ALBERTA LABOUR RELATIONS BOARD

INFORMATION BULLETIN

TRANSITIONAL
#24 ESSENTIAL SERVICES

This version of Information Bulletin #24 encompasses the coming-into-force of Division 15.1 of the Labour Relations Code concerning essential services, and amendments made by the Ensuring Fiscal Sustainability Act, 2019. It has been approved by the Essential Services Commissioner. Information Bulletin #24 and the procedures herein continue to be reviewed by the Commissioner on an ongoing basis, and the Bulletin remains transitional. The Commissioner welcomes comments from stakeholders about these procedures.

I. INTRODUCTION

The *Labour Relations Code* requires certain employers and the bargaining agent representing employees of that employer, in industries covered by the essential services Division of the *Code*, to ensure essential services will be maintained during a strike or lockout. Essential services are defined in the *Code* as services:

- which, if interrupted, would endanger the life, personal safety or health of the public; or
- necessary to the maintenance and administration of the rule of law or public security. *See section 95.1*

One way essential services can be maintained is for the employer and the bargaining agent to have a filed essential services agreement before taking strike or lockout action. An essential services agreement ensures sufficient employees in the bargaining unit will continue to work during a strike or lockout to provide essential services. Such employees are referred to as "designated essential services workers".

Alternatively, an employer may elect in advance to use the services of replacement workers in the event of a strike or lockout rather than negotiate an essential services agreement. The employer must seek an exemption from the Commissioner from the obligation to negotiate an essential services agreement. If granted, the employer may use replacement workers in the event of a strike or lockout, and no bargaining unit employees are required to work during the strike or lockout as designated essential services workers.

Where an essential services agreement is required, the employer and the bargaining agent are responsible for negotiating that agreement. The parties may appoint an umpire to assist them and, if no agreement can be reached, the umpire may settle the terms of the agreement. Umpires are also used by the parties to resolve disputes about the interpretation, administration or alleged breaches of an essential services agreement. The Commissioner may appoint umpires, may review the decisions of umpires, may settle the terms of essential services agreements herself,

reviews all essential services agreements submitted for filing, and hears various other essential services related applications.

Parties covered by the essential services Division of the Code may not strike or lockout without either a filed essential services agreement or an exemption. Designated essential services workers may not participate in a strike or be locked out.

If the portion of the bargaining unit required to provide essential services during a strike or lockout is so large that it would substantially interfere with meaningful collective bargaining, the Commissioner may make a declaration of substantial interference. When a declaration of substantial interference is made, there can be no further strike or lockout action, and either party may apply for binding arbitration.

This Bulletin addresses:

- Who is covered by the essential services Division;
- Exemptions from essential services agreement requirements, and elections to use replacement workers;
- The steps which cannot be taken without a filed essential services agreement;
- Negotiation and settlement of the terms of an essential services agreement;
- The filing of essential services agreements with the Commissioner;
- Declarations of substantial interference;
- Amendments to essential services agreements;
- Disputes regarding essential services agreements;
- Transitional sections.

II. WHO IS COVERED BY THE ESSENTIAL SERVICES DIVISION?

The following employers and bargaining agents representing the employees of that employer are covered by the essential services Division of the Code. They require either an essential services agreement or an exemption before any strike or lockout may occur:

- Any employer governed under the *Public Service Employee Relations Act*. This includes the Government of Alberta; certain agencies, boards and commissions; and public post-secondary institutions as it relates to their non-academic staff; *See PSERA, sections 1(m) and 2*
- Regional health authorities (Alberta Health Services);
- Employers who operate approved hospitals as defined in the *Hospitals Act*;
- Public post-secondary institutions as it relates to their academic staff;
- Employers who operate nursing homes as defined in the *Nursing Homes Act*;
- Employers who are licensed or required to be licensed under the *Supportive Living Accommodation Licensing Act;*
- Employers under contract with a regional health authority (AHS) to provide health care services or support services authorized under the Co-ordinated Home Care Program Regulation under the *Public Health Act*;
- Employers who are subsidiary health corporations of a regional health authority;

