



Essential Services Backgrounder

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I. Introduction to the Manual

The purpose of this manual is to provide CSSEA clients and CSSEA Advocates/Consultants with the education and resources needed to plan and negotiate essential service staffing levels. Essential services preparation aligns with the expiry of collective agreements, the negotiation of new collective agreements and the potential for job action like strikes or lockouts. In the Community Social Services (CSS) sector, job action is governed by Section 72 of the Labour Relations Code and it requires employers and unions to maintain essential service staffing levels.

This manual will enable employers to carry out their essential services planning responsibilities while avoiding pitfalls and disagreements with unions. It will ensure each stakeholder has their interests met in alignment with the legal rights and requirements of the Code.

II. Why Essential Services

The CSS sector is designated as an essential service by the BC Labour Relations Code because the services provided are considered necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.

The unions that make up the Community Social Services Bargaining Association (CSSBA) are entitled to engage in strikes and job action to put “pressure” on employers and the government in order to negotiate the best possible collective agreement terms, but they must do so within the confines of Section 72 of the Labour Relations Code.

In order to maximize the effectiveness of this bargaining pressure, unions must be able to put a stop to as many services as possible, while maintaining essential services. When these non-essential services are cancelled, clients are negatively impacted which, in turn, increases the need to return these services to operation (end the job action). This can come in the form of humanitarian empathy or media attention that motivates the negotiation of mutually acceptable employment contracts (Collective Agreements).

The unions’ desire to maximize their bargaining pressure must be balanced by the employers’ legal obligation to maintain those services that are deemed essential.

This may seem counter-intuitive to some because in doing so, the unions’ members are negatively affected by losing work and compensation. But that is the nature of a strike.

The unions withdraw their service to motivate employers and employees to resolve the dispute and agree upon a new collective agreement.

III. Global Orders

Global Orders are standard terms issued by the LRB. They apply to all employers in the community social services sector. They establish the ground rules in the event of a work stoppage. The general or “global issues” that are addressed in Global Orders are:

- 1) Determine which services are essential
- 2) Minimum staffing levels (agreed to at an agency level)
- 3) Deployment of management and excluded staff (agreed to at an agency level)
- 4) Use of volunteers (agreed to at an agency level)
- 5) Employee scheduling
- 6) Performance of normal duties
- 7) Union scheduling office (“strike headquarters”) requirements

By way of background, CSSEA’s Global Order History:

- 1) **1999 Global Order.** The Order was specific to CUPE certified agencies but all unions and employers were covered by this Order. It read: “The continued operation of group homes and programs or parts of programs” are deemed essential.
- 2) **2006 Draft Global Order.** It read: “The continued operation of group homes and programs or parts of programs” are deemed essential.
- 3) **2011 Global Order.** CSSEA successfully argued at the LRB that the Global Order should be expanded from “The continued operation of group homes and programs or parts of programs” to also include “Transition Houses, Crisis Lines and Child Care.”

It should be noted that the LRB will change a Global Order only if there are distinct or compelling reasons to do so. The last Global Order for the CSS sector was issued by the LRB in 2012. The Order defined essential services as group homes, transition houses, crisis lines, and child care. *See Appendix A.* Each agency with essential services has an Essential Services Designation Order which is specific to their agency and includes the Global Order and their agency specific information.

A review of the 2012 Global Order for the CSS sector uncovered that certain programs are not addressed in the Order, such as drop-in programs, shelter programs, food programs, guardianship programs, child welfare/protection programs, children and family programs, but were agreed to by the parties to be included as essential services in agency specific designation orders. The CSSBA appears to be open to treating these programs as essential again.

IV. Role/Authority of the Labour Relations Board

The BC Labour Relations Board (LRB) has the responsibility to oversee the Labour Relations Code, which includes Section 72 - Essential Services. The LRB has the legal authority to ensure employers and unions bound by Section 72 establish essential services levels for the affected services.

In BC, “Essential Services” are defined in Section 72 of the Labour Relations Code (the Code) as “those facilities, productions and services that the [Labour Relations Board (the LRB)] considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.” In the event of a work stoppage, there is no unrestricted right to disrupt these services.

The Code requires employers and unions to maintain certain services designated by the LRB as essential if union members take job action.

The formal process for securing Essential Services Designation Orders is described in Section 72 of the Code. CSSEA or CSSBA may apply to the LRB to investigate or the LRB may, on its own motion, investigate whether a “dispute” poses a threat to the health, safety or welfare of BC residents. Upon conclusion of the investigation, the Chair will then make a recommendation to the Minister of Labour. If satisfied that the dispute poses a threat, the Minister will direct the LRB to designate essential services. The parties are then tasked with identifying which community social services are essential, and at what level of services needs to be provided during a strike or lockout in order to protect the health, safety, and welfare of British Columbians.

Typically, the parties work proactively and prepare for essential services, rather than wait for the LRB to recommend or the Minister to direct the establishment of essential services. This proactive approach provides employers with more time to determine essential services levels than if the Board takes control over the process.

