



December 15, 2023

COMMUNICATION AND UPDATE ON LEGAL PROCEEDINGS

Certification

On June 13, 2023 the BCGEU filed an application with the Canada Industrial Relations Board (CIRB) seeking Certification as the bargaining agent for a unit comprised of all employees of the Ditidaht Community School, excluding the Principal.

Ditidaht First Nation raised an objection to the application in that pursuant to the *First Nation's Jurisdiction Over Education in British Columbia Act* and the Jurisdiction Agreement entered into with the Government of Canada, Ditidaht First Nation had sectoral self-government rights with respect to education on its lands, including the exclusive authority to regulate the employment and labour relations of the education staff, and the CIRB was without jurisdiction to hear the application.

In the alternative, Ditidaht First Nation argued that the Ditidaht Community School Education Authority was the employer of the education staff, and therefore independent from Chief and Council and not subject to federal (CIRB) jurisdiction. In particular, Ditidaht First Nation argued that on September 19, 2023, Ditidaht Chief and Council passed a BCR to delegate authority to govern the Ditidaht Community School to the DCSEA and gave the DCSEA the full and permanent autonomy to direct the educational, employment and financial direction of the school; and on September 23, 2023, at the Ditidaht First Nation AGM a motion was brought forward that Ditidaht Chief and Council is never to interfere in Ditidaht Education again. The challenges that many school staff had faced under the governance of the former Ditidaht Chief and Council and DFN Administrator were outlined, the effectiveness of having an arms length governance group to work with the complex system of the Ditidaht Community School was described a brief history of the former Ditidaht Education Authority was given. The community voiced their opinion about removing Ditidaht Chief and Council from the governance of Ditidaht Community School and the Motion was carried.

A hearing before the CIRB was held over two days on October 19 and 23, 2023.

The CIRB issued a bottom-line decision on November 10, 2023.

The CIRB decided that Ditidaht First Nation did not have sectoral self-government jurisdiction over the labour relations and employment matters relating to education on its reserve lands by the *First Nation's Jurisdiction Over Education in British Columbia Act* and the Jurisdiction Agreement entered into with the Government of Canada. The CIRB also decided that the Ditidaht First Nation is the true employer of the school's employees: "*Although the Ditidaht First Nation created the DCSEA and assigned some of the responsibilities to it for the management of the school, the [CIRB] concludes that the DCSEA is not independent of the DFN and is not the employer of the school's employees.*"

Full written reasons will be provided at a later date, likely in January of 2024.

Ditidaht First Nation has filed an Application for Reconsideration of this Decision, with full submissions to follow after the CIRB's written reasons are issued.

In its November 10, 2023 decision, the CIRB had considered the membership evidence that was filed with the application for certification, which showed there was majority support for the Union. As a result, the CIRB granted the Union's application for certification on November 10, 2023 and as of that date, the BCGEU became the bargaining agent for all employees of the Ditidaht Community School.

Union Bargaining

The BCGEU has delivered a notice to bargain for a collective agreement. Ditidaht First Nation has notified the Union that it will comply with its statutory obligations to bargain in good faith, but would prefer to postpone bargaining until after the CIRB's reasons are released and its Application for Reconsideration can be addressed.

BCLRB Application for Certification

There is also a concurrent Application for Certification pending before the British Columbia Labour Relations Board that is being held in abeyance until the outcome of the CIRB proceedings.

Unfair Labour Practice Committed Against Staff & Termination of Emily MacLennan

Coinciding with the school staff and teachers' (the "Staff") decision to unionize, the Union filed an Unfair Labour Practice Complaint on July 28, 2023 on the basis that the Ditidaht First Nation failed to renew 13 community school staff contracts and reneged on promises related to one community school staff member's continued employment and the eviction of community school staff from their housing with one week's notice. Some teachers and staff without contracts were evicted from their housing, had to find new jobs and relocate, causing significant harm to their lives. Principal Emily MacLennan was also terminated prior to the end of the school year.

Ditidaht First Nation's decision to depart from its previously consistent practice of renewing staff contracts, and in one case, renege on one teacher contract, and evict school staff was made because of the Staff's decision to unionize.

In addition to being included in the Union's complaint, Emily MacLennan also retained independent counsel, warning of litigation regarding her termination.

The Ditidaht First Nation admits that its actions in not renewing staff contracts and evicting staff from their housing on one week's notice directly after they chose to organize a union were unfair labour practices and caused significant harm to the staff, the students, families, Ditidaht First Nation members and the community. The Ditidaht First Nation recognizes that it is not entitled to improperly interfere with Staff decisions regarding unionization. Ditidaht First Nation has made and continues to make the efforts necessary to remedy the violations and fully compensate the community school staff and Emily MacLennan, including:

1. On August 15, 2023, Council passed a motion to resolve the Unfair Labour Practice Complaint by offering contracts and housing to teachers (including education assistants) in good standing;
2. Subsequently, all returning teachers, education assistants and school staff were offered a contract (and housing where applicable) for the 2023/2024 school year;

3. Effective August 29, 2023, the Delegated Authority reached an agreement with Emily MacLennan for her to return as Principal of the Ditidaht Community School commencing August 31, 2023. Emily MacLennan's reinstatement was in both parties' best interests, and the best interests for the school and the community;
4. Payment of staff wages for two hours for the purpose of attending a meeting with the Union;
5. A commitment to working with the unionized workers in good faith; and
6. All community school staff are or will be compensated for any outstanding monies, including moving expenses, owed to them.

It is hoped that as a result of these efforts the outstanding unfair labour practice complaint is or will be resolved without the necessity of a hearing.