2006-2010 facilities subsector collective agreement.

“These gains will also strengthen our opening position at the bargaining table in 2010 since we will enter those negotiations with both rights and language that we didn’t have at the end of the 2006 round,” says Darcy.

Under the settlement, health employers continue to have the ability to contract out during the current contract term, but it is subject to the existing 700 FTE cap negotiated in 2006, and to the other provisions of this agreement. The language will be contained in a memorandum appended to the collective agreement.

“Contracting out will be on the table in 2010, and we have ensured that our pre-*Bill 29* language continues to exist in the agreement itself,” says Darcy. “It is strategically important to keep the language intact for the next round of bargaining.”

### **WE NEED EXPANDED RIGHTS NOW**

Health authorities and government have announced plans to consolidate a number of services through a shared services organization.

- Shared services could be a prelude to further privatization and contracting out.
- The government has identified payroll, purchasing and IT services for possible “consolidation” and privatization.
- Approximately 1,350 HEU members work in these areas.

That’s why HEU members need expanded rights around contracting out.

### **CONSULTATION ON CONTRACTING OUT**

- Union receives 60 to 90 days’ notice before RFPs issued for contracting out of services
- Union can propose alternatives to contracting out
- If contracting-out plan includes more than one health authority, a province-wide union/employer committee will look at other options and consult with experts (including members)
- Union will be given 60 days’ notice of intent to re-tender a contracted-out service and the right to propose to bring the service in-house

### ***Put privatization under a microscope, propose alternatives (see Appendix C, p. 10; Appendix E, p. 16)***

Under the terms of the agreement, unions must be consulted before employers proceed with contracting out that would affect their members.

The agreement requires health employers to give the affected union a minimum of 60 days’ notice before issuing a request for proposals (RFP) for the contracting out of a service. If the proposal will involve a significant number of sites, the notice period can be extended to 90 days.

During this period, the union can propose alternatives to contracting out and discuss various options for employees that may be affected if the contracting out proceeds.

If the contracting-out plan is to take place on a larger scale – involving more than one health authority – a province-wide “Alternate Service Delivery” committee composed of four representatives each from health unions and health employers – will study the proposal starting 90 days before an RFP is due to be issued.

The committee can call in experts – including front-line workers – to explore alternatives to contracting out. Both sides will cover the costs of their own committee members but front-line members who are part of the committee will have their wages covered by their employer.

As part of this process, health employers will be required to disclose relevant documents related to the contracting-out proposal. The committee will also be able to discuss options for impacted workers.

Health employers must also give the unions 60 days’ notice if they intend to re-tender a contract for a service that was previously in-house. During that period, the union can make proposals on how the service can be returned to the public sector. This does not apply to renewals of contracted-out services.

“It’s not a guarantee that we’ll keep the work in-house,” says Darcy. “But it gives us the right to put contracting out plans under a microscope, propose alternatives and work for the preservation of publicly-delivered services.

“Over the past few years, our members have worked informally with health employers to find alternatives to contracting out. The protection of laundry services in the Interior Health Authority is an excellent example of how we can tap into the knowledge of the front-line experts – our members – to secure the best possible solution for both our members and the public.

“Consultation on contracting out was illegal in the *Bill 29* world,” adds Darcy. “But now we are in a position to challenge contracting-out plans – including plans by the new shared services organization – and put them under greater scrutiny. Because of this, contracting out will be a far more difficult proposition for health employers.”

## ***Expanding job options for laid-off workers; tackling staffing shortages***

If services are contracted out and members are laid off, the union has a number of new options to help members remain in decently-paid health care jobs including re-training and expanded posting opportunities.

“The real sustainability crisis facing health care isn’t a cash crunch – it’s a severe shortage of skilled, experienced health care workers,” says Darcy. “If a health care worker is laid off due to contracting out, we have a range of new options to ensure their knowledge and experience is not lost to patients or residents.”

### **Re-training (see Appendix D, p. 12)**

Under the agreement, \$5 million is available to cover re-training costs for up to 700 full-time equivalent employees – the maximum number of workers that can be laid off due to contracting out under the 2006 cap.

Costs covered by the re-training fund include course costs and a living stipend if appropriate.

The re-training fund will be administered by a joint committee made up of three representatives of the employer and three representatives of the FBA unions. The employer will identify areas of need in the health sector and the committee will determine what living stipend will be provided.

During the re-training period, workers will be placed on a casual list with their current employer to maintain active status and seniority. They can access work for which they’re qualified during re-training. If there is no work for which they are qualified, they will be deemed unavailable until the retraining is complete.

Workers who take advantage of re-training must commit to staying in health care for at least three times as long as the length of their training period or they will have to pay back a pro-rated portion of their course costs and living expenses (i.e. if the course length was one month, the employee would be required to work at least three months).

If no ongoing vacancy is available when they’ve completed their training, they will be registered on the casual list in any health authority. Re-trained workers can port their service and seniority if they successfully post into a job within six months.

