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July 30, 2012

VIA FAX (403-297-5884)

Nancy McDermid
Director of Settlement
Alberta Labour Relations Board
308, 1212 – 31st Avenue N.E.
Calgary, Alberta T2E 7S8

Dear Madam:

Re: 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 – Board File No. GE-06436

This is the response of Livingstone Range School Division No. 68 ("LRSD") to the complaint of the Alberta Teachers' Association ("ATA") dated July 13, 2012.

Response to ATA Particulars

Using the same paragraph numbers as in Mr. Nicholson's July 13, 2012 letter, LRSD has the following comments with respect to the ATA particulars:

1. Agreed
2. Agreed
3. Agreed
4. On June 11, 2012, Jeff Perry, on behalf of the LRSD, agreed by way of e-mail communication with Peter Kalis of the ATA to meet and exchange initial proposals on June 21, 2012. In that reply e-mail, Jeff Perry also gave advance notice to the ATA that the LRSD had adopted a more transparent communication. The actual text from Jeff Perry in his June 11, 2012 e-mail was:

"As a recognition of the good relationship that has been built between the Association and the Board I was asked to communicate to you in advance of our meeting that the committee and the Board have adopted a more transparent communication process for the ongoing and upcoming negotiations with all of our staff. This has begun with our Willow Creek School Bus Drivers Association, will continue with CUPE and our negotiations with this ATA local. I direct you to our website to view the process to date."

Negotiations with the Willow Creek School Bus Drivers Association concluded April 25 2012, over two months prior to the commencement of the ATA bargaining. The LRSD submits that the ATA would have been aware of the process taken by the LRSD with the Willow Creek School Bus Drivers Association. The LRSD posted on its website numerous documents during the negotiations with the Willow Creek School Bus Drivers Association. The following link is to the LRSD's current website which shows all of the material posted during the bargaining with the Willow Creek School Bus Drivers Association. <http://www.lrsd.ab.ca/collectivebargaining/Busdrivers/Pages/default.aspx>

On June 12, 2012, Jeff Perry received a reply from Peter Kalis stating the following:

"Hi Jeff,

Thanks for the update. We will concede to the Board's request to meet in the evening for the first meeting. We can discuss and set dates and times at that meeting. Agreed on the discussion points and we will look to formalize the groundrules in writing. First item will be the transparency initiative. The gesture of communicating it is well received. We have expected it and I'm sure that we can reach a mutually agreeable path forward.

See you then!

Peter"

5. At the commencement of the meeting on June 21, 2012, following introductions, the bargaining committee for LRSD put forward the Employer's Bargaining Principles. These state:

"LRSD Guiding Principles

– As approved by the Board of Trustees, April 8, 2009

- 1) *Decisions must be student centered.*
- 2) *Decisions must take into account our geography and ruralness.*
- 3) *Schools and communities must work collaboratively to provide the best quality educational opportunities for students.*
- 4) *Decisions are best made closest to the child through site-based decision making.*

- 5) *Decisions reached must be affordable now and sustainable in the future.*
- 6) *Equitable access to programming opportunities for students within their communities.*
- 7) *Program delivery must be flexible and responsive to student needs.*
- 8) *Accountability must be built into every decision.*
- 9) *Decisions must reflect board policies.*

***LRSD Guiding Principles for Collective Bargaining
- As approved by the Board of Trustees, April 17, 2012***

In conjunction with the LRSD overarching guiding principles, the following principles will serve to guide negotiations with employees and employee groups or their bargaining agent:

- 1) *any agreement will support transformation through innovative, adaptable, creative and collaborative practices;*
- 2) *any agreement will be competitive in order to attract and retain staff;*
- 3) *any agreement will ensure transparency during the collective bargaining process by keeping all stakeholders apprised of issues, developments, decisions and assessed impact on the education system.*
- 4) *any agreement will be affordable now and sustainable in the future.*

Desired Outcomes for Collective Bargaining Communication

- 1) *To ensure that the public is knowledgeable of the Board's approach to collective bargaining.*
- 2) *To make public accurate and timely information that abides by labour relations and legal parameters.*

Bargaining Process

The Employer will advocate and participate in negotiations by:

