

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

MULTIPLE FAX TRANSMITTAL SHEET

Re: British Columbia Public School Employers' Association (on behalf of all Boards, as defined in the School Act) -and- British Columbia Teachers' Federation -and- Various Trade Unions
(Section 72(1) REPORT - Case No. 62037/11)
(Section 72(2) ORDER - Case No. 62039/11)

DATE: August 5, 2011

SENDER: LABOUR RELATIONS BOARD

OPERATOR SENDING: Susan Noble, Senior Executive Assistant to Michael Fleming, Associate Chair, Adjudication

TELEPHONE NO: (604) 660-1329

INTENDED RECEIVER:

FAX NUMBER:

All boards as defined in the School Act, in the province
c/o British Columbia Public School Employers' Association

604-730-0787

Roper Greyell LLP
ATTENTION: Delayne M. Sartison

604-806-0933

British Columbia Public School Employers' Association
ATTENTION: Hugh Finlayson

604-730-0787

British Columbia Teachers' Federation
Legal Department

604-871-2288

British Columbia Teachers' Federation
ATTENTION: Carmela Allevalo

604-871-2288

CUPE British Columbia Regional Office
ATTENTION: Linda M. Dennis

604-291-1194

Bargaining Council of Vancouver School Board Construction and Maintenance Trade Unions

ATTENTION: Jim Paquette, Chairman

604-431-1864

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Teamsters Local Union No. 31
Head Office 604-540-6073

Communications, Energy and Paperworkers Union
of Canada, Local 470 604-685-5078

Professional Employees' Association
ATTENTION: Scott McCannell 250-385-6629

United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service Workers International
Union, Local 1-1937 604-874-8137

B.C. Government and Service Employees' Union
(Advocacy Section) 604-291-6030

British Columbia Provincial Council of Carpenters
on behalf of its Constituent Locals
c/o BC Regional Council of Carpenters 250-383-1603

West Vancouver Municipal Employees' Association,
Local No. 395 604-926-7059

International Union of Operating Engineers, Local No. 963
ATTENTION: Tim Chester 604-876-5687

International Union of Operating Engineers,
Local No. 959 250-392-7184

Construction, Maintenance and Allied Workers
Bargaining Council 604-437-3128

NUMBER OF PAGES: 10 (including this page)

SPECIAL INSTRUCTIONS:

Decision BCLRB No. B143/2011 dated August 5, 2011 enclosed.

Hard copies will be sent to all interested parties.

****NOTE: FACSIMILE OPERATOR, PLEASE CONTACT THE ABOVE INTENDED RECEIVER AS SOON AS POSSIBLE. THANK-YOU**

BRITISH COLUMBIA
LABOUR RELATIONS BOARD

August 5, 2011

To Interested Parties

Dear Sirs/Mesdames:

Re: British Columbia Public School Employers' Association (on behalf of
all Boards, as defined in the School Act) -and- British Columbia
Teachers' Federation -and- Various Trade Unions
(Section 72(1) REPORT - Case No. 62037/11)
(Section 72(2) ORDER - Case No. 62039/11)

Enclosed is a copy of the Board's decision (BCLRB No. B143/2011) rendered in connection
with the above-noted matter.

Yours truly,

LABOUR RELATIONS BOARD



Susan Noble, Senior Executive Assistant to
Michael Fleming, Associate Chair, Adjudication

Enclosure(s)

Interested Parties:

All boards as defined in the School Act, in the
province
c/o British Columbia Public School
Employers' Association
400 - 1333 West Broadway
Vancouver BC
V6H 4C1

Roper Greyell LLP
800 Park Place - 666 Burrard Street
Vancouver BC
V6C 3P3
ATTENTION: Delayne M. Sartison

British Columbia Public School Employers'
Association
400 - 1333 West Broadway
Vancouver BC
V6H 4C1
ATTENTION: Hugh Finlayson

Re: Case No. 62039
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British Columbia Teachers' Federation
Legal Department
100 - 550 West 6th Avenue
Vancouver BC
V5Z 4P2

British Columbia Teachers' Federation
100 - 550 West 6th Avenue
Vancouver BC
V5Z 4P2
ATTENTION: Carmela Allevato

CUPE British Columbia Regional Office
Suite 500, 4940 Canada Way
Burnaby BC
V5G 4T3
ATTENTION: Linda M. Dennis

Bargaining Council of Vancouver School Board
Construction and Maintenance Trade Unions
6188 Kingsway
Burnaby BC
V5J 1H5
ATTENTION: Jim Paquette, Chairman

