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TO Jeff Perry
COMPANY Livingstone Range School Division

DATE July 13, 2012
Fax # 403-625-2424

FROM Kelly Nicholson

File # 10-2733
Fax # 403 264 7084

OF PAGES TRANSMITTED
INCLUDING THIS ONE 13

HARD COPY
TO FOLLOW Yes No

SENDER Amera Belcastro

DIRECT LINE 403 260 8512

SUBJECT A bad faith bargaining and unfair labour practice complaint brought by the Alberta Teachers' Association affecting the Board of Trustees of Livingstone Range School Division No. 68

COMMENTS

Please see the attached.

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Our File: 10-2733

July 13, 2012

Via Facsimile

Labour Relations Board
308, 1212 – 31st Avenue N.E.
Calgary, Alberta T2E 7S8

Attention: Nancy McDermid

Dear Ms McDermid:

**Re: A bad faith bargaining complaint brought by The Alberta Teachers' Association
affecting The Board of Trustees of Livingstone Range School Division No. 68**

We are counsel to the Alberta Teachers' Association (the "ATA") and are writing to file the following complaint pursuant to Section 16 of the Labour Relations Code alleging a violation of Sections 60 and 148.

Complainant

Alberta Teachers' Association
11010 - 142 Street NW
Edmonton Alberta T5N 2R1
Phone: (780) 453-2411 Fax: (780) 455-6481

Contact: Peter Kalis
Executive Staff Officer, Teacher Welfare

Name of Respondent

Livingstone Range School Division No. 68
5202 – 5 Street East, P.O. Box 69
Claresholm, AB T0L 0T0
Phone: (403) 625-3356 Fax: (403) 625-2424

Contact: Jeff Perry,
Associate Superintendent, Business Services

Sections Pertinent to the Complaint

The ATA relies on Sections 60 and 148 of the Code:

60(1) When a notice to commence collective bargaining has been served under this Division, the bargaining agent and the employer or the employer's organization, not more than 30 days after notice is served, shall

- (a) meet and commence, or cause authorized representatives to meet and commence, to bargain collectively in good faith, and
- (b) make every reasonable effort to enter into a collective agreement.

...

148(1) No employer or employers' organization and no person acting on behalf of an employer or employers' organization shall

- (a) participate in or interfere with
 - (i) the formation or administration of a trade union, or
 - (ii) the representation of employees by a trade union.

Particulars

1. The ATA is the certified bargaining agent for the teachers employed by the Livingstone Range School Division No. 68 (the "Respondent" or the "School Division").
2. The Respondent is a rural school board encompassing a number of schools in the southwestern corner of Alberta. The ATA and the Respondent have been parties to a series of collective agreements. The most recent collective agreement had a term from September 1, 2007 to August 31, 2012.
3. Notice to bargain was served on the School Division by letter dated May 25, 2012 from the ATA (attached as Tab 1).
4. The parties agreed to meet and exchange initial proposals on June 21, 2012. In email correspondence dated June 12, 2012, Mr. Jeff Perry, on behalf of the School Division, advised Peter Kalis of the ATA that the Respondent had "adopted a more transparent communication process for the ongoing and upcoming negotiations". The same correspondence invited the recipient to "view the process to date" on the School Division's website.

5. The parties met on June 21, 2012 as planned, and exchanged their respective initial bargaining proposals. During the June 21st meeting, representatives of the Respondent advised the ATA's representatives of their intention to post both the School Division's and the ATA's initial and subsequent bargaining proposals on the Respondent's website, where they would be accessible by the public. The ATA's representatives objected to the Respondent's plan at that time; however, the School Division's representatives refused to change their position on the issue. The ATA's representatives stressed that, although they were leaving their initial proposal with the School Division's representatives, they considered it confidential and objected to it, or any further proposals, being posted on the Internet.
6. In correspondence dated June 22, 2012 (attached as Tab 2), the School Division stated that it had not agreed to receive the ATA proposal as confidential and confirmed its intention to post the ATA proposal on the School Division's website.
7. In reply correspondence dated June 25, 2012, (attached as Tab 3), the ATA advised the School Division that it continued to object to the posting of its proposals. The ATA further advised the Respondent that it considered all its proposals confidential, supplied "for the sole and limited purpose of good faith bargaining".
8. Subsequently, and notwithstanding the ATA's clear objections, the Respondent posted both its own and the ATA's initial bargaining proposals to the School Division's website, found at <http://www.lrsd.ab.ca/collectivebargaining/ata/Pages/default.aspx>.
9. At no time in the past has the School Division ever posted the ATA's bargaining proposals to a website or otherwise made them available to the public.

