G+ Education

INFO

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RECENT **DECISIONS**

1 Air quality tests to reassure employees

A school board challenged the derogation issued by a CSST inspector. In the course of an air quality inspection at a school, the Principal told the inspector that employees had complained of sore throats and foul odours, which had led to his ordering tests six months earlier. The Principal explained the measures in place and promised to send the report to the inspector. The union alleged that it received several other complaints in spite of these measures. Five days after the inspection, and before the inspector had a chance to receive the report promised by the Principal, the inspector issued a derogation. He demanded that new air quality tests be conducted over two days. The employer's request was granted. The inspector was informed of the steps taken that same year, and did not receive any details from the union regarding the alleged complaints. The evidence in this regard was far too limited, and an investigation would have been justified on his part to determine the validity of these complaints. He did not make judicious use of his investigative authority by requiring new measures just to document a situation or to reassure the employees.

Commission scolaire de Saint-Hyacinthe v. *Syndicat enseignement Val-Maska*
2015 QCCLP 271, Alain Vaillancourt

2 Dismissal of a teacher who was unable to improve her performance

A teacher challenged a written notice, a suspension and a dismissal. The school board referred to her inability to carry out the work of a teacher and her negligence in fulfilling the duties pertaining thereto. The evidence showed that there was quite a bit of noise coming from the teacher's classroom, to the point where her colleagues had to close her door. Also, several students would wander in the hallways, the classroom was in disarray and the teacher would be late in liberating the premises, thus disrupting the start of the following class. Finally, students and their parents were concerned by the quality of instruction and were anticipating failure. According to the arbitrator, the school board gave the teacher every possible chance to make amends, notably by setting up action plans and offering mentoring services. Though the teacher listened and collaborated, she never acknowledged that she had a problem, and so did not put into practice the assistance provided to her. The grievances were rejected and dismissal was upheld.

Commission scolaire de Grandes-Seigneuries v. *Association des professeures et professeurs de Lignery*
SAE 8933, 2015-07-06, Pierre A. Fortin

3 Day off for students = Day off for teachers

The union challenged the school board's new policy regarding class suspensions and school closures in case of bad weather or unsafe road conditions. In the new policy, the school board reserves the right to suspend classes for students only, thus making it mandatory for teachers to report to work. According to the union, this policy violates a provision of the local collective agreement to the effect that teachers are not obliged to report to work when the school is closed for students due to snow storms or unsafe road conditions. According to the arbitrator, the union's contention is well founded, since there is a real conflict between the school board's policy and the local collective agreement. He therefore upheld the grievance, but rejected the union's claims relating to an abuse of right on the part of the school board. Indeed, there is no abuse of right arising from the mere fact that the adopted policy is incompatible with the collective agreement, nor from the mere fact that the arbitrator agreed with the union.

Commission scolaire de la Beauce-Etchemin v. *Syndicat de l'enseignement de la Chaudière*
SAE 8937, 2015-07-08, Claude Fabien

4 Suspension without pay: is it an administrative or a disciplinary measure?

A teacher challenged the suspension without pay to which he was subjected pending his criminal trial related to charges of a sexual nature, in particular with regard to touching students in the primary school where he was teaching. The union alleged that such a suspension amounts to a disciplinary measure, which should be cancelled, since the school board did not follow the disciplinary procedure. Following a detailed study of case law, the arbitrator came to the conclusion that suspension without pay, in such circumstances, is generally considered an administrative measure. The arbitrator also referred to a provision of the collective agreement that makes it possible to remove a teacher without pay for the duration of criminal proceedings when the charges cause serious prejudice to the school board. Since the suspension without pay constitutes an administrative measure, there was no need to follow the disciplinary procedure.

Syndicat de l'enseignement de la région de Québec (CSQ) v. *Commission scolaire des Premières Seigneuries*
DTE 2015T-524, 2015 QCTA 502, Huguette April

5 What is plagiarism when a teacher is the person doing it?

The union and the employer both challenged an arbitrator's decision to substitute a six-month suspension instead of dismissal for a teacher who had resorted to plagiarism. The Superior Court ruled that the arbitrator had no business using the definition of "plagiarism" provided in the *Copyright Act*, and that he could have referred to the usual meaning of the term and the definition provided in the regulations applicable to students. The judge concluded that the teacher's offence had been proven and that he had resorted to plagiarism, considering, in particular, the similarities found between texts. As for the sanction, the judge believed that the arbitrator had taken into consideration less drastic measures taken by the school board against other teachers, and that his decision was reasonable, even though he had not dwelled at any length on extenuating factors. The Superior Court therefore upheld the arbitrator's decision and the six-month suspension.

Université du Québec à Montréal v. *Gagnon*
DTE 2015T-453, 2015 QCCS 2398, Thomas M. Davis

6 Invalidity of a dismissal handed down by the Executive Committee

A teacher was dismissed by the school board's Executive Committee, and the union claimed that this dismissal was invalid. The school board is governed by the *Education Act*, which allows it to delegate some authority to its Executive Committee through regulation. However, a regulation must indeed have been adopted. According to the arbitrator, the resolution passed by the Executive Committee, by which the employee was dismissed, was invalid, since the authority to dismiss a unionized employee had not been expressly delegated to the Executive Committee through regulation. The provisions of the *Education Act* being a matter of public policy, neither the Council of Commissioners nor the provisions of a collective agreement can run counter to these provisions, and a delegation of authority through regulation is required. The grievance was upheld.

Syndicat de l'enseignement de l'Ungava et de l'Abitibi-Témiscamingue v. *Commission scolaire de Rouyn-Noranda*
DTE 2015T-418, 2015 QCTA 384, André G. Lavoie

7 Cost transfer: moving is a personal choice

The school board challenged the CSST's refusal to grant a cost transfer. A special education technician was absent from work due to a lumbar sprain. Four months later, i.e. on June 6, her attending physician authorized a temporary assignment. Two weeks later, the employee took a few days vacation, then her attending physician terminated the temporary assignment on June 27, due to the recurrence of the pain. On August 14, the school board proposed a new temporary assignment, which the physician did not authorize. According to the CLP, there was no evidence to support the contention that the temporary assignment was not authorized for any reason other than the employee's move, an entirely personal choice, and the significant distances the employee had to travel to report to school. The costs are therefore not a result of a work injury. The cost transfer was granted as of the date when the physician refused to authorize the temporary assignment at the start of the new school year.

Commission scolaire des Premières Seigneuries
2015 QCCLP 2629, Paul Champagne

8 A painful exam period

An English teacher challenged the refusal of her claim for chronic neck pain. During the school year, she apparently went through seven intensive periods of correcting student papers, and developed pain in her neck and shoulders. During one of these periods, the same stiffness appeared, only more intense and persistent. The teacher experienced dizziness and nausea, which led her to see a doctor. The only submitted medical report indicates chronic neck pain, a slightly herniated disk as well as "poor postural alignment at work". The claim was rejected. The teacher alleged that she spent 84 hours correcting students' work, interspersed with other activities, though she couldn't specify over what period of time. Though she is a dedicated teacher who readily spends some of her own personal time working, there is nothing to prove that these hours absolutely have to be performed continuously, in a binding position, at a pace that is imposed and in an insufficient time frame. Mere allegations are not sufficient to prove the existence of a work injury. The claim was rejected.

Doucet v. *Commission scolaire des Draveurs*
2015 QCCLP 1886, Andrée Gosselin

9 Summer pay and preventive withdrawal from work: a discriminatory calculation according to the Court of Appeal

The school board appealed a ruling by the Superior Court, which rejected its request for judicial review of an arbitrator's decision. The arbitrator had concluded that the employer's application of the collective agreement concerning the calculation of summer pay for employees who are pregnant and under preventive withdrawal was of a discriminatory nature, the school taking into account only days worked. According to the Court of Appeal, the Superior Court rendered a reasonable decision. Under the *Act respecting Occupational Health and Safety*, an employee is deemed to be at work when she finds herself on forced leave because the employer does not reassign her in order to prevent any hazard. As the law is a matter of public order, the collective agreement must be interpreted in such a way as to respect the right to preventive withdrawal without placing the employee in a different situation because she exercised that right. By not taking into account the days not worked in its pay calculations, the employer penalized the employee because of her pregnant state, which is prohibited under section 10 of the Charter. This is a flagrant case of discrimination and the days not worked must be accounted for.

Commission scolaire des Découvreurs v. *Syndicat de l'enseignement des Deux-Rives*
DTE 2015T-413, 2015 QCCA 910

Comments

According to the Court of Appeal, these teachers cannot be treated as absent employees without pay, as the employer suggested. The employer must calculate the summer pay of teachers on preventive withdrawal as if they had been at work, even if they were not reassigned. The Court of Appeal even included a note to the CSST concerning a method of calculating the indemnity that would not include the summer pay, as well as a comment regarding the suspension of payment of the indemnity during the summer. Indeed, according to the CSST, the closure of the school would eliminate the hazard justifying a preventive withdrawal. Consequently, the pregnant teacher would not be entitled to the indemnity during this period. Now, according to the Court of Appeal, one might look at the discriminatory nature of such measures. Let us remember that the cost of indemnifying an employee under this plan is not directly charged to her employer's financial file by the CSST. However, in general, this generous plan is largely used by school board employees, with an impact on their availability.

10 The right of an employer to deny a full-time return to work

An academic advisor challenged the employer's decision to reject his reintegration. The employee was absent from work due to serious backaches requiring surgery. While waiting for this surgery, his attending physician authorized him to return to work progressively, then on a full-time basis, while the employer's medical consultant had instead recommended a part-time return to work, i.e. three non-consecutive days a week due to the high risk of recurrence. The employer compensated the employee for the two days not worked, though the latter was not entitled to this. The arbitrator concluded that the employer had fulfilled his obligations of accommodation and ensured that the employee's return to work would not jeopardize his state of health. The arbitrator also concluded that the employee had not cooperated with the employer and had not fulfilled his obligations under the collective agreement, which are intended to protect his health.

Commission scolaire de Saint-Hyacinthe v. *Syndicat des professionnelles et professionnels des commissions scolaires de Richelieu-Yamaska*
DTE 2015T-452, 2015 QCTA 326, Pierre Daviault

Comments

Considering his legal obligations, any employer has the obligation to take all necessary measures to protect the health, safety and physical integrity of his employees. Also the collective agreement involved here prescribes that a professional must take all necessary measures to protect his/her health, safety and physical integrity. The school board fulfilled its obligations by adjusting the employee's working conditions based on his ability to deliver a lesser amount of work since, after the surgery, the latter would be able to deliver normal work performance. However, the arbitrator concluded that the employee had not fulfilled his obligations, by insisting on returning to work full-time, despite the health risks, and by refusing to cooperate with the school board, even accusing it of malicious intent. It is true that such situations are rather rare. However, when they do occur, the employer must never lose sight of the fact that he must protect the health of any employee who insists on coming back to work.

How to handle pressure tactics

By Me Francis Hinse and Me Danilo Di Vincenzo, CIRC
Le Corre & Associates Law Firm

The last school year ended with several teachers' unions having resorted to pressure tactics, and it is safe to assume that the fall of 2015 may be a "*hot*" one.

Over the next few months, several school boards will probably be faced with pressure tactics on the part of their unionized employees, particularly teachers. Faced with this prospect, several of these school boards are wondering about the kinds of recourses available to them in order to put a stop to these pressure tactics. It must also be emphasized that, when called for, the employer's response must be properly aligned with the collective negotiation strategy in order to avoid any escalation of recourses on both sides of the table.

Thus, a school board might obtain an order from the *Commission des relations du travail* (hereinafter the "CRT) in order to put a stop to pressure tactics, or even resort to its disciplinary authority to sanction wrongful conduct.

Indeed, by virtue of his management right, any employer can impose disciplinary measures to sanction offences committed by his employees, whether or not these occur within the framework of pressure tactics or even in the context of a strike.

In this respect, one arbitrator has already rejected grievances challenging one warning, two one-day suspensions and one five-day suspension imposed on three teachers to sanction their conduct in the context of union actions[1]. In this case, the teachers had notably intimidated the school principal, in addition to yelling their indignation at her in the presence of the students. One of them had hung a doll in her likeness while another had sprayed graffiti during a strike day. Finally, one of these teachers had also mimed degrading gestures while following the principal, again in the presence of the students. According to the arbitrator, such actions are unacceptable on the part of teachers and he found the disciplinary measures handed down by the school board rather lenient.

In addition to being able to take disciplinary action, a school board could initiate legal proceedings to put a stop to pressure tactics by seeking to obtain an order from the CRT under sections 118 et al. of the *Labour Code*.

An order such as this can be obtained before the Essential Services Division or the Labour Relations Division of the CRT. Indeed, since school boards are public organisations in the meaning of section 111.2 of the *Labour Code*, the Essential Services Division of the CRT has the authority to maintain the educational services to which students are entitled, unless a strike is called.

Thus, if the pressure tactics being implemented are detrimental to the essential services to which students are entitled, the school board can ask the CRT's Essential Services Division to issue an order to cease these pressure tactics. To illustrate this point, it has already been ruled that taking ten minutes off each teaching day and exempting students from homework and lessons did not necessarily damage the educational service to which students are entitled[2]. Referring the matter before the Essential Services Division is therefore likely to be accepted when the nature of the pressure tactics has the potential to jeopardize the school year.

Also, section 108 of the *Labour Code* prohibits employees from slowing down activities, whether or not they have the right to strike. Thus, even though the pressure tactics being used may not be putting essential services at risk, a school board could apply to the CRT's Labour Relations Division to obtain an order to cease pressure tactics resulting in a slowdown of activities. In this respect, an unwarranted delay in teachers handing over students' marks has already been deemed a slowdown of activities[3].

In closing, one must point out that failing to abide by an order from the CRT can give rise to the application of the *Labour Code's* penal provisions, i.e. the union or the employees being sentenced to pay fines. In addition, the school board could be justified in imposing disciplinary measures to employees failing to abide by the order.

1. *Commission scolaire de Laval* v. *Syndicat de l'enseignement de la région de Laval,* SAE 8693, 2013-06-26.

2. *CPNCF* v. *Fédération des syndicats de l'enseignement,* DTE 2005T-370.

3. *Cégep de Bois-de-Boulogne* v. *Syndicat général des employés du Collège Bois-de-Boulogne,* DTE 83T-82.

Five actions of courageous leaders

By Marjorie Simard, PhD, organizational psychologist
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So what is different about leaders who display courage and fully shoulder their responsibilities? Over my years of experience in assessment, I have had the opportunity to meet hundreds of managers in the education community. Here are the five key actions I have observed in leaders not afraid to lead. These will help you grasp the subtleties of courageous management.

Contrary to popular belief, courage does not mean putting your head down and charging like a bull. Managerial courage involves a structured approach to risk management based on solid self-knowledge, detailed analysis of situations, planning of required actions and sound management of communications.

Create your own signature as a leader

The first key to showing courage is to develop your personal signature. This will help you establish a solid anchor to weather storms and adversity. Knowing yourself and your personal goals, defining your values and committing to a project bigger than yourself: all these factors form the foundation of your identity and will help you chart a clear direction, establish credibility and defend your positions.

Structure your decision-making approach

Courage implies sound management of the risks associated with making decisions. For that reason, smart managers take a structured approach to delicate situations. Here are the five steps in that approach:

- ✓ Set goals and determine their importance.
- ✓ Weigh the balance of power and determine whether it favours you.
- ✓ Calculate the personal and organizational risks and benefits.
- ✓ Move into action, with boldness and daring (who, when, how).
- ✓ Draw up contingency plans in case things do not unfold as planned.

Have a 360-degree vision

Analyzing the forces at play is crucial to using your courage intelligently. You therefore must conduct a thorough reading of the internal and external environment to gain a clear, integrated vision. Managing the political facets of a situation lets you position yourself effectively within the organization and tailor your communications. To that end, the following steps are essential:

- ✓ Target the people directly or indirectly involved in the situation.
- ✓ Determine their motivations.
- ✓ Understand alliances clearly and decode what has not been said.
- ✓ Stake out a position on the political chessboard.

Communicate with impact

Stating your position clearly and with conviction is a major challenge, especially when it is unpopular. To build a solid message, base your stance on observations and facts, then state your perceptions and, where necessary, feelings.

After conveying your message, take a step back, listen to others' concerns and ask questions. Understanding others' positions will give you greater insight into their resistance, help you adapt your arguments and, ultimately, achieve greater impact. Another winning strategy is to pay special attention to non-verbal language. These strategies will help you state your position with conviction while maintaining the relationship.

Remain calm and in control

Self-management is another key to managerial courage. Managers skilled at managing themselves expend less energy dealing with their own discomfort and are more focused on their goals. All managers therefore should develop tolerance for ambiguity, ability to deal with other people's reactions, skill in managing personal sources of stress and knowledge of themselves and their defence mechanisms when conflicts arise.

Small, steady, sustained (Ouellette, B., Organizational Psychologist)

It is unrealistic to think these aspects can be developed in just a few weeks. This process requires a long-term commitment but will develop your resilience as a leader.