“Health unions have gained a lot of experience – from the FBA Education Fund and other projects – in working with our public educational institutions to arrange high quality educational opportunities for our members and to leverage more resources for training,” says Darcy.

“We intend to put those principles to work for members who want to access these new re-training funds. Our goal is to make sure that any member that is laid off due to contracting out is re-employed in the health sector in a decent paying position.”

### **ACTION ON STAFFING SHORTAGES; RE-TRAINING OPTIONS FOR MEMBERS**

- \$5 million in re-training funds for those laid off under 700 FTE cap
- Funds co-ordinated by joint union/employer committee
- Course costs and living stipend covered
- Training in areas of “need” including community health
- Access to casual list during re-training period
- Ability to port seniority and service after re-training
- Opportunity for group training opportunities

There's also \$2 million earmarked for re-training of health care workers laid off due to contracting out in the past. But former members who are not currently in the facilities subsector and access these funds will have to apply for vacancies as an external applicant.

### Expanded posting opportunities (see Appendix D, p. 12)

Over the next two years, HEU members laid off due to contracting out under the existing cap also have access to more postings as a result of the agreement.

In 2006, the union negotiated provisions which meant that members who were laid off due to contracting out and had no bumping options to exercise could apply for vacancies anywhere within their health authority. Under this agreement, **that right is extended to the entire province.**

“We have built on the gains we made in 2006,” says Darcy. “In effect, we have made it possible for laid-off workers to apply for vacancies anywhere in the province.”

#### EXPANDED POSTING OPTIONS

- Workers laid off under contracting-out cap or as a result of P3s (*Bill 94*) are eligible
- Post to regular ongoing vacancy or casual list in another health authority
- Up to \$800 in moving costs covered
- Port seniority and service to new employer
- Recall period extended from one to two years

Laid-off workers who post into a regular job vacancy in another health authority can qualify for benefits the month after they start in their new position. They're also eligible for up to \$800 in moving expenses.

They can also register on the casual list in another health authority under the terms of the Casual Addendum in the collective agreement and apply for ongoing vacancies. Workers using this provision can access benefits without accumulating the usual requirement of 180 hours of work.

Workers laid off under the cap or because of public-private partnerships (P3s) designated under *Bill 94* can also register for work under the collective agreement Casual Addendum in any one health authority across the province and are eligible to apply for ongoing vacancies.

Casual employees under this provision can access benefits without the usual requirement to have worked 180 hours. They can convert their accumulated seniority and benefits under the formula outlined in the Casual Addendum.

The expanded options to post into regular and casual work apply to both the workers laid off under the cap – and workers who are laid off as a direct result of P3s. In all cases, the laid-off worker can port seniority and service to the new employer unless she has received an enhanced severance payment.

In addition, laid-off workers will have their recall period extended from one year to two years, if they haven't ported seniority to another health authority.

### Early retirement and voluntary departure (see Appendix D, p. 16)

Health employers at their discretion may provide early retirement, voluntary departure incentives or other labour adjustment provisions suggested by the union where these measures would create vacancies that would be filled by other employees affected by layoff.

## Other provisions

There are a number of other labour adjustment provisions in the agreement:

**Re-employment if services returned in-house (see Appendix A, p. 9):** If a contracted-out service is returned to the direct control of a health employer during the term of the collective agreement, members who were laid off and were working for the contractor when the work is brought back in-house will be offered an available position and their service and seniority will be restored.

**Employment with a contractor (see Appendix D, p. 15):** Employers have agreed to facilitate the process, should a laid-off worker wish to seek employment with a contractor.

**Payback of enhanced severance (see Appendix D, p. 13):** Any employee who takes a job with a health employer (not a private contractor) within six months of receiving enhanced severance will be required to pay back a pro-rated amount.

### ***Compensation for workers impacted by Bill 29 (see Settlement Agreement, p. 17)***

There is a \$68 million compensation package for HEU members and other FBA union members who were impacted by *Bill 29* in the past.

Approximately 9,000 workers are eligible for cash compensation.

“HEU members can be very proud that they held their ground for six long years to make sure that we did not forget our sisters and brothers who were treated so arbitrarily and unjustly by this government,” says Darcy.

“No compensation package could have made up for the harm that has been done to our families and communities. But it does provide recognition that our members were wronged by the government and it will provide some financial relief to workers who have suffered serious economic hardship as a result of *Bill 29*.”

The distribution of the funds will be coordinated by a joint union/employer committee that will be chaired by respected mediator/arbitrator Vince Ready.

The committee will review and confirm the list of impacted individuals as well as the categories of loss and the value of compensation assigned to the various categories.

“We are very pleased that Mr. Ready has agreed to help us with this complex process,” says Darcy. “His expertise will assist us in making sure that the thousands of workers who will qualify for compensation are treated in a fair and equitable manner.”