- a) *appointing a Negotiation Committee;*
- b) *engaging in open, honest and frank dialogue;*
- c) *gathering and sharing information necessary to ensure informed discussions;*
- d) *discussing and resolving issues keeping in mind the interests of the Employer;*
- e) *demonstrating management practices consistent with the values of the Employer;*

- f) *being transparent in its communications with employees and other stakeholders; and,*
- g) *being mindful of what is happening in the province.*

The ATA requested a caucus to discuss the Board's current position on transparency and communication. After a caucus, the ATA bargaining committee indicated that they would prefer the LRSD not post the proposals publicly. The LRSD indicated an intention to proceed with posting the proposals publicly. Notwithstanding, the parties exchanged proposals.

Once the proposals were exchanged, the members of the ATA bargaining committee raised from their seats and started to leave. At that moment Ken Power, the ASBA representative, inquired of Peter Kalis whether there was going to be any further discussion of proposals, next steps and next dates for bargaining. Peter Kalis's reply was to request that notice be provided to the ATA though Ian Baxter of any posting of proposals. The members of the ATA bargaining committee then left.

6. The actual text of the June 22, 2012 letter was:

"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?"

7. The text of the June 25, 2012 reply letter of the ATA was:

"Subsequent to our meeting on June 21, 2012, the Alberta Teachers' Association (the Association) does not consent to Livingstone Range School Division posting the Associations' 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..”

8. In addition to the bargaining proposals, other correspondence and documents related to collective bargaining are also posted on the negotiations page of the Livingstone Range website, including:
- The current collective agreement
 - The May 25 ATA notice to bargain
 - The June 1 LRSD response to ATA notice to bargain
 - The LRSD Bargaining Guiding Principles
 - The June 22 letter from LRSD to the ATA
 - The June 25 letter from the ATA to LRSD

In addition, on June 28, 2012, Peter Kalis contacted Jeff Perry and inquired why only the proposal provided by the ATA was displayed on the Livingstone Range website. Peter Kalis requested that the summary component of the proposal and a copy of the ATA Guiding Principles also be posted on the Livingstone Range website. Following the request made by Peter Kalis on June 28, 2012, Jeff Perry posted the summary component of the ATA proposal on the Livingstone Range website, but as a copy of the ATA's Guiding Principles were not provided to the LRSD, these were not posted on the website.

9. The last occasion upon which the parties negotiated a full collective agreement was in 2007/2008. During that round of collective bargaining the School Boards Employer Bargaining Authority ("SBEBBA") carried out the bargaining process on behalf of the LRSD. However, in the negotiations which took place between the LRSD and the ATA in 2003, the LRSD communicated with employees to summarize or update employees on the status of the negotiations. We have attached as Appendix "A" and "B" respectively two documents which are examples of that communication. It should be noted that in Appendix "A" the Employer's agenda for the meeting as well as the proposal was provided to school principals.

Additional Facts

The ATA periodically publishes the ATA News on its website which is accessible to the public: <http://www.teachers.ab.ca/Publications/ATA%20News/Pages/default.aspx>. In the ATA News, the ATA comments on collective bargaining issues, including those at the Rocky View School Division, which are almost identical to those at LRSD. The fact is the ATA filed a complaint with the ALRB on June 11, 2012 alleging that the publication of

bargaining proposals on the Rocky View School Division website was contrary to sections 60(1) and 148(1) of the *Code*.

Subsequent to the filing of the Rocky View complaint on June 11, in the June 12 edition of the ATA News, there is an article respecting the complaint at Rocky View under the title "A Rocky Start to Bargaining". There is also another column by Mr. Thomas entitled "Black Listing Boards that Behave Badly" which addresses the placing of teacher bargaining proposals on a public website. It includes the phrase "As reported elsewhere in this issue of the ATA News, the ATA can complain to the Labour Relations Board (LRB) that the employer has engaged in an unfair labour practice." This is clearly a reference to the situation at Rocky View. Interestingly, in the same column, Mr. Thomas also says "Teachers may collectively choose to raise public awareness of the Board's action in the community through advertising, advocacy and/or public demonstrations."

