

## CHAPTER 11

# PUBLIC SECTOR LABOUR RELATIONS

### Preface

In this chapter students explore the unique features of Canadian public sector unions. They will review how these unions came to be and their distinctive elements and future look forward.

### Learning Objectives

- 11.1 Identify the size and importance of the public sector.
- 11.2 Outline the development of labour relations in the public sector.
- 11.3 Describe the distinctive features of labour relations in the public sector.
- 11.4 Outline recent trends in public-sector labour relations.

### Outline/Table of Contents

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### **I. The Public Sector: Size and Importance**

The **public sector** is defined here as including three components: persons working directly for local, provincial, territorial and federal governments; persons employed in various public-sector agencies or services such as health care, social service agencies or educational institutions funded by government; and persons who work for government business enterprises and Crown corporations such as the Canadian Broadcasting Corporation.

### **Importance of the Public Sector**

The public sector is important for several reasons. The number of people employed makes it an important part of the Canadian economy. It provides vital services such as health care, education, police and fire protection. Unlike the private sector, where if an employer suspends operations customers can obtain services elsewhere, many public-sector employers are the only providers of their service.

The public sector is an important component of the labour relations system, and in 2021 approximately 77% of all union members were public-sector employees. This was in sharp

contrast to the private sector, where only 16 percent of persons employed in the private sector belonged to a union.

### **Why Public-Sector Employees Were Not Allowed to Unionize**

There are several reasons for the delay in extending the right to unionize to the public sector. The essential nature of some of the services provided was a concern as a strike could mean an interruption of vital community services. It was also thought that governments should not be forced to give up control of the public sector, in particular, control over budgets. There was also a concern that a unionized public sector would have too much power, in view of the services provided, and this would lead to excessive increases in compensation.

### **Employee Associations**

Prior to public-sector employees being granted the right to unionize, they formed employee associations to promote their interests. These were different from unions in several respects. Because these associations were not certified by a labour relations board, they did not have the right to strike. They included members of management and did not join labour federations. The associations consulted with governments to voice employee concerns regarding compensation and working conditions; however, the employer maintained final decision-making authority. Eventually employees perceived that this process did not adequately protect their interests, and they sought the right to unionize. The associations were important, however, because they were the basis for public-sector unions that were able to develop rapidly when legislation extended collective bargaining rights to public-sector employees.

### **Collective Bargaining Rights Extended to the Public Sector**

In 1967, the federal government enacted the *Public Service Staff Relations Act* which is now the *Public Service Labour Relations Act*. This Act gave federal government employees the right to unionize. A distinctive aspect of this legislation was a provision for a choice of contract dispute resolution mechanisms. Prior to the start of each contract negotiation, the union could choose either interest arbitration or a strike as the final dispute resolution mechanism. Subsequently, the provinces enacted legislation granting collective bargaining rights to their employees. In many jurisdictions, separate statutes covering parts of the public sector such as teachers or health workers were passed. There was a great deal of variation with respect to the right to strike in the provincial legislation. In some provinces, government and other public-sector employees were given the right to strike. In other provinces, employees were not allowed to strike, and interest arbitration was established as the contract dispute resolution mechanism.

## **II. Distinctive Features of Public-Sector Labour Relations**

### **Employers**

Several unique features of public-sector employers affect labour relations.

**DUAL ROLE** Some public-sector employers have a dual role; they function as both an *employer* and a *regulator* of the system. Public-sector employers engage in contract negotiation and administration with unions; however, the capacity of some public-sector employers to legislate affects these processes and labour relations outcomes. Governments can pass legislation that grants or takes away the right to strike from specific public-sector employees such as teachers. Governments can also pass legislation that imposes wage restraints or freezes, affecting, for example, community college bargaining outcomes.

**DIVIDED AUTHORITY** In the private sector, there is one voice for management, and it is usually known where the employer stands. In the public sector, management authority is sometimes divided, meaning that it is possible that corporate authority is divided between administrators the union usually deals with and elected government officials. This may prompt union leaders to attempt to go around management and influence federal or provincial legislation. For example, in the case of a public transit system, the union may determine that it will not be able to obtain a wage increase from the transit authority's administrators negotiating for the employer, and it may attempt to pressure politicians to intervene in contract talks.

