

Labour Relations Board Decision — Application for Union Certification Dismissed: Principals and Vice Principals Found to be “Managers”

The Decision

On Friday May 21, 2021, the Labour Relations Board (LRB) issued its decision in the [Board of Education of School District No. 5 \(Southeast Kootenay\) and Southeast Kootenay Principals and Vice Principals Association, 2021 BCLRB 82.](#)

The LRB found that when considering all factors together, the SKPVPA members perform the functions of a manager and are not “employees” under the *Labour Relations Code* (the Code) who are eligible to seek union certification. As a result, the SKPVPA is not a trade union as it is not “an association of employees.”

The application for certification was dismissed.

Issue

On March 18, 2020, the Southeast Kootenay Principals’ and Vice Principals’ Association (SKPVPA) applied to the 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).

The Parties’ Positions

❖ The Employer

The Employer’s position was twofold:

1. Section 20(2) of the *School Act* states that principals and vice principals are deemed not to be employees for the purposes of the Code and only “employees” (i.e., not “managers”) can seek to engage in collective bargaining under the Code.
2. Even without s. 20(2) of the *School Act*, principals, vice principals, and district principals are managers within the meaning of the Code and therefore not eligible for union certification.

❖ The SKPVPA

The SKPVPA challenged the constitutionality of the *School Act* claiming that it violated its members’ right to freedom of association.

The SKPVPA did not challenge the constitutional validity of the managerial exclusion in the Code, but rather, asked the LRB to apply a narrower managerial exclusion on the basis of Charter values — specifically, recent jurisprudence from the Supreme Court of Canada concerning the scope and application of freedom of association under the Canadian *Charter of Rights and Freedoms* (the Charter) in the context of collective bargaining. In essence, the SKPVPA argued the LRB ought to apply a more stringent test for the managerial exclusion such that its members would not be found to be managers and would have access to collective bargaining.

The Attorney General participated to defend the constitutionality of the *School Act*.

Analysis

In its analysis, the LRB first addressed the argument that its longstanding approach to determining whether individuals are “managers” under the Code ought to be amended in light of recent Charter jurisprudence. It noted that the LRB’s approach to the “managerial exclusion” is rooted in the core concepts of duty of loyalty and potential conflicts of interest, both of which are foundational to the Wagner Act model of labour relations (reflected in the Code), which has been recognized as a constitutionally valid principle of labour relations.

The LRB reviewed its jurisprudence and found that its longstanding approach to the managerial exclusion under the Code already appropriately balances the statutory objectives of the Code and the Charter right to freedom of association.

Having concluded that its existing approach to the managerial exclusion should not change, the LRB then applied its test to the facts of the case. The LRB found that SKPVPA members have effective determination:

- over whether a teacher will require a performance improvement plan and are involved in the creation of that plan;
- in the area of labour relations input because they
 - sit at the management table during collective bargaining and participate in the formulation and drafting of proposals; and
 - represent the employer at Step 1 grievance meetings and have some authority to independently settle grievances at that stage; and
- over hiring decisions in situations where interviews are required.

As referenced on page one of this bulletin, the LRB found that when considering these factors together, the SKPVPA members perform the functions of a manager and are not “employees” under the Code who are eligible to seek union certification. As a result, the SKPVPA is not a trade union as it is not “an association of employees,” and the application for certification was dismissed.

Finally, the LRB found that it was unnecessary to resolve the issue of whether s. 20(2) of the *School Act* is unconstitutional, as the individuals who are the subject of the application are, in any event, not employees pursuant to the Code.

Questions

If you have any questions, please contact [Bruce L. Anderson](#) or [Deborah Stewart](#).