The designation of essential services for certain community social services allows for a “controlled strike” approach. Under this approach, the primary purpose of an essential services designation is to allow essential services to continue to be delivered during a strike or lockout while aiming to place maximum pressure on the negotiating parties to reach agreement (i.e., place as many bargaining unit staff out of work as possible while maximizing inconvenience to management).

Although essential services levels are often negotiated successfully at the local level between individual employers and the union, there are often some disagreements about which services should be essential or what portion of a service should be essential. When the parties cannot agree, the LRB may support a mediation process to resolve outstanding issues or adjudicate the disagreements and issue binding essential service levels. Typically, mediation will occur first and only the unresolved matters will move to adjudication.

V. No Strike/Lockout Before Essential Service Levels Designated

Essential Services levels must be established and documented in a global order from the LRB before the parties are legally entitled to commence a strike or lockout.

Because there are so many employers and services governed by Section 72 of the Code, the task of establishing essential services for the entire sector can be quite time consuming. The parties can commence essential services preparations well in advance of the time when a strike or lockout may be triggered. This can occur before the Collective Agreement expires or after, while the parties have commenced collective bargaining.

It is important to note that because a strike/lockout cannot occur until essential services are designated, both the unions and employers must work efficiently to complete the process in a timely fashion. If either party believes the other is delaying the process and preventing their ability to commence job action, the LRB can be called upon to direct the parties or set essential services levels, unilaterally. This is a risky prospect as it may result in the establishment of levels that are unsatisfactory to one or both of the parties.

Individual employers should understand they cannot avoid negotiating essential services by refusing to meet with the union or delaying the process unnecessarily. To do so places them at great risk of the LRB unilaterally setting their levels and possibly taking action against the employer.

VI. 72-Hour Strike Notice

Essential services plans must be completed and formalized by the LRB prior to the commencement of any job action. Once completed, the union can issue a 72-hour strike notice of intent to strike to CSSEA. At the expiry of the 72-hour notice, the union is entitled to commence job action.

Job action may take a number of forms from a full strike across the entire sector to informal job action where staff may only provide the basic functions of their jobs. Other options are that the unions may engage in rotating strikes where they strike some employers for a few days and then move the strike to other employers and so on.

VII. Scheduling Essential Workers During Job Action

Once job action commences, the responsibility to schedule staff transfers from the employer to the union. This can be stressful for employers because they know how important scheduling is, especially for those services deemed essential.

The union is legally responsible for ensuring essential staffing levels are met so they can be expected to carry out the role competently. If problems arise, there are mechanisms available to employers to secure proper staffing on a short-term basis. Finally, CSSEA can assist if the LRB needs to be engaged to resolve scheduling problems.

Some employers regularly rely on overtime to ensure proper staffing, but the union is not authorized to commit the employer to overtime pay. In these cases, it is recommended that during the essential services negotiation phase, employers discuss with the unions and document how this issue will be handled in the event of a strike.

There are also some less common instances when a service may not be deemed essential except for urgent or emergent circumstances that arise only occasionally. Examples of this may include counsellors whose day-to-day work may not meet the test for an essential service but whose clients, when left without service for a period of time, may develop urgent or emergent issues requiring counselling services to prevent setbacks in their therapy. Another example may include maintenance workers whose routine work may not be considered essential; however, sudden urgent issues or preventative maintenance left for an extended period may require attention from these workers.

In cases like these, the union and employer may not agree that these services are essential from an ongoing perspective requiring daily or weekly hours scheduled but they can agree that these urgent/emergent circumstances are essential and need to be addressed. In these cases, the union and employer may agree that these employees are not necessarily scheduled on a regular basis but must report to work when circumstances warrant. For example, the maintenance worker would be expected to respond to messages and report to work to remedy urgent situations or carry out preventive maintenance required to avoid loss or damage to equipment/buildings. Similarly, the counsellor may be required to monitor emails or voicemails to assess whether clients require urgent services. When those urgent services

are required, the counsellor will be scheduled immediately to carry out only the essential services and then return to non-working status.

Because the responsibility for scheduling essential services staffing transfers to the union during job action, the employer is required to provide them with the resources necessary to carry out this function. This topic will be discussed fully in a later section of this manual (Scheduling Offices/Strike Headquarters).

VIII. How to Determine What Services are Essential and Appropriate Levels of Staffing

When preparing for essential services negotiations with the unions, employers must first determine which of their services meet the test to be designated as essential. In many cases, this is not clear or obvious but there is a subjective test that can be applied and a great deal of precedent to rely upon.

In addition to determining whether a service is essential, employers must also determine if specific portions of a service are essential or if the service provided to certain clients is essential. There is precedent that although an entire service did not meet the test, some of the clients did, so essential staffing was set at a lower level to meet the needs of “essential clients”.

It is common that employers will apply the essential services test in a way that designates more services as essential while the union applies it in a way that designates fewer services. Because of this potential for disagreement, it is recommended that employers provide as much detail as possible about any given service in order to make its case for essential services designation.