**POLITICAL BOTTOM LINE** In the private sector, employers are profit-seeking organizations, and collective agreement outcomes are largely determined by economic factors. The employer's ability to pay and retain customers are important factors. Wage increases that go beyond this ability cannot be sustained in the long run. In the public sector, the political factor is crucial. Governments are concerned with public opinion and how it affects re-election, not profits. Strikes in the private sector are a union practice to impose losses on the employer so that it will agree to a wage increase or other key negotiating demands. In the public sector, governments do not always incur losses during a strike; they may actually save money due to not having to pay wages and benefit expenses for unionized public servants. The purpose of some public-sector strikes is really about influencing public opinion so that government will be pressured to agree to more favourable terms of employment. Some public-sector employees such as teachers and nurses attempt to frame some disputes with the employer by referring to the quality of education or patient care to maximize a favourable reaction from the public. However, it is possible that some public-sector strikes will not generate public interest or support. For example, if the clerks who process payments of water bills at city hall go on strike, it is not likely that this will generate much public concern. In contrast, if professors strike, there will likely be calls after a short time for government action to end the disruption to classes.

**FINANCIAL CONSTRAINTS** At one time, it was thought that the public sector was different because governments would have the authority to raise taxes when necessary to provide for wage increases granted for public-sector workers. In view of the economic and political climates in the last decade, this does not appear to be the case. The deficit spending undertaken by governments in response to the COVID-19 pandemic, governments with increased debt that will make future contract negotiations more difficult.

## Unions and Their Members

Public-sector union membership has changed, not only in numbers but also in composition, from the traditional trade union rank-and-file of the early 20th century. Public-sector

unionization rates grew from 75.4 percent to 77.2 percent, while private-sector rates fell from 16.4 percent to 15.3 percent over the same period. These union members serve in white collar and professional roles, have post-secondary degrees or diplomas and focus on bargaining demands that support professional development and work-life balance. They also express bargaining demands that members of the public can relate to smaller class sizes, reduced wait times for medical care and improved community safety and security.

The importance of public opinion affects the methods unions employ to build support in their communities. Public-sector unions increasingly are turning to public town hall meetings and social media campaigns to achieve their objectives.

### **Legislative Framework**

There are over 40 federal and provincial statutes across Canada regulating public-sector labour relations. Depending on the jurisdiction, there may be only two statutes or as many as seven separate labour laws affecting public-sector employees. The key point is that there is a patchwork of legislation across the country affecting those in the public sector, and groups such as teachers and nurses may or may not have the right to strike depending upon the jurisdiction.

### **Establishment of Bargaining Rights**

In the private sector, labour relations boards affirm or may alter the composition of bargaining units after receiving input from the parties. In the public sector, bargaining units may be defined in legislation. For example, In British Columbia, the *Public Service Labour Relations Act* governs the collective bargaining relationship between the government and the unions that act as bargaining agents on behalf of public-service employees. This legislation establishes three bargaining units in the public service: a nurses' unit, a professional employees' unit and a unit for all other employees.

### **Scope of Contract Negotiation**

In the private sector, the parties are allowed to negotiate all terms of employment and also the scope, meaning the number of different jobs, of the bargaining unit. In the public sector, legislation can restrict the number of issues that can be the subject of negotiations. The *Public Service Labour Relations Act* prohibits bargaining over pensions, promotions and technological change in the federal public sector.<sup>1</sup> The scope of bargaining in the public sector is narrower than in the private sector and reference should be made to the relevant legislation in the particular provincial jurisdiction.

### **Contract Dispute Resolution**

If the parties are not able to negotiate an agreement in the private sector, the final dispute resolution mechanism is a strike by the union or a lockout by the employer. In the public sector, because some services provided are essential to the public's safety and welfare, it is not always possible to allow a strike or lockout. Thus, four primary methods of dispute resolution have

developed: an unrestricted right-to-strike model; a no-strike model that relies on interest arbitration; a designated or controlled strike model; and back-to-work legislation.

**UNRESTRICTED STRIKE MODEL** Parts of the public sector have been allowed to engage in unrestricted strikes in the same manner as the private sector. This model is typically applied to employees, such as municipal clerks, doing work that is not essential to public safety. Some public-sector employees have been granted the right to strike despite the fact that their work appears to be essential.

**NO-STRIKE, INTEREST ARBITRATION MODEL** Interest arbitration is a third-party method used to resolve a deadlock in collective bargaining between management and the union. Both parties submit evidence to an arbitrator or an arbitration board that decides the terms of the collective agreement. The **replication principle**, a fundamental feature of interest arbitration, holds that an arbitration award should as much as possible reflect the agreement that the parties would have reached had they been able to do so in negotiations. This guiding principle is relevant to arbitration awards in the public sector due to the impact of such third-party decisions on governments and members of the public. In cases in which a memorandum of settlement has been recommended by a majority of the bargaining team, it has been given significant weight by the arbitrator. In one case in which the memorandum of settlement had only been supported by half of the union's bargaining team, an arbitrator held that it should be given less weight and proceeded to award an additional increase to some employees. Accordingly, it has been recommended that the employer should attempt to ensure that a memorandum of settlement is unanimously recommended by the union bargaining team so that the chance of a higher award in subsequent interest arbitration cases is reduced if the agreement is not ratified. The employer could consider making an offer conditional upon unanimous approval of the union bargaining team.

The compensation and working conditions of employees at other workplaces, doing similar work, is a critical factor considered by arbitrators. For example, in the case of teachers, the union and the employer would present information regarding the salaries of teachers employed by other school boards. Arbitrators have also considered factors such as inflation, productivity increases and the need to maintain minimum cost-of-living standards, especially for lower-paid employees. In response to the possibility unions achieve higher compensation through arbitration than they would be able to obtain through the strike route, governments have passed legislation requiring arbitrators to consider the ability to pay and other factors.

**DESIGNATED OR CONTROLLED STRIKE MODEL** In the **designated or controlled strike** model, employees are given the right to strike, but an agreed-upon number of bargaining unit employees must continue working to provide essential public services. If this model was applied to workers maintaining roads in the winter, some employees would have to remain on the job if there was a strike. This model is used in parts of the public sector in Canada's federal jurisdiction, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Quebec and Saskatchewan.

The parties attempt to agree on who will continue to work in the event of a strike. If the union and the employer cannot agree on this, the dispute goes to the labour relations board or a

board created by legislation governing the involved employees. Because the parties will have different preferences and objectives regarding who is deemed essential, an agreement may be difficult to reach. Employers prefer that as many employees as possible be designated essential so that the disruption of service is reduced; unions prefer that a smaller number of employees be designated essential so that the strike will be effective and create pressure for a settlement. The number of employees designated as essential varies extensively depending on the work done. Under the *Public Service Labour Relations Act*, 2 percent of librarians and 100 percent of air traffic controllers have been designated as essential.

**BACK-TO-WORK LEGISLATION** Governments can also pass back-to-work legislation to end a strike and resolve a contract dispute. In most cases, such legislation provides for the dispute between the union and the employer to be resolved by interest arbitration. However, some statutes have instead set out the terms and conditions of work. Prior to the Supreme Court of Canada's decision in the *Health Services* case, a government could pass legislation nullifying the terms of previously negotiated collective agreements. In 2007 the Supreme Court held that legislation that substantially interferes with the union's collective bargaining rights violates the *Charter*. Accordingly, there is now a constraint on legislation that purports to invalidate existing collective agreements or impose restrictions upon contract negotiations.

### III. Comparing Alternative Contract Dispute Resolution Methods

Why don't we simply ban all public-sector strikes and provide for interest arbitration in all cases where the parties cannot reach an agreement? Consider the possible advantages and disadvantages of unrestricted strikes, no-strike interest arbitration and designated or controlled strike and back-to-work legislation.

