BCLRB No. B74/2014

BRITISH COLUMBIA LABOUR RELATIONS BOARD

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

(the "Employer" or "BCPSEA")

-and-

BRITISH COLUMBIA TEACHERS' FEDERATION

(the "Union" or "BCTF")

PANEL:

Richard S. Longpre, Vice-Chair

APPEARANCES:

E.J. Harris, Q.C. and Karen Jewell, for the

Employer

Carmella Allevato, for the Union

CASE NO.:

67116

DATE OF DECISION:

April 17, 2014

Re: British Columbia Public School Employers'

Association April 17, 2014 Page 2

Interested Parties:

British Columbia Public School Employers' Association 400 - 1333 West Broadway Vancouver BC V6H 4C1 ATTENTION: Karen Jewell / Michael Marchbank

Harris & Company LLP
Barristers & Solicitors
Suite 1400, Bentall 5
550 Burrard Street
Vancouver BC
V6C 2B5

ATTENTION: E.J. Harris, Q.C.

(For the Employer)

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DECISION OF THE BOARD

This proceeding concerns a directive by the Ministry of Jobs, Tourism and Skills Training and Minister Responsible for Labour, dated April 10, 2014, pursuant to Section 72 of the Labour Relations Code (the "Code") to designate services for students and eligible children under the School Act (i.e. the K-12 portion of the education sector). The directive relates to a dispute between the Employer and the Union. Pursuant to Section 72 of the Code, the Board is required to designate those facilities, productions and services that the Board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia or to prevent immediate and serious disruption to the provision of educational programs.

The Board convened a pre-hearing conference at the Board on April 15, 2014 at which the Union and the Employer agreed to submit their difference on essential service designations to mediation.

The parties subsequently reached agreement. This agreement is without prejudice to any position either party may take in any future labour dispute with regard to essential services.

The Board is satisfied that the terms of the agreement are not contrary to the Code and the parties have requested the Board to issue the following Order pursuant to Section 72 of the Code:

- 1. If the Union implements strike action that does not involve full withdrawal from all duties the following will apply:
 - With respect to any before/after school, recess or noon hour supervision normally provided by teachers, before/after school supervision related only to bus drop off and pick up, and recess and noon hour supervision will continue to be provided by teachers subject to the Employer utilizing management and excluded staff to the best extent possible to replace teachers for these activities. The utilization of management and excluded personnel will be discussed locally. If the matter cannot be resolved at the local level, either party may refer the matter to the Board for mediation/adjudication. The principles set out in BCLRB No. B417/2001, B431/2001 and B194/2011 shall apply to this decision.
- 2. If the Union intends to escalate strike action comprising of one (1) day per week where teachers intend to withdraw from all duties, the Union shall provide BCPSEA not less than two (2) working days' notice of the names of the School Districts and/or schools or worksites affected. Notice to BCPSEA will be deemed to be notice to all affected employers.

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- 3. If the Union intends to escalate strike action comprising an intention to withdraw from all duties beyond that described in #2 above, the Union shall give BCPSEA not less than three (3) working days' notice. Notice to BCPSEA will be deemed to be notice to all affected employers.
- 4. Teachers will be available in the event of any emergency or disaster situation. In the event of a dispute between BCPSEA and BCTF as to whether an emergency or disaster situation exists, the teachers will perform the work in question. This principle is akin to the "work now grieve later" principle. If a School District considers a situation an emergency, teachers will respond. If there is a dispute as to whether an emergency actually existed, the dispute will be addressed later.
- The provisions of Section 73(2) of the Code apply.
- 6. If there is a dispute arising from this decision, the dispute shall be immediately referred to the Board. The Board will conduct a hearing, by conference call if necessary, and issue a decision within forty-eight (48) hours of referral to the Board.
- 7. This decision reflects the current determination of the Board and is without prejudice to any applications to vary this decision. The decision may be varied by agreement of the parties or revised by successful application to the Board by BCPSEA or the BCTF.

LABOUR RELATIONS BOARD

RICHARD S. LONGPRE

VICE-CHAIR