Essential Services and Collective Bargaining in a Unionized Workplace

- With having gone 22 months without the renewal of our Collective Bargaining Agreement, we have had some requests from members to explain how the *Saskatchewan Employment Act* and the recent amendments to Part VII – Essential Services affect us.
- On April 29, 2014 the *Saskatchewan Employment Act,* an Act with respect to Employment Standards, Occupational Health and Safety, Labour Relations and Related Matters came into effect. This Act combined and replaced several different Acts. Part VI Labour Relations, Division 6 Collective Bargaining and Part VII Public Service Essential Services are where the provisions for collective bargaining and essential services are located in the Saskatchewan Employment Act.
- Division 6 of the Act provides the outline for the provision and requirements of collective bargaining as well as the ability to perform job action or lockout. There are certain requirements that must be met in order for either the Union or the Employer to take such action.

- Either party must service notice that allow for the opening of bargaining, notice must be given not less than 60 days nor more than 120 days before the expiry day of the collective agreement;
- Lockouts and strikes are prohibited during the term of the collective agreement;
- No Union shall take a vote on the question of whether to strike and no employer shall declare a lockout before the union and employer have engaged in collective bargaining;
- No Union shall declare or authorize a strike and no employee shall strike before a vote has been taken by the employees;
- A notice of impasse and mediation or conciliation are required before strike or lockout, this is done through notice to mediator;
- No strike is to be commenced and no lockout is to be declared:
    - Unless either the mediator has informed them that it does not intend to recommend terms of settlement or the parties have not accepted the recommended terms of settlement;'
    - The mediator has informed the minster and parties in a report that the dispute has not been settled;
    - Until the expiry of a cooling-off period of 14 days after the minister has been informed;
    - The mediator has discussed whether it is necessary to establish a shutdown protocol that preserved the plant, equipment and any perishable items;
    - 48 hours written notice of the date and time that the strike or lockout will commence.

The Saskatchewan Employment Act definition of **"Strike"** means any of the following actions taken by employees:

- A cessation of work or refusal to work or continue to work by employees acting in combination or in concert or in accordance with a common understanding;
- Any other concerted activity on the part of employees in relation to their work that is designed to restrict output or the effective delivery of services; *(This would include the withdrawal of callout and overtime services)*

- Prior to becoming Part VII Public Service Essential Services of the Saskatchewan Employment Act, *The Public Service Essential Services Act* was in effect.

- In the previous Act "**Essential Services"** was defined as:

- With respect to services provided by a public employee other than the Government of Saskatchewan services that are necessary to enable a public employee to prevent:
  - Danger to life, health or safety;
  - The destruction or serious deterioration of machinery, equipment or premises;
  - Serious environmental damage; or
  - Disruption of any of the courts of Saskatchewan; and
- With respect to services provided by the Government of Saskatchewan, services that :
  - Meet the criteria set out in subclause (i); and
  - Are prescribed;

The Act indicated that Crown's in right of Saskatchewan were bound by the Act and if a public employer and trade union do not have an essential services agreement that is effect, the public employer and trade union shall begin negotiations with a view to concluding an essential services agreement. This was to occur at least 90 days before the expiry of the collective agreement or as soon as is reasonably possible. The public employer was to advise the Union of those services that hey deemed essential. The agreement requires the following information under section 7(1(2)):

- Identify the services to be maintained;
- Provisions that set out the classifications of employees who must continue to work during stoppage;
- Provisions that set out the number of employees in each classification;
- Provisions that set out the names of the employees;
- Any other prescribed provisions;

For the purposes of clause (1)(c), the number of employees in each classification who must work during the work stoppage to maintain essential services is to be determined without regard to the availability of other persons to provide essential services.

