

Code of Conduct: Ministerial Order 276/07

Arbitrator Hall Award of February 25, 2011 — Preliminary Matter of Arbitrability

Issue: The BCTF filed a grievance with respect to whether codes of conduct for students had been developed and implemented across British Columbia schools in compliance with Ministerial Order 276/07. In particular, the union was concerned about an alleged failure of school districts to comply with s. 6(a) of the Ministerial Order which provides, in part, that boards of education must ensure their codes of conduct include “one or more statements that address the prohibited grounds of discrimination set out in the BC *Human Rights Code*.” At this stage of the arbitration, BCPSEA took no position on the interpretation of Ministerial Order 276/07, but first raised the preliminary matter of whether this grievance was arbitrable or not.

Employer’s Argument on the Preliminary Matter: The “code of conduct” legislation is with respect to the application of codes of conduct for students in schools, not teachers. As such, this legislation is not an employment-related statute for which an arbitrator has jurisdiction. The matter is not grievable or arbitrable, as the grievance does not arise out of the interpretation, application, operation, or alleged violation of the collective agreement nor does it create a substantive right and obligation for teachers or form a significant part of their employment relationship. The intent of student codes of conduct is to govern student conduct and to create consequences for students. The purpose and intent of student codes of conduct is not to establish terms and conditions of employment for teachers.

Union’s Argument on the Preliminary Matter: The BCTF takes the position that the matter is arbitrable, as the essential nature of the dispute is the extent to which school boards are exercising their management rights reasonably and satisfying their obligation to provide teachers with a workplace that is free from harassment and discrimination under the *Human Rights Code*. Further, creating a safe environment for students results in a safe and orderly environment for teachers.

Decision: Arbitrator Hall concluded the following on pages 39-41 of his award:

The Employer’s preliminary objection is sustained. I do not have jurisdiction to arbitrate the merits of the Union’s grievance alleging a failure by school boards to comply with the Ministerial order.

The Ministerial Order was promulgated pursuant to a statutory provision allowing the Minister to “establish a code of conduct for students”. As explained in the Legislature by Minister Bond, one-third of British Columbia schools did not have codes of conduct that met provincial standards. The Ministerial Order was intended to remedy that situation “so that

schools will be safer places for students to learn and grow.” Further, student codes of conduct per se have never been negotiated at either the local level or provincial level. All of these considerations demonstrate that the Ministerial Order is not “employment related” legislation (Parry Sound), and is not “a significant part of the employment relationship” between teachers and their school boards (BCTF v. BCPSEA). It necessarily follows that the essential nature of the Union’s grievance does not arise expressly or inferentially from the ambit of the collective agreement.

In my view, Section 27(1) ostensibly makes the Ministerial Order a term or condition of teachers’ contract of employment. I also acknowledge that one of the duties of teachers under Section 4(l)(c) of the School Regulations is “ensuring that students understand and comply with codes of conduct governing their behaviour.” However, Section 27(1) does not make the Ministerial Order a term or condition of the “teachers’ collective agreement” referred to in Section 27(1)(b); nor, for reasons expressed in this award, does the Ministerial Order have the necessary express or implicit connection to the collective agreement for grievance arbitrators to have exclusive jurisdiction. Finally, as made clear by the awards of Arbitrator Gordon and Diebolt, not all provisions of the School Act can be arbitrated, despite their inclusion under Section 27(1)(a) in the teachers’ contract of employment.

Significance: This award does not mean that districts do not have an obligation to comply with Ministerial Order 276/07; instead, it establishes that arbitration is the wrong forum for such a dispute/interpretation.

The union’s argument, had it been successful, could have expanded the role of an arbitrator to include the determination of a student’s conduct and consequences for their conduct. In essence, arbitrators could have become decision makers on student discipline matters, a role now performed by administrators, boards of education, and ministerial processes.

This is now the fourth arbitration award in the past two years that has determined the subject matter of the BCTF’s grievance is inarbitrable. The other three awards are as follows:

BCPSEA/SD No. 39(Vancouver) –and– BCTF/VTF (April 9, 2009), unreported (Gordon)

The interpretation of the board of education’s internal bylaw No. 1 (voting rules of trustees) with respect to the superintendent’s report to the board regarding the class size and composition report was inarbitrable.

BCPSEA/SD No. 68 (Nanaimo-Ladysmith) –and– BCTF/NDTA (January 4, 2010), unreported (Diebolt)

The content of the superintendent’s report on class size and composition under s. 76.3 of the *School Act* was inarbitrable.

BCPSEA/SD No. 70 (Alberni) –and– the BCTF/ADTU (February 2, 2010), unreported (Dorsey)

The union’s claim that teachers who are consulted and assigned classes that are organized in accordance with the *School Act* therefore acquire individual terms and conditions of employment that are enforceable through arbitration was inarbitrable.

Full text of Arbitrator Hall’s decision is on the BCPSEA website at

<http://www.bcpsea.bc.ca/documents/publications/@issue/Code%20of%20Conduct%20Decision.pdf>

Questions

Please contact your BCPSEA labour relations liaison if you have any questions.