The test provided in Section 72 of the Labour Relations Code to determine which services are essential is as follows:

“those facilities, productions and services that the Labour Relations Board (the LRB) considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia.”

Although this is good wording to direct the parties on how to establish which services are essential, a phrase like “...serious danger to health, safety or welfare...” has been debated extensively.

The LRB wording can help direct employers to assess what their essential services should be but relying on precedent will lead to clearer answers. There are a number of sources of precedent to rely upon and will be discussed in the next section, “Negotiating Essential Service Levels”.

Initial Process to Determine Essential Services

- 1) Determine what services can be eliminated or curtailed and the services that the clients will need during a work stoppage.
- 2) Identify clients that require specific staffing levels; for example, one to one care or 24-hour care.
- 3) Consider duties and responsibilities that must be performed and those that can be curtailed or discontinued, during a work stoppage.
- 4) Maintain legal and licensing requirements.
- 5) Understand the relationship between staffing levels in related programs; for example, the need to increase staffing levels in group home settings if community inclusion programs are curtailed/closed.
- 6) Compile a list of management and excluded personnel along with their qualifications, skills, and abilities and if applicable, their limitations. These personnel are required to perform essential services positions during a strike if qualified and capable.

- 7) Prepare work schedules and assign worksites for management and excluded personnel separately so you understand the impact on the essential services staffing levels of bargaining unit employees. Management's obligation is to work 150% of their regular schedule (to a maximum of 60 hours per week) but needs the flexibility to perform both assigned bargaining unit work and their own essential management duties during a work stoppage.

Employers are encouraged to seek advice from their respective CSSEA representative before engaging with the unions to negotiate essential service levels. Traditionally, CSSEA communicates with employers early on in the process to advise that setting and negotiating essential service levels is upcoming and provides employers with information about the process. In some cases, employer representatives have little or no experience with this and are likely to find the experience frustrating and potentially risky for their clients without good coaching. These employers are encouraged to seek advice from their CSSEA representative.

IX. Negotiating Essential Service Levels

Once management has completed the steps in Section VIII above and determined what it believes is the correct staffing to provide essential services, it is time to meet with the union representative(s) to negotiate agreement on those levels. Employers should be prepared for the unions to hold very different opinions on what services or levels of service meet the test for essential designation. Therefore, each employer must be ready to make its case with evidence and details about each service, the clients and the justification supporting the levels they have proposed.

The parties meet at the local level to negotiate essential services levels. The CSSBA has indicated that designated Essential Services representatives and local stewards will be participating in local negotiations. Steward participation in negotiations is not on employer paid time as it is not identified as one of the regular activities of a shop steward in the collective agreement.

If an agreement is reached at the local level, the agreement should be sent to CSSEA for review to ensure that it meets the LRB's requirements for an Order.

If at the local level the parties cannot reach an agreement, CSSEA will participate in discussions with the unions to determine if there are ways to resolve the outstanding issues. Employers must provide CSSEA with detailed information outlining the precise areas still in dispute. The information should include Forms A to D, notes from the local negotiations, and if applicable care plans.

Negotiations will be based on how each service is necessary to "prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia". Employers and unions will debate how their interpretation best aligns with this standard and rely on decisions about how it has been applied in past (precedent) to make their case.

Key Sources of Precedent are as Follows:

The first is to consider what essential services levels have been agreed to in previous rounds of negotiations. If a service has been deemed essential in the past, that is a strong indicator that it should be deemed essential now. Employers can access their levels from previous years to direct their negotiations with the union and those that are new or have not negotiated essential services in the past may rely on what other employers with similar services have negotiated in the past.

The employer may further argue that changes to the service since the last round of bargaining justify an increase to essential staffing levels over the levels that were negotiated in the last round. An example of this may be that new care standards require a higher level of staffing to meet the standards. Or, the employer may have experienced an increase in the acuity of clients since the last round of essential services negotiation requiring greater staffing levels this time. Finally, these changes or others may justify that services once deemed non-essential, now meet the test for essential designation. One should also be aware that the unions may use similar tactics to argue for reducing levels from previous rounds.

Employers must also consider whether specific pieces of a service or specific clients meet the test for essential service designation. Often, programs provide a variety of services of which some may be considered essential while others may not. It is appropriate to negotiate staffing levels for the essential pieces of a program and shut down the non-essential pieces during job action.

It is also appropriate to consider the acuity or level of needs of various clients within a service or program to determine essential services levels. Some clients may be minimally affected by the reduction of services during job action while other clients' needs may be much higher and meet the test set by the LRB. Employers must negotiate levels that will maintain services for the high-needs clients while cancelling/reducing service for those who are minimally affected. This disparity will require employers to hold difficult conversations with the clients who will not receive service during job action.

Other indicators of whether a service should be deemed essential are as follows:

- 1) Does the service operate on statutory holidays and weekends or on a 24-hour basis? If they do, it is a good indicator they are essential.
- 2) Does the employer take shut down periods (like at Christmas) where the service is not provided? If this occurs, the union will argue the service is not essential or at the very least, should be deemed non-essential for a period of time during a strike before it is re-opened.
- 3) How was the service affected when the COVID-19 restrictions were in place? If it was maintained, that is another good indicator it is essential. The reverse is also true.
- 4) If other employers have negotiated essential levels for similar programs, it can be used as leverage to negotiate similar levels at your company. Your CSSEA representative can assist with this.

Finally, it is appropriate that some services deemed non-essential in the short term may become essential on a periodic basis once a number of days or weeks have passed without the service. Negotiated levels should reflect the changing needs for services over time. For example, the service may be shut down for the first week of job action and then re-opened for some period of time before being shut down again.

Cautionary Note: Reliance on precedent is an important tool in negotiating all facets of essential services and is used by both the employer and the unions. Therefore, it is extremely important that employers negotiate levels that are generally in alignment with industry practice, subject to the exceptions that may be found from one employer to the next. It may not always be easy to know what other employers are negotiating so it is good practice to connect with your CSSEA representative before finalizing agreement.

There are times when the parties reach impasse and essential service levels cannot be agreed upon for one or more services. When this occurs, the employer should seek the advice of its CSSEA representative. If resolution cannot be achieved, the matter will be scheduled for mediation with the LRB. This will be discussed in a later section.

X. Deployment of Excluded Staff During a Strike

Once a strike commences, essential services staffing levels are triggered. When this occurs, non-union staff are required to be deployed to carry out as much bargaining unit (union) work as possible. A great deal of precedent has been established to govern how this occurs:

- 1) Generally, non-union staff are required to work 150% of their normal paid hours during job action to support the service. So, an employee who is normally paid 40 hours per week is required to work 60 hours per week and an employee who is paid 20 hours per week is required to work 30 hours. A simple formula to apply is as follows:

Normal paid hours/week x 1.5 = work hours during a strike

Non-union staff who work varied schedules and hours in any given week should be averaged over a period of time sufficient to accurately reflect their normal hours.

- 2) Non-union staff who meet the Employment Standards Act definition of Managers are not legally entitled to overtime premiums so, minimally, they must be paid straight time for the hours they work during a strike. Non-manager, non-union employees are entitled to overtime premiums beyond 40 hours per week as per the Employment Standards Act.
- 3) The hours worked by non-union staff during a strike are to be split between carrying out the essential parts of their normal job and carrying out bargaining unit work. There is no set formula governing the amount of time spent on each, but the unions often take the position that excluded staff work 40 hours per week on bargaining unit work and 20 hours on their own job (for a full-time employee). CSSEA takes the position that non-union staff should work approximately 50% of their hours on bargaining unit work and 50% on their own work on average.
- 4) There is some flexibility in how the bargaining unit work is distributed among non-union staff. For example, staff working in more senior positions or in positions that are required for the operation of the business (such as payroll) may work fewer than 50% of their hours in bargaining unit work and their shortfall in bargaining unit work must be made up by other non-union workers.

E.g., the full-time CEO may work only 20 hours per week in bargaining unit work while the full-time Administrative Assistant would make up the shortfall by working 40 hours per week in bargaining unit work.

- 5) There are some exceptions to the 150% rule for determining non-union work hours during a strike. One of the most common is when a non-union person has medical restrictions preventing them from working excessive hours or from working in more physical jobs (like may be expected in the bargaining unit work). In these cases, the employee may be required to provide medical evidence to support this accommodation. These employees will be expected to carry out whatever bargaining unit they are capable of and balance those hours against their essential non-union work.

Another example occurring more frequently in recent times is when staff have childcare or eldercare responsibilities outside of work. These staff may not be able to work additional hours due to their responsibilities so may have their essential hours of work adjusted accordingly. However, they will be expected to make alternative arrangements whenever possible in order to meet their essential services responsibilities.

CSSEA takes the position that the shortfall in bargaining unit work as a result of these staff is not required to be absorbed by other non-union staff because they will already be working their maximums.

- 6) Non-union staff are required to be deployed to bargaining unit work that makes the most of their qualifications and abilities in performing union positions. They must carry out full union positions that they are qualified for whenever possible. For example, when a manager is qualified as a counsellor, that manager must carry out the work of a counsellor during a strike so the counsellor may join the picket line. The hours that can be worked by non-union staff in essential positions are deducted from the amount of essential hours negotiated.

E.g., if the union and employer negotiate 70 hours per week of essential counselling services and there is a non-union member who is qualified as a counsellor, then that non-union staff person would be expected to work their 30 hours per week as a counsellor and another unionized counsellor(s) would work the remaining 40 hours (70 hours - 30 non-union hours). The essential services form would be completed to illustrate that 70 hours of this work is essential and 30 of those weekly hours are to be carried out by a non-union staff member.

This will be explained further in the next section instructing how to complete the essential services forms.

