

Research Package #2

Junior & Senior High

“This House Would Allow Essential Services to Strike.”



Mid-Year Topic (Nov./Dec./Jan.) 2011-2012

We no longer differentiate topics as “policy” or “values”. Use a model if it is helpful, but both practical and values arguments are accepted at all levels of debate.



“The only thing workers have to bargain with is their skill or their labor. Denied the right to withhold it as a last resort, they become powerless. The strike is therefore not a breakdown of collective bargaining-it is the indispensable cornerstone of that process.”

- Paul Clark

“Labor unions would have us believe that they transfer income from rich capitalists to poor workers. In fact, they mostly transfer income from the large number of non-union workers to a small number of relatively well-off union workers.”

- Robert Anderson

“THW Allow Essential Services to Strike”

The Proposition Team supports the resolution and will say “YES”

The Opposition Team opposes the resolution and will say “NO”

Both Proposition and Opposition Teams will try to pick about 3 or 4 good reasons to support their position and try to develop each by going through 4 steps:

1. State your point.
2. Explain your point.
3. Provide evidence in support of your point (give an example).
4. Explain how that evidence proves your point (tie it back to your theme).

Each argument will look like this:

Point #1: _____

Explanation: _____

Example: _____

Tie point to theme: _____

Point #2: _____

Explanation: _____

Example: _____

Tie point to theme: _____

Point #3: _____

Explanation: _____

Example: _____

Tie point to theme: _____

Here are some arguments that the Proposition can use in developing their case that the government should allow essential services to strike.

- Workers in services deemed essential have the same insatiable rights and needs as any other employees. They may require union representation in an unhampered manner to get fair treatment.
- Government workers (as essential services often are) are frequently the most in need of representation. With budget cuts and political turnover, they are routinely required to do more work with fewer resources. Mandatory overtime and unsafe circumstances can persist. Striking would give the workers recourse against this.
- If the service is important enough to be essential, its employee's and their welfare are essential. A union to look out for them should not be given less ability than other unions.
- Binding arbitration, a common alternative to striking power, tends to result in better deals for employees than collective bargaining backed by striking does. Empowering essential services to strike is likely to be good for employers in the field as well (often the taxpayer), driving costs down in labor disputes.
- The effectiveness of a strike requires the public's sympathy. Public outrage at casualties from any unjust strike would deter unions from abusing of the power to strike especially with essential services.
- With power taken away from either side in a labor dispute the negotiations can drag on. Often the workers of essential services are between contracts as negotiations drag. Giving unions back their teeth will help ensure proactive good-faith bargaining from both sides of the table. No one wants a strike but it being a possibility encourages co-operation.

OPPOSITION TEAM

The job of the Opposition is to be disagreeable! Whatever the Proposition believes, generally, the Opposition counters. The more you disagree, the better! The Opposition has to convince the judges not to accept the Proposition resolution.

The Proposition wants to convince the judges that their proposal should be adopted.

The Opposition wants to convince you that the Proposition proposal should not be accepted for one or more reasons.

The steps that the Opposition should use are:

- 1) Either agree with the Proposition definition or propose a definition of your own. (Only disagree if absolutely necessary. These make for messy debates).
- 2) Rebut the Proposition arguments in favor of the resolution.
- 3) Attack the Proposition Model and sometimes propose a counter model
- 4) Present reasons (arguments) to oppose the resolution.
- 5) Refute Proposition attacks on the Opposition case (show why the Proposition is wrong and Opposition is right).

Owing to time restrictions, the Opposition duties are divided between the first and second opposition speakers.

It is the custom for the First Opposition Speaker to present two arguments and the second opposition speaker to present the final argument. (This is flexible!)

AN EXAMPLE OF AN OPPOSITION STATEMENT

If you were to put a cost on human life, it would be well above an extra \$1.50 an hour. There are numerous effective alternatives to striking, such as asking for binding arbitration. It is simply irresponsible to allow unions to hold the ability to threaten human life and public safety when they are negotiating contract conditions by compromising essential services. The need to strike for these workers is not essential, the service is.

