

BCLRB No. B193/2011

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:** Michael Fleming, Associate Chair,
Adjudication**APPEARANCES:** Delayne M. Sartison, for BCPSEA
Carmela Allevato, for BCTF**CASE NO.:** 62039**DATE OF DECISION:** November 1, 2011

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 BCTF applies pursuant to a Board essential services order set out in *British*
2 *Columbia Public School Employers' Association*, BCLRB No. B132/2011 (the "Essential
3 Services Order") seeking a declaration that the Employer is in breach of the Essential
4 Services Order by virtue of management and excluded staff refusing to perform "struck
5 work" related to field trips.

6 The work in issue involves administrative duties related to field trips such as
7 completing paperwork, volunteer driver information and fee collection which teachers
8 previously performed but are no longer doing as part of Phase 1 of the BCTF job action.

9 BCTF also seeks a cease and desist order as well as an order directing
10 management and excluded staff to perform the struck work in order that field trips can
11 occur.

12 The parties' dispute revolves around paragraph 13 of the Essential Services
13 Order which directs activities that are to continue during Phase 1. More specifically,
14 paragraph 13(h) reads as follows:

15 13(h) Activities or field trips that are a required component of a
16 curriculum for which marks are provided or credit is given
17 will continue. Activities or field trips that are optional in
18 nature (i.e. not a required component of a curriculum) will
19 only occur during the instructional day, but will include any
20 necessary lunchbreak supervision of students.) (BCLRB
21 No. B132/2011)

22 The parties have requested that I provide an expeditious answer and,
23 accordingly, the decision and reasons that follows are brief.

II. BACKGROUND

24 The collective agreement between the parties expired on June 30, 2011 and the
25 parties have been engaged in efforts to bargain a renewal agreement since that time.

26 The parties, with the Board's assistance, agreed to all but one of the terms of the
27 Essential Services Order. The remaining term in issue was resolved by the Board in
28 BCLRB No. B143/2011.

29 As was the case in the 2001 and 2005 rounds of bargaining, the parties agreed
30 that the Essential Services Order would stipulate activities that BCTF members need
31 not perform during Phase 1 of their job action. All other activities not expressly listed
32 are to be continued in the normal fashion during Phase 1.

9 As part of their professional duties, teachers develop curriculum using instructional strategies including activities such as field trips.

10 Many school districts have extensive policies regarding field trips. Those policies cover a range of administrative duties required for a field trip to occur, which are normally undertaken by a teacher. Those duties include planning forms to be completed by teachers with specific information regarding the field trip.

11 The policies also deal with the requirements for the approval or disapproval of field trips by an Administrative Officer or school district and the considerations to be used in reaching that decision. Those considerations include the merits of the trip, the impact on the school, financial issues and risk management.

12 Those policies also set out requirements for parental consent for children to participate in the field trip as well as setting out requirements for transportation including the co-ordination of volunteer drivers and the collection of fees (where applicable), etc.

13 III. POSITIONS OF THE PARTIES

13 BCTF submits that paragraph 13(h) makes field trips that are a required component of a curriculum, as well as those that are optional, essential. BCTF argues that, given the essential nature of field trips, all struck work relating to them must continue, and management and excluded staff must perform that struck work. More specifically the administrative duties necessary for a field trip to occur, must be done by managers and excluded staff during Phase 1 of the BCTF job action.

14 BCTF says that under paragraph 13(h) of the Essential Services Order, field trips are not divided into those that are mandatory and those that are optional. Rather, the Board's use of the word "optional" in the context of field trips in previous Board decisions was with respect to whether a teacher was required to choose a particular teaching strategy. Under paragraph 13(h), a teacher may reschedule a field trip to occur during the instructional day. However, the field trip remains essential. BCTF argues that the Board's use of the word "optional" did not relate to whether it was optional for management to comply with the direction in the Essential Services Order that field trips continue.

15 BCTF submits that teachers have the professional autonomy to select an instructional strategy. BCTF says field trips that are normally scheduled by teachers as an instructional strategy to meet prescribed learning outcomes are being cancelled because management is refusing to do struck work associated with them.