- 7) Competence to Carry Out the Work with Reasonable Training - Non-union staff are not required to carry out bargaining unit work for which they are not qualified. This mainly applies to positions that require specific education, registration, license or endorsement from an accredited body or government agency. In contrast, bargaining unit work that can be carried out after a reasonable period of training is appropriate for non-union staff to perform. Employers should plan for this required training before a strike commences.
- 8) “Hand in Glove” Work - In many cases there will be a number of non-union staff who are not qualified to carry out the work that has been deemed essential. These staff are still required to work their essential services hours in bargaining unit work. In these circumstances, non-union staff are deployed to perform what is referred to as “hand in glove” work. Although there is no official definition, it is the support work performed by most other union positions as part of their normal roles, like housekeeping, laundry, food service and administrative work. During a strike, non-union staff who are not qualified to perform a full unionized position will carry out this portion of the union work.
- 9) During a strike, the responsibility of scheduling staff transfers to the union. Therefore, employers with non-union schedulers will need to deploy these staff into bargaining unit work.
- 10) Replacement workers cannot be employed to carry out bargaining unit work during a strike and this includes the bargaining unit work performed by non-union staff. Any non-union staff hired after the essential services levels have been negotiated will not be allowed to perform bargaining unit work and must only perform their non-union work during a strike.

XI. Scheduling Office/Strike HQ

The union is responsible for scheduling staff during job action in the Community Social Services sector. This transfer of responsibility from the employer to the union also requires the employer to provide the union with the space and resources required to schedule staff – commonly known as a Scheduling Office. The unions often refer to this as the Strike Headquarters.

The purpose of the Scheduling Office is to schedule essential staff in the event of a strike. Therefore, employers must provide the resources necessary for this function, but not the resources the union may require to carry out its strike. Normally, the Scheduling Office is provided and paid for by the employer, however, there is some precedent of this cost being shared in the past when the LRB found the union had made unreasonable demands for its office.

Please note that the Scheduling Office is not provided to the union until a strike is imminent.

Resources

Although there is a variety of ways to set up a scheduling office, the most common way is for the employer to allow the union(s) to use office space or meeting rooms in the employer's facility. This may occur in the head office or administrative office or within one of the facilities where services are provided. In some cases, employers have rented trailers and parked them in the parking lot of the business. In others, they have rented a store front or apartment for the union to carry out its scheduling function. It would also be feasible to rent space in the home of a union representative as long as the union was agreeable.

The office will need to have access to washroom facilities, power and running water, if possible.

Other office equipment the employer must provide is telephones. Typically, mobile phones are provided but land lines are acceptable. Access to printer/copiers is common, as are tables, desks and chairs.

The amount of resources provided will be proportional to the amount of scheduling required. Large employers will need to provide resources sufficient to schedule their essential staff while smaller employers will normally provide less.

Location and Make-up of Scheduling Office

Normally, the union seeks a scheduling office that is on-site or reasonably close to the facility for which they are scheduling. They will also look for space that is easily accessible by their members and that minimizes the interaction with other management representatives.

Employers should also consider the potential disruption that may occur with sharing office space with the union in a strike situation.

The parties may agree upon a scheduling office that services several facilities, several employers and that houses a number of different unions.

The key to negotiating a scheduling office is to remain reasonable and understand that neither party can demand to have all of their expectations met.

When to Negotiate Scheduling Offices

It is recommended that employers negotiate scheduling offices at the same time as they negotiate essential service levels or immediately after. Once essential service levels are established, the union is in a position to strike, and the scheduling office is a key piece of this.

Employers or programs whose services will be closed during a strike because they are not essential, are not required to provide a scheduling office because no scheduling will take place.

Documenting the Agreed Upon Scheduling Office

Once the parties have agreed upon the scheduling office and associated resources, they are required to document the agreement.

Employers are cautioned against using an agreement template produced unilaterally, by the union. We have seen past examples of a union's template that placed excessive or unnecessary burdens on the employer. To protect employers' rights, CSSEA has developed an appropriate agreement template and will attempt to seek union agreement on its use for future strike preparation.

XII. Access and Egress to Sites and Picketing Location in a Strike/Lockout

Picket Lines

Picketing is a way for the union to increase the pressure on employers in order to resolve the collective bargaining dispute. Union members can only picket when the union is lawfully on strike, or the employer has lawfully locked them out.

This means the union can only picket at a location if:

- 1) it is where they normally perform work for the employer
- 2) the work performed there is an integral and substantial part of the employer's operation, and
- 3) the location is under the employer's control and direction.

Ally Picketing

A union may apply to the Board for permission to picket at an ally's place of work. An ally is a person who, in the board's opinion, in combination, in concert or in accordance with a common understanding with an employer assists the employer in a lockout or in resisting a lawful strike.

If the Board finds that the person (including a company) is an ally, it can permit picketing by the union at the ally's location.

Common Site Picketing

Where more than one business operates where a union may lawfully picket, the Board generally limits the union's picketing to minimize the effects on third parties to the dispute. Please inquire if the Employer's building has any third-party business.

The purpose of a common site picketing order is:

- 1) to balance the union's ability to picket in pursuit of its legitimate objectives, and
- 2) to limit the effect of the picket on businesses that are not involved in the labour dispute.

