

Essential Services

UPDATE



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By E-mail: 03 Pages

The BCTF has announced it will be conducting a strike vote on June 24 and June 27-28, 2011. Many school districts have inquired about the potential for strike activity and the need for essential service designations in the event that the union obtains a legal strike mandate from its members.

This update provides information on the requirements for legal strike activity and the essential services process. For ease of reference, we have put this bulletin in the form of a Frequently Asked Questions.

Q: When can BCTF members legally go on strike?

A: The BCTF cannot strike until certain legal preconditions have been met. These preconditions are:

- The collective agreement term must be at an end.
- The parties must have bargained collectively and failed to conclude a collective agreement.
- The union must have held a strike vote with a majority of votes cast in favour of a strike.
- Strike action must be taken within three months on which the strike vote was taken.
- Strike notice of 72 hours must have been given to both the Labour Relations Board (LRB) and the employer.
- If a mediation officer has been appointed by the LRB or the Minister of Labour, that appointment must have come to an end and 48 hours must have passed
- The essential services process also affects the initiation of strike activity in the education sector. The union may not begin any strike action until the essential services designation process is completed.

Q: What types of strike activity may occur when the union is in a position to legally strike?

A: The definition of strike in the *Labour Relations Code* (the "Code") is very broad. Generally speaking, conduct will be a strike if it involves concerted action by employees which is intended to or does limit production. Possible types of strike activity may include a full scale strike with withdrawal of all services and picket lines or limited strike activity such as work to rule with a refusal to perform certain duties, slow downs, escalating strikes or rotating strikes.

BCTF has informed BCPSEA that they intend to conduct their strike in “phases” as they have done in the past with the first phase involving a refusal by their members to perform certain duties.

Q: Isn't education an essential service? Can the union still strike if it is an essential service?

A: The provision of education programs in British Columbia is an essential service. A union or an employer in an essential service industry is entitled to engage in strike or lockout activity; however, the union and employer are required to maintain certain essential services to the public during that time.

Over the past four decades Canadian legislators have extended the right to full collective bargaining, including the right to strike even in “essential services”, such as public safety (police, fire, etc.), health care operations and education. The need to retain some measure of public control over strikes in essential services has led to the introduction of special provisions in labour statutes. The essential services provisions in the BC labour legislation reflect what is known as a “controlled” strike model. A key element of this model is that it is intended to protect the public by ensuring the provision of essential services related to health, safety, welfare and the provision of education programs while also ensuring that, within those parameters, economic pressure on both parties is maximized.

Under the *Code*, essential services are services which the LRB decides are necessary or essential to prevent (i) immediate and serious danger to the health, safety or welfare of the residents of BC or (ii) immediate and serious disruption to the provision of education programs to students and eligible children under the School Act. These services must be continued even when a union is on strike.

Q: How is an essential services order obtained?

A: Under the *Code*, either party to a dispute may apply to the LRB to investigate or the LRB may investigate on its own motion whether a dispute poses a threat to the health, safety or welfare of the residents of BC or a threat to the provision of education programs to students and eligible children under the School Act. The LRB then reports to the Minister of Labour. The Minister in turn directs the Board to designate the facilities, productions and services it considers necessary or essential to prevent (i) immediate and serious danger to the health, safety or welfare of the residents of BC and/or (ii) immediate and serious disruption to the provision of educational programs.

Q: Has the Minister of Labour ordered the Board to designate essential services for the education sector?

A: Yes. The LRB has been ordered to designate the facilities, productions and services it considers necessary or essential to prevent (i) immediate and serious danger to the health, safety or welfare of the residents of BC and (ii) disruption to the provision of educational programs.

Q: Do the essential services designations that the LRB made in previous disputes apply to the current one?

A: The LRB is required to issue new essential services designations for the 2011 dispute. However, the LRB is extremely reluctant to depart from previous orders or agreements on designations absent evidence of changed circumstances that justify new or changed designations. BCPSEA is currently reviewing the previous orders and agreements to assess whether they continue to adequately protect the health, safety and welfare of students and the provision of educational programs.

Q: My local teacher's association is already distributing list of things that they say they will not be doing. Are they permitted to decide what they will and won't be doing?

A: No, it is up to the LRB to determine what services or activities will or will not continue during a strike.

Q: When and how will those essential services designations occur?

A: The LRB requires parties to attempt to reach mediated solutions prior to resorting to any adjudication given that the parties have greater knowledge about what is essential than the LRB. The first day of mediation has been scheduled to occur on July 8, 2011 and more dates may be scheduled if necessary. If full agreement is not reached in mediation, the Board will adjudicate the issues that remain in dispute and will then issue the Essential Services Designation Order(s).

Q: Can changes be made to Essential Services Designation Order(s) once the LRB issues them?

A: Yes, the LRB retains jurisdiction to make clarifications or changes to the Essential Services Designation Order(s) during the course of the dispute, either at the request of the parties or if the Board determines that changes are necessary. What constitutes an immediate and serious danger to the health, safety or welfare of residents or an immediate and serious disruption to the provision of educational programs may change over time, depending on how long the strike endures, the time of year, the nature of the educational program or many other factors.

Q: Will BCPSEA be providing more information on the essential services process and potential strike issues?

A: Yes. We are currently updating our Labour Dispute and Essential Services Manual and will be organizing information sessions to be held in Vancouver, Victoria and Kelowna in August. Those information sessions will discuss the essential services process, how to implement any phase 1 designations and strike management issues. Additionally, we will be providing Essential Services Updates to school districts on a regular basis.

If you have any questions regarding essential services, please contact:

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