**Interest Arbitration** Interest arbitration should ensure the provision of essential services because strikes are not allowed. Although there have been situations in which employees have gone on strike even though a strike is not legal, these are exceptions. Interest arbitration means that the parties avoid spending time and energy negotiating a designated employee agreement. However, interest arbitration reduces the likelihood that the parties will be able to negotiate their own agreement because of the chilling and narcotic effects. A bargaining impasse was more likely in the health care sector, especially among hospitals. It was also found that a centralized bargaining structure, such as used by participating members of the Ontario Hospital Association, led to higher levels of impasse. This may be due to the fact that in centralized bargaining the parties are seeking a common solution to various localized problems. Also, there is a possibility that when an arbitrator determines the outcomes, they may be less acceptable to the parties. In particular, employers may perceive that arbitration will lead to the union gaining terms it would not be able to obtain by going on strike. It is also noteworthy that strikes are not the only form of industrial conflict. There is evidence that when strikes are banned and replaced with interest arbitration, other forms of conflict such as grievances and work slowdowns increase.

**Strikes** The unrestricted strike model is more efficient than the designation model because the parties do not have to negotiate a designated employee agreement. It should encourage a voluntary settlement because it imposes higher costs than the other two methods. But it poses the highest risk of disruption of service to the public, and accordingly should only be used where

disruption does not entail a danger to the public. Allowing clerks who process income tax returns to strike makes sense, whereas allowing firefighters to strike does not. There is also the possibility that a strike will not produce a settlement and eventually back-to-work legislation will have to be imposed. **Designated Employees** The designation model has the advantage of avoiding a complete loss of services. Because some costs are imposed on the parties, a voluntary settlement is encouraged. However, the parties will have to spend time and energy negotiating the designated employees. A first designated employee agreement between the parties has posed a problem in a number of cases, resulting in proceedings to the labour relations board to resolve the matter. There is also the possibility that the designation levels might be set too high or too low.

#### IV. Recent Developments in Public-Sector Labour Relations

##### Economics

In economics, the debt-to-GDP ratio is the ratio between a country's government debt (a cumulative amount) and its gross domestic product (GDP). A low debt-to-GDP ratio indicates an economy that produces and sells goods and services sufficient to pay back debts without incurring further debt. Debt used in moderation can help stimulate economic growth while excessive government debt can lead to problems. The debt-to-GDP ratio is designed to help investors determine if a country has too much debt. High debt-to-GDP ratios are caused by an unexpected slowdown in the economy, demographic changes in the population and increases in government spending. Solutions to curb the debt-to-GDP ratio include cuts to government spending, encouragement of growth by lowering interest rates on borrowing and increasing income tax rates.

Beginning in 2020 due to the COVID-19 pandemic, many Canadian governments began to run budgetary deficits and accumulate more debt to support both Canadians and businesses negatively impacted by lock downs and closures due to the pandemic. It is important to note that while government deficits can stimulate a stagnant economy, the debt still needs to be repaid—eventually. Translating federal and provincial government debt helps us understand in a more realistic way the extent of this liability. For example, Nova Scotia has the highest combined federal-provincial debt-to GDP ratio at 106.0%. While Alberta has the lowest debt-to GDP ratio at 66.1%. Notably, Newfoundland & Labrador has the highest combined debt per person at \$64,224, followed by Ontario had the second highest at \$58,559 per person, with the lowest held by British Columbia residents at \$43,635 per person.

At the federal level, the Canadian federal government, provinces, and territories will need to develop comprehensive plans to manage the ongoing debt issues. After the economic impacts of the COVID-19 pandemic, the combined federal, provincial, and territorial debt is anticipated to exceed \$2 trillion dollars. Both federal and provincial debt to GDP ratios have substantially increased. The Conference Board of Canada has indicated it would ideally prefer to see a federal debt-GDP ratio of around 30 percent and declining, as was the case in the mid-2000s. A lower and falling federal debt ratio creates room to add significant federal stimulus in a deep recession without concerns about managing future debt.

