

# CONTRACT INTERPRETATION MANUAL

## Article 7 STRIKES, LOCKOUTS AND PICKETS

### Interpretation Guidelines

#### Strikes

Part 5 of the Labour Relations Code defines what is considered strike action.

The Employer has to prove there was a cessation of work, a refusal to work or continue to work, a slowdown or other activity that was done by a group of employees together that was designed to restrict or limit provision of services.

The Employer has to prove that these actions were carried out in accordance with a common understanding.

Examples of actions that could be considered strike activity under certain circumstances are:

1. Work stoppages
2. Sit-ins
3. Political protests
4. Overtime bans
5. Refusals to perform specific functions or jobs
6. Work to rule
7. Book-offs on sick leave

Legal strike action by the NBA can only take place after all the following conditions are met:

1. The term of the PCA has expired;
2. The parties to the PCA (HEABC and the NBA) have bargained collectively;
3. The NBA held a strike vote with the majority (50% plus one) in favour of strike (Labour Relations Regulation – Division 2 Strike and Lockout Vote);
4. Strike action occurs within 3 months of the date the strike vote was taken;
5. The NBA provides 72 hours written notice to HEABC of its intention to strike and files such notice with the Associate Chair of the Mediation Division of the BCLRB;
6. Where a mediator has been appointed, 48 hours have elapsed from the time the Union is informed by the Associate Chair of the Mediation Division that the mediator has concluded a report; and
7. The BCLRB has issued an Essential Services Order (Labour Relations Code Part 6 - Essential Services).

#### Lockouts

The Employer has to comply with the same kind of restrictions as listed above before they can commence a lockout of employees.

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## Picket Lines

BC Federation of Labour (BCFED) members are required to notify all unions at a worksite when they plan to put up a picket line. In health care, picket lines are not considered legal in the absence of an essential services order from the BCLRB.

Stewards who encounter a picket line at their worksite unexpectedly need to contact the Union Head Office immediately and provide their name and contact number along with the location of the worksite and which union appears to be in charge of putting up the line.

Employees have the right under the PCA to not cross a legal picket line. This applies to not only a BCNU picket line, but a picket line set up by another union. This is termed a common site picket and employees encountering one should contact their steward immediately. Stewards should contact the BCNU office. An employee cannot be disciplined if they refuse to cross a legal picket line.

However, that protection can be withdrawn in certain circumstances as set out in the Arbitration Award, Delta Hospital and BCNU, April 7, 1988 (Munroe), where a nurse was given a written reprimand for refusing to cross a picket line on the one day general strike on June 1, 1987 during Operation Solidarity. In this case the arbitrator agreed with the Employer's interpretation that "the employee's protection against discipline was withdrawn for a legal picket line once a statutory tribunal directs the employee to go to work". He went on to say grievances need to be filed where members are disciplined for exercising their right to refuse to cross a picket line to ensure there is a full review of the circumstances.

## Arbitration Awards

1. Delta Hospital and BCNU, April 7, 1988 (Munroe). Discipline, reprimand, picket lines.

## Additional Resources

### Legislation

1. Labour Relations Code, Parts 5 and 6.
2. Labour Relations Regulation, Division 2.

### BCLRB Decisions

1. HEABC (all Health Authorities and Providence) and NBA, FBA, and CBU May 3, 2012, BCLRB No. 94/2012: Confirms the parties' obligation to ensure essential services are established and urges "cooperation and goodwill". The Employer is ordered to provide to the Unions "sufficient and transparent information in order to properly engage in the designation process and (so Unions may) discharge their scheduling obligation to ensure essential services levels can be met".
2. BCLRB decision 73/96: HEABC and HEU, BCNU, HSA, BCGEU and IUOE
  - (a) "standard order decision" dealing with global issues
3. BCLRB decision 123/96: HEABC and BCNU, HEU, HSA, BCGEU and IUOE
  - (a) Dealt with 3 specific global issues:
    - i. Deployment of nursing managers/administrators
    - ii. Utilization of contract and non-union employees

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- iii. The determinative effect of local agreements on final essential services levels
4. BCLRB decision 94/2012 referenced and expanded on global issues.
5. HEABC (Fraser Health Authority and Burnaby Hospital) and HEU and BCNU and HSA, October 22, 2002, BCLRB No. 334/2002 Leave for Reconsideration of BCLRB No. 228/2002. This deals with what HEU characterized as a political protest against the government legislating concessions in their collective agreement and HEABC characterized as illegal job action. The original panel granted HEU's application for adjournment of HEABC's Part 5 complaint. As the alleged activity had ceased by the time of the Board hearing it was considered to be immaterial. However, the reconsideration panel found that the original panel's approach was not sufficient in all Part 5 circumstances where alleged illegal conduct has ceased prior to the Board hearing on the matter. The Board stated that "where there is evidence of a risk to the health and safety or welfare of patients through cancellation of surgeries or medically necessary procedures as a result of a prima facie unlawful, mid-contract work stoppage, the associated social costs and public importance of the issue will in all likelihood require the Board to determine whether the conduct is unlawful. However, not every alleged interruption of medical services will require the Board to exercise its discretion to hear an otherwise moot matter. There may be circumstances where the alleged interference is not great, causing inconvenience as opposed to real prejudice to the delivery of medical services, and there has been a resolution with an undertaking by a union which in all likelihood will prevent recurrence".

### Other Information

1. SHAREESSENTIAL SERVICES - Final Orders 2014
2. BCNU Job Action Manual
3. BCNU Essential Services Manual

### Footnotes

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