

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

April 26, 2012

BY FAX

To Interested Parties

Dear Sirs/Mesdames:

Re: British Columbia Public School Employers' Association -and- British
Columbia Teachers' Federation
(Part 5 and Section 135 - Case No. 63382/12)

The BCTF applies pursuant to paragraph 7 of an Order of the Board issued April 20, 2012 (the "April 20 Order") seeking clarification and a declaration that 17 identified School Districts have issued directions to teachers regarding marks and student progress reports (Student Reports) that are not in compliance with paragraph 5 of the April 20 Order. BCTF says the directions issued by those School Districts exceed the terms provided in paragraph 5 of the April 20 Order.

BCTF provides a summary of the directions it says have been provided by each of those School Districts which exceed the terms of paragraph 5.

BCTF seeks an order directing those School Districts to comply with the terms of the April 20 Order.

BCTF says it has provided clear direction that its members comply with the April 20 Order and they are doing that. They have filed grievances where appropriate. BCTF says it is very concerned that the directions provided by those 17 School Districts unduly impact teachers' workloads contrary to the clear intent of the April 20 Order.

BCPSEA submits it has not had any opportunity to investigate the circumstances or factual assertions of the BCTF.

BCPSEA says it has advised all its members to strive to issue directions that are consistent with point 5 of the April 20 Order. There is no evidence of any bad faith in the way that advice has been given effect and BCPSEA says it assumes the School Districts in issue have provided their directions for legitimate reasons.

BCPSEA seeks a declaration that BCTF has breached the *Labour Relations Code* (the "Code") and the *Education Improvement Act* (the "Act") by declaring and authorizing an unlawful strike. BCPSEA also seeks an order that BCTF cease and desist the unauthorized strike in the form of refusing to submit marks and not complying with the Employer's directions regarding the provision of marks and completion of the Student Reports.

The BCTF application was filed at the close of business yesterday and the BCPSEA reply was provided late in the evening yesterday. The BCTF provided a reply submission late this morning. Under the terms of the April 20 Order, Student Reports are to be provided by tomorrow.

The BCTF has made some factual assertions to support its claim of non-compliance. The Employer was not, understandably, in a position to deal with those factual assertions. In my view,

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there is a reasonable likelihood that an evidentiary hearing may be necessary to establish the facts and context for the directions provided by those School Districts.

Throughout the labour dispute between these parties, and now following it, the Board has endeavoured to provide expeditious answers to the various issues and applications brought by these parties. That exercise was done within the limited resources of the Board.

As was noted in BCLRB No. B82/2012, under normal circumstances, the provision of marks and completion of Student Reports, would be done by teachers in compliance with the directions from School Districts within the parameters of the relevant legislation. Issues relating to those directions would normally be dealt with under the grievance process in the collective agreement.

As was also noted in that decision, these are not normal circumstances but rather they involve a return to work following a contentious labour dispute, ended by the Act. A number of issues, including marking and provision of Student Reports, remained outstanding between the parties.

The parties attempted to resolve their differences with respect to marks and the Student Reports, but generally reached an impasse, which resulted in an application to the Board by BCPSEA. The April 20 Order was designed to break that impasse and provide sufficient certainty and consistency with respect to the marks and Student Reports, across the province and that they be provided in a timely manner.

The April 20 Order reflected the Board's answer to achieve that objective and provide a basis for the parties to move forward past their impasse. While the parties did not agree to the terms of the April 20 Order and had differences between them as to the terms it should contain if it was to be ordered, nonetheless, the April 20 Order was based on extensive discussions with them.

I accept that, in keeping with the intent of the April 20 Order, both BCPSEA and BCTF have provided directions or advice that the terms of the April 20 Order should be put into place.

Having said that, it would not be surprising if there were some differences at the local level regarding how marks and Student Reports are to be provided. Giving effect to the intent of the Order requires a measure of co-operation and good will, neither of which can be imposed by the Board by dictate.

I am not persuaded there is any evidence of bad faith or a complete refusal to give effect to the terms of the April 20 Order. Rather, there appears to be differences regarding how Student Reports are to be provided in the context of the April 20 Order.

These issues arise very late in the process, at the eleventh hour. As noted, the April 20 Order contemplated Student Reports being provided by tomorrow. In these circumstances, I am not persuaded it would be useful or appropriate to attempt to engage in an exercise of an examination of the asserted non-compliance at the very last minute.

It is apparent that the bulk of the School Districts and BCTF locals throughout the province have found ways to give effect to the April 20 Order.

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I accept there may well be, at the local level, examples of a lack of co-operation and unwillingness to be flexible (on both sides) in the way the terms are to be given effect. That illustrates the problematic nature of the current relationship between these parties.

The practical implications of the differences between the parties regarding marks and Student Reports is not known at this time. For example, it is not known if any discipline may arise as a result of the differences. In any event, even if that were to be the case, there is a remedy available through the collective agreement. As well, other issues arising from the difference may give rise to a grievance under the collective agreement, as is evidenced by the BCTF reply submission which notes teachers are filing grievances in response to at least some directions.

The issuing of a remedy under the circumstances arising in this case is a discretionary exercise. There are limits to both the Board's resources and patience. Bearing in mind all the circumstances, I am not persuaded it would be useful or appropriate to entertain and/or grant the orders sought by either party.

Accordingly, both applications are dismissed.

Yours truly,

LABOUR RELATIONS BOARD



Michael Fleming
Associate Chair, Adjudication

MF/sn

Interested Parties:

Roper Greyell LLP
800 Park Place - 666 Burrard Street
Vancouver BC
V6C 3P3
ATTENTION: Delayne M. Sartison, Q.C. / Jennifer Devins
(Fax: (604) 806-0933)

British Columbia Teachers' Federation
100 - 550 West 6th Avenue
Vancouver BC
V5Z 4P2
ATTENTION: Carmela Allevato
(Fax: (604) 871-2288)