- Employers whose primary services are the provision of medical laboratory diagnostic services under contract with a regional health authority, other than employers who are professional corporations within the meaning of the *Health Professions Act*;
- Canadian Blood Services and its agents and successors. *See section 95.2.*

Strikes and lockouts are prohibited in all cases for some other types of employees and their employers, listed below. These groups are not required to negotiate essential services agreements, and may apply for compulsory arbitration to resolve collective bargaining disputes. This includes:

- Firefighters; *See sections 96 - 99*
- Ambulance attendants employed by ambulance operators other than regional health authorities or operators of approved hospitals; *See sections 96-99*
- Police officers. *See the Police Officers Collective Bargaining Act*

III. ELECTIONS AND EXEMPTIONS

1. Exemptions Where No Essential Services or No Additional Workers required

Some employers:

- Have no employees in the bargaining unit who perform essential services; or
- Have employees in the bargaining unit who do perform essential services, but in the event of a strike or lockout those essential services could be performed by other capable and qualified persons who are neither bargaining unit members nor replacement workers (for example, by using management personnel).

Employers in this situation are not required to elect either designated essential services workers or replacement workers, as neither are required.

Parties in this situation may apply to the Commissioner under section 95.21 for an exemption from many sections of the essential services Division of the *Code*, including the obligation to negotiate an essential services agreement. If granted, collective agreement bargaining and any strike or lockouts will be governed by the normal processes elsewhere in the *Code* and PSERA (as applicable).

The requirements for applying for an exemption are discussed in section III(3) below.

2. The Employer's Election

Unless the situation above applies, the *Code* requires employers to elect the use of either:

- designated essential services workers (persons in the bargaining unit required to work in accordance with an essential services agreement); or
- replacement workers (persons hired or supplied to an employer for the purpose of performing the work of an employee in the bargaining unit)

to perform essential services during a strike or lockout.

The requirement to elect either designated essential services workers from the bargaining unit or replacement workers avoids any intermingling of replacement workers with bargaining unit members required to continue performing essential services during the strike or lockout. Where the Commissioner exercises her powers elsewhere in the Division, she will do so in a manner which also avoids intermingling in the workplace.

An employer must notify the union of its election in writing within a reasonable time after becoming required to negotiate an essential services agreement. This means a new election is required for any each round of collective bargaining.

If the employer elects to use designated essential service workers, it continues to be obligated to negotiate an essential services agreement.

If the employer elects to use replacement workers, the employer must apply to the Commissioner for an exemption under section 95.21.

An election to use replacement workers is not effective unless an exemption is granted by the Commissioner. The Commissioner must be satisfied the employer's plans to use replacement workers will maintain essential services during a strike or lockout, otherwise no exemption will be granted. Unless the exemption is granted, there remains a continuing obligation for the parties to negotiate and file an essential services agreement.

It is essential for employers to consider whether it will be reasonably practical to obtain the necessary replacement workers before making that election. As discussed below, the application for an exemption requires the employer to set out how the essential services will be maintained and its plans for obtaining the necessary number of replacement workers, and to declare in a statutory declaration that those plans will ensure essential services. The Commissioner must be satisfied those plans are practicable to ensure essential services. While the *Code* provides a mechanism for emergency circumstances where an employer which has been granted an exemption but then finds it cannot maintain essential services, those situations place the essential service at risk and strain Board resources to ensure essential services are maintained on an emergency basis. As discussed below, employers who overestimate their ability to hire the necessary replacement workers, or do not make best efforts to do so, risk a significant award of costs against them if an emergency application is needed.

