



WHAT'S NEW

ISSUE 2 – October 2013

The Alberta labour relations community may have noticed a *slight* delay in the production of the Board's "What's New" newsletter. Rest assured this was not for lack of new things happening at the Board! With many comings and goings, it seems "What's New" ended up on the back-burner.

As new Legal Counsel for the Board – a.k.a. "the New Guy" – I am tasked with bringing (and keeping) "What's New" true to its name. I aim to keep the Alberta labour relations community informed on an on-going basis of the happenings at the Board, as well as to have "What's New" be a quick and interesting monthly check-in for labour board law happenings at our Board and others. Feel free to let me know what you, as a Board stakeholder, would like to see in this space!

(Glances at stack of things to report on ...) So, this might be a long-one ...

Jeremy Schick
Legal Counsel, ALRB

NEWS FROM AROUND THE BOARD

Board Member Departures

Over the course of 2013, the Board has said farewell to a number of long serving Board members. The Board sends a heart-felt thank you to Paul Bokenfohr, John Briegel, Roger Gunn and Herb Holmes for their service with the Board.

Board Member Arrivals

The course of the year has also seen a number of appointments of new members of the Board, including two members returning after a period away from the Board. The Board was pleased to announce the appointments of Reg Basken, Dennis Bennett, Bruce Berg, Ron Butler, Niels Frederiksen, Peter Marsden, Jay Spark and Richard Wassill in January of 2013, and Jennifer Burns, Pemme Cunliffe, Paul de Jong, David Johnson and Bill Kolba in July of 2013.

These Board members bring with them a wealth of relevant experience in the Alberta labour relations community, as can be seen below:

Reg Basken

Reg returns as a member of the Board after a two year hiatus. He is currently retired after having served as National Vice-President of Communications, Energy and Paperworkers Union of Canada. Throughout his career as labour leader, he has been involved in numerous public

boards including literacy, public safety and social service agencies. Mr. Basken is the former Chair of the United Way campaign and has just received the Diamond Jubilee Medal.

Dennis Bennett

Dennis has over 32 years of experience in all areas of labour relations. He is a Labour Relations Consultant-Appeals and Arbitrations with the Health Sciences Association of Alberta. Dennis has been with HSAA for the past 12 years. He has been active in the trade union movement since 1974, was previously employed by the Alberta Union of Provincial Employees for 20 years and is a graduate of the Labour College of Canada. He is a former Correctional Officer for the Province of Alberta and a former Commissioned Officer in the Canadian Armed Forces. Dennis has acted as Union Counsel in rights and interest arbitrations, before the Alberta Relations Board and numerous Professional Health Colleges. In addition Dennis plays a very active role in mentoring and the continuing education of HSAA Labour Relations Officers.

Bruce Berg

Bruce has over 30 years of experience providing Labour Relations leadership and coaching to business operations across Canada and within the United States. He has been a Vice President in both the construction and aerospace industries and over his career has worked with union/management teams in multiple industries: retail/wholesale, packaged goods, aerospace, construction, forestry, mining, marine, pipeline and transportation. He is a member of the Program Advisory Committee for the Bachelor of Technology, Technology Management Program at the Thompson Rivers University in Kamloops, B.C. Bruce was appointed to the Board in January 2013.

Jennifer Burns

Jennifer returns as a member of the Board after a two year hiatus. She has a LL.B. from Osgoode Hall Law School and was called to the bar in Alberta in 1996. For most of twenty-five years, she has worked with Extendicare Canada Inc. primarily in the areas of labour and employment. Jennifer is the Director of HR as well as Legal Counsel at Extendicare. She was appointed to the Alberta Human Rights Commission (Tribunal Member) from September 2010 to June 2013 and is presently on the Board of Directors of the Continuing Care Safety Association.

Ron Butler

Ron has over 30 years of extensive human resources experience. Most recently, he was the Vice President, Corporate Resources with Husky Energy and prior to that was Vice President, Human Resources for BP Canada Energy. Ron holds a Bachelor of Commerce Degree from Queen's University, an M.B.A. from York University in Toronto and is a Certified Human Resources Professional (CHRP). He is currently a part time faculty member at the Bissett School of Business at Mount Royal University and is a member of the Board of Trustees for the Calgary Zoo.

Pemme Cunliffe

Pemme is in-house counsel at Covenant Health responsible for Labour and Employee relations. Her background includes 30 years as a nurse and a health care administrator and seven years in law. Her responsibilities include labour and employee issues, grievances and arbitrations, wrongful dismissal and other employment-based complaints, collective agreements, policies on compensation and benefits and managing Human Rights.

