

BCPSEA to discuss punitive options

A leaked BCPESA discussion document reveals that the employers' bargaining agent is contemplating three possible options in response to job action. They are: making teachers or their unions pay for health and welfare benefits; reducing teachers' pay; and lockout.

“Why would the employer be considering such provocative proposals when teachers across the province are still teaching and meeting students' needs—despite the underfunding, large classes, scant resources, and lack of services for students with special needs?” BCTF President Susan Lambert asked.

“This document indicates that BCPSEA is out of touch with most trustees, who understand that teachers are working hard and continue to do an amazing job for kids,” Lambert said. “It also offers some insights into the obstructionist attitudes teachers are confronting across the bargaining table, and makes one question just whose interests BCPSEA represents.”

Lambert suggested that these options fly in the face of the education minister's stated goal of working with the BCTF, building respectful working relationships, and goodwill. She expressed the hope that cooler heads would prevail when trustees discuss these options.

Below is the text of the BCPSEA document:

Category One comprises actions that the employer has under their control, some of which are designed tactically to induce the other negotiating party to agree to specific terms and conditions of employment; e.g., reduction in pay or lockout.

Transfer of payments for benefits

Section 62 of the *Labour Relations Code* provides that when employees are lawfully on strike or lawfully locked out, their health and welfare benefits (other than pension) normally provided by the employer must be continued if the union tenders payment. The majority of teacher collective agreements have no specific language regarding the payment of health and welfare benefit premiums during a strike or lockout. Of the six that do, three require the employee to pay the premium and the other three require the local union to either pay the premium or reimburse the employer.

During past strike activity districts have continued benefits and not requested the union tender payment for benefits. This is similar to the situation in health care strikes.

It is not clear that this section of the Code will automatically be applied by the LRB in the context of an essential services strike, particularly the limited strike action occurring during the teachers' Phase 1 strike, to require payment by the union for the continuation of benefits.

Reduction of Pay: Generally and Specifically; e.g., Positions of Special Responsibility (POSR), Department Heads

In industrial settings, pay is generally by hourly rate. A strike against certain job functions usually means fewer hours of work and therefore fewer hours of pay.

Employees are not paid when they are on strike and not working. The logical proposition is that teachers should be paid only for work actually performed and not for work that is not done due to a strike; i.e., as part of their teachers' strike activity, less work is done (reduction in supervision duties, no preparation or distribution of report cards, withdrawal from extracurricular activities, refusal to administer or supervise

various tests, etc.), therefore, it makes sense that employers would respond with the commensurate reduction to pay.

There are some issues to consider with reducing pay generally or decreasing stipends or allowances, including:

- o Establishing that teachers are not in fact performing work and in finding a practical way to accomplish not paying for work that is not done given that there are no set hours of work and that salaries and stipends or allowances are often based on an annual amount.

- o The struck tasks are virtually impossible to measure in terms of time and may not be evenly distributed from day to day.

- o The BCTF's likely argument (as its President has consistently stated publicly) that teachers are using the time freed up by the struck work duties to perform additional work of value with students or in preparing for classes.

- o Teachers have engaged in partial strikes of the same nature on several previous occasions and have continued to receive normal salaries (with the exception of one occasion which was quickly reversed due to the pressure of negative media and other school districts' concerns and voiced opposition). The continuation of full pay in strikes involving withdrawal of duties has also been the typical practice during health care union strikes.

- o Employers must also address the risk that a pay reduction will alienate employees who are not following strict union compliance guidelines and/or that in the aftermath of any strike activity the employer's relationship with the employees and/or the union will be significantly damaged at the local level, resulting in reduced cooperation and higher numbers of grievances and associated expenses. On a related point, employees who are not actually withdrawing services may successfully grieve their inclusion in any pay cut.

- o Finally, it should be noted that any successful reduction in pay to teachers may prompt the BCTF to augment teachers' pay with an equal amount of "strike pay."

Where position of special responsibility duties are performed outside the instructional day, a teacher is entitled to refuse to perform those duties under the current essential services order. In line with the general proposition that employees are not entitled to be paid for work they do not perform due to a strike, they should also not be entitled to the allowance for position of special responsibility work that is not done. There have been few, if any, reductions in stipends and allowances for position of special responsibility or department head positions in past strikes in education, likely for reasons as discussed above regarding general pay reductions.

These risks may be somewhat reduced and/or the potential impact of a negative finding reduced if, rather than simply implementing some form of pay reduction and inviting a BCTF grievance or complaint, BCPSEA instead first applies to the LRB for approval of some pay reduction. The above-noted health and welfare benefit payments and allowance/stipend withholding matters could be added to any application or treated separately. An application would refer to Mark Brown's comment noted above and seek the LRB's approval for a pay reduction with alternative applications to vary either the Phase 1 essential services order or collective agreement to accomplish a more balanced approach that creates pressure on both sides of the dispute. If such an application fails, boards of education will not face the liability of repaying wages improperly withheld and the "problem" identified by Mark Brown will have been placed before the LRB, which has jurisdiction over the essential services order, rather than addressed in a private labour arbitration concerning only the interpretation of the collective agreement.

Lockout

Lockouts are the right of employers just as strikes are the right of unions and their members. The *Labour Relations Code* provides that where a strike is occurring, an employer is entitled to lock out striking employees without a lockout vote (s.Bargaining, Options, and Moving Forward 59(2)(b)(ii)). Any lockout must accord with the *Labour Relations Code* essential services provisions and the essential services designation order (which would require amendment by BCPSEA). Under this option, the employment of a teacher could possibly be reduced a certain percentage for the duration of the teacher's participation in Phase 1 of the strike with a corresponding salary reduction. The reduction of the position would have to bear a reasonable relationship to the amount of legally struck duties to ensure that it does not encroach on the duties teachers are required to perform under the order. A significant area of concern with respect to this option is the need to manage the public perception of engaging in a lockout and preventing teachers from performing work.