## Political and Social Environment

In Canada, 90 percent of employers are regulated by a provincial government with the remaining 10 percent of workplaces within a federal government mandate. This is important to keep in mind when considering the relationship between a government's ability to sustain and expand its funding commitments to public-sector employers. External factors, such as slow economic growth, the impact of international trade agreements and sanctions as well as demographic trends do affect political and societal choices that a government make regarding whether or not to apply constraints or reductions in public-sector labour costs. In light of these challenges, governments have three options.

1. Government can reduce labour costs through collective bargaining. This would involve demanding reductions in wages and benefits from the unions that governments negotiate with directly. The demands might be supported by threats of contracting out or privatization. Where employees have the right to strike, governments will have to be willing to bear a strike. Where government is providing funding to employers, for example, in the health and education sectors, funding could be reduced so that employers would be forced to pursue reducing compensation in contract negotiations.
2. The second approach is a cooperative one in which governments approach unions with the problem, share information and attempt to resolve the issue. Unions might agree to wage concessions in return for job security provisions, or the parties might develop other options such as early retirement plans that save money.
3. The third approach involves changing compensation and working conditions unilaterally through legislation. In the past, this has been done by passing legislation that imposes restrictions on compensation, or directly imposes the terms of a new agreement.

The collective bargaining approach is slow and uncertain; and in situations where interest arbitration is the final dispute resolution mechanism, it is not guaranteed that an arbitrator would award reduced compensation. The cooperative approach is no faster or certain. Accordingly, the legislative approach is attractive to governments. However, because the *Charter* now protects collective bargaining, governments will have to ensure that they do not substantially interfere with that process. Unless a government is willing to rely on the *Charter's* notwithstanding clause, this will impose a constraint on the use of legislation to resolve disputes. In recent years, governments have relied more on legislation or the threat of legislation than on collective bargaining or the cooperative approaches referred to above.

It is important to note that the governments that adopted the legislative approach were able to do so without political penalty. Gene Swimmer noted that although some governments that resorted to the legislative approach were not re-elected, there is little evidence that their handling of public-sector labour relations was a factor in their defeat. Swimmer concludes that public-sector labour relations have been permanently changed. He notes that employers should consider the costs associated with rejecting the traditional collective bargaining model, including lost productivity. He submits that it is in government's self-interest to return to the collective bargaining model instead of relying on legislation. The challenges governments to think of



employees as a source of value rather than a cost to be reduced. On the union side, Swimmer observes that unions will have to come to terms with the new environment. Taking a no concessions position will encourage the government to take unilateral action.

## **V. Review Questions**

### **1. In what ways is the public sector an important element of Canadian society?**

The public sector is important for the following reasons:

- the large number of employees involved, 24 percent of employees are in the public sector,
- the provision of essential services such as health care, education, police and fire protection,
- more than half of all union members are in the public sector and the sector has a high union density.

### **2. Why were public sector employees not provided the right to unionize at the same time as employees in the private sector in most jurisdictions?**

Private sector employees were granted the right to unionize by *PC 1003* in 1944 and subsequent provincial labour relations statutes. Most public sector employees did not obtain the right to unionize until after 1967. There are several reasons for this delay in granting bargaining rights to public sector employees:

- 1) loss of control. It was thought that governments would be giving up control of their budgets if they allowed employees to unionize.
- 2) fear that unions would have too much power. Because some public sector employees are involved in providing essential services it was thought that unions would have too much power.
- 3) fear of disruption of essential services. Because some public sector employees are involved in providing essential services it was thought that they should not be allowed to unionize because this could lead to the loss of essential services.

Labour Relations Issue 11-1 outlines the concerns of teachers being allowed to strike.

### **3. How are public sector employers different from private sector employers?**

There are several features of public sector employers that distinguish them from private sector employers:

- Some public sector employers have the authority to pass legislation changing the bargaining process or outcomes. This is authority that private sector employers do not have. For example, governments can enact legislation that grants or takes away the right to strike. This may be viewed as the government acting as both an employer and a regulator.
- Management authority is sometimes divided between elected officials and administrators. This may cause problems for unions who do not know who they need to focus on.