Paul de Jong

Paul's 20 years of labour relations experience covers employee representation and industry relations functions with the CLAC union, including Provincial Representative, Calgary Regional Director and Prairie Provinces Director. Since 2010, Paul has served as the Executive Director of the Progressive Contractors Association of Canada. Responsibilities include public policy development and advocacy, corporate relations and management.

Niels Frederiksen

Niels has over 40 years of experience in Industrial, Commercial and Marine Construction. He was Vice-President of Operations of Jacobs Industrial Services Ltd. from 1994 – 2012 and prior to that, held a number of positions with Jacobs and Delta Catalytic Constructors Ltd., focusing on Industrial Contract Maintenance. From 1987 to 1994 he was responsible for the total management of the Prairie Division of Delta Catalytic Constructors Ltd. He has managed multiple construction projects throughout western Canada. Niels also served for 24 years on the Construction Labour Relations Association (CLRa), including serving as the Chair for two terms. He was also Chair of the Mechanical Trade Division, negotiating numerous agreements with the Pipefitters.

David Johnson

David has been a labour relations/human resources practitioner for 25 years in New Brunswick, Nova Scotia, Alberta and the NWT. He is currently Associate Superintendent of HR for Sturgeon School Division and a labour relations consultant/advisor to the College of Alberta School Superintendents. He has negotiated and administered collective agreements in education, health, and other areas of public service ranging from transportation to corrections.

Bill Kolba

Bill is a retired National Representative with the Communications Energy & Paperworkers' Union with extensive experience in servicing local unions and organizing unorganized workers. He served as President of the union's Composite Local 777 while working at CILVAT Plastics. He also served as a Board Member for over nine years on the Employment Insurance Board of Referees as well as serving on the Executive Board of the Energy and Chemical Workers Union.

Peter Marsden

Peter has over 25 years of labour relations experience in the municipal and electrical power industry. Mr. Marsden is currently the President of the Canadian Union of Public Employees, Local 38 which represents 5,000 members with the City of Calgary and ENMAX. Peter has also served on the Provincial board of CUPE and as President of his community association.

Jay Spark

Jay is Vice-Provost of Faculty Relations at the University of Alberta. He has over 30 years of professional experience as a labour relations specialist, senior manager, facilitator, mediator, trainer and consultant. From 1995 to 2010, Jay was principal consultant for Spark Consulting Services, providing labour relations and conflict resolution services to a range of union and non-union clients. He served as a member of the Government of Alberta's roster of Designated Mediators between 2003 and 2006. From 1979 to 1995, Jay was employed in progressively responsible managerial positions for the City of Edmonton and City of Calgary. He holds a Bachelor of Science degree and MBA from the University of Alberta.

Richard Wassill

Richard moved to Alberta in 1979 and acquired his Alberta Journeyman Plasterer Certification while working in the construction industry. In 1991 he became the Business Manager and Financial Secretary of Plasterers' and Cement Masons' International Association Local 222 and represented union members across the prairies in that position until 2012. In 2008 he was appointed to the position of Deputy International Union Representative. As the principal officer of the Union he chaired the Local Union executive board and was responsible for collective bargaining in three provinces. During this tenure he served in various other positions including, Chairman of the Alberta Building Trades Council, Interim Executive Director of the Alberta Building Trades Council, Pension Plan Trustee, Health and Welfare Plan Trustee, Manitoba Hydro Council Executive Board, Alberta Provincial Apprenticeship Committee member and sat as a Director of the Building Trades of Alberta Charitable Foundation.

(Copies of the biographies of all Board members can be found at the Board website at www.alrb.gov.ab.ca, under "About Us" / "About the Board")

Vice-Chairs

Vice-Chair Lyle Kanee was re-appointed as a Vice-Chair with the Board this May, shifting to a part-time casual Vice-Chair position.

The Board is currently recruiting for a position of full-time Vice-Chair with the Board. That search remains on-going.

It may be of interest to the labour community that appointments to the Board, including appointments of the Chair and Vice-Chairs, are now subject to the *Alberta Public Agencies Governance Act*, S.A. 2009, c. A-31.5, the relevant sections of which came into force in June, 2013. Under that Act, appointments cannot be made that would result in serving more than 12 consecutive years. Cabinet may exempt appointments from this term limit if, in the opinion of the responsible Minister, it is necessary to ensure the effective operation of the agency.