Placing bargaining related information, including bargaining proposals, on websites accessible to the public is not unique to Alberta or RVS. In terms of teacher bargaining in the provinces from Ontario and west, bargaining proposals are easily found on the internet for Ontario, Saskatchewan and British Columbia. There have been occasions in the past where other Alberta School Boards have also placed proposals or other information related to bargaining on public websites.

Analysis

The essence of the complaint is that any public disclosure of bargaining positions constitutes both a failure to bargain in good faith under Section 60 and an interference with the representation of employees by a trade union under Section 148 of the *Code*. LRSD agrees that free discussion at the bargaining table is a component of bargaining in good faith. Nothing in the actions of LRSD limits or inhibits the free discussion of any of those proposals at the bargaining table.

The ATA imputes a motive to LRSD which it suggests is "clear". That imputed motive is an intention to place a chill on bargaining efforts by making public bargaining proposals which will cause the ATA to fear a public backlash and therefore adopt a more timid bargaining position. In effect, the ATA is seeking an order which would interpret the *Code* in such a way as to require all bargaining proposals to remain confidential and never be publicly disclosed.

This position is contrary to the ATA's own actions in commenting on bargaining proposals on their own website and suggesting that teachers may wish "to raise public awareness ... through advertising, advocacy and/or public demonstrations." More importantly, it is simply wrong. The LRSD provided advance notice to the ATA regarding its desire for transparency prior to reaching the bargaining table. Despite the advance notice, the ATA chose to wait until the first bargaining meeting to address their concerns. Once at the initial bargaining meeting the ATA manufactured its own rationale for LRSD's actions and then refused to participate any further in the bargaining process.

LRSD is a Public School Division with a Board elected by the citizens who live within the School Division and which expends significant amounts of public funds. In a whole variety

of areas, the Board of LRSD communicates information relevant to its activities to the members of the public. The Bargaining Principles adopted by the Board of LRSD are consistent with the open and transparent approach to its activities. Despite the inference by the ATA, the motive is not to place a chill on bargaining, but rather to be transparent with the electors of Livingstone Range on a major activity of LRSD.

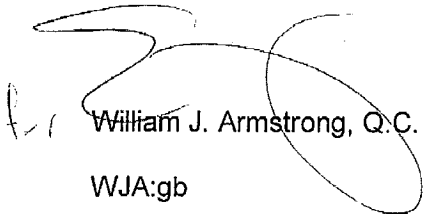
Scheduling

The LRSD and the ATA have not agreed on any additional dates for bargaining.

In my view, a Resolution Conference is unlikely to resolve this dispute. Mr. Nicholson and I can address any case management issues between ourselves and can contact the ALRB if there is a point of disagreement.

As this complaint is almost identical to the complaint filed by the ATA on June 11, 2012 involving the Rocky View School Division, I would suggest that this matter be held in abeyance by the ALRB until such time that a decision is reached in the Rocky View School Division complaint and the parties have had an opportunity to discuss the decision with their clients.

Yours truly,



William J. Armstrong, Q.C.

WJA:gb

cc: Livingstone Range School Division
Attn: Jeff Perry
cc: Field LLP
Attn: Kelly Nicholson

"A"



LIVINGSTONE RANGE SCHOOL DIVISION NO. 68

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Claresholm, Alberta
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Memorandum

To: School Principals
From: Don Olsen
Date: June 17, 2003
Re: A.T.A. Negotiations

The Board wishes to communicate with the teachers during the current round of negotiations. Enclosed you will find some information relative to negotiations between the ATA and the Board and I ask that you please post a copy of this information in the staff room in your school.

I understand, from the chair of the ATA negotiating subcommittee, that teachers have already been given the information relative to the proposals. The meeting summary notes have been reviewed with him and he is aware that I am forwarding this information to each school.

If you have any questions, please give me a call. Thanks for your cooperation.

cc: Mr. Sam Marra, NSC chair

A.T.A. Collective Agreement Negotiations
Meeting Summary Notes #1 (June 9, 2003)

These summary notes are intended to keep employees informed on the process of negotiations.