Approval of the labour adjustment measures contained in appendices A through E is required for the entire package including compensation for *Bill 29*-impacted workers to come into effect.

#### **COMPENSATION PACKAGE FOR *BILL 29*-IMPACTED MEMBERS**

- \$70 million (\$2M re-training; \$68M compensation)
- Joint committee chaired by Vince Ready will oversee process
- HEU facilities subsector members do not vote on compensation package **but** approval of labour adjustment measures is required for entire agreement to take effect

## ***Labour adjustment measures of the Settlement Agreement—Appendices A through E***

The remainder of this report contains the appendices to the Settlement Agreement which represent the labour adjustment measures for the purposes of balloting. The Settlement Agreement itself is included at the end of the document for information purposes.

Members familiar with the 2006-2010 collective agreement will recognize some of the language contained in the following appendices. Some provisions negotiated in 2006 and attached to the collective agreement were in the form of a memorandum of agreement (MOA) with the B.C. government, and not governed by the collective agreement's grievance/arbitration provisions because of the *Bill 29* bargaining prohibitions.

As a result of the Supreme Court decision and the Settlement Agreement, these provisions are now covered by the collective agreement grievance/arbitration process.

In many other cases, gains negotiated in the Settlement Agreement enhance existing memoranda so the original language is included for the sake of clarity.

### ***Appendix A: Memorandum of Agreement — Contracting Out***

#### **Explanatory Note for Appendix A**

- The original contracting-out language remains in the body of the collective agreement in Article 17.12 but is modified by this MOA. (Article 17.12 in the collective agreement reads: *The Employer agrees that they will not contract out bargaining unit work that will result in the lay-off of employees within the bargaining unit during the term of this agreement. The Employer will discuss with representatives of the local in a timely manner, functions they intend to contract out after the date of signing this collective agreement that could otherwise be performed by Union members within the facility, except where an emergency exists.*)
- Contracting out remains subject to the 700 FTE cap negotiated in 2006
- Provides for re-employment of laid-off workers if contracted-out services are returned in-house
- Moves disputes arising from the *Bill 94 (P3)* notice provisions to the grievance/arbitration provisions of the collective agreement, as legislative prohibitions against contracting-out language will be removed from *Bill 29*

#### **Appendix A**

##### **Facilities Subsector Collective Agreement 2006-2010**

##### **Memorandum of Agreement – Contracting Out**

- a) Notwithstanding Article 17.12, Health Sector Employers will have the option to contract out work carried out by members of the Facilities Bargaining Association bargaining unit including where it results in the layoff of members of the Facilities Bargaining Association bargaining unit. This Memorandum of Agreement continues in force and effect until such time as HEABC and the Facilities Bargaining Association negotiate changes to it.
- b) **Bill 94-2003:** HEABC commits to informing the Facilities Bargaining Association as soon as reasonably possible after notification by the Government of B.C. of any new designations under the

*Health Sector Partnerships Agreement Act* on or after April 1, 2006.

- c) Paragraphs b above is effective from April 1, 2006.
- d) **Return of Service:** If a Health Sector Employer returns a service for direct delivery that was contracted out, employees who were employed as a regular employee by the Health Sector Employer at the effective date of the contracting out and are regular employees of the contractor at the time that the service returns to direct delivery:
- i. will be offered employment by the Health Sector Employer subject to availability of positions; and
  - ii. where the former employee accepts the offer, he/she will have previous Health Sector service and seniority recognized.

This provision applies for the balance of the term of the 2006-2010 Facilities Subsector Collective Agreement and applies until the effective date of a renewal Collective Agreement.

### **Appendix B: Memorandum of Agreement – FTE Cap**

#### **Explanatory Note for Appendix B**

- Maintains the 700 full-time equivalent (FTE) cap on contracting out during the 2006-2010 collective agreement but moves dispute resolution to the collective agreement grievance/arbitration process reflecting the end of *Bill 29* prohibitions on collective bargaining related to contracting out

#### **Appendix B**

#### **Facilities Subsector Collective Agreement 2006-2010**

#### **Memorandum of Agreement – FTE Cap**

- a) **FTE Cap:** Notwithstanding Article 17.12 and the Memorandum of Agreement entitled “Contracting Out”, during the term of the 2006-2010 Facilities Subsector Collective Agreement, Health Sector Employers will limit contracting out to seven hundred (700) full-time equivalents (“FTE Cap”) covered by the Facilities Subsector Collective Agreement between April 1, 2006 and March 31, 2010. Any layoffs occurring on or after April 1, 2006 as a result of a displacement notice issued prior to April 1, 2006 shall not count towards this total number of reductions. The total number of reductions excludes employees who may be laid off as a result of the application of the *Health Sector Partnerships Agreement Act*. The contracting out allocation will occur as follows: (a) no more than two hundred (200) full-time equivalents in fiscal 2006/2007; (b) three hundred (300) full-time equivalents in fiscal 2007/2008; (c) two hundred (200) full-time equivalents in fiscal 2008/2009; and (d) any unused allocation in any year will be carried forward to future years until fiscal 2009/2010. For example, any amount not allocated in fiscal 2006/2007 may be carried forward to fiscal 2007/2008 to be allocated in addition to the three hundred (300) full-time equivalents in fiscal 2007/2008.
- The FTE Cap will be allocated to Health Sector Employers by the Government of British Columbia.
- b) Paragraph a above is effective from April 1, 2006.

