

Marguerite Jackson

Arbitrator

August 28, 2011

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Attention: Judith Anderson

Attention: John Rogers, Q.C.

Dear Mesdames/Sirs:

Re: BCPSEA and BCTF

The parties referred five questions to me for adjudication. These questions were fully argued at a hearing on August 25 and 26, 2011. By agreement of the parties, my decision must be issued by this evening. In light of that agreement my decision is in the form of this brief letter decision with reasons to follow at a later time.

QUESTION #1 – What is the authority of the parties to delegate provincial matters to local tables?

Answer:

Neither party has the authority to unilaterally delegate provincial matters to local tables.

QUESTION #2 – If a party has the authority to delegate provincial matters to the local level, can those matters then be referred to the provincial table when impasse is reached at the local level?

Answer:

Since there is no authority to delegate, it is unnecessary to address Question #2.

QUESTION #3 – If a party has the authority to delegate provincial matters and those matters can then be referred to the provincial table when impasse is reached at the local level, would section 59 of the *Labour Relations Code* (the "Code") requirements be met without discussion of these referred matters at the provincial table?

Answer:

As I have said, there is no authority to delegate. Nonetheless, section 59 of the *Code* should be addressed.

Counsel for the BCTF argued that no such delegation has occurred. Instead he described what is happening at the local tables with respect to matters currently designated provincial under LOU No. 1 as "...local unions...attempt(ing) to provide employers with an understanding of where their concerns are and what their demands will be if the bargaining regarding the re-designation of LOU No. 1 is successful". (Union Argument, para.34) No objection could be taken to such discussions as counsel for BCPSEA noted in her Reply.

However, it is my view that if any of those matters – currently identified as provincial in LOU No. 1 – that are being raised or discussed at the local tables are key issues with respect to the overall bargaining agenda of the BCTF, those matters should be raised at the provincial table to ensure compliance with section 59 of the *Code*: see **Natural Glacial Waters Inc.** BCLRB No. 329/2000 at para.21.

QUESTION #4 – What are the cost items defined by the *Public Education Labour Relations Act* ("PELRA")?

Answer:

Section 7(4) of *PELRA* provides a definition of "cost provisions" that are deemed to be provincial. It is my conclusion that the list of "cost provisions" in section 7(4) exhausts the definition.

The cost items defined by *PELRA* are as follows:

- all provisions relating to salaries that affect the cost of the collective agreement

- all provisions relating to benefits that affect the cost of the collective agreement

- all provisions relating to time worked that affect the cost of the collective agreement

- all provisions relating to paid leave that affect the cost of the collective agreement

The test of whether a provision is deemed to be provincial is two-fold. First, does the provision relate to, for example, salaries? Second, does the provision affect the cost of the collective agreement? If the answer to both questions is "yes", then the provision is one that is deemed to be provincial.

QUESTION #5 – Are there any restrictions on the ability of the parties to negotiate a re-designation of the split of issues, including whether the split of issues can be brought to impasse?

Answer:

Any re-designation of the split of issues must be consistent with section 7 of *PELRA*. It follows that all cost provisions that are deemed provincial under *PELRA* must remain provincial matters.

LOU No. 1 and Article A.1 set out the split of issues. LOU No.1 is not an independent protocol agreement but is part of the collective agreement. Negotiations concerning LOU No. 1 and its Appendices are not an attempt to negotiate "beyond the parameters" of the exclusive bargaining rights of the BCTF: see **Northwood Pulp** (1994) 23 CLRBR (2d) 298 at p. 314. In my view disputes about the content of LOU No. 1 can be bargained to impasse.

The Agreement

My appointment to resolve these questions is pursuant to an Agreement between the parties dated August 15, 2011.

In accordance with paragraph 4 of that Agreement, I remain seized to assist with the implementation of this decision.

Paragraph 3 of the Agreement states as follows:

3. During the period August 29 to September 5, 2011 the parties agree to implement the decision of the arbitrator and to rectify issues identified by the arbitrator according to the timeframe established by the arbitrator.

In general terms the issues that may require rectification are these. First, there are the matters currently identified as provincial in LOU No. 1 that are being raised or discussed at the local tables. If any of those matters are key issues with respect to the overall bargaining agenda of the BCTF, those matters should be raised at the provincial table this week. Second, the BCTF's re-designation proposal may include matters that it seeks to have designated as local but that fit within the cost provisions deemed to be provincial under Question #4. I expect the BCTF will review that proposal after receiving this decision. However, if there is any difficulty in this regard, I am prepared to assist and provide guidance.

If either party is of the view that there are other matters that require rectification I trust I will be advised.

As I indicated in my e-mail dated August 17, I am available on Wednesday, August 31 and Thursday, September 1 for any in person meetings that may be necessary. With respect to Thursday, September 1, I would prefer not to meet before 1:00 pm. On Monday, August 29 and Tuesday, August 30 I am not available for in person meetings. However, I could be available for a conference call or calls and will be monitoring my telephone messages and e-mails on both days with the exception of Tuesday, August 30 between the hours of 10 am and 2 pm.

Yours truly,

"M Jackson"

Marguerite Jackson, Q.C.