3. Exemption Applications

An applicant for an exemption must use the form provided for by the Rules of Procedure, and the application must provide the information and attach the documents required by that form. Similarly, the respondent must use the response form provided for in the Rules of Procedure and provide the information required, even if the application is consented to. If required documents are not included, a Board Officer will ensure these are produced before the application will be referred to the Commissioner. *See Rules of Procedure, Rule 44*

The exemption application is lengthy, and requires the filing of documentation necessary to satisfy the Commissioner that either there are no essential services performed, or that the plans of the employer will ensure essential services will be met. The form requires an individual authorized by the applicant to make a statutory declaration attesting to the accuracy of the documents provided and, where applicable, that the plans of the employer will ensure essential services. Where the use of replacement workers is contemplated, the statutory declaration must declare the employer's plans to obtain sufficient replacement workers is reasonably practicable and the employer will use best efforts to implement those plans. This documentation is of particular importance, and will be important evidence in the event of any future application to rescind an exemption.

Where the exemption application is contested, a pre-hearing conference will be held unless disposed of by the Commissioner. At the pre-hearing conference, the Commissioner will set timelines for any written submissions, consider requests for production of any further documents, and set dates for a hearing. In most cases, hearings will proceed without oral evidence from witnesses, unless there is a serious conflict in the evidence that cannot be resolved through a review of the filed documents or which requires cross-examination of witnesses. Parties requesting oral evidence at a hearing shall notify the Board Officer and other party in advance of the pre-hearing conference, and the request will be considered by the Commissioner at the pre-hearing conference.

Any written submissions in exemption applications, or any other proceeding before the Commissioner, shall be concise. Full copies of cases are not required, and are discouraged unless the case is not readily available elsewhere. Cases should be referred to in the written material by name, citation and relevant paragraph numbers.

Exemptions are only valid until either a collective agreement is reached or a strike or lockout is terminated. *See section 95.21(3)* This means a new exemption must be applied for in any new round of collective bargaining.

4. Rescinding an Exemption

There are two circumstances where a party may apply to rescind a previously granted exemption:

(1) There has been a significant change in circumstances. For example, the employer did not provide any essential services when the exemption was granted, but it now does.

(2) A strike or lockout has commenced, and the employer finds it is unable to maintain essential services.

In the first circumstance, the applicant must provide particulars in their application of the significant changes in circumstances. If the Commissioner rescinds the exemption, typically the parties would be required to commence negotiation of an essential services agreement.

The second circumstance, applications to rescind an exemption during a strike or lockout, are necessarily urgent applications, as they involve essential services not being maintained. The

applicant must provide particulars concerning what essential services are not being maintained; why this is the case; and whether the applicant is seeking the essential service staffing levels originally described in the exemption application or some different request.

Because of the urgency of maintaining essential services during a strike or lockout, the Commissioner will give interim directions forthwith to ensure those services are maintained. Parties are advised that in most circumstances:

- The essential service descriptions and staffing levels described by the employer in its application for the exemption will be important prima facie evidence;
- The appropriate interim order will be to require bargaining unit members to provide essential services at the level the employer now states is required, on an interim basis, until the parties have an opportunity to address on a more fulsome basis the necessary level of essential services, and any matters arising;
- There will be a direction that no replacement workers be used in a workplace along with bargaining unit members to provide essential services. *See the discussion re: intermingling above*

Interim directions are intended to operate only briefly to ensure essential services are maintained on an emergency basis until the issues concerning essential services can be fully negotiated by the parties or prescribed by the Commissioner. Typically the issue of declarations of substantial interference will not be considered at the interim direction phase, given the urgency to provide interim direction and the need for argument concerning substantial interference.

Following any interim directions, the parties must be prepared to immediately engage in expedited negotiations concerning essential services and, if unsuccessful, to engage in expedited mediation/arbitration and provide sufficient evidence and submissions upon which further essential services orders could be prescribed. The Commissioner may appoint an umpire to assist. As above, any final orders or directions will avoid intermingling in the workplace of replacement workers with bargaining unit members required to continue performing essential services.