**Appendix C: Consultation – Contracting Out****Explanatory Note for Appendix C**

- Contains the new provisions on consultation on contracting out

**Appendix C****Facilities Subsector Collective Agreement 2006-2010****Consultation – Contracting Out**

- a) Health Sector Employers will engage in a consultation process as described below effective at least sixty (60) calendar days in advance of the issuance of a Request for Proposals (“RFP”) or by issuance of an equivalent invitation to bid by a Health Sector Employer when it is considering contracting out that may result in the layoff of bargaining unit employees.
- b) **Consultation Process – General:** In the sixty (60) calendar day period, the Union will be provided an opportunity at the appropriate project level to discuss alternatives to the proposed contracting out and/or the options for impacted employees. Health Sector Employers will give good faith consideration, in the discussions on contracting out, to alternatives advanced by a Union.

Where a project involves services that impact a significant number of the worksites amalgamated within one (1) Health Authority, HEABC and the Facilities Bargaining Association agree that the sixty (60) calendar day period will be changed to up to ninety (90) calendar days.

At the end of the sixty (60) or ninety (90) calendar day period, as applicable, the Health Sector Employer will have the discretion to proceed with the contracting out.

- c) **Consultation Process – Two (2) or More Health Authorities:** Where a project would apply to two (2) or more Health Authorities (including Providence Health Care Society as part of Vancouver Coastal Health Authority) covered by the Facilities Subsector Collective Agreement, HEABC and the Facilities Bargaining Association agree to refer the project to a provincial level Alternate Service Delivery Committee jointly established by HEABC and the Facilities Bargaining Association. In this event the consultation process will begin ninety (90) days in advance of the issuance of an RFP by the Health Authorities or by issuance of an equivalent invitation to bid.

The Committee will be comprised of four (4) representatives appointed by the Facilities Bargaining Association and four (4) representatives appointed by HEABC. The Committee will have the ability to bring in a reasonable number of subject matter experts in the work performed and/or the proposed project. HEABC and the Facilities Bargaining Association also agree that where a project impacts multiple Union Bargaining Associations, the Committee may, by mutual agreement, meet with other Union Bargaining Associations but the membership of the Committee will not include representatives from other Union Bargaining Associations.

The Committee will be the forum for the discussion of alternatives to the proposed contracting out and/or the options for impacted employees. Health Authorities will give good faith consideration, in the discussions on contracting out, to alternatives advanced by a Union.

HEABC and the Facilities Bargaining Association will each pay their own expenses for their respective Committee members. Employees who are members of the Committee shall be granted leave without

loss of pay or receive straight-time regular wages while attending meetings of the Committee.

At the end of the ninety (90) calendar day period, the Health Authorities will have the discretion to proceed with the contracting out.

- d. **Disclosure:** Health Employers will provide to the Union a detailed description of the proposed contracting out.

Relevant information and supporting documents on the proposed contracting out will be disclosed by the Health Employer to the Union to inform the discussions regarding alternatives and options for affected employees.

- e. **Confidentiality:** Confidentiality will be needed until such time as the Employer is prepared to announce a decision.

HEABC and the Facilities Bargaining Association agree that the Union has the ability to discuss with impacted employees alternatives and options with the affected employees on a confidential basis.

HEABC and the Facilities Bargaining Association agree that should any financial and/or proprietary information of the Employer and/or any potential third party contractor be disclosed, such information will remain confidential.

- f. **Notification to FBA:** Once the Health Employer makes a decision under the process set out in this Memorandum of Agreement, the Facilities Bargaining Association will be notified of the decision in writing. If the Health Employer makes a decision to proceed with contracting out, the parties agree that they will move to the process set out in the Memorandum of Agreement Re: Employee Options – Contracting Out.

- g. **Application of Labour Relations Code:** HEABC and the Facilities Bargaining Association agree that the process described in this Memorandum of Agreement and the Memorandum of Agreement entitled “Employee Options – Contracting Out” establish the specific process of consultation and adjustment contemplated by Section 54 of the *Labour Relations Code* and satisfies the requirements of this Section of the *Labour Relations Code* for the purposes of contracting out that results in the layoff of members of the Facilities Bargaining Association bargaining unit.

