

Labour Relations Board Application: Foundation Skills Assessment Campaign

As we have previously reported, the BC Teachers' Federation (BCTF) has continued to escalate its campaign in opposition to the Foundation Skills Assessment (FSA). The BCTF and its union locals have issued a variety of communications to Chairs of Boards of Education throughout the province advising that teachers intend to refuse to prepare for, administer, and mark FSA. It is the view of BCPSEA that the BCTF advice and direction to their members in this regard is contrary to the *Labour Relations Code*, arbitral and Labour Relations Board (LRB) decisions, and/or the collective agreement.

We recognize there are a variety of views with respect to testing in general and the FSA in particular. These include the third-party use of FSA data to rank schools, the need for parents to have accurate data, and the census versus random sample model of reporting. Those views should properly be canvassed in a policy forum for discussion. The current matter at issue, however, is whether an employee has the right to determine what work they will do and what work they will not do during the term of a collective agreement.

Application to LRB

Accordingly, BCPSEA has today made application to the LRB. The purpose of the application is to ensure that the FSA, which is scheduled during the period February 2 – 27, 2009, occurs without disruption to students and to the public education system in general.

BCPSEA is requesting that the LRB schedule an expedited hearing for Friday, January 30, 2009 and is seeking 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
- 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.

Background

The administration and supervision of tests is the nature of work normally performed by teachers. The assessment and evaluation of students is a core duty of teachers, as this represents an integral part of the learning process. In response to a similar dispute between the Ministry of Education and the BCTF, the Labour Relations Board (LRB) issued decisions in 2002 (BCLRB No. 110/2002 and BCLRB No. B123/2002) concluding that supervising FSA is work which teachers are obligated to perform and ordered the BCTF to suspend its direction to members not to supervise the FSA. Vice-Chair Kearney held that:

“...supervising the FSA test is *prima facie* work which teachers are obligated to perform.”

She went on to order the BCTF to:

- “1. suspend its direction to members not to supervise FSA tests and to take any reasonable steps to communicate that suspension to its members; and,
2. cease and desist from authorizing or declaring its members not to supervise FSA tests.”

Despite its longstanding opposition to FSA, and the determination by the LRB that the supervision of FSA is teachers' work, neither the BCTF nor any of its locals have filed a grievance relating to the requirement of teachers to perform duties associated with the FSA. This work has consistently been performed by teachers in every year since 2000.

As we have stated many times before, the reality is that whatever personal opinions school trustees, district staff, the BCTF, and teachers may hold with respect to the FSA (or any other educational initiative for that matter), the FSA is an initiative of the Ministry of Education and is required by the *School Act* and Regulations. Boards of Education are obliged to ensure that the FSA proceeds as intended without disruption to the workplace.

Next Steps

Should the LRB issue Declarations and/or Orders in favour of the BCPSEA Application, the expectation is that the BCTF and its members would comply with those Declarations and/or Orders.

However, it is important to note that BCTF *School Staff Alert* No. 19, dated January 26, 2009, states as follows:

“Previous experience has taught us that when the crunch comes we can expect to be faced with letters, demands, and all manner of pressures to comply. The protest of 2005, and previous to that the action we took over the college in 2003, also taught us that if we all take a stand in support of our strategy and colleagues, we are all protected. No one was disciplined in either of the actions in 2005 and 2003.”

The LRB will establish its process in response to our Application. We will advise boards as soon as further information is received.

In the interim, boards and district staff should continue to ensure that teachers understand the expectations with respect to administration of the FSA. BCPSEA will continue to work with boards to manage the labour relations implications of the BCTF political campaign against FSA. Please contact your BCPSEA labour relations liaison for discussion and assistance as matters evolve in your district.

For Your Reference

The *Labour Relations Code* references are as follows:

- **"strike"** includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees that is designed to or does restrict or limit production or services...

- ***Strikes and lockouts prohibited during term of collective agreement***

57 (1) An employee bound by a collective agreement entered into before or after the coming into force of this Code must not strike during the term of the collective agreement, and a person must not declare or authorize a strike of those employees during that term.

(2) An employer bound by a collective agreement entered into before or after the coming into force of this Code must not during the term of the collective agreement lock out an employee bound by the collective agreement.