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By E-mail: Two Pages

Application for Union Certification: Southeast Kootenay Principals' and Vice Principals' Association

Issue

On March 18, 2020 the Southeast Kootenay Principals' and Vice Principals' Association (SKPVPA) applied to the Labour Relations Board (LRB) for certification to be the exclusive bargaining agent for all principals, vice principals, and district principals employed in School District No 5 (Southeast Kootenay).

If certification is granted by the LRB:

- the SKPVPA will have the exclusive right to represent the school district's principals, vice principals, and district principals in full collective bargaining under the *Labour Relations Code*, including the right to strike or be subject to a lockout, with the aim of negotiating a collective agreement applying to all principals, vice principals, and district principals in the district; and
- the school district will no longer be able to negotiate terms and conditions of employment with individual principals, vice principals, and district principals.

The Parties' Positions

▪ The Employer

Under section 20(2) of the *School Act*, principals and vice principals are deemed to not be "employees" for the purposes of the *Labour Relations Code* (the Code) and only "employees" (i.e., not "managers") can seek to engage in collective bargaining under the Code. Even without s. 20(2) of the *School Act*, principals and vice principals also fall under the definition of "manager" under the Code and would be excluded from collective bargaining in any event.

Section 20(2) of the *School Act* states:

A principal, vice principal or director of instruction is not an employee within the meaning of the Labour Relations Code.

▪ The SKPVPA

The SKPVPA is taking the position that principals, vice principals, and district principals are not "managers" under the Code and is also seeking to challenge the validity of section 20(2) of the *School Act* as part of its certification application. The LRB and, potentially, the courts, will have to rule on those issues before the certification can be granted.

The Approach in Other Provinces

In some provinces (e.g., Alberta and Saskatchewan) principals and vice principals are part of the same "bargaining unit" as teachers and a single collective agreement covers teachers, principals, and vice principals.

However, it's important to note that in those jurisdictions, principals and vice principals have different statutory duties compared to their counterparts in BC.

In other provinces (e.g., Ontario and Nova Scotia), principals and vice principals are excluded from collective bargaining under the applicable labour code.

There is no province in Canada in which principals and vice principals have their own bargaining unit and engage in collective bargaining under the labour code as the SKPVPA is seeking in this case.

The Vote of the SKPVPA Members

Given the COVID-19 pandemic, the LRB determined that a mail ballot of the SKPVPA members would be conducted, with ballots to be returned to the LRB by April 22.

The LRB ordered the ballot box be sealed pending the outcome of the adjudication of the legal issues, which include that:

- the bargaining unit is appropriate for collective bargaining
- the SKPVPA meets the definition of a "trade union" for the purposes of the Code
- principals, vice principals, and district principals are not "managers"
- in this case, section 20(2) of the *School Act* is invalid.

If the resolution of these issues permits the possibility of the SKPVPA being certified, the ballot box will be unsealed, the votes counted, and the results communicated to the parties.

If there is a majority of "yes" votes, the LRB must certify the SKPVPA if the LRB is satisfied that the legal requirements are met.

If there is a majority of "no" votes, the SKPVPA will not be certified and principals, vice principals, and district principals will continue to enter into individual contracts of employment with the school district.

Important Note Regarding Terms and Conditions of Employment for SKPVPA Members During This Process

It's important to note that while the certification application is pending, the school district is prohibited from making changes to rates of pay or other terms and conditions of employment for SKPVPA members without the LRB's written permission.

If the certification is granted, the Code imposes a further 12-month "freeze" during which no changes to pay or other terms and conditions of employment for SKPVPA members can occur unless a collective agreement is negotiated.

Next Steps

The LRB has set timelines for receipt of written submissions from both the employer's and the SKPVPA's respective counsel. The LRB will also consider the need for oral hearings on the matters in dispute. We will keep the sector informed as this matter proceeds.

Questions

If you have any questions, please contact [Renzo Del Negro](#) or [Deborah Stewart](#).