Teamsters Local Union No. 31
Head Office
#1 Grosvenor Square
Delta BC
V3M 5S1

Communications, Energy and Paperworkers Union
of Canada, Local 470
540 - 1199 West Pender Street
Vancouver BC
V6E 2R1

Professional Employees' Association
505 - 1207 Douglas Street
Victoria BC
V8W 2E7
ATTENTION: Scott McCannell

Re: Case No. 62039
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United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service
Workers International Union, Local 1-1937
#301 - 8988 Fraserton Court
Burnaby BC
V5J 5H8

B.C. Government and Service Employees' Union
(Advocacy Section)
4911 Canada Way
Burnaby BC
V5G 3W3

British Columbia Provincial Council of Carpenters on
behalf of its Constituent Locals
c/o BC Regional Council of Carpenters
210 - 2750 Quadra Street
Victoria BC
V8T 4E8

West Vancouver Municipal Employees' Association,
Local No. 395
118 - 2419 Bellevue Avenue
West Vancouver BC
V7V 4T4

International Union of Operating Engineers, Local
No. 963
707 Durward Avenue
Vancouver BC
V5V 2Y9
ATTENTION: Tim Chester

International Union of Operating Engineers, Local
No. 959
Box 4766
Williams Lake BC
V2G 2V8

Construction, Maintenance and Allied Workers
Bargaining Council
304 - 2806 Kingsway
Vancouver BC
V5R 5T5

BCLRB No. B143/2011

BRITISH COLUMBIA LABOUR RELATIONS BOARD**BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION**

(the "Employer")

-and-

BRITISH COLUMBIA TEACHERS' FEDERATION

(the "Union")

PANEL: Michael Fleming, Associate Chair,
Adjudication

APPEARANCES: Delayne M. Sartison, for BCPSEA
Carmela Allevato, for BCTF

CASE NO.: 62039

DATE OF DECISION: August 5, 2011

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 This decision involves an issue between the parties regarding the "transmission
of attendance records" as recorded in the Essential Services Order dated July 26, 2011
issued under Section 72 of the *Labour Relations Code* (the "Code") (the "Essential
Services Order").

II. BACKGROUND

2 The collective agreement between the parties expired on June 30, 2011 and the
parties have begun bargaining for a renewal agreement.

3 The parties, with the Board's assistance, agreed to all but one of the terms of the
Essential Services Order. As in the two previous rounds of bargaining in 2001 and
2005, the parties agreed that the Essential Services Order would stipulate activities that
BCTF members need not perform during Phase 1 of any job action. All other activities
not expressly listed must be continued in the normal fashion during Phase 1.

The Issue

4 The only remaining issue between the parties regarding the terms of the
Essential Services Order relates to the collection and transmission of student
attendance information.

5 While there is no dispute that teachers will continue to take attendance in the
normal fashion during Phase 1, the parties disagree whether teachers should also be
required to continue to transmit student attendance information to administration during
Phase 1.

6 The monitoring and transmission of student attendance information was
described by the Board in *British Columbia Public School Employers' Association*,
BCLRB No. B262/2005 ("B262/2005") in the following way:

Monitoring of attendance is performed in different ways within the
school system. In some cases attendance is taken by hand, in
other cases "bubble sheets" are utilized, and in some cases an
electronic student information system is utilized. In the first two
cases the documents are either delivered to the school office by a
student or teacher. In the latter case, the teacher pushes the send
button on the computer to transfer the information to the office or it
may be automatically electronically submitted. (para. 16)

III. POSITIONS OF THE PARTIES

7 BCTF submits that Section 72 of the Code contemplates that excluded personnel
are to be used to the best extent possible during a labour dispute. The balance of work
is then performed by teachers.

8 BCTF says that, presumptively, excluded staff should be responsible for the
transmission of student attendance information.

9 BCTF further submits that the issue of the transmission of student attendance
information should not result in a blanket order. Rather, the issue should be discussed
and resolved at the local level taking into account the following factors:

- the size of the school;
- the number of excluded staff;
- the age of the students - i.e., there are no safety issues with respect to adult students;
- the purpose of the monitoring attendance (i.e., "safe arrival");
- other duties that might prevent excluded staff from transmitting the attendance records.

10 BCTF acknowledges that in B262/2005, the Board dismissed essentially the
same position as that now advanced by BCTF. However, BCTF submits that in that
case the Board applied the approach taken in the health care industry. BCTF says that
approach is not appropriate in the context of a partial withdrawal where the parties, and
the Board, have agreed teachers may strike by not doing certain work. BCTF says that
its situation is very different from the health care situation where workers, not tasks, are
withdrawn.

11 BCTF submits that if teachers were not required to be responsible for the
transmission of attendance records to administration, BCPSEA could still later apply for
a variation in the Essential Services Order if BCPSEA thought one was required.

