

BCTF/BCPSEA: Definition of Strike in the *Labour Relations Code*

In Spring 2002, the Labour Relations Board (LRB) issued two conflicting decisions in response to the question, "Does the definition of strike under section 1 of the *Labour Relations Code* infringe upon the rights to freedom of expression, freedom of assembly and freedom of association guaranteed by section 2 of the *Canadian Charter of Rights and Freedoms* and not saved by section 1 of the *Charter*?" The reconsideration of those decisions BCLRB No. B92/2004 (BCPSEA) and BCLRB No. B64/2004 (Health Employers' Association of BC) was consolidated.

While differing analyses were provided by each of the three reconsideration panel members, the effect of the award is that the definition of strike remains constitutionally valid and applicable, unless and until a court decides otherwise (BCLRB Reference No. B395/2004).

BCPSEA Reference No. LB-10-2004.pdf

BCTF/School District No. 75 (Mission): Layoff Notice (Reduced FTE/Surplus)

For the 2002/03 school year, it was determined that 36 FTE teaching positions would be eliminated. Some teachers were declared surplus, some were given layoff notice, and some junior teachers were deemed protected by virtue of particular skills. The Union alleged the Board attempted to disentitle teachers to severance and other rights. Arbitrator Emily Burke upheld the Employer's position that only teachers not being retained should be laid off and dismissed the grievance.

BCPSEA Reference No. A-66-2004.pdf

BCTF/School District No. 93 (Conseil Scolaire Francophone): Assignment in School

In 1999, the Grievor, a Social Studies teacher without library experience or training, was asked to assume a part-time library position. While some concerns were raised regarding her performance in the library, she retained this position for two years before going on medical leave. When she returned in March 2002, the Grievor resumed her .5 Socials Studies duties but not her library duties. For the 2002/03 school year the library position was increased to .7 but the Grievor was not reassigned to it. Initially, the Union grieved under the assignment provision and later added the return from leave provision. Arbitrator Judi Korbin would have concluded that the Grievor should be reassigned to the library had the Grievor not resigned in the interim. In light of the resignation, the award was a declaration of rights. The arbitrator found the Grievor was entitled to return to the same position and that the Employer had failed to consider all the factors listed in the assignment article.

BCPSEA Reference No. A-63-2004.pdf

Questions

If you have any questions concerning these decisions please contact your BCPSEA liaison. If you wish a copy of the complete award please contact Lynda Kuit at lyndak@bcpsea.bc.ca and identify the reference number found at the end of each summary.