Access/Egress

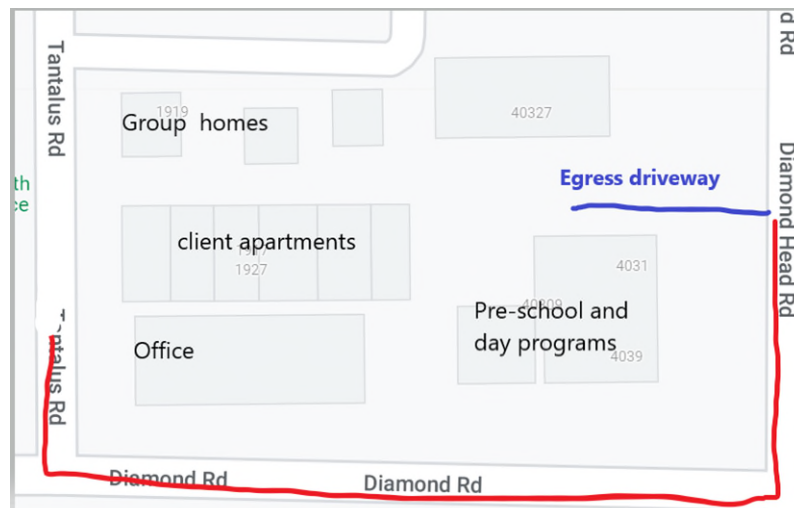
The Union must provide unrestricted access and egress for delivery companies, contractors, and volunteers.

In some cases, unionized delivery drivers have refused to deliver to a facility where there is an active picket line. Often the public is not aware of the law surrounding essential services and that these services

continue to operate, even during a strike. As a result, employers should discuss with their unions about where picket lines will be placed to minimize disruption to deliveries. Employers are well advised to communicate with their delivery companies as well to explain how deliveries must continue during the strike so that essential services may continue.

It is good practice to create a diagram or use a picture to outline where picket lines will occur so that access is provided for delivery companies, contractors and volunteers.

Google maps is a good source of photos that can be used to map out the picket lines and egress. See the diagram below:



- 1) Label the buildings
- 2) Draw the picket lines
- 3) Add in an egress for contractors, deliveries and picket pass entrances

XIII. Mediation and Adjudication of Disputes

When negotiating essential service levels with the union, employers should expect there may be some programs or services where the two sides do not agree. However, these impasses must be resolved in order to prepare for a potential strike or lockout and there are a number of methods for achieving resolution.

1. Contact Your CSSEA Representative

Your CSSEA representative is a great source of advice and information for resolving essential service disagreements. They will be able to tell you if there is precedent supporting your position on essential services or if there have been past decisions contrary to your position. This advice can be very helpful in resolving the impasse quickly.

Your CSSEA representative may be able to make your case with senior union officials in an effort to resolve the impasse. Senior union representatives understand the power of precedent in negotiating essential services and your CSSEA rep. is experienced in communicating those to the union.

However, employers should understand that disagreements over essential service levels are rarely black and white and therefore, may not be resolved easily. If your CSSEA representative is unable to break the impasse, there is a next step that is very effective.

2. Mediation

Mediation is an informal and non-binding process where a third party, who is skilled at conflict resolution and understands the law on essential services, meets with both the employer and union in an effort to achieve resolution. Mediation is not required to complete essential services preparation but is encouraged as an effective and efficient process for resolution.

Mediation is considered to be informal for several reasons. First, it is non-binding so neither party is required to agree to any form of resolution if they do not believe it is acceptable. Second, the process is free of legal process requirements that many find complicated or illogical. Both parties are still expected to conduct themselves respectfully and participate with an open mind toward resolving the conflict. And finally, the mediator is not required to seek a legally correct resolution – just a resolution that both parties can agree to. These agreements can be made without prejudice to avoid setting precedent for future negotiations. Mediation tends to be successful because its informality allows the mediator to identify the “real” issues creating impasse and seek out solutions that address those issues.

The two key requirements for participating in mediation is that the employer representative has a solid understanding of the issue in dispute and the authority to settle the dispute.

Traditionally, mediation was held in-person and the employer, union and mediator would meet in a room to discuss the highlights of the issue and the positions held by each party. Often the parties would split into breakout rooms and the mediator would meet with each separately. More recently, this same process has taken place virtually with the use of video-conferencing technology but the format has remained very similar.

Mediators will inform the parties how the law and precedent apply to the case at hand and each party has the opportunity to clarify the similarities or differences between their case and the precedent. In many cases, CSSEA representatives will support employers in these meetings by providing advice on how precedents apply and assisting with the negotiation. Mediators may propose suggestions or encourage the parties to develop their own. This step usually takes place in the breakout room, so each party feels comfortable to fully explain their case without the other party present.