If the provision of essential services that would be required would substantially interfere with meaningful collective bargaining (see below), the Commissioner may make a declaration of substantial interference and declare the dispute is to be resolved by compulsory arbitration.

Applications to rescind an exemption during a strike or lockout tax Board resources because of the urgency to restore essential services. If an urgent application to rescind an exemption during a strike or lockout turns out to have been required because the employer carelessly overestimated its ability to maintain essential services, its ability to hire necessary replacement workers, or the employer did not make best efforts to do so, such employers risk a significant award of costs against them.

IV. A FILED ESSENTIAL SERVICES AGREEMENT OR EXEMPTION MUST PRECEDE THESE STEPS

While parties may file their essential services agreement before commencing collective bargaining, this is not strictly necessary under the *Code*. However, certain steps in the collective bargaining process cannot take place until an essential services agreement has been accepted for filing by the Commissioner or an exemption is granted:

The appointment of a mediator. The Director of Mediation Services appoints mediators to inquire into disputes and to endeavor to assist the parties to reach settlement concerning collective bargaining. The Director may not appoint a mediator in any dispute where an essential services agreement is required unless:

(1) the essential services agreement has been filed;
(2) the parties have been granted an exemption pursuant to section 95.21 (see above);
(3) the Commissioner has made a declaration of substantial interference; or
(4) the Commissioner has granted the parties consent to have a mediator appointed without a filed essential services agreement (section 65(2.1)(d)).

Either party may apply to the Commissioner under section 65(2.1)(d) for consent to the appointment of a mediator without a filed essential services agreement. Because the *Code* anticipates parties will negotiate their essential services agreement in advance of collective agreement bargaining, such consent will be given only in rare circumstances. The Commissioner may, if necessary, release guidelines on circumstances where granting consent might be appropriate.

Strikes or Lockouts. Parties who are required to have an essential services agreement may not strike or lockout without a filed essential services agreement, unless they have been granted an exemption. *See Code sections 73(a.1) and 74(a.1); For PSERA bargaining relationships, those sections are to be read in accordance with section 28(1)(c) of PSERA*

Because a strike or lockout vote cannot be supervised until 14 days after the report of a mediator, and a mediator typically will not be appointed without a filed essential services agreement or exemption, in almost all cases the essential services agreement will have been filed, or an exemption granted, before any vote is requested. The one possible exception is where the Commissioner has consented to the appointment of a mediator without a filed agreement. In any such case, even where a vote is in favour of strike or lockout action, the party will not be in a position to commence strike or lockout action until an essential services agreement has been accepted for filing. Any strike or lockout occurring before the essential services agreement has been accepted for filing would constitute an illegal strike. *See sections 73(a.1)(i) and 74(a.1)(i)*

V. REACHING AN ESSENTIAL SERVICES AGREEMENT

The negotiation of an essential services agreement is primarily the responsibility of the parties to the bargaining relationship. The parties best understand which services are essential to protect lives, health, safety, security and the rule of law, and which positions are necessary to maintain

those essential services. Parties are required to bargain the terms of an essential services agreement in good faith. Failure to bargain in good faith and make every effort to enter into an agreement may result in a complaint to the Commissioner pursuant to section 95.4(4).

An essential services agreement must contain:

- Provisions identifying the essential services to be maintained by employees in the bargaining unit during a strike or lockout;
- Provisions setting the classifications, and the number of positions in each classification, required to perform those essential services;
- Provisions setting out the method by which employees capable of performing the essential services will be assigned to perform those services during a strike or lockout;
- Provisions setting out procedures to be followed in responding to emergencies or foreseeable changes to necessary essential services. Such provisions should make an essential services agreement flexible enough that the parties can themselves quickly respond to emergent changes to necessary essential services;
- If applicable, provisions setting out any permissible changes to the terms and conditions of employment which will apply to designated essential services workers during a strike or lockout;
- Provisions identifying sufficient umpires to be available for the resolution of disputes concerning the interpretation or application of the essential services agreement;
- Provisions identifying the process for parties to notify the other of a dispute and how parties are to apply to a dispute umpire. *See sections 95.41(1), 95.7(1)-(2)*

