

BCLRB No. B132/2011

BRITISH COLUMBIA LABOUR RELATIONS BOARD**BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION****(the "BCPSEA")****-and-****BRITISH COLUMBIA TEACHERS' FEDERATION****(the "BCTF")****PANEL: Michael Fleming, Associate Chair,
Adjudication****APPEARANCES: Delayne M. Sartison, for BCPSEA
Carmela Allevato, for BCTF****CASE NO.: 62039****DATE OF DECISION: July 26, 2011**

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 This decision involves the designation of essential services for students and eligible children under the *School Act* (i.e. the K to 12 portion of the education sector).

2 This decision addresses what BCTF has characterized as "Phase 1" of its job action plan.

3 The Parties have reached the following agreement regarding the process for essential service designations respecting any dispute arising out of the current round of collective bargaining.

1. The Board shall designate essential services for the BCTF bargaining unit to the extent necessary for Phase 1 pursuant to the process set out in sections 72(3), (4) and (5).
2. Every effort shall be made to complete #1 by no later than August 1, 2011 and the Parties will resolve disputes through written submissions or other expedited processes to the extent possible.
3. Should the BCTF contemplate initiating any strike activity beyond what is contemplated in Phase 1:
 - (a) the BCTF shall notify the Board;
 - (b) any strike activity beyond what is contemplated in Phase 1 shall not take place until the essential service designation process in (c) below is complete;
 - (c) the Board shall designate essential services for the BCTF bargaining unit and all support Unions pursuant to the process set out in Sections 72(3), (4) and (5); and
 - (d) Every effort will be made to complete these designations expeditiously.

II. DECISION

4 The Parties have reached agreement on the terms of this decision but for the terms with respect to attendance addressed below. The Parties' agreements are without prejudice to the position to be taken by either party at Phase 2 adjudication.

5 Following the approach taken in previous BCPSEA/BCTF disputes in 2001 and 2005, this decision sets out both a list of activities that BCTF members must continue

during Phase 1 job action and those that BCTF members need not perform during Phase 1 job action.

6 The Activities not referenced in this paragraph must be continued during Phase 1 job action, in the normal fashion. During Phase 1 job action BCTF members need not:

- Participate in meetings or interviews with parents/guardians and/or district teaching staff outside of instructional time, or during instructional time unless coverage is provided.
- Participate in meet the teacher activities outside of instructional time, or during instructional time unless coverage is provided.
- Prepare or distribute report cards.
- Provide any student assessment data to Administrative Officers or the school office, except Grade 12 marks required for graduation, post-secondary applications and scholarship purposes.
- Complete and submit student referral forms outside of instructional time.
- Attend staff meetings.
- Attend staff committee meetings.
- Attend any meeting called by School District management.
- Participate in any standing or ad hoc District committees.
- Attend school based meetings called by an Administrative Officer, unless the meetings are related to an emergency.
- Provide Administrative Officers with any routine printed, written or electronic communications.
- Accept any printed, written or electronic communication from an Administrative Officer, unless it relates to an emergency.
- Participate in the preparation or organization of assemblies outside of instructional time, or during instruction time unless coverage is provided.
- Participate in any accreditation activity.
- Participate in any School District or Ministry in-service.
- Participate in any professional development that is not teacher directed.
- Participate in any school photo organization.
- Provide coverage for a teacher who is absent, except for a Teacher On Call hired specifically for that purpose (consistent with principles in B421/2001 and B444/2001).
- Administer or supervise FSA or any District or Ministry test (consistent with principle in B418/2001).
- Collect money from students or participate in fund raising.

- Order supplies, textbooks, etc., unless needed immediately to effectively maintain ongoing instruction.
- Assist the Administrative Officer in administrative tasks like building timetables or computer organization.
- Do inventory.
- Organize textbooks.
- Answer school office phones.
- Supervise detentions before, during or after instructional time.
- Prepare overviews or previews for the Administrative Officer, except when associated with a teacher evaluation process.
- Distribute School District or administrative letters, newsletters, memos or announcements to students, unless it is health and safety related.
- Pack up classrooms to facilitate painting, renovations or maintenance.
- Perform department head/position of responsibility duties except during allocated time in the timetable.

7 BCTF's position is that the transmission of attendance records to the school office shall be the responsibility of the Employer. BCPSEA's position is that teachers should transmit attendance records in the normal manner. This issue shall be adjudicated in accordance with the process set out in #2 in paragraph 3 of this order. The Union shall file its written submission no later than July 18, 2011. The Employer shall file its reply submission no later than July 25, 2011. The Union shall provide its final reply no later than Tuesday, July 27, 2011. In the unlikely event that material fact(s) are in dispute the Board will convene an oral hearing to conclude the proceedings as expeditiously as possible.

8 BCTF members shall participate in the normal manner in the class/program composition and formation at the beginning of the school year until September 10, 2011 for elementary students and until September 17, 2011 for secondary students. It is understood that this may include communications and meetings of teachers with the principal for the sole purpose of organizing the class/program composition and formation.

9 BCTF members shall participate in the normal manner in activities concerning statutory class size procedures.

10 BCTF members will continue to hold IEP meetings in the usual manner; however administrators will only attend IEP meetings if they are providing direct service to the student under discussion at the IEP meeting. BCTF members will continue to communicate with administrators regarding students with special needs as necessary and in the best interests of students.

11 With respect to any before/after school, recess or noon hour supervision normally provided by the 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 and B431/2001 shall apply to this decision.

12 Where there are no Administrative Officers at a school, Teachers In Charge ("TIC") must continue their normal TIC duties. The principles set out in BCLRB No. B421/2001 and B451/2001 shall apply to this decision.

13 The services/activities performed by teachers outside of the regularly scheduled day which will continue to be performed are:

- (a) lesson preparation;
- (b) planning;
- (c) assessment, evaluation and marking; and
- (d) teacher discipline/evaluation/investigation meeting.

The following existing assignments will continue as normal unless limited above:

- (a) Existing scheduled courses, including Semester 2, which are part of a teachers' regular FTE instruction assignment which are scheduled outside the regular timetable;
- (b) Regular scheduled instruction in storefront, alternative programs, learning centres, and adult education programs will continue to operate in their existing instructional hours. Any programs that either party believes are similar will be discussed locally to determine whether they should be included. Any additions must be approved by BCPSEA and BCTF. If there is no agreement, the matter may be referred to the Board for adjudication;
- (c) Non-enrolling teachers and associated professionals will continue with their existing assignments as and when they are currently performed;
- (d) All aspects of the TREK and EARTHQUEST Programs will continue as normal and as currently provided both within and outside the instructional day. Any programs that either party believes are similar will be discussed locally to determine whether they should be included. Any additions must be approved by BCPSEA and BCTF. If there is no agreement, the matter may be referred to the Board for adjudication;

- (e) Existing activities within an existing assignment for which an allowance or compensatory time is provided by the Employer will continue as normal;
- (f) Visits by work experience co-ordinators (teachers) to worksites will continue as normally and currently provided;
- (g) Career Preparation Programs, including the work experience component, which are part of a teacher's existing assignment, will continue as normal;
- (h) Activities or field trips that are a required component of a curriculum for which marks are provided or credit is given will continue. Activities or field trips that are optional in nature (i.e. not a required component of a curriculum) will only occur during the instructional day, but will include any necessary lunchbreak supervision of students.

14 BCTF agrees that the Employers may continue extracurricular activities, for which teachers are withdrawing voluntary services for this Phase of the job action, with volunteers or others to replace the striking teachers without any contravention of Section 68 of the Labour Relations Code.

15 As noted above, all other job duties will be performed by BCTF members as normal during Phase 1 job action. Except as modified by the above, current Collective Agreement provisions will continue to apply.

16 Teachers will be available in the event of any emergency or disaster situation. In the event of a dispute between the BCPSEA and BCTF as to whether an emergency or disaster situation exists, the teachers must 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 must respond. If there is a dispute as to whether an emergency actually existed, the dispute will be addressed later.

17 There will be no picketing during Phase 1 job action.

18 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.

19 This decision reflects the current determination of the Board. The decision may be varied by agreement of the parties or revised by successful application to the Board by the BCPSEA or the BCTF.

LABOUR RELATIONS BOARD



MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION