GRIEVANCE & ARBITRATION UPDATE

British Columbia Public School Employers' Association

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BCTF/BCPSEA: Class Size Arbitrability

In January 2002, class size was removed from the collective agreement and the collective bargaining process, and set by statute in the *School Act* and the *Class Size Regulation.* In November 2002, the BCTF filed a policy grievance alleging violations of those statutes, which was referred to Arbitrator Don Munroe. Arbitrator Munroe first dealt with the issue of arbitrability. He found that the matter was not arbitrable and dismissed the grievance, saying:

> "An arbitral finding that the legislative provisions on class size are implicit in teachers' collective agreements, thus implying back into those collective agreements provisions of a kind earlier stripped from the agreements by legislative warrant, and legislatively declared not permissibly included now or in the future in teachers' collective agreements, would directly collide with the clearly-stated intention of the Legislative Assembly, and for that reason would be incorrect in adjudicative principle."

The BCTF appealed the decision in the Court of Appeal. On February 18, 2005, the Court issued its judgment, setting aside the arbitrator's award and determining that an arbitrator has jurisdiction to determine whether there has been a violation of the *School Act* or the *Class Size Regulation*:

> "It is significant that the subject of class sizes was negotiated in collective bargaining between teachers and school boards before the 2002 legislation and was clearly, in the past, regarded by the parties as a term or condition of employment. The fact that the subject of class sizes can no longer be negotiated nor have any place in the collective agreement of the parties does not make that subject any less a term or condition that affects the employment relationship….
>
> I believe that a flexible and contextual approach to the position that should be adopted by an arbitrator on the application of a statutory provision to the interpretation, operation, and application of a collective agreement, and to an alleged violation, does not depend on an "incorporation" of the statutory provision in the collective agreement but rather on whether there is a real contextual connection between the statute and the collective agreement such that a violation of the statute gives rise, in the context, to a violation of the provisions of the collective agreement, often, but not exclusively a violation of the right expressed or implied in the collective agreement to set principles for management of the workforce in accordance with the laws of the Province. In short, the collective agreement must be interpreted in the light of the statutory breach."

BCPSEA is reviewing the judgment and considering its course of action. Should an appeal be filed, it must be filed within 60 days of the judgment.

BCPSEA Reference No. CD-01-2005.pdf.

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

The Labour Relations Board's decision regarding the constitutionality of the definition of strike in the *Labour Relations Code* was reported in the January 2005 update (No. 2005-01). The BCTF filed an appeal of that decision with the BC Supreme Court on February 15, 2005.

Questions

If you have any questions concerning these decisions, please contact your BCPSEA liaison. If you want 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.