

Legal department defending members' rights

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by JEANNE MEYERS



SAs legal department has been working actively in the past year to support the work of the labour relations department. While HSA has tried to find labour relations solutions wherever possible, in the current climate, we are experiencing an approach by the Health Employers Association of BC, some Health Authorities and the provincial government that can best be characterized as obstructionist.

New legislation further erodes rights

The Liberal government has introduced further legislation which infringe your rights in the workplace. Bill 94, the *Health Sector Partnership Agreement Act*, extends the reach of Bill 29 to limit collective agreement rights of employees of contractors and "private sector partners" operating in the health sector. This bill makes it possible for the contracting employers to avoid collective bargaining obligations by further contracting out. The unions will not have recourse to the successorship or common employer provisions of the *Labour Code*. As well Bill 94, and a consequential amendment to Bill 29, may make it more difficult to establish work as contracted-in and thus caught by the collective agreement. We are reviewing the legislation to determine the most effective way to challenge its validity.

Charter case

At convention I reported on the conduct of the *Charter* case and advised that the litigation on behalf of HSAs paramedical members would not be going forward on the same timeline as that of the other associations. I also advised that the case on behalf of members in the community social services sector was being held back. We did, however, continue to have our legal counsel provide support upon request to the other unions legal teams. Despite an excellent presentation by the other unions, we heard on September 17 that the BC Supreme Court had dismissed the case. Of course, this did not include the paramedical case that has not yet gone to trial. We are not yet ready to move that matter forward and will continue to provide support to the other unions, which are working to appeal the decision of the Supreme Court. At the time of printing we have not been advised as to hearing dates.

HEABC: inducing breach of contract/deceit

Although we have moved cautiously with respect to our *Charter* case we have been actively pursuing our action against HEABC for inducing breach of contract, deceit and breach of fiduciary duty. The same day we heard the disappointing result in the *Charter* case, HEABC argued a motion to have our claim against it dismissed. HSA took the position that the courts ought to take jurisdiction and allow the matter to go to trial. The judge has yet to render a decision.

Red-circling

A "red-circled" member is one who has been involuntarily demoted. This has always included employees forced to bump or post into lower-rated positions. Red-circled employees continue to be paid at their previous, higher

rate of pay until such time as the wages of their colleagues performing the same job -catch up" through wage increases.

The struggle to have the red-circling grievance heard is a good example of HEABCs delay tactics. The red-circling issue is an important one for HSA members, some of whom have been displaced and have had to bump down as many as five grade levels. HEABC has instructed facilities that Bill 29 eliminates the need to red-circle under those circumstances. HSA argues that Bill 29 says no such thing. The union referred the matter to arbitration in June 2002, but HEABC would not agree to an arbitrator. By August 2002, HSA applied to the Labour Relations Board to have an arbitrator appointed and had a date set to hear the matter. HEABC objected to the arbitrators jurisdiction, but we successfully argued the point at our earliest opportunity in February 2003 and the arbitrator took jurisdiction. HEABC then appealed to the LRB hoping the LRB would agree that the arbitrator was without jurisdiction. The LRB did not agree and dismissed HEABC application.

After months of these shenanigans we were able to argue the case on the merits at a hearing held December 2, 2003. We are awaiting Arbitrator Kinzies decision on this matter. 

Jeanne Meyers is HSAs Executive Director of Legal Services.

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180 East Columbia
New Westminster, BC V3L 0G7

Website
www.hsabc.org

Telephone 604-517-0994
1-800-663-2017