Some of the arguments that the Opposition can use in developing their case that Alberta should **NOT** allow essential services to strike:

- The lives of individuals are on the line with any interruption in essential services.
- Striking provides the union of essential services too much power when lack of service due to the strike can involve public death.
- Employees of the essential services are not in need of striking ability. With current labor laws and the option of binding arbitration, they are well represented.
- When striking poses risk to community safety workers may be less inclined to strike. Giving them the right to strike may actually weaken their position by taking away alternative protections like binding arbitration often granted in lieu of their right to strike.
- Significant and irreversible damage could occur to society by permitting essential services to strike. The ability to deal with emergencies, crisis, and criminal elements are severely compromised with the loss of personnel. The longer the strike drags on the greater the chance of something occurring.

THE ARTICLES HERE HAVE BEEN EDITED, REPHRASED & ANNOTATED

RESEARCH

This Research booklet is not complete. It is only an overview of information and good debaters will use this booklet as a basis for their thinking and move on to other ideas and research. As well, the best foundation for any research into a topic begins with some basic reading on the ideas. Follow this with an interview with someone who is knowledgeable, can suggest ideas and can direct you to other ideas and research. Although you cannot quote this person unless he/she is published in print or on video, a human being can always explain issues better than an article.

Who are the essential service workers?

TARRYN HARBOUR | JOHANNESBURG, SOUTH AFRICA - Sep 09 2010 17:14

<http://mg.co.za/article/2010-09-09-who-are-essential-service-workers>

Neither the government nor the unions made use of a mediation mechanism that could have avoided the recent month-long strike by public service workers.

That's according to John Brand, director and alternative dispute resolution specialist at the law firm Bowman Gilfillan, who said this week that the law provides that "no essential services worker may go on strike and that any dispute must be referred to interest arbitration" which would be conducted by an independent third party under the auspices of Commission for Conciliation, Mediation and Arbitration (CCMA).

"This is something government could have invoked and in fact was obliged by law to invoke the moment a dispute was declared but did not, for reasons unknown," said Brand. "Instead they took the fight to the streets and basically allowed essential services to come to a standstill."

Essential service workers are prohibited by law from striking. But confusion around who, exactly, constitutes an essential service worker, along with discussions around minimum service agreements -- an agreement between the employer and the union which outlines the number of workers to remain at work during a strike so the service continues to function -- and the deep dissatisfaction of the workers complicated the issue.

Repeated calls and emails to the Department of Public Service and Administration (DPSA) media liaison to get additional clarity on the matter of the mediation mechanism were unreturned.

However Cosatu spokesperson Patrick Craven said that a minimum service agreement needs to be established. "A lot of problems were caused by the consistent failure of government to sit down and determine who are essential service workers and can't strike, something that should have been clear from the beginning," Craven said.

"Unions are prepared to maintain essential services, but this is difficult when government keeps issuing interdicts and refusing to define who they mean by essential service workers."

According to Brand, essential service were defined "in general terms" by the Labour Relations Act of 1995, which also formed the essential services committee (ESC). The ESC receives applications on which services should be classified essential.

"If there is a service, the interruption of which would damage life, health and safety, then that service can be declared essential," said ESC chairperson Afzal Mosam.

However it wasn't until August 27, after the public servants strike had been under way for two weeks, that DPDA Minister Richard Baloyi issued a media statement listing the essential services and essential support services in terms of the Labour Relations Act, including nurses, paramedics, laundry workers and catering staff.

Mosam explained that minimum service agreements between the employer and the unions need to be ratified by the ESC.

"Once a service is determined as essential, they must try to come to agreement which category of workers is non-essential. The minimum service agreement allows certain workers to go on strike within a service that is designated as essential."