**Appendix D: Employee Options — Contracting Out****Explanatory Note for Appendix D**

- Includes both the expanded posting and re-training provisions for workers laid off due to contracting out under the 700 FTE cap
- The bulk of the language in this appendix was originally negotiated as part of the MOA on Enhanced Severance on p. 232 of the 2006-2010 collective agreement
- Includes expanded province-wide posting options for employees laid off due to contracting out or P3s (under *Bill 94*) to both regular vacancies or to register on a casual list
- Extends the recall period from one year to two years
- Establishes criteria for the \$5 million re-training fund (and the \$2 million fund for workers laid off under *Bill 29* in the past) and provides posting options for re-trained workers and the ability to port seniority and service
- Establishes a requirement that employees repay a pro-rated portion of Enhanced Severance if they are re-employed in facilities subsector with six months
- Establishes that employers can opt to make early retirement, voluntary departure and other incentives available to employees who are laid off due to contracting out

**Appendix D****Facilities Subsector Collective Agreement 2006-2010****Employee Options – Contracting Out**

- a) The Memorandum of Agreement Re: Employees Laid Off Due to Contracting Out or Due to the Application of the *Health Sector Partnerships Agreement Act* [Employee Options] in the Facilities Subsector Collective Agreement is retained and amended as follows:

The parties agree as follows:

**1. Enhanced Severance Allowance:**

- a) An Enhanced Severance Allowance shall be paid to each regular employee who is laid off where the employee's services are no longer required due to contracting out or because of the application of the *Health Sector Partnerships Agreement Act* between April 1, 2006 and March 31, 2010. The Enhanced Severance Allowance will be based on the exact same formula and process as the Severance Fund established in the May 2, 2004 Memorandum of Agreement as outlined in the November 26, 2004 agreement letter from the FBA to HEABC.
- b) The balance remaining from the \$25 million Severance Fund established under the May 2, 2004 Memorandum of Agreement between HEABC, the FBA, the Government of British Columbia, and the B.C. Federation of Labour shall be carried forward to finance, in part, the Enhanced Severance Allowance referenced in paragraph 1 (a) above. Employees laid off as a direct result of contracting out or who received layoff notice during the period referenced in the May 2, 2004 Memorandum of Agreement or whose job was eliminated due to contracting out between April 1, 2004 and March 31, 2006 shall be entitled to

receive a payment from the balance of the \$25 million Severance Fund in accordance with the November 26, 2004 agreement letter from the FBA to HEABC. Note that employees under this provision are not entitled to the Enhanced Severance Allowance referenced under paragraph 1 (a) above.

- c) A regular employee who is re-employed in the Health Sector within six (6) months of the effective date of layoff will not be entitled to receive an Enhanced Severance payment subject to the conditions set out below. If the Enhanced Severance payment is made to an employee who is re-employed within six (6) months of the effective date of layoff in the Health Sector, he/she will reimburse the Employer a prorated amount of the Enhanced Severance payment based on the length of time before re-employment (e.g., one month before re-employment means a repayment of 5/6<sup>th</sup> of the Enhanced Severance payment).

2. **Expanded Access to Regular On-Going Vacancies and Work Under the Addendum – Casual Employees:**

Regular employees laid off as a direct result of contracting out or as a direct result of the application of the *Health Sector Partnerships Agreement Act* who have not terminated and who have no bumping or vacancy posting option under the Facilities Subsector Collective Agreement at their current Employer shall be entitled to:

- a) Apply for an unfilled regular on-going vacancy across any one (1) Health Authority worksite in the province.
- i. A laid off regular employee who successfully posts into a regular on-going vacancy will be entitled to coverage under the Medical, Dental, and Extended Health Care Plans effective the first day of the month following employment.
- ii. **Relocation Expenses:** An employee who accepts a regular on-going position in the Health Sector in a location that is more than fifty (50) kilometres from his/her previous worksite and who chooses to relocate will be entitled to relocation expenses of five hundred dollars (\$500) for a move of up to two hundred and forty (240) kilometers and eight hundred dollars (\$800) for a move of beyond two hundred and forty (240) kilometers. Relocation expenses must be claimed from his/her former Employer within six (6) months of the start date of the regular position and must be supported by receipts.
- b) Register for work under the Addendum – Casual Employees on one casual list in any one (1) Health Authority worksite in the province provided the employee is qualified to perform and capable of performing the work.
- i. An employee who registers under the Addendum – Casual Employees shall be eligible to apply for regular on-going vacancies.
- ii. A laid off regular employee who registers for work under the Addendum – Casual Employees has the option to enroll in the health and welfare benefit plans as per Section 14 of the Addendum without having to work one hundred and eighty (180) hours.
- iii. In addition, a laid off regular employee who registers for work under the Addendum – Casual Employees will be entitled to access the benefits set out

in Section 15 of the Addendum at the Health Authority.

- c) A laid off regular employee who successfully posts into a regular on-going vacancy or registers for work under the Addendum – Casual Employees prior to the expiry of their recall period under the process in this Memorandum of Agreement shall port her/his service and seniority to the receiving Employer. The ability to port is not available to an employee who receives an Enhanced Severance Allowance under paragraph 1 above.
  - d) **Re-employment with Previous Health Sector Employer:** A regular employee laid off as a result of contracting out who successfully applies on a posting for a regular on-going position at his/her previous Health Sector Employer within one (1) year from the effective date of the end of the recall period will have his/her previous Health Sector service and seniority restored. If the employee received a Severance Allowance or elected to waive the recall period to receive Severance Allowance, Article 43.02 (c) of the Facilities Subsector Collective Agreement will continue to apply. This provision will not apply to an employee who has ported service and seniority to another Health Sector Employer within one (1) year from the effective date of the end of the recall period.
3. **Reimbursement of Educational or Re-Training Costs:** Regular employees who are issued displacement notice on or after April 1, 2006 and laid off as a result of contracting out or as a result of the application of the *Health Sector Partnerships Agreement Act* may apply to their Employer for reimbursement of educational or re-training costs, subject to the following conditions:
- i. Reimbursement will be provided for the costs of courses incurred at an educational institution up to a maximum of \$1,000 (pro-rated for regular part-time employees based on their full-time equivalent);
  - ii. Reimbursement will be provided upon presentation of receipts submitted before the expiry of the employee's Collective Agreement recall period; and
  - iii. Regular employees who are laid off and who request to be added to one casual list within the Health Authority (as per paragraph 2 (b) above) are not eligible for these funds.
4. **Re-Training Fund:** A re-training fund of seven million dollars (\$7,000,000) will be established to facilitate access to re-training for a job in areas of need in the Facilities Subsector.
- a. Re-training for employees laid off due to contracting out in the future – five million dollars (\$5,000,000).
  - b. Individuals previously laid off due to contracting out – two million dollars (\$2,000,000). Individuals previously laid off due to contracting out who are interested in re-training must receive an allocation from the two million dollar (\$2,000,000) re-training fund by June 1, 2009. After that date, remaining funds shall be made available to all employees to be re-trained in areas of need in accordance with terms

determined by the joint Committee. Individuals previously laid off due to contracting out who are re-trained, who are not already in the Health Sector, and who apply for a regular on-going vacancy with any Health Sector Employer are considered an external applicant under Article 16.03 of the Facilities Subsector Collective Agreement.

5. **Employment with the Contractor:** If a regular employee who has been issued a displacement letter due to contracting out is interested in being employed by the contractor, the Health Employer will facilitate the process.
  6. Subject only to the variations specified in this Memorandum of Agreement, the Facilities Subsector Collective Agreement will apply and prevail.
  7. This Memorandum of Agreement is effective from April 1, 2006.
- b) **Re-Training:** A joint Re-Training Committee will be established comprised of three (3) representatives appointed by the Facilities Bargaining Association and three (3) representatives appointed by HEABC to implement the terms of this Framework Agreement pertaining to the re-training fund. The principles governing the Committee's decisions and the application of the re-training funds are:
- i. Re-training must be for an area of need in the Facilities Subsector as determined and approved by the Employer. The Committee may discuss re-training for areas of need in the Community Bargaining Association.
  - ii. Employee must be qualified and capable before being able to bid on a vacancy upon completion of any re-training.
  - iii. The funds shall cover the cost of the course and, where appropriate, a reasonable stipend for current employees in the Health Sector to assist with living expenses while enrolled in the course. The joint committee will determine the value and application of the stipend.
  - iv. During the re-training period, the employee will be placed on a casual list at his/her current Health Sector Employer and:
    - a) can access work during the re-training period if the employee is qualified; or
    - (b) if not qualified, is deemed unavailable until the re-training is concluded.
  - v. Commitment to stay in the Health Sector upon conclusion of re-training and posting into a vacancy. Failure to stay in the Health Sector for a period equivalent to three (3) times the length of the re-training period results in a prorated share of reimbursing the Fund for the cost of the re-training and, where applicable, the stipend payments.
  - vi. Should no regular on-going vacancy be available, a re-trained employee must register on one casual list in any one (1) of the six (6) Health Authorities across the province upon completion of training to facilitate access to a regular on-going vacancy. The casual list must be for an occupation in which the employee received re-training.
 

The employee will retain the ability to have his/her service and seniority restored for six (6) months following the completion of the re-training if the employee is successful in posting into a regular on-going vacancy.
  - vii. HEABC and the Facilities Bargaining Association will work with public sector post-secondary institutions to maximize the training opportunities for the employee and the Employer.

- c) **Other Options:** The following options are available for consideration by the Employer at its discretion:
- i. Early Retirement Incentives and/or Voluntary Departure Incentives. If such incentives are made available to employees impacted by contracting out, such incentives will only be granted where vacancies would be created by the departing employee(s), which would be filled by other employees who would otherwise be laid off due to contracting out; and
  - ii. Other options for labour adjustment suggested by the Union, including voluntary recognition of the Union.