In determining what designated essential services workers are required, the parties must have regard to the availability of other capable and qualified persons who are neither members of the bargaining unit nor replacement workers. Employers who have elected to use designated essential services workers may not use the services of replacement workers (section 95.201(2)). Essential services agreements will only be acceptable for filing if a term prohibits the use of replacement workers in the same manner as section 95.201(2).

Where an employer has been refused an exemption and remains obligated to negotiate an essential services agreement, such essential services agreement will only be acceptable for filing if it prohibits the use of replacement workers in the same manner as section 95.201(2).

1. Assistance by Umpires

The parties may agree to use an umpire to assist them in reaching an essential services agreement. Umpires assist by mediating and, if a negotiated resolution is not possible, by settling the terms of the essential services agreement. If the parties have agreed to use an umpire, but cannot agree on the umpire to be used, they may apply to the Commissioner to appoint an umpire.

Where the terms of an essential services agreement have been settled by an umpire, either party may apply to the Commissioner to review the umpire's award under section 95.42(7) of the *Code*

on the ground the umpire's award is unreasonable. Applications for review under s. 95.42(7) must be submitted within 10 days of the umpire making the award.

Notwithstanding that a party has applied for review of the umpire's award, both parties must submit the necessary documents to submit the agreement for filing (as discussed below). In this way, the Commissioner will both review the umpire's award pursuant to section 95.42(7) while also performing the assessments required by section 95.44(4).

The remedies available to the Commissioner where a review is successful are not limited by the *Code*. In line with the Commissioner's powers concerning agreements, if the Commissioner grants a review, the agreement could be:

(1) amended by the Commissioner,
(2) referred back to the umpire,
(3) referred to a different umpire, or
(4) referred back to the parties for further negotiation (with or without the assistance of the Commissioner, an umpire, or other further directions).

2. Assistance by the Commissioner

If the parties do not agree to use an umpire, either party may apply to the Commissioner for assistance. The Commissioner has broad discretion upon receiving such an application. The Commissioner may agree to assist the parties by mediating and, if necessary, may set the terms of the essential services agreement. Alternatively, the Commissioner may choose to appoint an umpire to do so. The Commissioner may make any other direction appropriate in the circumstances, such as directing the parties to negotiate further and/or engage in mediation.

If the Commissioner agrees to assist the parties, they shall forthwith provide the Commissioner with a statement clearly setting out the matters on which the parties have agreed and on which they have not agreed.

In settling the terms of an essential services agreement, at any point the Commissioner may request submissions from the parties concerning whether the provision of essential services during a strike or lockout would substantially interfere with meaningful collective bargaining. Where the Commissioner hears submissions on the issue and determines there is no substantial interference, the Commissioner will express that finding in her award. If the Commissioner determines no essential services agreement acceptable for filing can be achieved, because the provision of essential services during a strike or lockout would substantially interfere with meaningful collective bargaining, the Commissioner may proceed to issue a Declaration of Substantial Interference under section 95.44(7) (as discussed in section VII below).

VI. FILING OF ESSENTIAL SERVICES AGREEMENTS

Essential services agreements are submitted to the Commissioner for filing. Merely submitting the agreement for filing has no effect. An essential services agreement has no effect under the

Code until it has been accepted for filing by the Commissioner. The parties will receive formal notice from the Commissioner when the agreement has been accepted for filing.