Although much of the discussion takes place in the breakout room without the presence of the union, employers should be judicious with the information they disclose when the mediator is present. The mediator is not on your side or the union’s – only the side of resolving the impasse. So, information learned during a caucus may be used to encourage a deal that is acceptable rather than favourable. The parties to mediation are encouraged to resolve the dispute voluntarily, because although the process is non-binding, this is the last opportunity the parties have to participate in creating the solution. If mediation fails to resolve the issue, adjudication is the final step and is binding on the parties.

3. Adjudication

The Labour Relations Board has the responsibility to ensure that sectors governed by Section 72 of the Labour Relations Code have completed essential services preparations in a timely manner so that the parties may engage in strike or lockout activity.

When the parties cannot reach agreement on their essential services plan, the LRB has the responsibility and the authority to adjudicate the matters to completion. Adjudication is binding on the parties and has the force of law.

Adjudication has the benefit of providing a final answer to the question of, “What are the appropriate essential services levels for a particular program or service?” But there are drawbacks as well. The most obvious is that the LRB may adjudicate a decision that is unfavourable for one of the parties and worse than was proposed at mediation. Any proposals made at mediation are off the table once the matter is referred to adjudication and the LRB may take a very different position on what service is essential or not.

Another drawback to adjudication is that both parties must prepare their cases for adjudication, and this is an onerous task. The parties are required to draft their arguments and support them with actual evidence. This evidence will likely include specific information about each client as well as medical opinions for each about how cancelling or limiting the service will result in “...immediate and serious danger to the health, safety or welfare..” of the clients. There may be very little time provided to prepare the case as well.

Finally, the adjudicated resolution becomes a precedent and will influence essential services for all other organizations with similar programs in the future. A negative outcome can have far-reaching and permanent implications for the sector.

4. Union Strike Captains

The Strike Captain is a role developed by the unions so is not governed by the Labour Code or precedent. As a result, it is difficult to define, and the unions have the right to expand or contract its responsibilities as they see fit. In addition, different unions may bestow different responsibilities on the role.

Generally, the Strike Captain is a person or people, designated by the union, to oversee their strike activities. The Captain may determine which members must participate in picket duty and when, which members are scheduled to work essential shifts and when and they may act as a liaison with the employer’s Strike Coordinator when issues arise. Because this role may share the responsibility for scheduling essential staff, it may be appropriate for the employer to provide this person with a mobile phone as part of the Scheduling Office negotiations.

The employer would communicate with the Strike Captain if they are experiencing scheduling issues or if the employer believes the essential services plan is not being carried out as agreed. If there is a need for emergency staffing, the employer would work this out with the Strike Captain. The Strike Captain may also monitor whether non-union staff are working sufficient union hours or carrying out this work to a proper standard.

It is recommended that employers learn who is the union’s Strike Coordinator at their sites, what their responsibilities and authority include and how to contact them on short notice if required.

XIV. How to Seek Additional Essential Service Levels During a Strike

The negotiation of essential service levels is based on the employer's and union's beliefs about the staffing levels required to provide sufficient services to "...prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia." The parties may hold differing beliefs about this, which impacts the final negotiated levels.

Although we are fortunate to have not experienced much job action in the Community Social Services sector in the past, it also means that the traditionally agreed upon essential service levels, have not been tested against real-life circumstances. Therefore, it is possible to see examples when altering essential services levels is necessary. For example, the negotiated levels may be appropriate for a strike of short duration but one that lasts longer may take a toll on non-union staff or have greater impacts on clients who have been without service for an extended period. In other cases, the levels negotiated may be simply insufficient.

Depending on the circumstances, employers may take action in two different ways:

1. A program is experiencing an emergency shortage of staff. This may occur when the level of staff is not meeting the essential needs of its clients or creating an unsafe situation for clients or staff posing an imminent risk. There may be additional circumstances meeting the test for an emergency.

In emergency circumstances, the employer's Strike Coordinator would immediately contact the union Picket Captain or designate to describe the emergency situation and request the union provide additional staff sufficient to alleviate the emergency on an immediate basis. This may be for a few minutes, hours or the rest of the shift. **Note:** it is important for the employer's Strike Coordinator to be made aware of the union's contact people for these circumstances as well as their contact information before a strike commences.

In emergencies, the union is aware of its responsibility to provide additional staff relative to the negotiated levels and not to debate whether an emergency exists. In reality, strikes can be adversarial, and the parties may be suspicious of the other's motivations. If the union representative indicates they are not willing to comply with the employer request, the employer should clearly communicate to the union representative they have assessed this to be an emergency situation and that the union is responsible to provide sufficient staff. This should be followed by a question asking if the union representative will provide additional staff in a manner timely enough to avert the emergency.

If the union representative fails to provide sufficient confirmation to comply with the request, the employer should immediately contact their CSSEA representative who will assist with contacting the LRB for support in resolving the matter. The union leadership may also be contacted to assist in resolving the matter.

Emergencies are to be treated in a manner similar to the doctrine of "work now – grieve later". There is not to be debate of the merits of the emergency beyond a brief description of it. And the union is entitled to contact the LRB (after providing sufficient staff) for assistance in resolving the matter if it believes the employer has falsely declared an emergency.

