

Labour Relations Board Decision: BCTF Foundation Skills Assessment (FSA) Campaign

The formal hearing in response to the BC Public School Employers' Association (BCPSEA) Application to the Labour Relations Board (LRB) with respect to the BCTF advice and direction to their members to refuse to perform work related to FSA convened this morning at approximately 10:15 am and concluded at 1:30 pm.

LRB Decision

In its decision released to the parties this afternoon, Vice-Chair Lisa Southern stated:

I find that administering/supervising the FSA tests is prima facie work which teachers are obligated to perform. Consequently, BCTF is ordered, on an interim basis, to do the following:

1. cancel its direction to members not to administer/supervise FSA tests and to take reasonable steps to communicate that cancellation to its members as soon as possible and no later than 4:00 pm on February 4, 2009; and
2. cease and desist from authorizing or directing its members not to administer/supervise FSA tests.

...This order is intended to revert the parties to 'business as usual' as it existed prior to the BCTF's direction."

A full copy of the LRB decision is attached.

Summary of the BCTF Argument

The BCTF argument focused on three points:

- Rejection of the "educational effectiveness of FSA testing"
- "FSA testing has negative, rather than positive effects:
 - the testing creates anxiety in students and is effectively "high stakes" for students, teachers, education programs whether intended to be or not...
 - it alters the timing and presentation of the provincial curriculum — many teachers feel pressured to use valuable instruction time for test preparation and practice...
 - FSA is not diagnostic and does not help plan instruction for individual students...
 - There are significant problems with the validity of the data due to the fact there were computer problems last year, and students who did not write the test were recorded as receiving zero

- results are misused by media and political axe grinders like the Fraser Institute to promote rankings which exacerbate the disparity between advantaged and disadvantaged schools and are used to attack our system of public education in order to promote an ideology which favours the privatization of schools.”
- Teachers are exercising their professional autonomy in not administering the FSA:
 - They argue, “the vast majority of collective agreements protect a teachers’ autonomy with respect to planning and presentation of courses and the methodology to be used in the classroom.” The logical consequence is, therefore, that “teachers have the right to determine how matter connected to teaching and learning will be scheduled and conducted in their classrooms based on their professional training and expertise.”

The BCTF further stated that its advice and direction to its members to refuse to prepare for, administer, and mark the FSA is not proof of a failure to do work and that there is no evidence to support a claim of any breach of the collective agreement. They argued the LRB has no jurisdiction to issue an anticipatory cease and desist order because of an alleged violation or “to restrain or attempt to remedy hypothetical future contraventions that it guesses or presumes will occur...the Board’s remedial authority is expressly limited to existing or ongoing violations of the statute or the contract — it cannot issue a cease and desist order for a presumed eventuality.”

Summary of the BCPSEA Argument

In our Application to the LRB, BCPSEA sought Declarations, Orders, and other relief including:

- the BCTF has declared or authorized an illegal strike by its members, in violation of Part 5 of the *Labour Relations Code*
- the refusal by BCTF members to prepare for or administer the FSA is contrary to Part 5 of the *Labour Relations Code*
- any work stoppage, slow down, strike or any other activity related to or directed at the preparation for and administration of the FSA which is intended to or does restrict or limit production or services is contrary to the *Labour Relations Code*
- the BCTF cease and desist from encouraging, declaring or authorizing its members to refuse to prepare for or administer the FSA
- all BCTF members cease and refrain from any withdrawal of services or refusal to do work and from any other concerted activity that is designed to or does restrict or limit services at the sites of the BCPSEA’s member employers
- the BCTF publish to its members and to the general public a copy of the Declarations and Orders issued in respect of this application
- the BCTF communicate the contents of the LRB’s Declarations and Orders to its local presidents, shop stewards and other persons to whom the BCTF communicated its intended strike action and to post the LRB’s Declarations and Orders on its websites for a period not less than thirty days
- the BCTF inform the LRB and BCPSEA, within two hours of the issuance of the LRB’s Order, of the steps they have taken to comply

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- the BCTF, its members, and all other persons having knowledge of the Order of the LRB, or any other person to cease and desist from declaring, authorizing, counselling, aiding or engaging in or engaging in concert with others either directly or indirectly to bring about any unlawful activity by the members of the BCTF at or near the premises of BCPSEA member employers
 - any such further Order the LRB may deem appropriate.

Next Steps

School districts should proceed with their plans with respect to FSA. We will be in touch further tomorrow but in the interim, please contact your BCPSEA labour relations liaison for discussion or assistance.

Attachment: LRB decision BCLRB 25/2009