12 In the alternative, BCTF suggests if the transmission of the attendance
information is to be continued by teachers, it be with a proviso that excluded and
management personnel must first be utilized to the best extent possible (as in the case
with supervisors' duties).

13 BCPSEA submits that the very same issue now raised by BCTF was litigated in
the last round of essential services Phase 1 adjudication. The Board specifically
rejected BCTF's position that transmitting student attendance information to the
administration be added to the list of activities teachers were not required to perform
during Phase 1 of any job action: *British Columbia Public School Employers'
Association*, BCLRB No. B255/2005; B262/2005.

14 BCPSEA says the parties agreed that monitoring attendance is a safety issue
and was to be maintained: B262/2005, para. 20.

15 BCPSEA submits that nothing has changed since that decision was issued to
justify a departure from the approach taken in B262/2005. BCPSEA says both the
manner of taking and transmitting attendance information must continue in the normal
fashion during any job action.

16 BCPSEA submits that the *All Boards, as defined in the School Act in the
Province*, BCLRB No. B431/2001 decision, relied upon by BCTF, has no application in
this case as it simply clarified certain principles applicable to the local supervision
agreements already contemplated in the Phase 1 Order regarding supervision.

17 BCPSEA says the Board's approach in the essential services designation
process is to err on the side of caution. Where that results in levels which are
demonstrably too high, the Board can amend them downwards.

IV. ANALYSIS AND DECISION

18 In *All Boards, as Defined in the School Act*, BCLRB No. B383/2001, the Board
concluded that it could determine if any components of services withdrawn by teachers
under Phase 1 fell within the ambit of Section 72(2) of the Code. If so, the Board could
designate essential services for teachers.

19 In BCLRB No. B409/2001, the Board recorded the list of activities the parties
agreed teachers did not have to perform during Phase 1.

20 In BCLRB No. B436/2001, the Board concluded BCTF agreed that teachers
would continue to monitor student attendance during Phase 1 as they normally did.

21 BCTF accepts that teachers will be required to take attendance but says that
excluded personnel should be responsible for its transmission.

22 There is no dispute that, as found in B262/2005, monitoring student attendance
information including its transmission, is a safety issue and is to be maintained. I am
satisfied it is captured by Section 72(2) of the Code.

23 In B262/2005, the Board considered this same issue and concluded the
transmission of student attendance information should not be added to the list of
activities which teachers are not required to do during Phase 1 of any job action.

24 In that decision, the Board concluded the principles enunciated in *Health Labour
Relations Association*, IRC No. C42/92 in the health care context, were equally
applicable in the escalating job action contemplated by the teachers: para. 18.

25 Accordingly, teachers were required to perform those duties during Phase 1 in
both the 2001 and 2005 rounds of bargaining,

26 BCTF does not assert that circumstances have changed since B262/2005 was
issued. Rather, BCTF urges me to come to a different conclusion on this issue on the
basis that the approach taken by the Board in B262/2005 is not appropriate to the
teachers' partial withdrawal of services.

27 The essential issue arising in this case is whether the approach to this issue
taken in B262/2005 should now be rejected.

28 While the approach and criteria suggested by BCTF has some merit, there
should be a compelling basis established for a different conclusion to be reached now;
i.e., to find that the conclusion in B262/2005 is no longer appropriate. That is
particularly so in the circumstances of this case which involve the designation of
essential service levels, where predictability and certainty are important considerations.

29 In all the circumstances, I am not persuaded there is an appropriate or
compelling basis for me to reject or depart from the Board's approach to this issue in
B262/2005. In any event, while arguably there are other approaches that may be
available, in my view, the monitoring and transmission of student attendance is a safety
issue. I am not persuaded it would be appropriate to divide the duties relating to the
monitoring of student attendance currently performed by teachers into two components,
one which would continue to be done by teachers and the other by excluded staff, as is
being suggested by BCTF during Phase 1. I find it would not make practical labour
relations sense as the safety issue comprises both monitoring and the transmission of
the attendance information. I find that while there are differences in the health care
sector, the rationale is applicable in the context of this dispute.

30 Accordingly, I find the transmission of attendance information should not be
added to the list of duties teachers are not required to perform set out in the Essential
Services Order. Accordingly, teachers will be required to take attendance in the normal
manner and the records are to be transmitted or delivered to the school office by
teachers in the normal or usual manner during any job action under Phase 1.

31 Either party is free to apply to the Board if it reasonably believes excluded and
management staff are not being utilized to the best extent possible during any Phase 1
job action.

LABOUR RELATIONS BOARD



MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION