2026 NBKB 035

COURT FILE NO: FM-80-2025

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 2745

- and -

HIS MAJESTY IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK AS REPRESENTED BY TREASURY BOARD, HONOURABLE CLAIRE JOHNSON IN HER CAPACITY AS MINISTER OF EDUCATION AND EARLY CHILDHOOD DEVELOPMENT, HONOURABLE RENÉ LEGACY IN HIS CAPACITY AS MINISTER OF FINANCE AND TREASURY BOARD, DAVID MCTIMONEY AS SUPERINTENDENT OF ANGLOPHONE SCHOOL DISTRICT - WEST, DEREK O'BRIEN AS SUPERINTENDENT OF ANGLOPHONE SCHOOL DISTRICT – SOUTH AND MONIQUE BOUDREAU AS SUPERINTENDENT OF DISTRICT SCOLAIRE FRANCOPHONE SUD

RULING ON APPLICATION - CONTEMPT

Date of Hearing: February 13, 2026

Date of Ruling: February 13, 2026

Before: Justice E. Thomas Christie

Representation of Parties at Hearing:

Glen S. Gallant, K.C., Counsel for Canadian Union of Public Employees Local 2745

Keith Mullin, Counsel for the Province of New Brunswick

Christie, J. (Orally)

[1] By Further Amended Notice of Application, the Applicant, Canadian Union of Public Employees, Local 2745, seeks an order finding the Respondents in Contempt of the Court's order of August 20, 2025. The Court's order arose as a result of the filing of an Order of the Labour and Employment Board dated July 29, 2025. The filing of the Board's order with the court was pursuant to s. 20(2) of the *Public Service Labour Relations Act*. The Board's Order, filed with the Court, required the Respondents to:

a) Cease and desist from any further changes in the terms and conditions of employment contrary to the Act, until the parties have concluded collective bargaining;
b) Rescind layoff notices issued to Library Workers in school districts ASD-W, ADS-S, DSF-S;
c) Rescind the decision to reduce the hours of School Administrative Assistants.

[2] The parties have been in a period of negotiation toward the renewal of a collective agreement. In April 2025, a tentative agreement had been reached. However, before Local 2745 members voted to ratify the tentative agreement, the Respondent issued certain layoff notices and other notices affecting the hours of work of a portion of the Local's membership. This, Local 2745 argued, was a breach of the bargaining requirements in the *Act* and it sought a ruling from the Board to, essentially, re-establish the status quo, until bargaining had properly concluded.

[3] Local 2745 was successful before the Board thus resulting in the order at issue. The Respondents argue that the notices that had been issued in April/May 2025 had, in fact, been operationalized by the time the Board had finished its hearing and decision process in July 2025. Thus, the Board's ruling requiring the Respondents to rescind the layoff notices that had been issued to certain employees, rescind the decision to reduce the hours of work of school administrative assistants and further, to cease and desist from further violations of the terms and conditions of employment until the parties had concluded collective bargaining.

[4] The Respondents, upon receipt of the Board's order, once confirmed by the court, did act to rescind the layoff notices and restore hours of work. It took a number of days to restore the status of affected employees, but as Local 2745 acknowledges, the Respondents did comply. With that said, I recognize the disruption on the employees and students and families that resulted from the Respondents' actions in the first place.

[5] What was clear to all however, was that the Respondents were intent on ultimately imposing the layoffs and reduction in hours of work. It just had to wait for the bargaining to be completed, typically once the ratification vote has been held showing sufficient membership support. The evidence before me is that Local 2745 leadership was reluctant to hold a ratification vote knowing that, if approved by the required number of members, the Respondents would then operationalize their intended staff reductions and reduce the hours of work. This has caused discord within the membership because there is retroactive pay that is being held up for, I believe, the majority of Local members.

[6] Local 2745 scheduled a ratification vote for October 16, 2025. The Respondents were made aware of that scheduled date by Local 2745 representatives. However, on or about October 10, 2025, the Respondents issued notice that it would proceed to implement the layoffs and reduction of hours of work two weeks after the ratification vote. In a letter from Jennifer Johnson, Negotiator for Respondents, to the President of Local 2745, dated October 10, 2025, can be found the following:

> The Employer will proceed with the implementation of the planned layoffs and reductions in hours for School Library Workers and School Administrative Assistants following ratification of the tentative agreement. Affected employees will receive written notice prior to October 15, 2025, consistent with Article 13.03 of the collective agreement. The layoffs will take effect two weeks following ratification of the tentative agreement.

[7] The following is illustrative of the notices of the same date that went to a library worker in Hartland and other employees in the affected groups:

> This letter is to advise that it remains the intention that the Library Worker I hours at Hartland Community will be eliminated upon ratification of the Tentative Agreement.
>
> The elimination of your hours is considered a layoff under article 13.01 of your collective agreement.
>
> As stated publicly, the layoffs will be effective as soon as the employer is in a legal position to implement the layoffs, which I have been informed will be upon ratification of your collective agreement as set out in s. 46 of the *Public Service Labour Relations Act.*
>
> Therefore, in accordance with Article 13.01 of your collective agreement, the Employer is notifying you that your layoff will be effective at the end of the two weeks' notice period from when your collective agreement is ratified.

[8] Local 2745, in response to such notifications, postponed the ratification vote. It has yet to be held.