### **Appendix E: Contract Re-tendering**

#### **Explanatory Note for Appendix E**

- Contains provisions that allow the union to make proposals to bring a service in-house, if a health employer intends to re-tender the contract.

#### **Appendix E**

#### **Facilities Subsector Collective Agreement 2006-2010**

#### **Contract Re-Tendering**

Prior to the expiry of the full term of currently contracted services that were provided by the Facilities Subsector Bargaining Association as of January 28, 2002, the Union that previously represented the employees at the Health Employer will be entitled to an opportunity to prepare and present a proposal for the orderly return of contracted services to the direct control of the Health Employer to the senior designate(s) appointed by the Health Employer. The opportunity for the Union to present a proposal to the Health Employer will be provided sixty (60) days before a Request for Proposals (“RFP”) is issued for the continuing contracting of services. The Health Employer will have the discretion to choose to proceed with the contracting out. The Employer agrees to provide the Union with the details of the work to be performed, including any tendering documents.

**Settlement Agreement (provided for information only)**

**Explanatory Note for the Settlement Agreement**

- Provides for the MOAs (Appendices A through E) to be added to the collective agreement
- These MOAs are supplementary to the provisions of the collective agreement which is in effect from March 31, 2006 to March 31, 2010
- Sets out total compensation package including re-training funds; establishes the process for allocating payments to impacted individuals from the \$68 million compensation package
- Resolves outstanding grievances and claims under *Bill 29* for the health sector (but not for the social services sector)
- Commits government to introduce legislative changes which will result in the removal of sections 6(2), 6(4) and 9 from *Bill 29*

**This Settlement Agreement made this 25th Day of January 2008**

**Between:**

**The Government of the Province of British Columbia (“Government”)**

**- and -**

**Health Employers Association of British Columbia (“HEABC”)**

**- and -**

**Facilities Bargaining Association (“FBA”)**

**WHEREAS:**

- A. The parties have met and considered the decision of the Supreme Court of Canada dated June 8, 2007 in the matter of *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia* (the “Decision”).
- B. The parties have resolved all issues arising from the Decision which affect members of the FBA.
- C. It has been agreed to enter into this Settlement Agreement.

**THEREFORE**, the parties agree as follows:

**1. Effect of Agreement:**

- 1.1. The responsibilities which arise under this Settlement Agreement will be the responsibility of the party identified as bearing the responsibility.
- 1.2. This Settlement Agreement will be supplementary to the provisions of the Facilities Subsector Collective Agreement between HEABC and the FBA which is in effect for the term of April 1, 2006 to March 31, 2010 in the manner established in this Settlement Agreement.



## Bill 29 Settlement

- 1.3. This Settlement Agreement will come into effect on [date], provided it has been approved by the FBA, by HEABC, and by the Government.
2. **Contracting Out:**
  - 2.1. A Memorandum of Agreement entitled “Contracting Out” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix A.
3. **FTE Cap:**
  - 3.1. A Memorandum of Agreement entitled “FTE Cap” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix B.
4. **Consultation:**
  - 4.1. A Memorandum of Agreement entitled “Consultation – Contracting Out” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix C.
5. **Employee Options:**
  - 5.1. A Memorandum of Agreement entitled “Employee Options – Contracting Out” will be added to the 2006-2010 Facilities Subsector Collective Agreement as set out in Appendix D.
6. **Contract Re-Tendering:**
  - 6.1. A new Memorandum of Agreement entitled “Contract Re-Tendering” will be added to the 2006-2010 Facilities Subsector Collective as set out in Appendix E.
7. **Financial Issues:**
  - 7.1. A lump sum of seventy-five million dollars (\$75,000,000) to be allocated as follows:
    - A. Two million dollars (\$2,000,000) for re-training for individuals previously laid off due to contracting out;
    - B. Five million dollars (\$5,000,000) for re-training of employees laid off due to contracting out in the future; and
    - C. Sixty-eight million dollars (\$68,000,000) for payments to impacted individuals.
  - 7.2. The parties agree that the total amount committed for the above purposes must not exceed seventy-five million dollars (\$75,000,000).
  - 7.3. A joint governance Committee will be established between HEABC and the Facilities Bargaining Association to set priorities for how to allocate payments to impacted individuals. The joint governance Committee will be established within thirty (30) days of the effective date of a Settlement Agreement and will be terminated on December 31, 2008.
  - 7.4. The parties agree on the following process for the identification and categorization of impacted individuals entitled to a payment from the sixty-eight million dollar (\$68,000,000) lump-sum amount:
    - A. Step One:
      - i. The Facilities Bargaining Association will engage in the following preliminary

process:

- a. the identification of impacted individuals;
- b. the criteria and categories of impact; and
- c. the value assigned to each category of impact.

