

WHAT'S NEW

ISSUE 2 - February 2012

In an effort to keep the Labour Relations Community informed on an ongoing basis of happenings at the Labour Relations Board, the Board produces a monthly newsletter - "What's New." The following is Issue 2 for February 2012.

NEWS AROUND THE BOARD

Re-Appointments - The Board is pleased to announce Mark Asbell, Gerry Lucas and Nancy Schlesinger have all been re-appointed to their positions with the Labour Relations Board. Nancy and Mark have been re-appointed for further five year terms while Gerry has been re-appointed until November, 2013.

The Board is Busy! - The Alberta Labour Relations Board has seen a significant increase in the workload to date this fiscal period (April 1, 2011 – February 24, 2012). Applications are up 50% and the number of hearings has risen by approximately 8%. The Board has also seen an increase in the number of matters that are resolved without formal adjudication. Last year at this time, 55% of the files had been resolved without going to hearing, whereas to date this year, 74% have been resolved without formal adjudication.

Areas where we have seen the most significant rise in applications are:

	Apr 1/10-Feb 24/11	Apr 1/11 – Feb 24/12
Certifications	109	148
Bad Faith Bargaining	15	35
Strike Votes	15	26
UFLP	361	689

On the Lighter Side! – Various Board employees have commenced a noon-hour fitness regime consisting of river valley walking forays. Group spokesperson Marlene Leslie states the participants' goal is to keep pace with fitness guru Lyle Kanee!

RECENT CASES

Saskatchewan Federation of Labour v. Her Majesty the Queen in Right of the Province of Saskatchewan 2012 SKQB 62

In the context of a challenge by the Saskatchewan Federation of Labour to Saskatchewan's essential services legislation, the Saskatchewan Court of Queen's Bench recently made the first ever finding that the right to strike is constitutionally protected.

The legislation in question adopted a “controlled strike” model for ensuring the continuation of essential services during a strike. It applied to all employees of public employers in Saskatchewan, identified various programs to be essential, contemplated a negotiated essential services agreement, and reserved to employers and the government the right to unilaterally establish the level of essential services in the event the parties failed to negotiate an agreement.

Relying on Canada’s labour history, recent Supreme Court of Canada jurisprudence, international instruments, and labour relations realities, the Court concluded the right to strike is a fundamental freedom protected by section 2(d) of the *Charter*.

The Court went on to conclude the legislative scheme interfered with the freedom of public sector employees to engage in meaningful strike action, with the result that it violated section 2(d) of the *Charter*.

Finally, the Court found the provisions were not saved under section 1 as the scheme did not minimally impair the employees’ right to freely associate. The legislative scheme went beyond what was reasonably required to ensure the uninterrupted delivery of essential services during a strike. While the right to strike may, within certain parameters, be curtailed for employees engaged in essential services, it must be accompanied by a fair and adequate dispute resolution scheme. As such a resolution scheme did not exist as part of the legislation in question, it did not minimally impair the employees’ right to freely associate.