

BCTF/BCPSEA: Court of Appeal — Freedom of Speech

In the fall of 2002 as part of its Action Plan in response to the passage of the *Public Education Flexibility and Choice Act*, the BCTF distributed political materials regarding class size and other issues to locals for distribution to parents and posting on teacher bulletin boards. A number of Districts took action to prevent the distribution of these materials, and directed teachers not to use parent-teacher interview time to discuss political issues surrounding class size.

In response, the BCTF grieved two general categories of action:

1. The School Boards or their representatives advised teachers they were not to post certain material on teacher bulletin boards in areas in schools where students and their parents may see them.
2. The School Boards or their representatives advised teachers they were not to distribute certain documents to parents either during parent-teacher interviews or otherwise on school property. Teachers were directed that parent-teacher interviews could not be used to discuss class size issues or to make available certain documents produced by them or the BCTF relating to class size or collective bargaining issues.

Arbitrator Don Munroe upheld the Union's grievance, ruling that the Districts' actions violated teachers' right of free expression under section 2(b) of the *Charter of Rights and Freedoms*.

BCPSEA appealed the arbitrator's award directly to the Court of Appeal. On August 3, 2005, the Court issued its decision. The majority of the court (two of the three justices) voted to dismiss the appeal, with one judge dissenting. The full text of the Court's decision can be accessed at <http://www.courts.gov.bc.ca/Jdb-txt/CA/05/03/2005BCCA0393.htm>

Further reference materials can be found on the BCPSEA website at:

- <http://www.bcpsea.bc.ca/public/publications/aissue/ai2005-02.pdf>
- <http://www.bcpsea.bc.ca/public/publications/aissue/ai2005-03-guide.pdf>

BCPSEA Reference No. A-48-2005

BCTF/School District No. 33 (Chilliwack): Court of Appeal — Access to Information

In March 2004, Arbitrator Judi Korbin directed the Employer to disclose, in the course of the grievance, detailed notes of the reference checks and interview of the successful applicant made during the post and fill process. The Employer appealed this decision to the Court of Appeal. While the Court described the Employer's position as "a persuasive attack upon the correctness of the arbitrator's reasoning and particularly her interpretation of FOIPPA," it ultimately determined that it lacked jurisdiction. Timelines prevented the matter from being returned to the Labour Relations Board for consideration so the decision is in force for SD No. 33 (Chilliwack).

In February 2005, Arbitrator Emily Burke reached a contrary decision in a case involving the Coast Mountain Bus Company and COPE. She found "the Employer is not permitted to disclose information about an identifiable individual to the Union pursuant to Article 7.11(g), without the written consent of the individual."

BCPSEA believes this matter was wrongly decided by Arbitrator Korbin and should be revisited. If the matter arises in your district please contact your BCPSEA liaison. We also advise, when appealing an arbitration award, to discuss with legal counsel whether it would be appropriate to file concurrently with the Labour Relations Board and the Court of Appeal.

The full text of the Court of Appeal's decision can be accessed at <http://www.courts.gov.bc.ca/Jdb-txt/CA/05/04/2005BCCA0411.htm>.

BCPSEA Reference No. A-42-2005

BCTF/School District No. 39 (Vancouver): Severance Pay/Employment Rights

The school board and the union had agreed as a matter of practice, not collective agreement right, that teachers on the recall list may opt to go on the TOC list and, once on the list, have priority access to casual assignments ahead of TOCs. Teachers in Vancouver may opt for severance "at any time up to the end of the recall period." A number of teachers whose recall period was expiring October 31, 2004 elected to take severance.

The Union took the position that upon electing severance pay, the teacher is still entitled to remain on the TOC list. The expiry of recall rights and/or the election to receive severance pay does not amount to just and reasonable cause for removal from the TOC list. The purpose of severance pay is to compensate the laid off teacher for the loss of the continuing appointment; the election to receive severance cannot be seen as connoting a full severance of the employment relationship. The Employer's position was that all employment rights end upon the acceptance of severance. Employees who have accepted severance are considered external applicants.

Arbitrator Don Munroe dismissed the grievance. The commonly understood meaning and purpose of "severance pay" is as a payment to which an employee will be entitled in stipulated circumstances upon a complete termination of employment. The acceptance of severance pay represents a complete termination of the employment relationship, and such teachers retain no rights to employment.

He also said that continuing teachers on the recall list do not become TOCs by virtue of opting to obtain employment through TOC assignments. Even if the teachers did become TOCs, the just and reasonable cause protection for removal from the TOC list is intended to apply to removal for disciplinary reasons only. The removal in this case was not disciplinary.

BCPSEA Reference No. A-20-2005

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 **Laura Parks at laurap@bcpsea.bc.ca** and identify the reference number found at the end of the summary.