But as yet, the ESC has not ratified any. Mosam said that employers were reluctant to enter into minimum service agreements because they want to keep all their workers at work.

"But in fact the opposite is happening," he said. "Because they're frustrated, all the workers are going on strike."

Thobile Ntola, president of the South African Democratic Teachers' Union (Sadtu), said the workers see the dramatic inequalities between themselves and government ministers and don't understand why they are not being paid what they demand.

Ntola also criticized the government for being distracted during the recent public servants' strike.

"The focus of the state was all over the place," Ntola said. In a direct hit on the presidency, Ntola said that focus was "in China, overseas, on international relations, not the workers. The strike was not its first priority."

Brand said the public-service strike was not so much a strike as a service delivery protest.

"The conditions on the ground for the average South African are no better, and arguably worse, than they were in 1995," he said.

"Workers had very high expectations that post-1995 their lives would improve. But instead they have an appalling health service, an appalling education system, very serious housing problems in many places, and almost total absence of municipal services. It would not have been possible to mobilize the people in the numbers that they did and there would not have been the violence there was without very deep-seated anger."

Essential Services Legislation Undermines Public Education

British Columbia Teachers Federation

<http://bctf.ca/BargainingAndContracts.aspx?id=4934>

During the election campaign, the Liberals promised to place education back in the Labour Relations Code as an essential service, as it had been before 1994. On August 14, 2001, the government returned education to the code but made some significant changes. Previously essential service meant “necessary or essential *to prevent immediate and serious danger to the health, safety, or welfare of the residents of British Columbia.*”

The new wording states that “the minister may direct the Labour Relations Board to designate as essential services those facilities, productions, and services that the board considers necessary or essential *to prevent immediate and serious disruption to the provision of educational programs.*”

The new provision can be activated by the minister of labour, the chair of the Labour Relations Board (LRB), the employer, or the union. The LRB has the responsibility to decide if there will be any essential-service designations, and if so, what levels of service would have to be provided.

Why essential services now?

This provision is an intrusion into the bargaining process. Essential services have traditionally been services provided 24 hours a day, 7 days a week, 365 days a year, like healthcare, police officers, and firefighters. Education is a service provided for approximately 190 days a year. Schools close in the evening and for weekends and holidays. Since 1992, students have lost an average of 27 minutes a year to job actions. Students lose more than that each year to colds, flu, and family vacations. *The Vancouver Sun* reported that Gordon Campbell took his children out of school for two weeks in December every year for a family vacation. His children lost 100 times more instruction to the family vacation than the average student lost to job actions.

Members of the government have often stated that students have lost four million days of instruction because of labour disputes since 1992. They don't mention that those four million days represent approximate 0.4% of the billion days taught in the same period. Essential-services legislation will not provide much-needed resources or attract one new teacher to the province.

What's next?

We will stick to our agenda. We will continue to be advocates for teachers, for students, and for public education—and we'll do it, as we have in the past, through collective bargaining.

We will meet the needs of teachers and students in our schools and despite this legislation we have a wide range of options if we are forced to use them.

It's about time for an agreement

We are negotiating for a collective agreement that will meet the needs of teachers and students in the schools.

Total number of school days lost to strikes in schools over the last nine years: **4 million**

Total number of school days taught over the last nine years: **1 billion**

Percentage of school days lost to strikes: **0.4%**

Percentage of school days taught: **99.6%**

Average annual amount of class time lost to strikes over the last nine years:
27 minutes

Number of provinces in Canada that deem education to be an "essential" service:
1 province – British Columbia

The Ongoing TTC "Essential Services" Debate

Professor David Dorrey

<http://www.yorku.ca/ddoorey/lawblog/?p=2640>

The issue of whether TTC employees should be declared "essential services" has been floating around for a while now, but was in the news again this weekend as the Liberal government has indicated that it is beginning consultations with the union and TTC management about whether to grant the new Mayor's wish to make the TTC essential. [As this Globe and Mail article notes](#), the province promised to consider the possibility if the City voted in favour of a resolution to have the TTC deemed "essential", and that resolution passed 28-17 in a recent City council vote. For my new industrial relations students, it's useful to recap the debate.