Staff Departures

Two long-serving staff Labour Relations Officers with the Board's Calgary office both departed this summer for well-deserved happy retirements. Congratulations to both Barb Cook and Betty-Lou Stelling, and we know that the labour-relations community across Alberta joins the Board in thanking them for their long-service and wishing them all the best in their retirement! The Calgary Board office remains well-served in the LRO department, with Bridget Oliveira and Nailya Rakhmatulina continuing to provide fine service to our stakeholders.

Former Legal Counsel for the Board, Shawn McLeod, also left the Board in March to pursue other opportunities, and we wish Shawn all the best in his future endeavours!

Staff Arrivals

On September 1, the Board welcomed Nailya Rakhmatulina to the position of Labour Relations Officer in its Calgary office. Nailya started her career with the Government of Alberta in 2004, after moving from Kazakhstan. Prior to joining the Board, she worked as an Employment Standards Officer in Calgary for over six years. Nailya has completed two post-graduate degrees, one in Public Administration, and the other in Business Administration. She has also obtained a PULSE Mediation Certificate after completing 40 hours of mediation training.

On September 16, the Board announced my appointment as Legal Counsel. I am a graduate of the University of Alberta, and previously practiced with the firm of Lucas Bowker & White/Davis & Company and the Alberta School Boards Association. I also spent three years teaching legal research, writing and advocacy with the Faculty of Law at U of A. I am greatly looking forward to working closely with the labour bar around the Province, and to serving as an information resource for both the Board and the labour community at large.

Statistics from Around the Board

One of the Board's important roles is the processing of complaints alleging breaches of the duty of fair representation by unions pursuant to section 153 of the *Labour Relations Code*. As many of the complainants are self-represented and may be unfamiliar with the processes of the Board, these complaints can pose unique challenges to the Board and other parties.

In the last twelve months (since November 1, 2012), the Board has received 66 duty of fair representation complaints. This constitutes 8.3% of the Board's total of 792 applications in that period. This compares to 122 complaints out of 1153 applications (10.6%) over the twelve months immediately prior.

However, in comparing these statistics, it is important to note that this January the Board released its decision in *Ryan Lalonde v. Specialty and Temporary Employees Union and James Homes*, [2013] Alta. L.R.B.R. 1 (see below), which stated the duty of fair representation is owed only by trade unions, and not by individuals acting on behalf of trade unions. As a result, the Board no longer accepts complaints against individuals, reducing the number of "duplicate" complaints by individual complainants.

In fact, comparing the number of individual complainants in those time periods, there were 49 complainants in 2012-2013, compared to 55 complainants in 2011-2012. Thus, despite the seemingly large reduction in the number of total complaints, the actual number of complainants remains relatively constant, and is in fact a growing proportion of the Board's caseload.

Education Initiative

The Board is planning on updating its delivery of ongoing training of Board Members and staff to include web-based videos on relevant areas of administrative law, privacy law and other areas of interest. The Board will be looking at posting some of these training videos publically on the Board's website for potential use by our stakeholders looking for a layperson's overview of topics relevant to the Board's processes (and administrative tribunals generally). This initiative falls under my bailiwick, and I look forward to putting my "lecturer" hat back on in video form!

INTERESTING DECISIONS FROM THE BOARD

Ryan Lalonde v. Specialty and Temporary Employees Union and James Homes – Cite: [2013] Alta. L.R.B.R. 1 (Hyperlink: http://www.alrb.gov.ab.ca/decisions/GE_06515.pdf)

In this decision, the Board found that the duty of fair representation in section 153 of the *Code* is owed only by trade unions, and that individuals acting on behalf of trade unions do not owe any duty of fair representation in their individual capacity distinct from the liability of the trade union itself. As referenced above, the Board is no longer accepting duty of fair representation complaints as against individuals.

Victor Flaviano v. Canadian Union of Public Employees, Local 709 – Cite: [2013] Alta. L.R.B.R. LD-017 (Hyperlink: http://www.alrb.gov.ab.ca/decisions/GE_06569.pdf)

In this letter decision, the Board discusses its power to compel document production. In duty of fair representation cases, the Board typically convenes an Administrative Panel to perform a documentary review of the complaint to determine whether the complaint should be referred to a hearing. This decision confirms that the Administrative Panel has the authority to request further documents from the parties when performing a documentary review, including copies of documents referred to by the parties.