The parties shall jointly submit the agreement for filing using the mandatory form provided by the Commissioner. The form shall attach a Declaration by each party and a full copy of the agreement. In all cases, the parties shall jointly submit the form, along with the agreement and the Declarations, within 10 days of the terms being settled: Rules of Procedure, Rule 45(2). The requirement of joint filing applies regardless of whether the parties negotiated the essential services agreement themselves or whether an umpire or the Commissioner settled the terms of the essential services agreement *See section 95.42(6)* The requirement and timeline for joint filing also applies regardless of whether a party agrees with, or has applied for a review of, the terms of the agreement.

The Declaration requires each party to declare:

- whether the essential services agreement being submitted ensures essential services will be maintained during a strike or lockout; and
- whether the provision of essential services required by the essential services agreement will not substantially interfere with meaningful collective bargaining.

The Declarations and the agreement submitted for filing will be brought before the Commissioner for review. The Commissioner reviews essential services agreements submitted for filing on three grounds, listed in section 95.44(4):

(1) Technical compliance with the necessary elements of an essential services agreement;

(2) Whether the agreement will ensure the provision of essential services during a strike or lockout. Where both parties have provided Declarations to that effect, the Declarations shall be accepted as prima facie evidence supporting the acceptance of the agreement.

(3) Whether the provision of essential services required by the essential services agreement will not substantially interfere with meaningful collective bargaining. Where both parties have provided Declarations to that effect, the Declarations shall be accepted as prima facie evidence supporting the acceptance of the agreement.

Where the Commissioner settled the terms of the essential services agreement under section 95.42(3), in most circumstances no further hearing will be held. The Commissioner will have already determined the agreement ensures the provision of essential services during a strike. If, in the course of settling the agreement, the Commissioner has already determined it will not substantially interfere with meaningful collective bargaining, no further hearing shall be held on that issue.

Where there is a disagreement between the parties in their Declarations, the Commissioner must reach a decision under section 95.44(4) whether the agreement submitted is acceptable for filing. If any party has concurrently filed for review of agreement on the basis that an umpire's award was unreasonable, the Commissioner considers those issues together.

The Commissioner may hold a hearing concerning whether the essential services agreement is acceptable for filing. The Commissioner may determine whether an oral hearing is necessary or to proceed based on written submissions alone. Section 95.44(5) establishes that the parties to any hearing dealing with the filing of an essential services agreement are the parties to the agreement, namely the employer and the bargaining agent. Only those parties will be given notice of the application and hearing.

Where the Commissioner is not satisfied the agreement submitted is acceptable for filing, the Commissioner has a broad range of available remedies under section 95.44(6). The Commissioner may:

- amend the agreement after having heard the submissions of the parties;
- assist the parties with further negotiations concerning amendments and then, if necessary, amend the agreement;
- refer the agreement back to an umpire or appoint a new umpire;
- refer the agreement back to the parties for further negotiation (with or without further directions).

When an essential services agreement is accepted by the Commissioner for filing, the Commissioner shall notify the parties, and a copy of the essential services agreement marked "Accepted" will be placed on the Board's Essential Services file relating to that bargaining relationship.

1. Freedom of Information

Once an essential services agreement is accepted for filing, a redacted copy of the master agreement is posted to the Board's website. Individuals can make requests for disclosure of the schedules to the agreement without filing a formal request under the *Access to Information Act* ("ATIA") and without providing notice to the parties to the agreement. If a party is concerned that any part of the essential services agreement may contain information which, if disclosed, could reasonably be expected to threaten someone's safety or health, interfere with public safety, harm a law enforcement matter, or raise others disclosure concerns under the ATIA, that party shall advise the Commissioner when it files its Declaration. If the Commissioner agrees with the party's concern, the parties will be asked to provide a redacted version of the agreement, and to black out the inappropriate information. The redacted version of the agreement will be the copy generally available to the public upon request.

VII. DECLARATIONS OF SUBSTANTIAL INTERFERENCE

The Commissioner shall not accept an essential services agreement for filing where the provision of essential services required by the agreement would substantially interfere with meaningful collective bargaining. If, because of this, no essential services agreement acceptable for filing is possible, the Commissioner will issue a Declaration of Substantial Interference. A Declaration of Substantial Interference makes further strike or lockout action illegal, and permits either party to apply for binding arbitration if a collective agreement cannot be reached.