What is this all about? The purpose of making transit "essential" is to *prohibit the workers from striking*. That's all we're talking about. We don't mean "essential" in the sense that everyone needs access to transit—if that were the case, then the City would not keep raising the fares to a level that many working poor cannot afford. The TTC has been around since the 1920s, and strikes have been infrequent, though in the past there have been a few long strikes. One report I saw noted that there have been about 70 days of strikes at the TTC in nearly 90 years, most of these happening prior to the 1980s. For example, there was over

45 days lost to strikes in the 1970s, and less than 5 days in 2000's (although part of the explanation is that contemporary governments have often legislated a quick end to strikes in recent years).

What are the debates?

Supporters of a TTC strike ban: The argument from those who would like to ban transit strikes is simple enough and it is **economic**. A transit strike makes it more difficult for people to get to work and this costs the economy. That is Mayor Ford's argument and [even the Toronto Star](#), a vocal critic of Ford in many aspects, agrees with this argument. The argument is that the right of transit workers to strike to achieve better terms of employment must give way to the economic interests of others to get to work by public transit.

That is an interesting argument, and unusual in rights discourse. If you believe that there is a "human right" to strike—and that is what many people argue, see below—then it is an interesting debate about whether a human right should have to give way to economic expediency—the desire to be able to get to work on a transit system. Historically, and in international human rights law (see below), "essential" workers have been understood to refer only to those without whom human life, health, or safety would be imperiled. In other words, a job is "essential" when it is needed to protect human health (i.e. doctors, ambulance drivers, police, firefighters), not when it is important to the local economy. If you can see the difference between a doctor/firefighter and a bus driver, then you can understand part of the debate over the meaning of "essential". In some cases, in Ontario, we allow workers to strike, but require some of those workers to remain at work to protect public safety. That is how we deal with ambulance drivers, for example ([see the interesting comment on this post by Dave Wakely](#), who notes that the proposal to declare TTC workers essential, if passed, would mean bus drivers are more "essential" to us in Ontario than paramedics).

Another argument in favor of declaring transit workers essential is that interest arbitration, the method of resolving disputes when there is no strike or lockout right, is actually beneficial to workers, so that on balance, this is a reasonable solution. John O'Grady, a well-respected economist and former research director for a major labour organization set out a form of this argument [in an earlier Guest Blog here](#). That argument rests on the assumption that the interest arbitration process will continue to function in roughly the manner that it has, and that under this model, workers are well-served.

Opponents of a TTC strike ban. Some opponents of the move to make transit workers essential rely on a different sort of **economic** argument. Studies show that unions often do better in interest arbitration than when they follow the strike/lockout model. In other words, the cost of transit goes up when you ban strikes, and that increase will be passed along to taxpayers in some form (either higher TTC fees, higher taxes, or cuts to other services). So, for example, the CD Howe Institute (a conservative think tank) claims that banning TTC strikes will increase annual payroll at the TTC by \$6 million dollars. That money will have to come from somewhere (i.e. you and me, if you live in Toronto). To be clear, while Mayor Ford makes a lot of claims about saving taxpayers money, the proposal to ban TTC strikes is not one of them. This move is likely to *increase* costs, not decrease them.

A second argument against banning transit strikes is that doing so will impede collective bargaining, since both parties know that in the end an arbitrator will resolve any disputes. Since arbitrators often “split the difference” between the parties’ positions, this discourages the parties from bargaining in a frank and open way. Industrial relations scholars study these claims, [as I have noted before](#). Many experts in the field argue that the best relationships are those in which the parties (unions and employers) have bargained the agreements themselves, so that mandatory arbitration does not contribute to a healthy industrial relations climate. A response to that argument is that, at the TTC at least, the parties already behave as if they are subject to mandatory interest arbitration, since recent governments have quickly legislated TTC strikes to an end in any event, so that both sides expect this to happen.