United Food and Commercial Workers Canada Union, Local No. 401 v. Westfair Foods Ltd. – Cite: [2013] Alta. L.R.B.R. LD-035 (Hyperlink: http://www.alrb.gov.ab.ca/decisions/GE_06484.pdf)

In this letter decision, the Board discusses the particulars required where a union alleges a violation of the section 147(3) “statutory freeze”. The decision states that it is sufficient for the union to describe the changes allegedly made, and to state that the changes do not fall within the permitted exceptions in s. 147(3). If the union goes further, and expressly denies the changes were “in accordance with the collective agreement” (s. 147(3)(c)), the union is not required to provide particulars of the collective agreement provisions it argues were violated, what conduct was a violation, or its explanation why the conduct is a violation.

Guardian Ambulance Ltd. v. Canadian Union of Public Employees, Local 3197 – Cite: [2013] Alta. L.R.B.R. LD-037 (Hyperlink: http://www.alrb.gov.ab.ca/decisions/GE_06589.pdf)

In this letter decision, the Board stresses the importance of the confidentiality of matters discussed in the Board’s Resolution Conferences. Following a Resolution Conference, a representative of the Union sent an e-mail to various members of the Union outlining matters discussed in the Resolution Conference. The Board declared that the disclosures in the e-mail constituted a clear breach of confidentiality. The Board awarded costs against the Union for the breach, but declined to order either a make-whole costs order, which is reserved for cases of egregious and repeated or lengthy misconduct, or to summarily dismiss the Union’s application.

All parties participating in Resolution Conferences are reminded that, in accordance with Board Information Bulletin #2 (<http://www.alrb.gov.ab.ca/bulletins/2bulletin.html>), all discussions taking place at Resolution Conferences are confidential, and that significant consequences may result from breaches of that confidentiality.

Canadian Union of Public Employees, Local 38, City of Calgary and Thant Aung-Kyaw and Shawn Matz on behalf of Engineers-In-Training Employed by the City of Calgary –
Cite: not yet reported (can be found at http://www.alrb.gov.ab.ca/decisions/GE_06661.pdf)

In this formal decision, the Board considers whether engineers-in-training (EITs) under the *Engineering and Geoscience Professions Act* fall within the “professional exemption” to applicability of the *Labour Relations Code*. For the professional exemption to apply, 3 conditions must be met: (1) Member of a profession exempted by the legislation; (2) Qualified to practice their profession in Alberta, and (3) Employed in their professional capacity. While the EITs in question met the first and third conditions, because EITs’ ability to practice is limited to practice under supervision and control, the Board found they are not fully “qualified to practice” under the laws of Alberta. Accordingly, the professional exemption did not apply, and the EITs were found to form part of the bargaining unit.

INTERESTING DECISIONS FROM OTHER JURISDICTIONS

Saskatchewan Federation of Labour v. Her Majesty the Queen in Right of the Province of Saskatchewan – Cite: 2013 SKCA 43 (Leave to appeal to S.C.C. granted)

On October 17, 2013, the Supreme Court of Canada granted leave to appeal the April 26, 2013 Saskatchewan Court of Appeal decision in the *Saskatchewan Federation of Labour* case.

In this case, the Saskatchewan Federation of Labour challenged the constitutionality of the Saskatchewan *Public Service Essential Services Act*, S.S. 2008, c. P-42.2, claiming that the legislation violated the right to freedom of association in section 2(d) of the *Charter of Rights and Freedoms* by depriving employees of a meaningful right to strike. At first instance, Justice Ball of the Saskatchewan Court of Queen’s Bench held that section 2(d) does protect a right to strike, drawing on the Supreme Court’s decisions in *Dunmore*, *B.C. Health Services* and *Fraser*. Having determined a *Charter* right to strike existed, and was breached by the Act, Justice Ball then found that the legislation was not saved by section 1, and was unconstitutional.

On appeal, in a decision by Mr. Justice Richards (as he then was), a five member panel of the Saskatchewan Court of Appeal overturned that decision, and upheld the legislation. Referring to the doctrine of *stare decisis*, the Court consider itself bound by the Supreme Court’s earlier decisions in the *Labour Trilogy* that section 2(d) contained no right to strike. The Court of Appeal held that the more recent S.C.C. decisions concerning section 2(d) protection for bargaining activity had not definitively undermined the binding precedent of the Labour Trilogy, and it was therefore not open to the lower court to ignore that precedent. In short, the Court of Appeal stated that “any decision to overturn the *Labour Trilogy* must be left in the hands of the Supreme Court itself.”

Having now accepted leave to appeal, the Supreme Court of Canada’s decision in *Saskatchewan Federation of Labour* will be closely watched for its decision on that point.