

INSURANCE AND PENSION RIGHTS

INTRODUCTION

Section 155 provides for the continuation of certain pension and insurance rights during a strike or lockout. The wording of this section may be difficult to understand. The Board has explained it in *ATA v. County of Stettler No. 6 et al.* [1993] Alta. L.R.B.R. 159. This policy includes:

- the statutory provisions;
- discussion of the meaning of Section 155(1); and
- discussion of the meaning of Section 155(2), (3) and (4).

STATUTORY PROVISIONS

Section 155(1) states:

155(1) No employer or employers' organization and no person acting on behalf of an employer or employers' organization shall deny to any employee any pension rights or benefits or insurance rights or benefits to which the employee would be entitled but for

- (a) the cessation of work by the employee as the result of a lockout or strike that is permitted by this act, or
- (b) the dismissal of the employee contrary to this Act.

Section 155(2) states:

155(2) While an insurance scheme remains in force, no employer or person acting on behalf of an employer shall, without lawful excuse,

- (a) deny or threaten to deny an employee any benefit under the insurance scheme,
- (b) cancel or threaten to cancel the insurance scheme,
- (c) refuse to accept any of the premiums tendered by a bargaining agent on behalf of all the employees enrolled in the insurance scheme who are represented by the bargaining agent, or
- (d) fail to remit to the insurer any of the premiums tendered by a bargaining agent,

in the circumstances referred to in subsection (3).

Section 155(3) discusses the application of Section 155(2):

155(3) Subsection (2) applies where

- (a) the employee in a unit of employees of the employer ceases to work because the employees in the unit are locked out by the employer or because the employees in the unit are on a lawful strike, and

- (b) the trade union that was the bargaining agent for the employees in the unit at the same time the lockout or strike commenced tenders, or attempts to tender, to the employer, for the duration of the lockout or strike, the premiums in respect of all the employees covered by the insurance scheme who are represented by the bargaining agent.

Section 155(4) provides some useful definitions:

155(4) In this section,

- (a) "insurance scheme" means a mental, dental, disability, life or other insurance scheme normally maintained by the employer on behalf of the employees in the unit;
- (b) "premiums" includes all amounts payable by the employees and the employer in consideration for a contract of insurance.

SECTION 155(1)

Section 155(1) is difficult to interpret. In *ATA v. County of Stettler*, above at 170, the Board found this section to mean that it:

...protects and preserves pension rights and benefits and insurance rights and benefits (whatever that term may mean) that existed before the strike. Therefore there is no loss of pension or insurance rights or benefits that have already accumulated to the date of the strike. However, the section does not allow for the accumulation of new pension or insurance rights or benefits during a strike.

For example, an employee may pay into a pension with the expectation of later receiving a pension. The employee's pension rights are not lost when a strike occurs. Rather, they continue and, when the dispute settles, presumably the employer will resume making pension contributions. This provision displaces the common-law notion that, once employees go on strike, they have terminated their employment and are a new employee if they return to work after the strike.

SECTION 155(2), (3) AND (4)

Until employees go on strike or are locked out, the collective agreement (most likely operating via the bridging provisions of Section 130) maintains employees' insurance schemes. When the employees go on strike or are locked out, the collective agreement is terminated. This would normally end such benefits as employees' health and dental insurance. Section 155(2) and (3) prevent these insurance schemes from lapsing so long as the employees' bargaining agent tenders or attempts to tender the full premiums charged by the plans. See: [*ATA v. County of Stettler*, above at 173].