On June 9, 2003, the first negotiation session between the Alberta Teachers' Association and Livingstone Range School Division No. 68 was held. The following is a brief synopsis of the topics and discussions of the meeting:

- Communications: The parties discussed communications during the negotiation process. The Board committee expressed their desire to have joint communications to teachers and the public. The ATA committee indicated their intent to communicate directly with their members, although they may be willing to provide joint communications with the public on a limited basis.
- Issue Resolution Process: A brief discussion was held on a process to resolve the issues brought forward during negotiations.
- Exchange of proposals: The parties exchanged their issues and copies of these are attached. The Board's list of discussion items was written within the context of interest/issue based bargaining, which focuses on the exploration of interests and jointly, through discussion, seeking options to resolve the issues. Under such a format, the issues raised are not written as positions or specific amendments to the Collective Agreement. The A.T.A. presented their issues using a solution-based approach where specific wording was used to identify changes sought.
- Next meeting date: The parties agreed to meet again on September 24th at 6:00 p.m.

"B"

LIVINGSTONE RANGE SCHOOL DIVISION NO. 68
Collective Bargaining (ATA) Update #2
October 2, 2003

These summary notes are provided by the Employer and are intended to keep employees informed on the process of negotiations between the Employer and The Alberta Teachers' Association. This is the second set of notes sent out to teachers in the current round of bargaining, with the previous notes dated June 9, 2003 included again as part of the background information for this package in case some teachers did not see that material, given the time of the year that it went out.

To date, there has only been one bargaining session between the parties. This session was held on June 9, 2003. The mutually agreed bargaining date on September 24, 2003 was cancelled by the ATA. The attached "Chronology of Bargaining Activities" provides information on why this meeting was cancelled. At this time, no future meeting dates have been set.

The ATA disputes the format of the Employer's bargaining proposal tabled in negotiations for a new collective agreement between the parties. As was indicated in the "Meeting Summary Notes #1 – June 9, 2003", the parties exchanged their issues at the June 9th meeting. The ATA presented their issues using a solution-based approach, in which specific contract language was used to identify amendments sought. The Employer's list of bargaining items is written within the context of interest or issue based bargaining. This approach focuses on the exploration of interests and through discussion, seeks options to resolve the issues identified. Under this format, the items identified are not written as positions or specific amendments to the collective agreement, but as issues that need to be explored in an attempt to find some common ground before proceeding to write possible contract language.

The ATA requested on June 9th that the Employer provide additional information in writing on the Employer's bargaining items. That information, which is contained in the attachments, was provided to the ATA on June 19th. However, the ATA continues to challenge the Employer's bargaining document.

The ATA contends that the format of the Employer's proposal contravenes Article 2.2 of the collective agreement. The ATA therefore has filed a grievance in this regard. The collective agreement, under Article 17, sets out the process to be followed when a grievance is filed. The attached "Chronology of Bargaining Activities" also provides information relative to the grievance as well as the current status of the grievance.

The Employer is advised that the ATA wishes to delay collective bargaining until an arbitration board determines their grievance. Since collective bargaining requires that both parties be willing to meet and bargain, it appears that negotiations will next resume when the grievance is determined.

Livingstone Range School Division No. 68
Collective Bargaining (ATA)
Chronology of Bargaining Activities

May 9, 2003: Livingstone Range ATA Local #14 served notice to the Employer in writing (by email) to commence collective bargaining and provided the names of their negotiating sub-committee (NSC).

May 16, 2003: Livingstone Range ATA Local #14 indicated by letter (email) to the Employer that they would be pleased to meet without the use of their representative of the bargaining agent (RBA) and that they would be available to meet on June 9, 2003 at 6:30 p.m.

May 16, 2003: LRSD No. 68 responded to the May 9th ATA Local #14 letter advising of the Employer's committee and also that the Employer had already requested the services of a representative from the Alberta School Boards' Association (ASBA) to assist the Employer's committee at the bargaining table. The letter confirmed that the parties would meet on Monday June 9, 2003 to commence negotiations. The letter also confirmed that the parties would exchange bargaining proposals at that time.

May 28, 2003: The Alberta Teachers' Association provided official notice to the Employer to commence collective bargaining and again named the members of the NSC. As well, Mr. Opatril was appointed as representative of the bargaining agent (RBA) and the letter indicated that any further information was to be sent to him.