[9] That such notices went out, essentially on the eve, of the ratification vote, is what gives rise to the present contempt Application. The present Application is governed by *Rule* 76. The relevant authorities on contempt require the Applicant to establish that (*Mugford v. Mugford Estate*, 2025 NBKB 185):

i. The Order is clear and unambiguous as to what can or cannot be done;
ii. The party whose conduct is impugned must have had actual knowledge of its terms;
iii. The party allegedly in breach must have intentionally done the act that the order prohibits or failed to do as the order compels.

[10] The Respondents accept that parts (ii) and (iii) are satisfied in that the Respondents had actual knowledge of the terms of the Order and that the issuance of the correspondence of, or

around October 10, 2025 was intentional. We focus then on whether the Order is clear and unambiguous as to its requirements.

[11] The Respondents argue that, unlike the notices that went out in April/May of 2025, where actual layoffs did happen as a result and hours were reduced, the October 10th notifications were not followed by any actual layoffs or reductions. All hours of work, and lost positions in August of 2025 had been restored. All the Respondents were doing, counsel argues, was letting employees know that, once the agreement was ratified, their positions were to be affected as had always been the plan. Local 2745 argues that it matters not if anyone had, or had not, been laid off, or had their hours reduced. What mattered was the very issuance of the notification that layoffs or a reduction of hours was to follow. Essentially, the Respondents argue, the October 10th correspondence was a 'notice' of an upcoming or intended 'notice'.

[12] Frankly, these parties are sophisticated in the art of negotiating collective agreements. It is not likely a coincidence that the ratification vote was scheduled when it was, or that the Respondents issued the October 10th correspondence when it did. There is little debate that the Employer could issue the notices and effectuate the layoff and reduction of hours upon ratification. Local 2745 does not want that to happen. It has not sent the tentative agreement to its members for a vote. They say that they have tried to engage the Respondents in finding a way through this issue but been met with stubborn resistance. Regardless, it appears that there is not a suitable landscape in place that Local 2745 finds acceptable for putting the tentative agreement to its membership.

[13] Local 2745 comes to this court asking that, not only should findings of contempt be made against the Respondents, but that as a remedy for such contempt, I essentially freeze the exercise of certain management rights for the remainder of the term of the 'yet to be ratified' collective agreement and that it would, as a potential consequence, continue into the next round of bargaining to some degree. Local 2745 argues that such a broad remedy is needed to protect the *status quo* and ensure compliance with proper negotiating practices. I expressed the view during

argument that doing so would insert this court into the collective bargaining process in a way that it is not meant to be. I remain of that view.

[14] The court Order of August 20, 2025, arose in the context of circumstances that were fully set out in the Board's reasons of August 13, 2025. By the end of August, the 'mischief' that gave rise to the Order in the first place had been substantially resolved. That said, it was certainly not without its impact on the employees and families of students.

[15] However, as Local 2745's counsel noted, the prior notices of April/May 2025, that were offensive to the *Act* as found by the Board, were just re-issued less than two months later, thus arguably, contravening the CEASE and DESIST directive. In other words, the Respondents were intended by the Order to be prevented from doing again the very thing they had [been directed] to rescind – notices of layoff and rescind the decision to reduce the hours of work. Local 2745 has a point in this regard.

[16] In this case, the only remedy for the alleged contempt suggested by Local 2745 is not a remedy I am prepared to entertain. Doing so just inserts the court into the bargaining process to a degree that is not appropriate. When bargaining reaches an impasse of some type, or the conduct of a party during bargaining raises questions as to whether steps taken are appropriate or not (like originally happened here), the *Act* provides a means of redress.

[17] In my view, there is ambiguity in the meaning of the terms of the Order particularly, if it was meant, in all respects, to bind the parties to CEASE and DESIST from specific acts. Here, the Local has not held a ratification vote. It would do so, except for the potential negative impact it would have on certain of its members. The decision not to hold a vote is, arguably, holding up the conclusion of collective bargaining. Was the type of conduct now alleged to be sufficient for contempt, contemplated by the Board, or the parties, when it crafted the terms of the Order?

[18] The finding, and punishment for contempt is a discretionary use of the court's authority. As Justice Petrie wrote in *Mugford*:

> 10. In New Brunswick civil contempt proceedings are governed by Rule 76 and under those provisions the Court possesses the power to impose sanctions for contempt of court, in particular, under Rule 76.02.
>
> 11. Rule 76.06 set out the measures that are available to the Court to punish for contempt. It is highly discretionary. The discretion of a trial judge to refuse a contempt order or impose any penalty following a contempt very broad.

[19] Accepting, as I do, Justice Petrie's reminder that a civil contempt proceeding, "*is a quasi-criminal procedure requiring proof beyond a reasonable doubt*" (*Mugford*, para. 12), I am unable to conclude, beyond a reasonable doubt, that the Respondents are in contempt. They may well have been so found were the standard not, '*beyond a reasonable doubt*'. And one may find other words to describe the utility of the Respondents sending the October correspondence when they did, or the decision of Local 2745 to hold off on holding its ratification vote.

[20] The Respondents conduct in sending the October 10th correspondence or notifications is questionable for sure, but I am not certain, beyond a reasonable doubt that, at this stage, it shows contempt of the court's, and the Board's, Order.

[21] The Application is dismissed and, while the Applicants may ordinarily be ordered to pay costs, in this case the conduct of the Respondents gave rise to a foundation for making this Application in the first place. It is just that given the standard to be met, the breadth of the relief sought by the Applicant, and the ambiguity in the intended scope of the Order, the Applicant cannot prevail. There is no cost order.

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Justice E. Thomas Christie
Court of King's Bench of
New Brunswick, Trial
Division