By no later than March 31, 2008, the number of categories and the relative value of such categories will be established. Subsequently, the determination can be made as to the expenditure of the sixty-eight million dollar (\$68,000,000) lump sum by calculating the number of impacted individuals in each category times the relative value of all categories divided into the sixty-eight million dollar (\$68,000,000) lump sum.

**B. Step Two:**

- i. The joint governance Committee with a neutral Chair will be established comprised of three (3) representatives appointed by the Facilities Bargaining Association and three (3) representatives appointed by HEABC. The parties agree that, in order, Vince Ready or Irene Holden or Chris Sullivan will be appointed as the neutral Chair of the joint governance Committee, subject to his/her availability consistent with the needs of the parties.
- ii. The Committee will determine its own process.
- iii. The Committee will review and confirm:
  - a. the identification of impacted individuals;
  - b. the categories of impact and criteria for inclusion in that category;
  - c. the application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact; and
  - d. the value assigned to each criteria in the category of impact.
- iv. Disputes by previously impacted individuals will be limited to appropriate application of the criteria to individuals for placement within the categories established.
- v. The application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact must be finalized, prior to any distribution of funds, in the event there are disputes over assignments.
- vi. The Chair has jurisdiction only to resolve disputes regarding the allocations and development of criteria and assignment of individuals to categories, and there is no jurisdiction to render any decision, the effect of which would result in the lump sum of sixty-eight million dollars (\$68,000,000) being exceeded. The Chair also has jurisdiction to determine that the process set out in Step One and Step Two will not be conducted in a manner that is arbitrary, discriminatory, or in bad faith.

8. **Release:**

- 8.1. This Settlement Agreement will exist as a separate Agreement and will not form part of the Facilities Subsector Collective Agreement. Notwithstanding the foregoing, any amendments arising from this Settlement Agreement are supplementary to the Facilities Subsector Collective Agreement and will be deemed to be part of the Facilities Subsector Collective Agreement.
- 8.2. This Settlement Agreement will resolve all outstanding grievances and claims by the Facilities Bargaining Association and each of the member Unions of the Facilities Bargaining Association on their own behalf and on behalf of their individual members or former members with respect to Part 2 of the *Health and Social Services Delivery Improvement Act*, and Parts 1 and 4 as they affect Part 2, including:
- a) Every grievance filed by a member or former member of the Facilities Bargaining Association, including policy grievances, between January 28, 2002 and the date of this Settlement Agreement relating directly or indirectly to the application, interpretation, operation, constitutionality of, or in any way engaging, the *Health and Social Services Delivery Improvement Act* or relating to the impact of Health Sector Employer or Government actions taken pursuant to the *Health and Social Services Delivery Improvement Act*.
  - b) Any claim by the Facilities Bargaining Association, a constituent member of the Facilities Bargaining Association, or any member or former member of any of the constituent Unions of the Facilities Bargaining Association in relation to the *Health and Social Services Delivery Improvement Act*.
  - c) Any claim by the Facilities Bargaining Association or any of its constituent Unions for damages or any other form of relief pursuant to or related in any fashion to the June 8, 2007 of the decision of the Supreme Court of Canada in the *Health Services* case.
- 8.3. The Facilities Bargaining Association and each of its constituent Unions agree that they will not initiate any new claims or grievances in respect of the *Health and Social Services Delivery Improvement Act*.
- 8.4. Sections 8.2 and 8.3 do not affect a future claim that an Employer covered by the *Health and Social Services Delivery Improvement Act* has acted contrary to a provision of the *Health and Social Services Delivery Improvement Act*.
- 8.5. This Settlement Agreement is entered into on a strictly without prejudice basis to the position of the Government and HEABC that the *Health Services* decision has no retrospective or retroactive effect. This Settlement Agreement is entered into on a strictly without prejudice basis to the position of the Facilities Bargaining Association that the *Health Services* decision has retrospective or retroactive effect.

- 8.6. The Government may be presenting legislation or amendments to the *Health and Social Services Delivery Improvement Act* to the Legislative Assembly, which shall not be inconsistent with this Settlement Agreement, to implement the terms of this Settlement Agreement. It is a fundamental term of this Settlement Agreement that any such legislation will not be inconsistent with the terms of the Settlement Agreement.
- 8.7. Subject to Section 8.8 below, the parties confirm that all shaded provisions in the printed booklet of the 2006-2010 Facilities Subsector Collective Agreement are deleted.
- 8.8. Section 8.7 above does not apply to the first paragraph of Article 17.12 as it is qualified by Appendix A of this Settlement Agreement (Memorandum of Agreement – Contracting Out).
- 8.9. It is understood that off-the-record discussions during the negotiations will not be referred to, introduced, or relied on in any future proceedings except in a proceeding to determine the correct interpretation of the Settlement Agreement, including these Release provisions.