16 BCTF says field trips that were approved in the past are now being refused under Phase 1. Field trips scheduled during the instructional day are routinely being cancelled.

17 BCTF asserts that notwithstanding the job action in Phase 1, managers and excluded staff have significant free time and, in the BCTF's view, are not currently

working the required 60 hours under the Essential Services Order. BCTF says that field trips are being cancelled, not as a result of a lack of time by management and excluded staff, but rather as a result of the Employer's response to the BCTF job action.

18 BCPSEA submits that school districts have extensive policies governing the planning and expectations for field trips. All field trips require the approval of the Administrative Officer or school district, even if they are connected to curriculum.

19 BCPSEA says field trips range from those that are "curricular" in that they complement the curriculum and serve to assist students in achieving prescribed learning outcomes, to those that are entirely extra curricular and not related to curriculum (such as end of term parties or team trips).

20 BCPSEA says that prior to Phase 1, field trips were regularly not approved, even those connected to curriculum.

21 BCPSEA submits that during Phase 1, many field trips operate as usual, while in other cases teachers are refusing to perform the related administrative duties necessary for them to occur. BCPSEA says that in some schools Administrative Officers have taken on most of those duties while in others they have declined to do so due to scarce resources.

22 BCPSEA says field trips that are required as part of a curriculum are rare and only in those rare cases would a school district require a teacher to offer the field trip.

23 BCPSEA argues that BCTF is seeking to insulate teachers from any negative impact of the BCTF job action. BCPSEA says that if the Essential Services Order is found to require employers to approve and support previously optional teaching methods, such as field trips, which were regularly not approved prior to Phase 1, regardless of the impact on school district resources, BCTF members would be placed in a better position than if there were no job action. BCPSEA says that is clearly not the intent of paragraph 13(h) of the Essential Services Order.

24 BCPSEA submits that paragraph 13(h) focuses on which duties teachers must continue to perform. The focus is not on which services managers and excluded staff must perform. The Essential Services Order does not order Administrative Officers to perform all services teachers may withdraw from with respect to field trips. Rather, paragraph 13(h) requires a continuation of certain duties during Phase 1 including "field trips that are a required component of a curriculum for which marks are provided or credit given".

25 BCPSEA says the Board did not purport to remove the school districts' authority to decide which optional activities may be accommodated safely and effectively in the context of the job action by BCTF members.

26 BCPSEA says that instances where field trips have been cancelled involved circumstances where an Administrative Officer had concerns about the allocation of

resources in a school, particularly where the Administrative Officers are responsible for before school, noon hour and after school supervision.

27 BCPSEA submits that the BCTF position in essence asserts that field trip duties are essential, but only to the extent that managers and excluded staff perform them.

28 Finally, in the alternative, BCPSEA says if the Board concludes that all field trips are mandatory, the Essential Services Order should be varied to provide that teachers will continue to provide all duties in support of them in the normal manner.

IV. ANALYSIS AND DECISION

29 Section 72 of the Code deals with establishing essential services levels in the context of an essential services dispute. Section 72 of the Code creates a balance in which parties can exercise their right to strike/lockout to achieve their collective bargaining objectives but in a controlled manner in which the public interest is protected; that is, by a "controlled strike".

30 In an essential services labour dispute the Board designates essential services and the manner in which the services are to be provided with a view to allowing as much economic pressure as possible to be exerted on both sides (in order to achieve a collective agreement as quickly as possible) while ensuring the health, safety and welfare of the public (in this case the students) is protected through the provision of essential services. In addition, in the context of education, the immediate and serious disruption of educational programs is prevented by the provision of essential services: for a more fulsome discussion, see BCLRB No. B161/2011.

31 Normally, essential services orders provided by the Board direct work that bargaining unit employees will continue to perform during the labour dispute. In education, a somewhat different approach has been adopted. The Essential Services Order lists the activities that BCTF members must continue and those that BCTF members need not perform during Phase 1 of the BCTF job action. All work not expressly referenced in paragraph 6 of the Essential Services Order must be continued to be performed by teachers in the normal manner.

