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EDITORIAL

Pressure tactics: what recourse is available?

Me Chantal L'Heureux, Le Corre Lawyers

In the next few months, many private colleges and school service centers will be confronted with the mobilization of their unionized employees. In fact, many are already preparing for the pressure tactics that will be used and the possibility of an unlimited general strike, which several unions have officially endorsed and are likely to initiate "at the right time".

However, with over a million students in Quebec potentially affected by the actions taken[1], it's worth asking how far unionized employees can actually exercise their right to protest, and more importantly, what recourses employers have to control or stop pressure tactics.

First of all, it is important to remember that the employer's disciplinary power can still be used to punish misconduct by unionized employees, even if it occurs in the context of pressure tactics or during a strike.

For example, in *Syndicat des professeures et professeurs du Collège de Rosemont* and *Collège de Rosemont*[2], the arbitrator upheld a five-day suspension imposed on the teachers who had blocked access to the Cegep and had forced the suspension of classes during an illegal one-day strike. The arbitrator concluded that the sanction was justified because the teachers had unlawfully impeded the college from fulfilling its educational mission:

> We cannot, illegally by force and the "law" of the padlock, force a public educational establishment to stop providing services to the public without demonstrating a lack of loyalty to the employer, whose obligation under the law is precisely to provide these services.
>
> [our translation]

The Administrative Labour Tribunal ("ALT") may also intervene by ordering, pursuant to section 118 and following of the *Labour Code*, the cessation of pressure tactics that jeopardize the educational services to which students are entitled. Such an order may be requested from the Labour Relations Division or, in the case of school service centers, from the Essential Services Division of the ALT. Since school service centers are public bodies pursuant to section 111.2 of the *Labour Code*, the Essential Services Division is competent to ensure that educational services are maintained unless a strike is declared.

It's difficult to draw the line between pressure tactics that are permitted and those that are not. When it comes to education, the only actions that will be sanctioned are those likely to damage educational services and deprive students of the services to which they are entitled.

For instance, the Court has already ruled that they were prejudicial to educational services: the disruption in the preparation of Stage 1 report cards[3], an illegal half-day strike[4] and the extension of recess periods[5]. However, the boycott of Christmas-related activities[6], the enforcement of forced homework and lesson leave, and the refusal to forward non-urgent communications to parents[7] have not been considered detrimental actions.

When the right to strike is not exercised, the collective agreement remains in force. Therefore, unionized employees must maintain their work performance and cannot unduly slow down the employer's activities. In such a situation, the ALT may issue an order if the pressure tactics put in place result in a slowdown of the employer's activities, regardless of whether educational services to students are compromised.

Failure to comply with an order issued by the ALT may result in the union or the unionized employees at fault being fined pursuant to the penal provisions of the *Labour Code*. Disciplinary measures can also be imposed on unionized employees for failure to comply with orders.

In conclusion, it should be noted that if the management response is necessary when student services are disrupted, it is essential that such a response be aligned with the collective bargaining strategy in order to avoid an intensification of recourses on both sides.

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[1] Databank of Official Statistics on Québec, Effectif scolaire de la formation générale des jeunes par école selon diverses variables, années scolaires 2022-2023
2 2017EXPT-936, 2017 QCTA 266
3 Commission scolaire de Sorel-Tracy and *Syndicat de l'enseignement du Bas-Richelieu,* 2015EXPT-2233, 2015 QCCRT 609
4 *Comité patronal de négociation des collèges* and *Centrale des syndicats du Québec*, DTE 2002T-100 (SE), motion for judicial review dismissed, DTE 2002T-854 (SC)
5 *CPNCF* v. *Fédération des syndicats de l'enseignement*, 2015EXPT-2183, 2015 QCCRT 601
6 Supra, note 4
7 *CPNCF* and *Fédération des syndicats de l'enseignement*, DTE 2005T-370 (SE)

RECENT DECISIONS

1 Even after 27 years as a substitute, she had not accumulated any continuous service

An employee filed a complaint under section 124 of the ARLS. In 2021, the employer notified her that he would no longer need her services, even though she had been a supply teacher since 1994. She had worked between 72 and 164 substitute days per year during this period. The employer requested a summary dismissal of the complaint on the grounds that the employee did not have two years of continuous service. The Court began by pointing out that a succession of services, even if they are frequent and numerous, does not constitute a continuity of employment. In this case, the employee had no recall or priority rights. The employer had no obligation to her, and she had no obligation to the employer. Consequently, there was no continuity of service. Moreover, as the case law shows, school supply contracts are of a temporary nature and are generally incompatible with the notion of continuous service. The complaint was dismissed.

Lampron and *Centre de services scolaire des Samares*
2023EXPT-883, 2023 QCTAT 1414, Lyne Thériault

2 Labour shortage did not justify a moratorium on certain partial leaves without pay

The union filed a grievance contesting a notice of intent issued by the employer that partial leaves of absence without an annual salary of 10% or less for teachers would not be granted for the 2019-2020 school year. According to the arbitrator, the union's position was well founded. Indeed, although the collective agreement provides that such a leave may be requested, with the employer retaining the discretion to refuse such a request, the arbitrator held that the employer had waived its discretion by issuing such a directive. Such a refusal to exercise discretion is unreasonable and constitutes an abuse of rights. The employer could not, several months beforehand, decide that all these leaves would be refused based on the labour shortage context. He had to analyze each request, which could be refused as long as he acted in good faith. The grievance was upheld.

Association des professeurs de Lignery and *Commission scolaire des Grandes-Seigneuries*
SAE 9694, 2023 QCTA 399, Nathalie Massicotte

3 The employer had the right to ask a teacher to take part in anger management training

A teacher filed a grievance contesting the employer's request that she participates in an anger management training session. Indeed, following various events during which the employee lost her temper with students and parents, leading to suspensions of up to 20 days, the employer felt that a training session would be beneficial for the employee. The union alleged that this violated the employee's fundamental rights, since the employer required her to participate in "directed therapy". Concluding that such a measure was an administrative one, the arbitrator indicated that the training requested was similar to a counselling approach. He also stated that the employee's employment was not dependent on her participation in such a meeting. The employer's decision was intended to help her improve her anger management skills, and was not arbitrary, unreasonable or carried out in bad faith. The grievance is dismissed.

Commission scolaire Crie and *Association des employés du Nord québécois*
SAE 9695, 2023 QCTA 408, Pierre-Georges Roy

RECENT DECISIONS

4 Withdrawal of priority of employment is not equivalent to a dismissal

A non-permanent lecturer filed grievances against the withdrawal of his employment priority. The employer alleged that the quality of his professional activity was inadequate, and more specifically that he failed to comply with the policies, had problems with the preparation of his courses and his method of evaluating learning, as well as with his general attitude towards students. According to the union, the employer had not demonstrated a "just and sufficient cause" to terminate the employee's employment. The employer, for its part, argued that the withdrawal of priority should be assessed according to the notion of "just cause" provided for in the collective agreement. The arbitrator agreed with the employer, pointing out that the precise regime agreed between the parties precluded the union's position that the withdrawal of the priority should be assessed in the same way as a dismissal. He concluded that the employer had demonstrated a just cause for withdrawing the priority and dismissed the grievances.

Cégep de la Gaspésie et des Îles and *Syndicat de la Gaspésie et des Îles*
SAE 9661, 2023EXPT-1098, 2023 QCTA 162, François Bastien

5 Islamophobic hate speech: cost transfer granted

The employer contests the refusal of a cost transfer in a case where a Muslim daycare educator suffered post-traumatic stress disorder. While on a field trip with students, she was confronted and verbally abused by a woman who said: "Why are you putting that rag on your head in front of the children?" referring to the veil covering her hair. The lady was agitated and angry, and continued to insult the employee and make hateful remarks. The employee even lost consciousness and was taken by ambulance to hospital, while the police had to intervene with the furious woman. The Court had no hesitation in concluding that the accident was largely attributable to a third party. It is inconceivable that an unjustified, unprovoked verbal assault motivated by hatred, xenophobia or Islamophobia should constitute a risk to be borne by the employer. Cost transfer is granted.

Centre de services scolaire de Montréal
2023EXPT-1201, 2023 QCTAT 2368, Michel Letreiz

6 A DVS student cannot benefit from the ARIAOD compensation plan

A student pursuing a diploma of vocational studies in horticulture alleged that he had suffered an industrial accident when he twisted his foot while planting a tree. The employer claims that the student is an apprentice, not a worker or a trainee as defined by the ARIAOD. There is no apprenticeship or employment agreement binding the student to the school service center. The evidence showed that, at the time of the event, the student was attending a required training course on plant planting, as part of a mandatory course required by his training program. Practical, theoretical or simulation exercises integrated as part of a training program do not constitute an internship as defined by the ARIAOD. Indeed, an internship implies, at the very least, the performance of work, which is not the case here. The student is not covered by the ARIAOD and his claim is rejected.

Gareau et Centre de services scolaire de Laval
2023EXPT-1515, 2023 QCTAT 2866, Alain Lachance