2. A program is experiencing a shortage of staff to fulfill its essential services obligations but does not yet trigger emergency circumstances.

In these circumstances, the employer should meet with the union representative to discuss why a change to the essential service levels is required. It will be important to include any evidence supporting the change and why the current levels are insufficient to provide essential services.

If the union and employer can mutually agree to new essential service levels, the changes can be made on a new form 2 and submitted to the LRB. Please note, the union will likely require the agreement/signature from their senior union representatives and your CSSEA representative will require the new signed copy.

If the union will not agree to the changes, the employer should contact its CSSEA representative, who can assist with submitting the request to the LRB. A teleconference or meeting with the LRB and the union representative will likely be required to resolve the issue and make a change to the essential service levels.

XV. The Union May Seek to Reduce Essential Services Levels During a Strike

The union may also seek to change essential service levels once a strike has commenced. This will usually occur once there is experience with essential services and the union witnesses non-essential service taking place or excluded staff being underutilized.

In these circumstances, the union must continue to provide the agreed upon essential service levels and engage in the process outlined in Section XII., subsection 2. above.

Because there is the possibility of the union seeking to reduce essential services levels, the employer's Strike Coordinator should remain informed about the day-to-day operation during a strike and ensure that deployed non-union staff remain fully utilized. If there is the appearance that staff are not fully engaged or that the services being provided go beyond what is deemed essential, the union is more likely to seek a change in levels.

XVI. Impact to Workers' Pay in a Strike/Lockout (who pays?)

Employers continue to pay workers during a strike but only those who perform essential service work. The union may equalize the work performed among all staff so employers should expect that staff will not continue working their regular schedules. A system for tracking hours and paying workers will need to be established with the union before the strike commences.

Normally, essential services represent a significant reduction from normal services so staff will see reductions in their pay. If staff ask their employers how much they will be paid during a strike, it is recommended they be told that the union is responsible for scheduling and the employer will pay those who are scheduled and work.

Unions will occasionally develop a strike fund to support their members during a strike. If employees ask the employer about strike pay, they should be encouraged to speak with their union representative about this question. Employers should not speculate on if or how much strike pay employees will receive during a strike.

XVII. How Do Employers Pay for the Additional Hours that Management is Working?

Some employers have asked about a budget to finance the additional wages that will be paid to non-union staff when they work additional essential services hours. CSSEA is not involved in the financial aspect of its members businesses and does not receive funding to defray these additional costs so is not in a position to provide advice on this.

However, it must be noted that employers in the Community Social Services Sector do not have the ability to opt out of essential services. It is a legal requirement of the BC Labour Code.

XVIII. What Happens in a Strike and How do Employers Prepare?

Before a strike can commence, a number of important milestones must have taken place, so employers can be assured not to be caught off guard.

The first is that the unions in the Community Social Services Bargaining Association must have taken a strike vote of its members and deliver a mandate supporting a strike. When this occurs, it is usually well publicized in the news and CSSEA communicates to its members. Therefore, it is very important for members to review CSSEA correspondence in a timely manner prior to the renegotiation of the collective agreements. Keep in mind that once a strike vote is taken, it could still be weeks or even months before a strike occurs.

Another milestone required before a strike is that essential services must be negotiated and finalized in Global Orders by the LRB. Employers are warned that unjustified delays in completing essential services preparations will not be tolerated by the LRB.

The last milestone before a strike can occur is that the union must have provided 72-hour strike notice. This is the notice that employers have three days to make their final preparations for implementing essential services.

Preparing for a Strike

In order to prepare for a strike, employers should carry out the following preparations:

- 1) Plan for the transition of scheduling function from the employer to the union
 - Establish system for tracking hours and communicating to payroll
 - Maintain efficient payroll system
- 2) Implement Scheduling Office (Strike HQ)
 - Secure agreed upon number of phones and deliver to union – track phone numbers
 - Ensure office/meeting room space and supplies are ready to be handed over to the union
 - Union may need to start scheduling staff before strike commences
- 3) Identify the union Strike Captain and contact information
 - Establish how regular and emergency communication will occur
 - Schedule regular meetings at the beginning of the strike

- 4) Communicate with all staff how a strike works
 - Share essential service levels with staff so they are aware of the impact
 - Communicate which services are cancelled, reduced or operate at full levels
 - Communicate that non-union staff must perform union work
 - Advise non-union staff of the requirement to perform union work and the number of hours
- 5) Determine if any non-union staff require accommodation and if they can make alternative arrangements before strike commences
 - Secure medical verification of the need for accommodation is necessary
- 6) Provide education/orientation to non-union staff for the work they will perform in a strike
- 7) Develop work schedules and assignments for non-union staff
- 8) Review where picketing will occur and where it will not occur with union representatives
- 9) Communicate with delivery companies and others who must access the site how essential services works and how to access the site during a strike.
- 10) Stock up on important supplies before a strike begins
- 11) Communicate to clients well in advance how services will be affected during s trike and encourage them to make back-up plans
 - Communicate again once 72-hour notice is received