32 Another component of the general framework of essential services in education is that managers and excluded staff are to perform their own work which is essential as well as bargaining unit work. In that regard, managers and excluded staff are to be utilized to the best extent possible: BCLRB No. B431/2001, para. 10.

33 Within that context, the issue arising in this case involves the interpretation and application of the Essential Services Order.

34 Paragraph 13 lists, in part, existing assignments which are to continue as normal during Phase 1. The focus of paragraph 13 is on duties or assignments which teachers must continue to perform during Phase 1.

35 Paragraph 13(h) deals with field trips. In that regard, in BCLRB No. B476/2001, the Board found that teachers have the option to include field trips in the development of curriculum. The Board went on to say:

But to say that in a strike situation the originally planned activity must go ahead, even though it was optional for the teacher to plan the activity in the first place and even though it was optional for the student to attend, stretches the purpose of essential service legislation and the concept of a "controlled strike" beyond its limits. (para. 23)

36 However, the Board also went on to distinguish specific activities (including field trips) that are a requirement to complete a course and if a mark for them is not received the completion of the course may be jeopardized.

37 Paragraph 13(h) of the Essential Services Order contemplates that teachers are to continue field trips that are a required component of a curriculum for which marks or credit is given.

38 It also contemplates that teachers may reschedule other types of field trips to occur during the instructional day. Teachers would participate in those field trips but have declined to continue to provide the related administrative duties, which BCTF says must now be performed by managers and excluded staff.

39 I am satisfied that Administrative Officers and school districts had the authority to approve field trips and exercised that authority, including to deny field trips, prior to Phase 1. I accept those decisions were based on established considerations reflected in the various school district and school policies relating to field trips described above.

40 In my view, paragraph 13(h) does not remove that authority by making it a requirement that all field trips must now be approved by the Employer regardless of those or other legitimate considerations.

41 Having reached that conclusion, as noted above, a key component of the essential services regime under Section 72 of the Code is that managers and excluded staff are to be used to the best extent possible. That includes performing the essential features of their jobs as well as the work which teachers have withdrawn from during Phase 1, to the best extent possible.

42 It would seem to me to be reasonable to expect in that regard, that the approval of field trips by Administrative Officers and school districts should continue to be made on the basis of the legitimate considerations in the various school district and school policies as well as considerations emanating from the context of ensuring managers and excluded staff are being used to the best extent possible as that is intended in the essential services, controlled strike context.

43 On the basis of the information provided, I am satisfied the Employer has not breached the Essential Services Order by way of managers and excluded staff declining

to provide the administrative duties related to field trips which teachers are not performing under Phase 1 of the BCTF job action.

44 Having reached that conclusion, it is not necessary for me to decide the BCPSEA's alternative position that if field trips are mandatory, teachers should be required to perform all related duties in the normal manner.

45 The difficult nature of the parties' collective bargaining relationship is well known. That complicates the challenges associated with the controlled strike labour relations model in education.

46 While the parties have the right to attempt to achieve their respective collective bargaining objectives in this obviously difficult essential services labour dispute, I believe both should, and will, take all reasonable steps to ensure student educational outcomes are not unduly prejudiced by the labour dispute and that the students' educational interests remain a focus for both sides.

47 As noted by the BC Court of Appeal in *Beacon Hill Lodges (1984) Limited v. Labour Relations Board of British Columbia* (1987), 12 B.C.L.R. (2d) 273, the Board has the jurisdiction to determine what orders, terms or conditions are necessary to ensure the objectives of Section 72 are met.

48 In that regard, as noted in the Board's order of October 5, 2011:

...the Board is satisfied that, in the context and circumstances of this Essential Services labour dispute that, going forward, the parties' conduct in giving effect to the order set out in BCLRB No. B132/2011 and this order, will be a relevant consideration in determining the process, and any orders, directions or decisions which may be necessary or appropriate; (p.2)

V. CONCLUSION

49 For the reasons provided above, the application by BCTF is dismissed.

LABOUR RELATIONS BOARD



MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION