

Free Speech Does Not Trump Other Rights



Union leader's support for U of T encampment oversteps her mandate

Last week, Laura Walton, president of the Ontario Federation of Labour, sent a letter warning University of Toronto president Meric Gertler against the threatened use of law enforcement to break up the illegal encampment on the university's property. She demanded that the university negotiate with the protesters without even a hint of a threat of police intervention and referred to the students' "[free speech rights](#)." She then called on [union members](#) to attend the encampment and protect the students, with their bodies if necessary. That letter partly read:

"I was disappointed to hear about your ultimatum to the student encampment at the University of Toronto: clear out by Monday at 8:00 a.m. or be in violation of a trespass notice.

As trade unionists, we know what good-faith bargaining looks like. You should, too. In most instances at the bargaining table, our members and your representatives have successfully negotiated numerous collective agreements, without resorting to strikes or lockouts.

The same approach should apply here. Negotiations must continue in good faith, and without threats of police intervention."

This letter is a chimera. It conflates the law, and it took temerity for the OFL to send it as it ought to have understood its legally false comparisons.

The only appropriate reply from Gertler would be a letter asking Walton this simple question: "Can Ms. Walton provide a single instance where the Ontario Federation of Labour or any of its constituent unions authorized members to occupy a plant for political or any other purposes, and what would she expect might happen if it did?"

The letter, legally, is rank nonsense.

The OFL should know that if a union tried to occupy the plant of an employer with whom it has a bargaining relationship, the union would be sued for any damages it caused, the provocateurs would be (successfully) [terminated for cause](#) and the employer would receive an injunction within hours. That would be the result in any case, regardless of the cause, but even more so if the cause was political in nature – say, for example, if the union were to object to the employer buying or selling materials from Israel.

For those reasons, no such occupation would ever occur, and I cannot recall a single instance of this type in Canadian labour history.

The argument that the union can join the encampment on “free speech grounds” is risible, and Walton should know this. Free speech does not permit criminality or illegal trespass.

This would be the case whether the plant occupation was peaceful or not, and in the U of T case, the encampment has not been “peaceful,” as was well documented in the university’s injunction application (which has not yet been decided).

As for Walton’s collective agreement analogy, there is indeed a statutory legal duty for employers to bargain in good faith with their unions respecting such issues as wages, benefits, etc., under the relevant labour relations act in each province. But there is no such legal or other duty to bargain with the union about matters extraneous to the scope of their collective agreement rights.

But, to the point, the university has no statutory or any other legal duty to negotiate with any self-selected groups of students, let alone these occupiers, about anything whatsoever.

Bargaining with individuals who occupy simply entices further occupations and puts those trespassers above the law-abiding majority of students who do not trespass. After all, no other student gets to negotiate with the university, and permitting this occupying group to do so raises its stature among the student population, leaving aside the fact that a good number of the occupiers have little to no association with the university in the first place.

Many years ago, I was one of the two elected undergraduate students on U of T’s governing council. In that specific context, as the elected representative of all undergrad students, I had a right to express the students’ collective views at the council and in its committees. But if my view was ignored or overridden, as it often was, that did not give me or others licence to occupy a building, and, if I had, I would have expected to be expelled.

There has been a common misconception as of late that “free speech” permits lawlessness or provides charter rights. It does not. There are countless limits to free speech and, in any event, to the extent free speech rights permit students or others to express themselves, it does not permit them to occupy property or shout hate speech, as is coming regularly from this encampment.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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