- Public sector employers have a political rather than an economic bottom line. This refers to the fact that governments are not seeking profits but are seeking re-election. Unions in the public sector will use public relations and media efforts to achieve their objectives. They may need to inform and convince the public that the employer should grant concessions. Similarly, employers may engage in media campaigns, including newspaper ads, to influence public opinion.

#### **4. How are public sector employees and unions different from private sector employees and unions?**

The public sector has more white collar and professional employees. The public sector also has more female employees. Public sector unions make greater use of public relations efforts.

#### **5. Why are there restrictions on the issues that can be the subject of contract negotiations in the public sector?**

Restrictions on issues that can be the subject of bargaining were established to allay concerns regarding the extension of bargaining rights to public sector employees. One of the concerns was the quality of services that are provided by the public sector. It could be argued that the quality of the services provided is so critical that it should not be left to the vagaries of negotiation. In most provinces training programs and promotions are matters that cannot be the subject of bargaining. In some provinces the pension issue is excluded from bargaining. This could relate to a concern over the cost that could be incurred if this matter was a subject of bargaining.

#### **6. Outline the possible advantages and disadvantages of the three main methods of contract dispute resolution in the public sector.**

Table 11-1 summarizes the advantages and disadvantages of the methods of contract dispute resolution.

### **VI. Discussion Questions**

#### **1. Three key methods to resolve contract disputes in the public sector are interest arbitration, a strike, and a designated strike. Consider the following employees: clerical staff at Revenue Canada, air traffic controllers and medical laboratory technicians. Which method of dispute resolution would be preferred by the union and by the employer for each of these sectors?**

For clerical staff at Revenue Canada the timing of negotiations and a strike could be a critical factor. If a strike occurred during the March and April income tax return period it could be more effective because some members of the public will want to have their tax returns processed as quickly as possible so that they can obtain a refund. At other times of the year the public may be less concerned about a strike, and the strike would be a less effective weapon. The employer's preferences may also be affected by the timing of any strike. The employer may be willing to accept a strike if it does not lead to demands from the public for settlement and does not seriously affect the receipt of tax revenue. If a strike would reduce tax revenue, the employer would prefer

to avoid this through interest arbitration. A union representing air traffic controllers would prefer a strike because this would place the most pressure on the employer to settle. An employer would prefer arbitration or a designated strike so that the disruption was prevented or minimized. A teacher's union might prefer the strike to maximize pressure placed on the employer and avoid a settlement being imposed by an arbitrator. To avoid disruption and pressure from the public the employer may prefer interest arbitration. The government may think that education is so critical that it should not be disrupted by a strike.

**2. Do you think that teachers should have the right to strike? Support your point of view using key concepts and discussions from this chapter.**

Those opposed to teacher strikes will likely argue that education is so important that it should not be interrupted by a strike. In many jurisdictions, separate statutes covering parts of the public sector such as teachers or health workers have been passed. There is a great deal of variation with respect to the right to strike in the provincial legislation. In some provinces, government and other public sector employees have been given the right to strike. In other provinces, employees are not allowed to strike, and an alternative interest arbitration has been established as the contract dispute resolution mechanism.

**3. Are there any reasons why labour relations would be more confrontational in the public sector as opposed to the private sector? Explain.**

The following comments are conjecture. Is it possible that in some instances economic realities in the private sector will force the parties to collaborate to survive? In contrast, in the public sector where there is a political bottom line, there may not be the same impetus to collaborate.

## **VII. Web Research**

1. Issues identified by CUPE will include a variety of economic and social justice issues facing workers in the current environment.

## **VIII. Vignette**

### **Government Employees Leave During COVID-19**

During the COVID-19 pandemic, thousands of employees needed to make work arrangements to take care of family members, accommodate children moved to online learning, and their own illness. Specifically, 135,000 Canadian federal government employees were granted paid leave during the first year-and-a-half of the pandemic to manage closed workplaces, COVID-19 quarantines, and children not in schools and daycare centres. The Treasury Board of Canada instructed employees to use accumulated leave credits before they could apply for discretionary paid leave, known as “699 leave”. The Parliamentary Budget Officer (PBO) estimates the Canadian government’s paid leave policy cost \$1.27 billion between March 2020 and July 2021.