The other main argument against banning transit strikes is that it is a violation of fundamental, internationally recognized human rights. There is no doubt that a transit ban will be found to violate Convention 87 of the International Labour Organization, mentioned above. Canada has ratified Convention 87. [In its Digest summarizing ILO law](#) on the right to strike, we find this explanation of essential service (para. 581):

To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.

Applying that definition, the ILO has ruled that metropolitan transit systems and railways (see para. 587) are not essential, so that governments are not permitted to ban the right of these workers to strike. Opponents of declaring transit workers “essential” argue that rather than violating international human rights, the Ontario government should be a vocal advocate of these rights and a global leader in advancing workers’ rights against oppressive governments and powerful economic interests.

Neither the Union Nor the Employer Wants the Change to be Made

Interestingly, both the TTC union and the TTC itself oppose the “essential services” proposal. The Union makes the “human rights” argument primarily, along with the argument that bargained agreements work better than imposed ones. [The employer similarly argues](#) that bargaining should be left to the parties, while also expressing concern about the “economic” costs of banning its employees’ right to strike. So the push for this legal change is one driven by popular politics—Ford and the people who elected him are against public sector unions—and not one based on any principled argument from the parties that actually have to deal with the workplace on a day to day basis.

Is it only the TTC that is essential, or all public transit?

It is unclear to me whether the idea is that *only* the TTC would be declared essential, or all public transit in Ontario. If the TTC is essential, then isn’t the Mississauga Transit, or the Hamilton, Sudbury, or Vaughn transit employees also essential? I have no idea, but I would presume so. Not having a bus to take to work is equally disruptive for a transit user in Mississauga and a Mississauga employer as it is for a Toronto worker and a Toronto employer. Does anyone know if the idea is to declare all transit workers in Ontario “essential”, or just TTC employees? Can you think of an argument as to why only the TTC is essential and not other transit authorities?

Essential services strike ban 'may need to be option'

BBC News

5 August 2010 Last updated at 21:02 ET

<http://www.bbc.co.uk/news/uk-10888785>

The government is being urged to consider banning strikes in essential public services, as a response to the expected action against coalition cuts.

Employers group, the Chartered Institute of Personnel and Development, says ministers should consider tightening laws on strike ballots.

The Trades Union Congress dismissed the idea as unworkable.

And GMB union leader Paul Kenny criticized the suggestion as an attack on the rights of employees.

Unions are preparing for a mass campaign of protest this autumn over the government spending cuts and jobs losses.

Strike action is highly likely in a number of areas of the public sector, said BBC employment correspondent Martin Shankleman.

'Case for change'

The Chartered Institute of Personnel and Development (CIPD) is urging the government to consider a range of what it calls high stake options if confronted with strikes in key industries.

These include a further tightening of the laws on strike ballots and compulsory arbitration. But the institute said ultimately it is incumbent on the government to consider banning walkouts of workers in essential public services. It claims polls show 40% of employees back the idea.

Mike Emmott, CIPD employee relations advisor, said: "It is also incumbent on the government to consider the policy options open to it for reducing the risk of disruptive and damaging industrial action by public service employees, such as banning strike action of those involved in the delivery of essential services."

However, he added: "If the government was forced to go down this route it would be a sign of its failure to make the case for change to public sector employees."

A TUC spokesman said: "Destroying the jobs of hundreds of thousands of public sector workers will put the fragile economic recovery at risk. Of course unions will defend their members' livelihoods.

"The government would do better to invest in jobs and growth than pay attention to the CIPD's unworkable proposals on industrial action law."

Paul Kenny, GMB General Secretary said: "It beggars belief that these fat cat directors, who presided over a decade of boardroom excess and greed, have the barefaced cheek to attack the rights of people who actually work for a living."