Basis of the Complaint

As is well known, the purpose of Section 60 is to bring the parties to the bargaining table where they will present their proposals, articulate supporting arguments, and search for common ground, which can then serve as the basis for a collective agreement. In order to give life to this purpose, and to the authority granted a trade union by Section 148, it is essential that the bargaining table be characterized by an atmosphere of equality and free discussion. In particular, the parties must be free to advance the proposals that they think best serve their strategic interests at any point in the bargaining process, without fear that the content of a proposal will expose them to public disapprobation. In the past, the ATA and the Respondent have respected the confidentiality of each other's bargaining proposals, and have – as a result – maintained the atmosphere of free and frank discussion that successful collective bargaining requires.

The School Division has now made a choice to publish the ATA's bargaining proposals on the Internet, where they are accessible not only to members of the public in the School Division's community but also to the world at large. The gesture is a unilateral one, made without the ATA's consent, and in fact carried out notwithstanding the ATA's clear objection. Importantly, the School Division's actions constitute a stark and abrupt departure from long-standing practice between the

parties; they are, at the same time, a departure from the long-standing practice that has subsisted between the ATA and other school districts throughout the Province for many years.

The motive behind the School Division's gesture is clear: it is an attempt to place a chill upon the ATA's bargaining efforts. The idea is that members of the public – who see the bargaining proposals in isolation, without a full understanding of the context in which they arise – will somehow disapprove of the ATA's proposals. Consequently, the ATA, fearing public backlash, will adopt a more timid bargaining position than it otherwise might have. In short, the Respondent's gesture is a rankly political one calculated to exert pressure on the ATA in a public forum so that it will be rendered compliant at the bargaining table. The Respondent's actions have destabilized the bargaining process and are destructive to it. Moreover, those actions interfere with the ATA's representation of the Respondent's teacher employees.

The ATA submits that the Respondent is bargaining in bad faith, interfering with the representation of employees by a trade union, and is acting in breach of the Code.

Remedies

The ATA requests the following remedies:

1. A declaration that the Respondent has breached Section 60 of the Code and is not engaging in good faith bargaining.
2. A declaration that the Respondent has breached Section 60 of the Code and is not making every reasonable effort to reach a collective agreement.
3. An order that the Respondent cease and desist from bargaining in bad faith and that it make every reasonable effort to conclude a collective agreement.
4. A declaration that the Respondent has breached Section 148 of the Code and is interfering with the ATA's representation of the School Division's teacher employees.
5. An order that the Respondent cease and desist from interfering with the ATA's representation of the School Division's teacher employees.
6. An order that the Respondent cease and desist from posting the ATA's bargaining proposals on its website or otherwise disseminating them or making them available to the public.
7. Such other remedies as the ATA may request at a hearing into this matter.
8. Such further and other remedies as the Board may deem proper under the circumstances.

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The ATA requests that a Resolution Conference be scheduled between the parties prior to a hearing and that the Resolution Conference and hearing into this complaint be scheduled on an expedited basis.

We anticipate calling a maximum of three witnesses and expect that this matter could be heard in one day.

Yours truly,

FIELD LLP



Kelly Nicholson

KRN/ab

cc: Livingstone Range School Division No. 68
Attention: Mr. Jeff Perry
(via fax)

Alberta Teachers' Association
Attention: Mr. Peter Kalis
(via fax)

TAB 1



The Alberta Teachers' Association

11010 142 Street NW, Edmonton, Alberta T5N 2R1

T 780-447-9400 or 1-800-232-7208

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www.teachers.ab.ca

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President

Dr Gordon R Thomp
Executive Secretary

Sharon L Armstrong
Vice-President

Dennis E Theobald
Associate Executive Secretary

H Mark Aarnsanker
Vice-President

Frank Bruseker
Past President

2012 05 25

via Fax—403-625-2424

Mrs Ellie Elliott
Superintendent
Livingstone Range School
Division No 68
5202 5 Street E
PO Box 69
Claresholm AB T0L 0T0

Dear Mrs Elliott

This letter constitutes formal notice by the Alberta Teachers' Association (the Association), pursuant to Section 59(2) of the Alberta *Labour Relations Code*, to commence collective bargaining.

