

BULLETIN

## Essential service levels

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by BRUCE WILKINS



What are "essential service" staffing levels? I have always considered the job I do to be essential to the public. Why was my work not included in the "essential service" designations set by the labour board?



Recently the threat of strike action has sent the whole health labour relations sector into intense and frenetic activity.

As the work our members do is subject to the essential services legislation contained in the Labour Relations Code, the HSA has been a part of this activity. Members, stewards, labour relations officers, and the unions legal counsel have all been a part of the massive effort to set essential services levels.

British Columbia's essential services legislation creates a balance between workers rights to strike, and the need to protect the public from "immediate and serious danger." Some provincial legislatures have simply taken away the right to strike from health workers, and substituted mandatory interest arbitration in its place.

When essential service levels are in place, the employer's human resources are reduced, placing pressure on the employer to get back to the bargaining table. A balance is thereby struck, which prevents the chaos of a total withdrawal of service in the health care system, but allows meaningful collective bargaining to take place.

But what standard does the Labour Relations Board use to determine what an "essential service" is?

The *Labour Relations Code* states in section 72(2) that the LRB must designate as essential facilities, productions and services which the LRB feels are essential to prevent immediate and serious danger to the health, safety and welfare of the residents of British Columbia.

We are used to arguing about how health care is underfunded and overstressed even at regular operational levels. How could any work in the health care system be considered anything less than essential?

Members should remember that the legal test is not whether your job is important or not, but whether the services, facilities or productions are "essential" to prevent *immediate and serious danger to the health, safety and welfare of British Columbians*. Undoubtedly, all of the work being done by HSA members is important, but not necessarily "essential" in the strict legal test contained in the Labour Relations Code.

The key is to look at the words "immediate and serious danger." This is a highly restrictive legal test that severely limits the staffing levels designated as "essential services." This is why it is important for the union to ensure only those services that will prevent "immediate and serious danger" are deemed "essential."

The lower the staffing levels, the more pressure the union is exerting on the employer to take negotiations seriously. If the employer continues to provide services that are not "essential" in the legal sense, the union's bargaining power is weakened.

There may be a critical point in negotiations when members are called upon to back their bargaining demands through job action ... and this can be stressful, both for union members and for the public.

With reasonably low "essential service" levels, members have a means to exert pressure on the employer and support their bargaining committee while balancing the public interest of ensuring access to services.

*Bruce Wilkins is legal counsel for HSA.*

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180 East Columbia  
New Westminster, BC V3L 0G7

Website  
[www.hsabc.org](http://www.hsabc.org)

Telephone 604-517-0994  
1-800-663-2017