

Distribution of this Bulletin

Please ensure that this bulletin is circulated to all administrative staff in both the district office and schools who must rely on the collective agreement in the performance of their duties.

Layoffs: Legislative Requirements (Teachers and Support Staff)

Boards may be considering the layoff of employees for educational and/or budgetary reasons. The following is a reminder of the processes outlined in legislation that may apply in addition to the processes found in collective agreements.

▪ **Labour Relations Code — Section 54**

Section 54 of the *Labour Relations Code* (the Code) is applicable “if an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a **significant number** of employees to whom a collective agreement applies.” [emphasis ours]

Particular consideration must be given to determining whether a “significant number of employees” have their security of employment affected. The words in section 54 have been given a broad and liberal interpretation. For example, in *Pacific Press*, BCLRB No. B374/96, the proposed change would have affected approximately 37 employees out of a bargaining unit of 850 (roughly 4%); the Labour Relations Board (LRB) found this to be a significant number in absolute terms (as opposed to percentage of the bargaining unit).

Where section 54 applies to your anticipated layoff situation, section 54 notice must be provided to the union. Where it is not clear that section 54 is applicable to your anticipated layoff situation, you may wish to follow the process on a “without prejudice” basis to avoid any potential LRB challenges by your local teachers’ and/or support staff union/association. Your letter of notice should include wording such as, “Without prejudice to our position that section 54 of the *Labour Relations Code* does not apply, we are providing you with notice under section 54 and ask that a meeting be scheduled to discuss layoff issues.”

Section 54 notice must provide sufficient time to meet in good faith for meaningful discussions to endeavour to develop an adjustment plan. Notice should be given when you reasonably know what will be the final decision, but before the final decision is made. The Code requires at least 60 days notice.

For your reference, following is the wording of section 54 of the Code.

Adjustment plan:

- 54 (1) If an employer introduces or intends to introduce a **measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees** to whom a collective agreement applies, [emphasis ours]
- (a) the employer must give notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and
 - (b) after notice has been given, the employer and trade union must meet, in good faith, and endeavor to develop an adjustment plan, which may include provisions respecting any of the following:
 - (i) consideration of alternatives to the proposed measure, policy, practice or change, including amendment of provisions in the collective agreement;
 - (ii) human resource planning and employee counseling and retraining;
 - (iii) notice of termination;
 - (iv) severance pay;
 - (v) entitlement to pension and other benefits including early retirement benefits;
 - (vi) a bipartite process for overseeing the implementation of the adjustment plan.
- (2) If, after meeting in accordance with subsection (1), the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.
- (3) Subsections (1) and (2) do not apply to the termination of the employment of employees exempted by section 65 of the *Employment Standards Act* from the application of section 64 of that Act.”

▪ ***Employment Standards Act* — Section 64**

Section 64 of the *Employment Standards Act* (ESA) outlines a process to be followed when the employment of **50 or more employees** at a **single location** is to be terminated **within any two month period**. [emphasis ours]

A school or administration building is considered a single location. Therefore, the ESA only applies when 50 employees are being terminated (or deemed terminated) from one school or building. Where employees are temporarily laid off pursuant to the terms of a collective agreement, the employees are not “terminated” for the purpose of section 64 until the recall period provided for under the collective agreement has expired.

Questions

Should you require assistance or wish to discuss this issue further, please contact your BCPSEA district liaison.