

Labour Relations Board Issues Decision Arising From 2005 Hearing — Likely to Inform Current Dispute

On September 2, 2011 the Labour Relations Board (LRB) issued a decision ([B161/2011](#)) on whether teachers may withdraw services from the classroom. This decision is further to a hearing before the LRB in the fall of 2005 between BCPSEA and the BCTF; a decision, however, was not issued before terms of a new collective agreement were imposed. This decision relates to the previous dispute and it is anticipated that it will provide guidance to the LRB with respect to the current labour dispute with the BCTF, should the BCTF strike action proceed beyond Phase 1 to a withdrawal of classroom services.

The issue argued by the parties before Adjudicator Mark Brown was the application of Section 72 of the *Labour Relations Code* in the context of the withdrawal of classroom services by teachers — specifically, the determination of “when does the teacher’s absence from the classroom result in a ‘serious and immediate disruption to the provision of educational programs’.”

In his decision, Adjudicator Brown concluded that teachers can withdraw from the classroom for “at least” two weeks without any services designated as essential. It is interesting to note his recommendation under point 5 on hours of work and compensation:

“...compensation should be based on the percentage of days worked compared to the norm. As it stands now, bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and the Employers are impacted, the bargaining unit members continue to receive full salary.”

We have excerpted Brown’s recommendations (from page 17 of his decision) for ease of reference below.

1. Given that the current dispute is at the beginning of the school year, and given that the parties experienced a two week withdrawal of services in October of 2005 without any evidence of “serious and immediate disruption to the provision of education programs,” I conclude that teachers can withdraw from the classroom for at least two weeks without any services designated as essential.
2. Before that can occur the Board needs to consider whether any services provided by the support staff unions fall within the scope of Section 72. Because students would not be in class, the likelihood of any essential service designation for the support staff unions would be minimal, possibly physical plant issues.

3. After the two week or longer period referenced in #1, I conclude that any further withdrawal of services may be impacted by grade and time of year, factors which the parties refused to contemplate in the case before me. A process needs to be developed to give the parties the opportunity to specifically address those issues.
4. While the process in #3 is being conducted, in order to continue some pressure on the parties to encourage a resolution to the collective bargaining dispute while at the same time erring on the side of caution while further arguments are fully considered, I would impose a further interim order establishing BCPSEA's position of one day withdrawal in five days of instruction (i.e., 20% weekly). I note that I do not accept that a weekly reduction of 20 percent meets the test under the Code as a long term order under Section 72. Such a reduction could see the dispute last a lengthy period of time as the pressure exerted is limited and does not meet the test under Section 72 of the Code. However, it does result in some pressure on an interim basis while the adjudication continues. The purpose of the controlled strike is to exert as much pressure on both sides without having a serious and immediate disruption on the provision of education programs.
5. Furthermore, I would amend the structure of the Board order to be consistent with essential service orders in other sectors. The order should set out the days of work for the bargaining unit members. The employer would continue to direct the workforce as per current collective agreement terms. In this way the order would establish what the bargaining unit members are doing, not what they are not doing (see, for example, *Health Labour Relations Association*, IRC No. C42/92 and numerous cases since then citing the same case). In addition, compensation should be based on the percentage of days worked compared to the norm. As it stands now, bargaining unit members are receiving full pay while not performing the full range of duties. This does not result in a balance of pressure in a controlled strike environment because while students and the public are impacted, and the Employers are impacted, the bargaining unit members continue to receive full salary.

This decision is not a formal decision with immediate application. It anticipates further issues to be adjudicated and is intended to provide guidance to the parties and to a future panel of the LRB.

Questions

If you have any questions regarding this decision or essential services generally, please contact:

Karen Jewell 604 730 4518
Renzo Del Negro 604 730 4511

karenj@bcpsea.bc.ca
renzod@bcpsea.bc.ca