

Political Pamphlets in the News

You may have seen a news item on BCTV News on Global last evening, April 29, 2009 with respect to distribution of political pamphlets by teachers through students to parents in the Vancouver school district. Following is the transcript:

Vancouver teachers send students home with anti-BC Liberal literature
Global BC, 6:13 pm, April 29, 2009

Tony Parsons: Is it appropriate for students to be used to deliver political literature to their parents during an election campaign? That's an issue right now in Vancouver where thousands of high school students were sent home with an envelope containing information highly critical of the BC Liberals for failing to fund schools adequately. As you might imagine, that didn't exactly thrill all the recipients.

Reporter: Are they students, or, as some in the education sector describe them, couriers. Last week, tens of thousands of students were give a sealed brown envelope to take home. Nothing on that envelope indicated who sent it.

Cathy Quicke (Chair, Magee Secondary PAC): It, it, it looks like an official to the parents or guardian of, then your child's name. When you open it, it's information from the Teachers' Federation. But it's made specific to, you know, saying that it's representing the views of the teachers of our school, of Magee Secondary School.

Reporter: The coloured booklet is from the BC Teachers' Federation, the white one from the Vancouver Secondary Teachers' Association. Both are critical of the Liberal Government's record on education spending. And although sent out in the middle of an election the senders insist the message is meant to be non-partisan.

Ann Guthrie Warman (Vancouver Secondary Teachers' Association): There was nothing partisan in any of the, in any of the documents that were sent out. It was simply pointing out the issue of class size, class composition, and that it's rather a broken promise on the part of the Liberals.

Quicke: This pamphlet has quite a few inaccuracies, you know, in saying that some of our other departments are under funded. It's not true.

Reporter: Last year, the BC Teachers' Federation won an arbitration that ruled it could use students to send information home if the federation's concerns were legitimate to the overall quality of education. But the Vancouver School Board says that ruling also gave it some say in what kind of information is sent out.

David Weir (VSB): Teachers do have the right of ah, to express their opinion. We also should have the ability to be able to review that material and make sure that there's, the statements made within are factually correct.

Irene Lanzinger (BCTF): The ruling of the arbitrator was that our information must be accurate. Boards can object to us sending it out on the basis of accuracy. And when that happens, that gets worked out between a district and the local union.

Reporter: Regardless of the interpretation of the ruling in this case, these pamphlets went out without the Vancouver School Board being given notice. And the Vancouver Secondary Teachers' Association says next time it will consider stamping VSTA on the outside of the envelope.

In response to several queries, we thought it would be helpful to re-state our advice based on the three main cases that have proceeded to arbitration on the issue of a teacher's right to provide parents with union information on educational issues.

The background on this issue, including the cases referenced, can be reviewed in @issue No. 2009-14 dated April 16, 2009 (on our website at <http://www.bcpsea.bc.ca/access/publications/aissue/aissue.html>).

Recommended Action for Districts

1. It is suggested that the Board of Education either pass a resolution or adopt a district policy that requires prior approval for a teacher to distribute union/political information on educational issues directly to parents or through students. An example of such a resolution or policy for your consideration is as follows:

Guideline

Procedures for distributing union/political information on educational matters to parents must be considered within the established legal framework.

It is recognized that respectful debate about educational issues is important. In that regard, judicial and arbitral jurisprudence has clarified that teachers have the right to engage in political discussion and the freedom to express their views to parents on such educational issues under Section 2(b) of the *Charter of Rights and Freedoms* (the Charter). Any restrictions on expression have to be justified under Section 1 of the Charter

Accordingly, teachers' right to further the debate with parents must be valued, but it must also be balanced with society's interest in an effective and efficient school system which maintains the confidence of students, parents and the public.

Procedures

- The Board of Education requires teachers to obtain prior approval of their <title of employer representative or designate> when distributing union/political information on educational matters on school property to parents or through students.
- The school or district administration will review the information for its accuracy and relevance to educational matters. Further, the review undertaken will determine the appropriateness of sending the information from the school to parents, taking into account the "pressing and substantial" objectives of the public school system. Teachers must contact their principal for review and approval prior to distribution.
- In determining the appropriateness of the materials for distribution, there must be a consideration of the balancing of rights and measures that may be taken to minimally impair the teacher's right of free speech while at the same time achieving the objectives of the school district.
- Should a union/political communication on an educational matter not be approved for any reason, the employer will raise the matter with the local union.
- With respect to the accuracy, the content of the information must be accurate so that the expression is not misleading such that confusion and/or conflict are created. If the content or a portion of the communication is inaccurate/misleading, the employer will identify and request that the employee/union amend the inaccurate/misleading information. If the

employee/union refuses to remove or amend the inaccurate/misleading portions as identified, the employer would then ban the entire distribution of the communication.

- Any approved communication by the school district must be placed in a sealed envelope and clearly marked/addressed to the parent/guardian. Further, in order to ensure there is no confusion regarding from whom this communication is coming, the document itself should clearly indicate the authorship.

2. Contact your local union president and seek assurance that when teachers are distributing union/political information on educational matters on school property to parents or through students they will follow the “Kinzie process”; i.e., prior to distribution, they will seek approval from the employer, which will review the materials to address any inaccuracies.

If your local union is in agreement, then it is recommended that a process/protocol is established with your local union consistent with the Kinzie award. If your local president is not in agreement or will not provide you with a response, below are template letters that your district may consider providing your local president and teachers. The expectation is that the Kinzie process will be followed and, if there is a disagreement, the *work now grieve later* principle be followed.

Letter to Local Union

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Accordingly, teachers’ right to further the debate with parents must be valued, but it must also be balanced with society’s interest in an effective and efficient school system which maintains the confidence of students, parents and the public. Distribution of union/political information on educational matters on school property to parents or through students must be considered within this context and, in particular, the guidance provided by Arbitrator Kinzie in his award dated May 2, 2008 in School District No. 5 (Southeast Kootenay).

If you wish to distribute material through the schools, I ask that you provide me a copy of the material in advance of it being sent home. This is consistent with the award of Arbitrator Kinzie. In the event that your local union does not intend to follow the Kinzie process (i.e., provide me with a copy of the union/political information on educational matters in advance and address any inaccurate and/or misleading statements prior to distribution), the district will be providing teachers with notice not to distribute union/political information on educational matters on school property to parents or through students without the prior authorization of their principal. The district expects teachers to follow this direction and, if not in agreement, to follow the *work now, grieve later* principle. I understand that the BCTF has already filed a provincial grievance in relation to this matter, which may provide additional guidance on this important matter.

In the meantime, I hope that you will reconsider your position and work with the district in accordance with the Kinzie process on this very challenging issue.

Letter to all Teachers

Memo to: All Teaching Staff
From: Superintendent
Subject: Distribution of Union/Political Information on Educational Matters on School Property to Parents or thought Students

It has come to my attention that some teachers may have been advised by their union that they have the right to distribute union/political information on educational matters to parents through the school or students, without the prior approval of the school Principal. The purpose of this memorandum is to notify all teachers that any such union publications intended to be distributed to parents or though students at the school must be approved for distribution by your Principal **prior** to the material being sent home or otherwise distributed.

The district is attempting to reach a resolution with the local union on a process to provide the district with a copy of the union/political materials and address any issues related to the publication prior to its distribution.

If you have any questions or are not clear on this notification of this direction, please contact your Principal.

Questions

Each case will have to be assessed on its individual merits. While the cases to date provide specific guidance for teacher activity at the workplace involving government policy and legislation issues (class size/FSA), and the use of students as couriers, future issues concerning teacher activity outside the workplace or issues regarding a teacher/union speaking out about a school district's decisions, policies and/or actions will need to be reviewed and assessed based on their individual merits, the application of the legal concepts from the cases to date, and other case law.

Should you encounter the issue of distribution of union/political material (on or off school property), please contact your BCPSEA labour relations liaison for discussion.