June 9, 2003: The first negotiation session was held. At this meeting the ATA requested additional information on the Employer's bargaining proposal. Meeting summary notes #1 was sent out to schools on June 17, 2003 to be posted on staff room bulletin boards. These notes are attached to this chronology. (**See Attachment #1 starting on page 1**)

June 19, 2003: Letter sent from the Employer to ATA representative, Mr. Opatril with more information regarding the Employer's bargaining proposal. The Employer also requested additional dates to continue collective bargaining. (**See Attachment #2 starting on page 24**)

July 15, 2003: Letter from ATA representative, Mr. Opatril to the Employer acknowledging receipt of additional information on the Employer's bargaining issues. The ATA indicated that this additional information still did not comply with Article 2.2 of the collective agreement. Therefore the ATA filed a grievance. The letter also requested that the grievance not follow the process outlined in the collective agreement but instead, proceed directly to a single arbitrator. (**See Attachment #3 starting on page 28**)

August 8, 2003: Letter from ATA representative, Mr. Opatril to the Employer indicating that the Association is advancing the grievance to Step 2 under Article 17.3 of the collective agreement. (**See Attachment #4 on page 30**)

August 22, 2003: Letter from ATA representative, Mr. Opatril to the Employer indicating that he will be replaced as RBA for collective bargaining by Mr. Krause. (**See Attachment #5 on page 31**)

September 2, 2003: Letter from ATA representative, Mr. Opatril to the Employer indicating that the ATA is advancing the grievance to Step 3 (arbitration) under Article 17.4 of the collective agreement. (**See Attachment #6 on page 32**)

September 4, 2003: Letter from ATA representative, Mr. Krause to the Employer indicating that due to the status of the ATA grievance, September 24, 2003 would not be available for a bargaining meeting as previously agreed between the parties. (**See Attachment #7 on page 33**)

September 10, 2003: Letter from ATA representative, Mr. Opatril to the Employer offering to extend the time limits until September 11th for the Employer to name its nominee on the arbitration panel. (**See Attachment #8 on page 34**)

September 15, 2003: Letter from the Employer to ATA representative, Mr. Opatril indicating the Employer's position that the ATA's attempt to advance their grievance directly to arbitration contravenes Article 17.6 of the collective agreement. Also based on Article 17.7 (e) of the collective agreement, the Employer's position was that the grievance was still at Step 1 under Article 17.2 of the collective agreement. The Employer provided the Step 1 response in that same letter. (**See Attachment #9 on page 35**)

September 15, 2003: Letter from the Employer to ATA representative, Mr. Krause confirming the Employer's expectation that the September 24, 2003 bargaining meeting would go ahead as scheduled rather than awaiting the outcome of the ATA grievance. (**See Attachment #10 on page 36**)

September 15, 2003: Letter from ATA legal counsel to the Alberta Labour Relations Board (ALRB) requesting that the ALRB appoint a nominee to an arbitration panel on behalf of the Employer. (**See Attachment #11 starting on page 37**)

September 17, 2003: Letter sent by ASBA legal services to ALRB requesting the ALRB delay consideration of the ATA request to appoint a nominee on behalf of Employer in order to allow the parties to comply with the grievance process set out in the collective agreement. (**See Attachment #12 starting on page 39**)

September 18, 2003: Letter from ATA legal counsel to ALRB requesting that the ALRB proceed with the appointment of the Employer's nominee to the arbitration panel as requested in their letter of September 15, 2003. (**See Attachment #13 starting on page 41**)

September 23, 2003: Letter from ATA representative, Mr. Opatril to the Employer indicating that the Association will not proceed with the September 24, 2003 bargaining meeting unless the Employer meets certain ATA conditions. (**See Attachment #14 on page 43**)

September 24, 2003: Letter from ASBA legal services to ATA legal counsel naming the Employer's nominee to the arbitration panel. (**See Attachment #15 starting on page 44**)

September 30, 2003: Letter from The Employer to ATA representative, Mr. Opatril conceding to the ATA's demand that bargaining will next resume when the grievance is determined. (**See Attachment #16 starting on page 46**)