

## **Labour Relations Board Dismisses BCTF Application**

In his *Report from the Chair* of June 5, 2006, Ron Christensen, Chair of the BCPSEA Board of Directors, advised that the BC Teachers' Federation had filed an application to the Labour Relations Board (LRB) asserting that the BC Public School Employers' Association (BCPSEA) had breached the *Labour Relations Code* provision to bargain in good faith.

### **Requirement to bargain in good faith**

**11 (1)** A trade union or employer must not fail or refuse to bargain collectively in good faith in British Columbia and to make every reasonable effort to conclude a collective agreement.

(2) If a trade union and the employer have concluded a collective agreement outside British Columbia, it is invalid in British Columbia until a majority of the employees in British Columbia covered by the agreement ratify it.

The BCTF asserted that they are entitled to bargain the manner in which school boards' discretions or powers under the *School Act* are exercised, and the consequences that flow from the exercise of that power or discretion. This refers specifically to what has become known as "manner and consequences." This issue dates back to the controversy associated with the removal of class size and composition matters from collective bargaining and into public policy.

BCPSEA had advised the BCTF that we are prepared to have discussions on this matter. However, as it is our view that their proposals are illegal, we are not prepared to discuss these specific proposals.

We argued that we are entitled to a hard bargaining position of refusing to bargain the proposals and that our position does not constitute a failure to bargain in good faith. In any event, we argued that it is permissible to refuse to bargain an illegal proposal.

The BCTF argued that the proposals are legal, and therefore BCPSEA is in error in refusing to bargain the proposals. This refusal constitutes a breach of the duty to bargain in good faith.

## **LRB Decision**

We have today received the LRB decision in this matter. LRB Vice-Chair Ken Saunders dismissed the BCTF application, determining that,

BCPSEA's refusal to bargain "manner and consequences" language does not establish that it is negotiating without a bona fide intention of reaching a collective agreement.

The LRB determined that the question to be answered is,

...whether BCPSEA's refusal to bargain "manner and consequences" language into the new provincial collective agreement shows that it is negotiating without a bona fide intention of reaching an overall collective agreement with the BCTF.... The issue is not whether the BCPSEA's view that the BCTF's proposals are legally impermissible is correct or "accurate," as the BCTF puts it, but whether the BCPSEA's conduct in bargaining shows it is bargaining in bad faith....

The LRB determined that BCPSEA is entitled to stick firmly to its position that it views "manner and consequences" as legally impermissible and that it refuses to agree to that type of language in any event.

Right or wrong, BCPSEA's position is seriously and genuinely held; it is not a "bare assertion" or a mere "branding" of the BCTF's proposals as illegal, as suggested by the BCTF in its submissions.

In addition, the LRB found no evidence that BCPSEA's position is "irrational." Based on the parties' submissions and the bargaining dialogue, there is a bona fide difference of opinion on the legality of the bargaining proposals.

While the BCTF invited the LRB to review the reasonableness of BCPSEA's position, the LRB determined that.

...such a review is clearly not consistent with Code principles and policy under Section 11. As stated in a previous Board decision, "it would be inconsistent with the fundamental policy of the Code...for the Board to evaluate the substantive positions of each party, to decide which is the more reasonable, and then to find the other party to be committing an unfair labour practice for not moving in that direction.

The LRB concluded by stating that,

*...each side is entitled to adopt positions which are in its own interest and to stick firmly to them. I find that this is what BCPSEA has done, and that, viewing the circumstances as a whole BCPSEA's refusal to bargain "manner and consequences" language does not establish that it is negotiating without a bona fide intention of reaching a collective agreement.*

A copy of the full text of the LRB decision can be found on the BCPSEA public website at:

<http://www.bcpsea.bc.ca/public/emplgroups/teacher/bargaining/award/lrbreport-june15.pdf>

## Questions

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