A Declaration of Substantial Interference may arise in three circumstances:

1. **The Commissioner Refuses to Accept an Agreement for Filing (section 95.44)**

When the agreement is submitted for filing, a party may declare on its Declaration that the provision of essential services required by the agreement would substantially interfere with meaningful collective bargaining. After hearing submissions from the parties, the Commissioner may refuse to accept the agreement submitted for filing. The Commissioner then endeavours to make the agreement acceptable using one or more of the processes listed in section 95.44(6).

If, on her own motion or at the request of a party, the Commissioner determines no agreement acceptable for filing can be achieved because the provision of essential services will substantially interfere with meaningful collective bargaining, the Commissioner may issue a Declaration of Substantial Interference. Before doing do, the Commissioner will determine whether any further submissions from the parties are required, or whether all relevant considerations have already been addressed by the parties in previous submissions and proceedings.

2. **The Commissioner Was Unable to Settle the Terms of an Agreement (section 95.42)**

If the Commissioner's services are used by the parties to assist in negotiation pursuant to section 95.42 and, after hearing submissions from the parties, the Commissioner determines no agreement acceptable for filing can be achieved because the provision of essential services would substantially interfere with meaningful collective bargaining, the Commissioner may issue a Declaration of Substantial Interference.

3. **Any Agreement or Order Arising from the Rescinding of an Exemption Would Substantially Interfere**

As discussed above, if an exemption is rescinded during a strike or lockout, once interim directions have been put in place, the parties will be required to expeditiously negotiate an essential services agreement or litigate concerning a further order to prescribe the provision of essential services. If, on her own motion or at the request of a party, the Commissioner determines no agreement acceptable for filing can be achieved, or no order is possible, because the provision of essential services thereunder will substantially interfere with meaningful collective bargaining, the Commissioner may issue a Declaration of Substantial Interference.

The issue of substantial inference will typically not be considered at the interim direction phase, given the urgency to provide interim direction and the need for argument concerning substantial interference.

4. **Significant Change in Circumstances Application (section 95.45)**

During a strike or lockout, either or both parties can apply for a Declaration of Substantial Interference where:

- there has been a significant change to the essential services that must be maintained; and

- that change will substantially interfere with meaningful collective bargaining.

Upon the issuance of a Declaration of Substantial Interference during a strike or lockout, the strike or lockout becomes illegal and is terminated. No further strike or lockout may take place, and the parties may apply for binding arbitration.

A Significant Change in Circumstances application under section 95.45 is not the appropriate application where the party is seeking to change the essential services required by the essential services agreement (rather than a Declaration of Substantial Interference). Where a party believes a change in circumstances requires a change to the essential services agreement, see "Amendments" below.

VIII. AMENDMENTS

1. Non-Emergency Amendments

Parties may propose amendments to essential services agreements to the other party at any time. Section 95.42 of the *Code* applies to proposed amendments, meaning that the parties may utilize the services of an umpire and make applications to the Commissioner. The Commissioner expects the parties to negotiate issues concerning proposed amendments in good faith between themselves, or using the services of an umpire, before making any application to the Commissioner concerning a non-emergency amendment. Premature applications to the Commissioner may result in a direction to the parties to negotiate in good faith and make every effort to resolve the issue.

2. Emergency Changes to Essential Services

Essential services agreements must contain provisions setting out procedures to be followed in responding to emergencies or foreseeable changes to the essential services that need to be maintained during a strike or lockout. The Commissioner expects the parties will negotiate into their agreement a timely process for handling changes to required essential services which is responsive to their particular circumstances, including handling emergency changes.