The Association appoints Peter Kalis, address above, as representative of the bargaining agent (RBA). The RBA is authorized to bargain collectively, conclude and sign a memorandum of agreement. The Negotiating Subcommittee (NSC), elected by members of the bargaining unit, consists of:

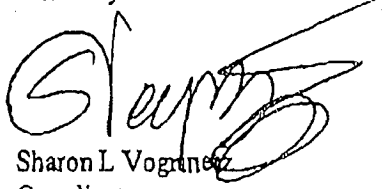
The concluding of a collective agreement requires ratification by a vote of the members of the bargaining unit and the signature of the coordinator of Teacher Welfare or designate.

... continued

Elliott, 2012 05 25, p2

All communication should be sent to Mr Kalis.

Sincerely



Sharon L Vogreney
Coordinator
Teacher Welfare

SLV/ejp

- cc P T Kalis, RBA, Livingstone Range SD No 68
- I P Baxter, EPC/NSC Chair
- G A Freer, R W Gillespie, L Lalande, J G Moore, R Tkachuk, NSC Members
- B Heine, President, Livingstone Range Local No 14
- J C Schilling, District Representative, South West

TAB 2

5202 - 5 Street East
P.O. Box 69
Claresholm, AB
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T: 403.625.3356
F: 403.625.2424
www.lrsd.ab.ca
1.800.310.6579



Livingstone Range
SCHOOL DIVISION NO. 68

June 22, 2012

Mr. Ian Baxter
NSC, Chair
The Alberta Teachers' Association
P.O. Box 914 Coleman, AB T0K 0M0

Dear Mr. Baxter:

Re: Notice of intent to post both ATA and LRSD Initial proposals

As per the discussion between the local ATA Negotiating Subcommittee and the Livingstone Range School Division (LRSD) Negotiating Committee on June 21, 2012, the LRSD Negotiating Committee did not agree to receive the ATA proposal as confidential and the ATA Negotiating Subcommittee was fully informed that the proposals would be posted on the LRSD website.

As you requested to know when the initial proposals would be posted, it is the intent of the LRSD Negotiating Committee to post it on June 26, 2012.

It was also indicated by Peter Kalis, RBA for the local Negotiating Subcommittee to communicate this information through you.

Finally our June 21st meeting ended prior to scheduling our next bargaining meeting. Given that it is near the end of June our committee suggests that we look for a date in mid September. Will you please provide me with suggested dates your committee is available for our next bargaining meeting?

If you should have any questions please feel to contact me.

Sincerely,

Jeff Perry

Associate Superintendent Business Services
Livingstone Range School Division No. 68

committed to learning ...

dedicated to students ...

enriching communities ...

TAB 3



The Alberta Teachers' Association

11010 142 Street NW, Edmonton, Alberta T5N 2R1

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Sharon L Armstrong
Vice-President

Dennis E Theobald
Associate Executive Secretary

H Mark Ramsanker
Vice-President

Frank Bruseker
Past President

2012 06 25

Via Fax—403-625-2424

Mr Jeff Perry

Associate Superintendent Business Services

Livingstone Range School Division No 68

5202 5 Street E

PO Box 69

Claresholm AB T0L 0T0

Dear Mr Perry


Re Publishing Opening Proposals on Website

Subsequent to our meeting of June 21, 2012, the Alberta Teachers' Association (the Association) does not consent to Livingstone Range School Division posting the Association's initial bargaining proposal and subsequent proposals (the "bargaining proposals") on its website or publishing the proposals in any other manner. As we expressed at the table, the Association views the bargaining proposals as confidential and are provided to the Board in the expectation they will remain so.

The opening proposal has been, and other proposals will be, provided to the Board as part of the collective bargaining process and for the sole and limited purpose of good faith bargaining. The Association does not consent to their publication or use outside of the collective bargaining process.

The Association will use whatever resources it deems appropriate to challenge this practice. There may be publicity that arises as a consequence.

Sincerely


Peter T Kalis
Executive Staff Officer
Teacher Welfare

PTK/ejp

cc Ken Power, Labour Relations Consultant, ASBA

IP Baxter, EPC/NSC Chair, Livingstone Range SD No 68