

# WHAT'S NEW

## ISSUE 6 - June 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 6 for 2012.

### NEWS AROUND THE BOARD

Labour Relations Board Chair's Conference – Chair Asbell and Director of Settlement, Tannis Brown, attended the Chair's Conference in Vancouver on June 18, 19 and 20<sup>th</sup>.

Education Caucus - The Board held a half day Education Caucus on Tuesday, May 15, 2012. This Caucus was a first for the Board as we used newly purchased video conferencing equipment to conduct the meeting. Caucus participants gathered in Edmonton and Calgary. By all accounts the technology worked well for this purpose saving both time and money in the process.

### RECENT CASES

#### *UFCW Local 401 v. Alberta (Information & Privacy Commissioner), 2012 (ABCA)*

Recently, the Alberta Court of Appeal issued a significant decision balancing two competing values – freedom of speech as protected by the *Charter* and individual privacy rights as protected by the Alberta *Personal Information Protection Act* (PIPA).

The decision arose out of the United Food and Commercial Workers, Local 401's decision to videotape the picket line established after workers at Palace Casino (and represented by the Union) went on strike. The Union posted signs stating that images of people crossing the picket line might be placed on its website. No such postings occurred. Concerned about the videotaping in question, several members of the public and employees who crossed the picket line filed complaints with Alberta's privacy commissioner.

An inquiry under PIPA concluded the Union had no right to collect and use the recordings. This finding was overturned by the Court of Queen's Bench on the basis the findings restricted the Union's *Charter* right to free speech. The Court of Appeal upheld the lower court's finding.

In reaching its conclusion the Court made a number of comments.

First, labour picketing and the picket line itself contain protected expressive activity. In turn, the recording of the picket line and its activities also has an expressive component. The right of a union to express its views in relation to the collective bargaining process

including a strike includes the right to gather information, including video information, for that purpose.

The Court also made clear the protected right is not limited to non-selfish or benevolent conduct. It is not only pleasant or benign speech that is protected. As stated by the Court,

Strikes on no tea parties ... Attempting to persuade the public to support the union, and to suspend doing business with the employer, are key tactical and economic components of a strike. So long as there is no promotion of violence or other activity, a reasonable amount of psychological or other pressure may be brought to bear on all those involved ...

...

Dissuading people from crossing the picket line, enhancing morale of the strikers, deterring violence and threats, and achieving a favourable end to the strike are all legitimate purposes supported by the right to free expression. Persuading people to think or act in a certain way is a direct purpose of free expression.

Ultimately, the Court concluded a declaration should issue that the application of the Act to the activities of the union was unconstitutional, because it infringed the Union's charter rights. The Court did not strike down any portion of the Act and directed that the privacy decision be quashed.

#### **CONFERENCES:**

- Canadian Labour Board Law Conference - October 16-17, 2012 - Toronto, Ontario