

WHAT'S NEW

ISSUE 7 – September 2011

In an effort to keep the Labour Relations Community informed on an ongoing basis of happenings at the Labour Relations Board, the Board produces on a monthly basis “What’s New.” The following is Issue 7 for September 2011.

NEWS AROUND THE BOARD

Welcome – The Board is pleased to announce the addition of its newest member – Carl Soderstrom who was appointed to the Board effective July 25, 2011. Carl brings a wealth of experience to the Board. As AUPE’s Director of Labour Relations, Carl is currently responsible for directing, coordinating, and advising the union regarding high-level strategy and tactics integrating all aspects of labour relations including oversight of AUPE’s internal Labour Relations Board application and complaint processes. Previously Carl also worked for UNA and the Canadian Health Care Guild.

In addition to his newly appointed position as a Board Member with the Labour Relations Board, Carl also served as a Vice Chair and Trustee to the Local Authorities Pension Plan and as a member of the Public Service Pension Plan. Carl is a regular lecturer at the University of Alberta for both the Bachelor of Commerce and Masters of Business Administration programs and also lectures at the Faculty of Law on labour law and organizing. He holds a Bachelor’s Degree in Economics from York University

Congratulations! – Andy Sims is the 2011 recipient of the Bora Laskin Award for Outstanding Contributions to Canadian Labour Law. The award was established by the University of Toronto to honour those who have made an outstanding contribution to labour law in Canada. The award is named after the late Chief Justice Bora Laskin (1912–1984) who, before joining the Supreme Court of Canada, was a pre-eminent labour law scholar and arbitrator.

Previous recipients include Harry Arthurs, Pierre Verge, Paul Weiller, Roy Heenan, Mel Myers, Warren Winkler, Innis Christie and Justice Rosalie Abella.

The award will be presented at Bora Laskin Award Dinner on the evening of October 18, 2011. Details can be found at www.lancasterhouse.com.

Board Caucus – A second Board caucus meeting has been scheduled for the 2011 calendar year. It will take place on November 8 and 9, 2011 in Calgary at the Sheraton Cavalier. Further details to follow.

OTHER HAPPENINGS

Canadian Bar Association – 12th Annual National Administrative Law, Labour and Employment Law Conference – November 25 and 26. The Conference will be held in Ottawa. Topics will include:

- The Year in Review in Labour and Employment and Administrative Law
- Fireside Chat with Right Hon. Beverley McLachlin, Chief Justice of Canada
- Experts and Tribunal Expertise
- Workplace Investigations
- Real and Nominal Litigants
- Flavours and Layers of Privilege
- A View from the Bench, with justices from the B.C. Supreme Court, Quebec Court of Appeal, Federal Court of Canada and Supreme Court of Newfoundland and Labrador
- The Changing Supreme Court of Canada

Further information can be found at: www.cba.org

Lancaster House – Canadian Labour Board Conference – October 18 and 19, 2011. Topics include a case law and legislative update, a discussion of the S.C.C. recent decision in *Fraser*, and a presentation on essential services. The Bora Laskin award being presented to Andy Sims is being awarded in conjunction with this conference. Further details can be found at: www.lancasterhouse.com

RECENT CASES

Recent Charter Jurisprudence

Government of Alberta v. AUPE

On September 12, 2011, an Alberta arbitration board found section 12 of the *Public Service Employee Relations Act (PSERA)* does not violate section 2(d) of the *Charter*.

Background

PSERA provides the structure under which a union can become the certified bargaining agent for certain employees of certain public sector employers. Section 12 excludes certain persons from collective bargaining under PSERA including managers; individuals employed in human resources, labour relations, or the bargaining of collective agreements; budget officers, systems analysts, auditors; and various others.

The Alberta Union of Provincial Employees, as the certified bargaining agent for the bargaining unit consisting of the “employees” of the Crown in right of Alberta filed a policy grievance raising various issues including a challenge to the constitutional validity of the section 12 exclusions affecting approximately 7000 individuals employed by the Government of Alberta. The Union argued the provision infringed the right to collectively bargain protected by section 2(d) of the *Charter* by creating a statutory prohibition on collective bargaining for any person employed by the Government who is referred to in section 12.

The Government argued *PSERA*, and section 12 in particular, respects the constitutional requirement of section 2(d) of the *Charter*. Section 12 does not impact on these employees constitutional right or ability of workers to make representation to the Government and to have them considered in good faith by the Government.

Decision

A majority decision of the arbitration board dismissed AUPE’s application concluding section 12 of *PSERA* does not violate section 2(d) of the *Charter*. In particular, the Board rejected AUPE’s position that section 12 creates a blanket prohibition against any form of collective action by the excluded workers. While *PSERA* prohibits the individuals in question from participating in the full “Wagner Model” of collective bargaining *PSERA* creates for other Crown employees, it does not prohibit workers from joining together in a collective vehicle for making representations to the employer about the terms or conditions of their employment. Nor does it remove the Crown’s obligation to consider any representations by those workers in good faith. This is consistent with the requirements of section 2(d) of the *Charter* as determined by the S.C.C. in *Fraser*.

The decision also contains a comprehensive dissent taking issue with the majority’s conclusion that section 12 does not involve a blanket form of collective action by the excluded workers. The dissent further argues the majority’s conclusion that the workers are left with no legislative protection violates section 2(d) of the *Charter*.