



Freedom of Expression

Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* is the part of the *Constitution Act, 1982*, which entrenches certain fundamental rights and freedoms for all Canadians. It covers all aspects of human rights, ranging from fundamental freedoms, mobility rights and legal rights, to free communication. It specifically states that everyone has the fundamental freedoms of thought, belief, opinion and expression.

But while the *Charter* allows all Canadians to freely express their thoughts and opinions, it also protects everyone's right to be treated fairly, without discrimination.

Guarantee of Rights and Freedoms

Section 1 of the *Charter* guarantees the rights and freedoms of Citizens only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.



Collective Agreement

Clause 5.01 of the Urban Postal Operations' collective agreement (UPO) and of the Rural and Suburban Mail Carriers' (RSMC) collective agreement states that there shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or stronger disciplinary action exercised or practised with respect to an employee by reason of age, race, creed, colour, national origin, political or religious affiliation, sex, physical or emotional handicap,



Continued on page 3

Self-funded leave – What you need to know

Clause 27.10 of the urban collective agreement gives members an opportunity to obtain a self-funded leave. As stated in clause 27.10, the terms and conditions of the leave plan are determined unilaterally by the employer as per its Work Options Program. Obviously, no one is required to participate in the plan, but any employee who opts for the plan is bound by its terms and conditions. Legally speaking, an agreement must be reached between the employee, the employer and the trust company.

A common scenario is one where employees agree to receive only 80% of their pay for a period of four years in return for one year of leave, again at 80 % of their salary. In these cases, employees are considered to be on unpaid leave. The plan provides some flexibility in terms of the level of reduced pay, the period over which the reduction applies, and how the funds set aside are to be used later.

In the case of self-funded leave, as provided for in the urban collective agreement, during the period over which the pay deductions accumulate, the employer pays a share of the employees' gross salary (i.e., before deductions) into a trust account that is administered by a third party (Alterna Savings).

When the employees take their leave, they are granted leave **without pay** from the employer and the trust

company then pays them the amounts accumulated in their trust account. Employees shoulder the responsibility for interest or losses on money in the trust account.

What about benefits?

Since the employer is not paying any salary during the period of leave, it is not required to pay its share of contributions to the CPP/RRQ. The employee must, during the self-funded leave, pay his or her contribution, as well as the employer's contribution, to the Canada Pension Plan (CPP) or to the Régime de rentes du Québec (RRQ).

As for the Canada Post Pension plan, both employee and employer contributions are mandatory for the first three consecutive months of

leave, after which an employee can opt to stop contributing and the leave period would not be considered pensionable service. For the leave period to be considered pensionable service an employee can choose to pay two times their share of premiums. Canada Post will recover the total amount owed over a period equal to two times the duration of the absence.

As for the extended healthcare plan, disability and life insurance, employees pay both their own and the employer's share of premiums. Again, Canada Post will recover the total amount owed over a period equal to two times the duration of the absence.

The employee does not accumulate or use vacation or sick leave during this period.



Freedom of Expression

Continued from page 1

sexual orientation, marital status, family status, conviction for an offence for which a pardon has been received, or membership or activity in the Union.

For example, an employer who threatens, intimidates or harasses employees wearing union buttons is interfering with legitimate union activity. This is what Canada Post is being criticized for doing, when it prohibits employees from wearing buttons.

Background

The Union has embarked on a public campaign to make the citizens of Canada and Quebec aware of the real threat posed by the deregulation of Canada Post. The Union's campaign requires, among other things, membership participation, mainly by asking them to wear two buttons. The first included the message "Your PUBLIC postal service delivers ... for now." The second had the following seasonal message: "Peace, Joy and a Public Post Office." Essentially, the two buttons were designed to raise public awareness of the Conservative government's decision, made last April, to appoint an advisory committee to conduct a strategic review of Canada Post. The stakes are very high, as this advisory committee could very well recommend that the government deregulate Canada Post.

Deregulation: The Stage Is Set

First, the government had introduced Bill C-14 deregulating inter-



national lettermail, but fortunately it died on the order paper when the 2008 Federal election was called.

Still, the government's intentions are now known. Second, it created the advisory committee, whose chairperson, Robert Campbell, has already come out in favour of postal deregulation. In the past, he recommended a comprehensive reform of the institution. Third, Canada Post itself, while not pressing the issue, is not opposed to such reform. In fact, it is contributing to it by preventing employees from taking part in union activities, by intimidating, harassing, and threatening employees who wear buttons. However, in doing so, Canada Post is violating the provisions of the collective agreement and flouting the *Canadian Charter of Rights and Freedoms*.

Interim Order

The Union presented a national grievance (N00 07 00016) along with an application for a cease and desist order, which was referred to an arbitrator from the national list of arbitrators contained in the urban operations' collective agreement. The

national arbitrator granted the Union's application and ordered that the employer stop prohibiting urban operations' employees from wearing buttons or stickers and stop disciplining those who do. Because this is an interim order, it only applies for twenty (20) calendar days, but can be renewed. The Union has to apply to the arbitrator to renew the order after 20 days (clause 9.95 of the collective agreement).

In his decision, the national arbitrator stated that the right to wear buttons is protected by the collective agreement and section 2 of the *Canadian Charter of Rights and Freedoms*, even outside the collective bargaining process. According to the arbitrator, activity in the Union should be assessed in the same way, whether the parties are in negotiations or not (*a right recognized by jurisprudence*). In other words, in a free and democratic society, the workers' right to freedom of expression takes precedence over the employer's management rights, regardless of the circumstances.

Freedom of Expression



*The play on words in this poster cannot be translated into English.

Continued from page 3

We now have to refer the national grievance to another arbitrator from the national list of arbitrators. At the time of writing this article, the parties were still in disagreement over the arbitrator's jurisdiction. Hearings are being conducted before arbitrator Dulude to determine his jurisdiction to hear the grievance on its merits.

Ms. Greene wants to silence people who are worried about their jobs and about the service that is being provided to the public; she couldn't care less about the collective agreements or the *Charter*.

We should never forget that freedom of expression is a basic right.

Only dictators refuse to recognize this right.

Modern Post

At the last Convention, the Montreal Local had reproduced a poster from the Charlie Chaplin movie *Modern Times* on a T-shirt. The poster showed Moya Greene in Charlie's body, caught up among gears.

This poster circulated so much that in some locations, the employer asked that it be

removed, alleging that it was libellous against Ms. Greene.

In fact, there is nothing libellous about this poster. At most, it is a caricature that is neither degrading nor irreverent, and is in no way prejudicial to Moya Greene or her privacy.

Freedom of opinion and expression

Whether Ms. Greene likes it or not, this type of publication is protected by freedom of opinion and expression. Because she holds a

public office as President and CEO of Canada Post, her decisions are subject to analysis, criticisms, comments and opinions.

When someone accepts public office, they must also accept criticism, which may take different forms. Caricature is a form of expression protected by freedom of expression.

It appears that in the run-up to its major technological changes and the strategic review, the employer wants to muzzle postal workers. Yet, our public campaign to expose the perils of deregulation is not directed at the employer, but rather at Stephen Harper's minority government.

Regardless of what is behind the actions of Canada Post or the government, postal workers have rights that must be respected. Freedom of expression and freedom of opinion are among these rights.

We should all fear deregulation. The international financial crisis is a glaring example of where deregulation and neo-liberalism can lead.

CUPW • Stewards' Action Bulletin



CUPE 1979