On January 30, 2015, by a 5-2 majority, the Supreme Court of Canada granted an appeal by the SFL (Saskatchewan Federation of Labour) of the province's essential services legislation which restricted who could strike. This had immediately been deemed as a victory by labour in organized workplaces and assumptions were made that the legislation was repealed. This was not the case as the court upheld the principles of essential services and gave the government 12 months to fix the current law.

As a result, new essential services legislation took effect on January 1, 2016 requiring changes to *The Saskatchewan Employment Act.* Amendments were made to the notice of impasse that clarified that the employer or union can serve notice of impasse when they are of the opinion that an impasse has been reached. The notice must identify whether there are essential services that would have to be maintained. The party receiving notice must within 3 days of receiving notice, identify the essential service that would have to be maintained. This changed the requirement to negotiate the agreement in advance of bargaining.

Mandatory mediation was introduced, establishing a time period of 60 days from the appointment of the mediator before either party could indicate that an agreement is not obtainable. The requirement for the 14 day cooling off period was still maintained but would be reduced to 7 days for those required to negotiate an essential service agreement.

Part VII – Essential Services was significantly amended with the following changes.

- The definition of “Essential Services” was repealed and the parties will be required to negotiate the essential services appropriate for their organization, so as to ensure the public interest is met;
- Much of the content of the agreement still remains the same but here have also been some additional requirements added and they are listed as follows:
  - Essential Service;
  - Locations of work;
  - Classification of employee;
  - Number of position in each classification;
  - Process to identify and inform employees;
  - Process to respond to changes in need for service’
  - Dispute resolution process.

In the negotiations of the Essential Services agreements between the employer and the union, the employer is required to consider qualified employees who are not members of the bargaining unit and the union is then required to identify the qualified union members required to fill any vacancies identified in the essential service schedule. An example of this would be if an employer required 20 essential services and they have 5 qualified managers, the union would be required to fill 15 vacant positions with qualified members. A process for dispute resolution, which would be the use of a tribunal, was introduced for the purpose of establishing the essential service requirements.

Where 100 percent of the bargaining unit are determined to be essential, the Tribunal can declare that the decision substantially interferes with the exercise of a strike or lockout and the parties would enter into binding mediation-arbitration of the terms and conditions of the collective agreement.

In bargaining units that are not deemed 100 percent essential, an application would be required by either party to the Chair of the Tribunal for determination as to whether the essential services agreement substantially interferes in the exercise of the strike or lockout. If the Tribunal determines, or the parties agree, that the level of designation in an essential services agreement substantially interferes with the exercise of a strike or lockout, the parties are required to enter into binding mediation-arbitration.

The binding process will be conducted by a tri-party board unless agreed by both parties to utilize a single mediator/arbitrator. If agreement cannot be reached on a chair within 3 days, one will be appointed by the minister.

Fines for violations of the essential services strike/lock out provisions of the Act are as follows:

- Union or Employer - $100,000;
- Employee - $1000;
- The fine for continuation of an offense is $10,000 per day for Union and Employers and $400 for employee.

What does this mean for members of IBEW Local 2067 employed by SaskPower?

It means the following:

- The union and the employer are to bargain in good faith with the intentions of reaching an agreement that can be ratified through each party's internal processes;
- No vote on the question of strike can take place until this occurs;
- Neither the Union nor the Employer may engage in perceived job action until all conditions have been met;
- Under section 6-33 of *the Saskatchewan Employment Act,* the union or the employer will serve notice of impasse in writing and outline the required essential services, or identification that none exist;
- The other party has 3 days in which they may respond identifying the groups that would be essential in their view;
- The parties will enter into mandatory mediation for 60 days;
- If no agreement is reached within the 60 days, the parties would enter into a cooling off period prior to commencement of job action;
- A strike vote must be taken by the Union before any strike notice can be given;
- After the 5th day of the cooling off period, either party can serve their 48 hours' written notice of the date and time that the strike or lockout will commence;
- At any time after the parties have engaged in collective bargaining, a final offer may be tendered and if the requirements are met will be taken to membership for a vote;