

CUPE Local 2145/School District No.54 (Bulkley Valley): StrongStart Program

School District No. 54 (Bulkley Valley) and CUPE Local 2145 recently resolved a dispute regarding that district's Strong Start Coordinator and the appropriate jurisdiction of the work.

Issue: Is the work of a Strong Start Coordinator in a StrongStart BC Program automatically work within the CUPE jurisdiction by virtue of the bargaining certificate and the collective agreement?

Facts: In 2007 the *School Act* was amended by the *School (Student Achievement Enabling) Amendment Act* to authorize boards of education to "operate an early learning program with the prior agreement of the minister." School District No. 54, like many others, received funding to establish centers under the StrongStart BC program and then chose to establish the Strong Start Coordinator position within the district but outside of their support staff bargaining unit (in this district CUPE). CUPE Local 2145 grieved that the employer was in contravention of the collective agreement because it had established the position as a position excluded from the bargaining unit when the unit was defined in the collective agreement as "all employees except teachers as defined by the *School Act*." The union also asserted that it is certified as the exclusive bargaining agent by the Labour Relations Board.

School District No. 54, as did other districts, grounded their action in the fact that this was entirely new work that had not been contemplated at the time of the original certification and which had previously been outside the mandate of school districts. The employer did not argue that this work was excluded by the *Labour Relations Code*; rather, for such work to be brought into the bargaining unit, the union must first sign up the employee(s) and then negotiate the necessary changes to the collective agreement to accommodate the duties and scheduling of the new job(s).

Award: In this consent award, the employer agreed to the inclusion of the Strong Start Coordinator position within the CUPE bargaining unit. This agreement was without prejudice to the position it might take with other newly created positions and in exchange for amendments to the collective agreement that recognized the unique nature and needs of the newly established pre-school StrongStart Program. It is important to note that the employer did not concede to the union's original position that StrongStart work or the Coordinator position was automatically work within the current collective agreement by virtue of the collective agreement language and the bargaining certificate. Also, prior to entering into discussions with CUPE, the employer confirmed that the incumbent did not object to being included in the bargaining unit.

The highlights of the necessary amendments to the collective agreement include:

- Both the union and employer acknowledge this is a newly created and included position under the collective agreement and will be subject to review with respect to compensation under the job evaluation system.
- Future vacancies for Strong Start Coordinators in this district will be posted under the collective agreement and must include the "required ability" for the position as agreed to by the parties. The

union acknowledged that the employer has the right to set these qualifications, skills and abilities and agrees with the qualifications established in Schedule 1 of the award.

- Strong Start Coordinator positions will receive program protection in the event of layoff by amending the Bumping Rights provision and adding the following:

“The Board reserves the right to deny an employee to bump into a Strong Start Coordinator position if this would create a negative impact on the StrongStart program.”

- Annual vacation for the Strong Start Coordinator will be scheduled so there is no interruption with the delivery of the program. Amendments to the collective agreement were made by adding the following:

“These employees will take their annual vacation during Christmas and Spring Break or otherwise when the program is not operating.”

- The four-hour minimum shall be interpreted as an average of four hours worked daily over the course of a four week period in order to meet the needs of the program and the requirement for flexibility in scheduling hours of work outside of the hours of operation of the StrongStart Centre.
- Paid rest period shall be taken during times that will not interfere with the operation of the StrongStart Centre.

Next Steps: This agreement may have implications for any district that has established StrongStart positions outside their support staff bargaining unit. Under the delegated authority model for support staff, a district may elect to engage in discussions with their support staff union to establish the necessary changes to the terms and conditions for StrongStart Coordinators in exchange for inclusion in the bargaining unit. While BCPSEA policies and bylaws prohibit automatic voluntary inclusion, the approach taken in School District No. 54, and suggested as a model for other districts, protects management’s right to determine how new types of work are best introduced and ensures that newly established positions outside of the current bargaining unit certificate will only be included when the unique needs of a program such as StrongStart have been considered and addressed.

Districts interested in pursuing this option should contact their BCPSEA labour relations liaison prior to discussions with the union to ensure that any negotiations are consistent with the consent award and can be ratified by the BCPSEA Board of Directors should an agreement be reached between the parties.

It is also important to note that this award does not impact a district’s ability to contract StrongStart work, subject to the limitations that exist in each local agreement. Given the award, however, a district may choose to continue to contract such work or determine that there are benefits to establishing the position as a support staff bargaining unit position provided an agreement with the union can be reached regarding required variances to the collective agreement.

BCPSEA Reference No. A-25-2007

Questions

If you have any questions concerning this decision, please contact your BCPSEA labour relations liaison.