The Public Service Alliance of Canada (PSAC), Canada's largest public service union, grieved that Treasury Board guidance. This grievance was filed as 699 leave is intended to be used when employees cannot come to work through no fault of their own. Lawyers for the Canadian government argued. "699 leave was intended for short-term situations, such as snowstorms, and that eligibility should be decided on a case-by-case basis". The Federal Public Sector Labour Relations and Employment Board ruled that the federal government cannot force employees to use other forms of leave before applying for 699 leave. This was viewed as a violation of the PSAC collective agreement. Notably, the sick leave, family leave, and vacation credits used during COVID-19 before taking a 699 leave will be restored to each employee.

## **IX. Case Incident: The Ferry Strike**

The purpose of this incident is to illustrate the terms and operation of an essential services agreement. The situation presented is based upon *VSA Highway Maintenance Ltd. v. B.C. Government and Service Employees Union*

<http://www.canlii.org/en/bc/bclrb/doc/2007/2007canlii27558/2007canlii27558.html> with some modifications. A key point this incident illustrates is that a designated or controlled strike will involve some inconvenience to the public.

### **1. Outline the argument that the employer will make before the Labour Relations Board.**

The employer could argue that the union's proposed reduction in hours is not proportional to the reduced traffic during the school vacation period. In other words, the union is not just attempting to adjust the agreement to reflect reduced traffic; it is attempting to reduce the service level.

### **2. Outline a response the union could make to the employer's request for a return to normal hours of operation.**

The union's response would be that an essential services agreement entails some inconvenience, and the emergency provisions of the agreement can be improved upon.

### **3. What powers does the British Columbia provincial minister responsible for labour Relations have in this situation?**

The powers of the British Columbia provincial minister for labour relations are guided by his or her own initiative after receiving a report of the chair regarding a dispute. S/he can consider that a dispute poses a threat to the health, safety or welfare of the residents of British Columbia, the minister may direct the board to designate as essential services those facilities, productions and services that the board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia. When the minister makes a direction under subsection 2 the associate chair of the Mediation Division may appoint one or more mediators to assist the parties to reach an agreement on essential services designations.

The Board may decide to end the work stoppage by explaining that "... must designate the level of services that is necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of British Columbia" The union's application to reduce the

hours of operation was dismissed because it did not correlate to the reduction in the number of school buses using the ferry. The Board noted that some inconvenience was part of the essential services model of dispute resolution as follows: "At times, there will be inconvenience and hardship to the public during a labour dispute. However, this does not amount to immediate and serious danger to the health, safety or welfare of the public... and therefore does not justify an increase in the level of ferry service." The Board said that it had some concern regarding the emergency situations and directed the parties to address that issue and communicate with the community about the process that should be followed in the event of an emergency. The Board indicated that if the issue of the operation in emergency situations could not be resolved an increase in the level of service would likely be justified.

**4. Identify and explain the rationale for your preferred contract dispute (CDR) method to be applied in the future between the ferry service and its union.**

Students may have different opinions on their preferred CDR.

Unrestricted Strike: Since the parties have already agreed to a controlled strike, this would not be a viable option.

No Strike, Interest Arbitration. Since the parties have not reached a settlement and there has been a lengthy strike this may be a preferred option. In this option both the union and the employer have the opportunity to present their positions on the open issue. A key factor here may also be which method to use at interest arbitration, item by item or final offer.

Legislation: The government may wish to end the strike due to concerns of public safety. There have been examples where public safety has been compromised and the "Return to Work" legislation could be enacted.

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<sup>i</sup> Gene Swimmer, "Collective Bargaining in the Federal Public Service of Canada: The Last 20 Years," in *Public Sector Collective Bargaining in Canada*, G. Swimmer and M. Thompson eds. (Kingston, ON: IRC Press, 1995), p. 371.