IX. ESSENTIAL SERVICE AGREEMENT DISPUTES

Essential services agreements must identify umpires to be available for the timely resolution of disputes involving the interpretation, application, implementation or alleged breaches of the essential services agreement. *See section 95.41(1)(f)* The agreement should also set how parties notify the other of the dispute and how parties apply to a dispute umpire. *See section 95.7(1) and (2)* Subject to the terms of the essential services agreement, the dispute umpire may mediate and resolve the dispute.

If no dispute umpire identified in the agreement is available to provide a timely resolution of the dispute, either party may apply to the Commissioner to appoint a dispute umpire. *See section 95.7(4)*

Either party may apply to the Commissioner to review the dispute umpire's award under section 95.7(8) of the *Code* on the ground the award is unreasonable. Applications for review under s. 95.7(8) must be submitted within 10 days of the dispute umpire making the award.

A dispute umpire shall file a copy of any award issued with the Commissioner. Dispute umpires' awards will be placed on the Board's Essential Services file related to that bargaining relationship, and will generally be available from the Board upon request. The Commissioner may publish dispute umpires' awards of significance. Parties with concerns about disclosure of a dispute umpire's decision should promptly notify the Commissioner.

Where an employer or bargaining agent fails to comply with the dispute umpire's award, a party may apply to the Commissioner to have the award filed with the clerk of the Court of Queen's Bench, whereupon the award is enforceable as an award or judgment of the Court. *See section 95.7(9)*

1. Illegal Strikes and Lockouts

It is a prohibited practice under section 95.8 of the *Code*:

- For an employer to lock out, cause a lockout, or threaten to lock out or cause a lockout, of designated essential services workers;
- For a bargaining agent to strike, cause a strike, or threaten to strike or cause a strike, of designated essential services workers;
- For designated essential services workers to participate in a strike;
- For any person or trade union to impede, prevent, or attempt to impede or prevent, a designated essential services worker from complying with the essential services Division of the *Code*.

All illegal strike/lockout applications under section 95.8 will be heard by a panel of three members of the Board, chaired by the Commissioner, which will permit the same panel to exercise the powers of both the Commissioner and the Board. *See section 9(15)*

X. TRANSITIONAL

1. Original transition provisions for PSERA employers, AHS and hospitals as defined in the *Hospitals Act*.

Parties to whom the essential services Division applies, and for whom a mediator was appointed in the current dispute on or before March 15, 2016, are required to have:

(1) submitted their essential services agreement for filing,
(2) agreed upon an umpire to mediate/settle the terms of the agreement,
(3) applied to the Commissioner to appoint an umpire,
(4) applied to the Commissioner to mediate/settle the terms of the agreement, or
(5) been granted an exemption under section 95.21,

no later than September 26, 2016. The parties may mutually agree to extend this requirement to a date agreed between the parties. The parties shall provide notice to the Commissioner by letter informing the Commissioner of any such extension. *See section 95.91*

Parties to a compulsory arbitration board appointed on or before March 15, 2016, which has not yet made its award, may mutually agree to the termination of the compulsory arbitration board by filing that agreement with the Board pursuant to section 95.92(2). Parties terminating a compulsory arbitration board must take one of the steps referred to above within 120 days of filing the termination agreement. The parties may mutually agree to extend this requirement to a date agreed between the parties. The parties shall provide notice to the Commissioner by letter informing the Commissioner of any such extension. *See section 95.92.*

2. **Transition provisions for employers falling under Essential Services effective June 7, 2017 (except public post-secondary institutions re: academic staff)**

For parties listed in subsections 95.2(1)(e) to (j), if, before June 7, 2017, a mediator has been appointed pursuant to section 65, the dispute has not been resolved, and no exemption has been granted under section 95.21, the parties are required to enter into an Essential Services Agreement within 120 days of June 7, 2017 (i.e. October 5, 2017). The parties may mutually agree to extend this requirement to a date agreed between the parties. The parties shall provide notice to the Commissioner by letter informing the Commissioner of any such extension. *See section 95.2(2)*

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