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BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

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Freedom of Expression: Teachers' Distribution of Letters to Parents During BCTF Strike Action

As both the school year and the BC Teachers' Federation (BCTF) strike action commenced with the withdrawal of some teacher duties, the issue of freedom of expression will arise in the context of teachers seeking to communicate with parents through bulletins, letters, etc. going home with students regarding BCTF strike activity, bargaining, and related issues.

Recommended Action

School districts are encouraged to continue to follow their district policy with respect to communication to parents for those communications teachers wish to send home during the BCTF job action. Union locals and teachers should be reminded of board policy regarding the need for authorization or review by administration before communications are sent home to parents.

At present, the cases that have been decided on teachers' freedom of expression to parents via written communications have dealt with communications to parents on educational issues. Each teacher communication to parents should relate to an educational issue, and will have to be assessed in light of its own unique circumstances.

Where a specific communication does not pertain to an educational issue, contains inaccurate or misleading information, or otherwise raises a concern, contact your BCPSEA labour relations liaison for advice.

Discussion of Guiding Principles

Numerous arbitrations and court decisions have established case law and guiding principles on the issue of teachers communicating with parents. Although none of these cases dealt with communications by teachers during strike activity, the following legal principles apply:

1. Under Section 2(b) of the *Charter of Rights and Freedoms* (the Charter), teachers have the right to express themselves on educational issues.

2. Although an absolute ban by the employer would generally be a violation of the Charter, some restriction on expression may be justified under Section 1 of the Charter. Section 1 provides that the rights and freedoms guaranteed under the Charter are subject to "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Judicial and arbitral jurisprudence provides guidance on whether a particular restriction would be justified under Section 1.

3. In order to justify a restriction on teacher expression under Section 1 of the Charter, the employer must establish that the restriction is in furtherance of a "pressing and substantial" objective; the restriction is rationally connected to that objective; the restriction impairs as little as possible the Charter rights; and there is proportionality between the objective and the deleterious effects of the restriction.

4. In the achievement of the employer's "pressing and substantial" objective, there must be a balancing of rights. Any limit or restriction placed on free speech by the employer must be taken to minimally limit the teacher's right to freedom while at the same time achieving the objectives of the school district.

5. The following is a list of "pressing and substantial" objectives that may be found to allow for a restriction or limit on a teacher's right to freedom of expression under Section 1 of the Charter:

   - the objective of maintaining public confidence in the public school system
   - the objective of ensuring that accurate information is provided to parents about educational matters
   - the objective of duty of loyalty owed by employees to their employer.

   These are examples of the kinds of "pressing and substantial" objectives which may justify a restriction on expression.

6. Subject to Charter rights, past practice, and the collective agreement, school districts have the management right to control what is being sent home to parents by teachers through students. In order to assess whether a limit of these expressions is justified under Section 1 of the Charter in the distribution of teacher communications on an educational issue, the employer will need to first review the content of the communication in advance of its distribution.

7. Upon review, if the employer believes that the content of the information is not on an educational issue, or the content of the information is misleading and/or inaccurate or otherwise undermines a pressing and substantial objective of the school system, the employer should request that the teacher (or union) amend the information accordingly. If the teacher/union is unwilling to amend, the employer would then be justified in restricting the distribution of the entire document. It is suggested that advice be obtained if you are confronted with this situation.

8. The communication itself must clearly identify who the communication is coming from; i.e., this is the view of the BCTF, letterhead, logo, etc.

9. If the communication is on an educational issue, has been approved by the employer, and a teacher wishes to send it home to parents through students, the following apply:

   - communication through students should be limited to teachers who normally communicate with parents on educational matters about their children in this fashion
   - the information must be in sealed envelopes and clearly marked/addressed to the parent/guardian.

10. At present, only teacher/union communications directed at educational issues (i.e., Foundation Skills Assessment (FSA), class size and composition) have been considered in the freedom of expression jurisprudence.

11. It is recognized that school districts have both a responsibility and a right to insulate students from “political messages that directly impact on their mandated educational program”.

Questions

Please contact your BCPSEA labour relations liaison for further information.