



## **Guide to Essential and Emergency Services For the Unified Bargaining Unit in the Ontario Public Services (OPS)**

(Please note that you cannot 'interview' members while they are performing their work. It is important to engage members during lunch, on their break or after work.)

### **1. What are Essential and Emergency Services (EES)?**

The Crown Employees Collective Bargaining Act (CECBA) gives OPSEU/SEFPO members in the Ontario Public Service (OPS) the legal right to strike. It also requires us to provide Essential and Emergency Services (EES) during a strike or lockout.

CECBA defines essential and emergency services in Section 30 as services that are necessary to enable the employer to prevent:

- danger to life, health or safety;
- destruction or serious deterioration of machinery, equipment, or premises;
- serious environmental damage; and
- disruption of the administration of the courts or legislative drafting.

That is the criteria used in negotiating an essential and emergency service.

### **2. What are Essential and Emergency Services Agreements (EESA's)?**

CECBA specifies that the EESA's must identify:

- the essential and emergency services;
- the number of employees required to perform the essential and emergency services;

- the employees, usually by position and/or classification, who will be required to work during a strike or lockout to the extent necessary to enable the employer to provide essential and emergency services.

Your EESA (if applicable) will also identify:

- the Ministry and location;
- the number of employees who normally provide that service –“normal complement” (NC);
- the essential and emergency job functions; and
- the triggers that set an emergency service in place.

The agreements may identify key conditions. It is not business as usual in the workplace, and the health and safety of employees must be maintained.

### **3. Why are we doing the EES review?**

OPSEU/SEFPO members in the Ontario Public Service (OPS) will begin to bargain a new collective agreement later this year.

The Crown Employees Collective Bargaining Act requires OPSEU/SEFPO and the employer to negotiate agreements to provide EES in the event of a strike or lockout. We have no choice in this matter. It's the law.

At the 2022 Unified Divisional meeting, the members made amendments to state that EESA's be completed as soon as reasonably possible in advance of issues bargaining. The Executive Board passed these amendments at their July 18-20, 2023, meeting.

### **4. What else do I need to know about EES?**

A Supreme Court decision states that essential or emergency services agreements must be negotiated so that they allow for the Union to have a meaningful strike.

A ruling by the Ontario Labour Relations Board (OLRB) during the 1998-99 negotiations outlined the following four principles;

- The right to strike can only limited to the extent necessary to enable the employer to provide essential services. A strike or lockout is not business as usual.
- Members who must perform essential services are required to do the essential parts of their job, not their whole job.
- The Union is entitled to unscheduled worksite inspections of up to 30 minutes to ensure the EESA is being followed. There is no limit on the

number of worksite visits. [Note: The parties later negotiated a 45-minute protocol]

- Essential and emergency workers retain the right to refuse unsafe work as laid out in the Occupational Health & Safety Act (OHSA)

We have learned other valuable lessons from previous rounds of negotiations, like:

- The EESAs have to identify the essential and emergency functions of the job. The Ontario Labour Relations Board (OLRB) ruled that if an EESA does not spell out the essential job functions, the whole job is deemed to be essential. Any exclusions to the whole job must be identified in the EESA.
- The OLRB makes its rulings based on the EESA. The Union won't win arguments about what's essential and what's not, if the information is not in the EESA. Therefore, EESAs must be detailed and specific about the job functions that are essential.
- Once the agreements are signed off, the employer cannot add duties. The employer can't make an essential worker do work that's normally done by another position.
- The more information your bargaining teams have about your workplace, the better. The employer has been known to fabricate stories – at the bargaining table or the Labour Board – about the work of OPSEU SEFPO members.

#### **5. Can the number of OPSEU SEFPO essential workers be reduced if managers will be doing EES work?**

Yes, they can, but ONLY IF these 'management offsets' are bargained into the EESA. Otherwise, CECBA applies. CECBA says that the number of bargaining unit members necessary to provide the essentials services shall be determined without regard to the availability of other persons to provide the services. Management offsets must be bargained.

#### **6. What are the steps to identify Essential and Emergency Services in your worksite?**

There are four steps to complete the review:

- Step 1. Identify all the worksites that you believe have essential or emergency services.

- Step 2. Contact a steward or active member(s) in the identified worksites and in the appropriate services in your local to help you complete the template. Do this at lunch, on break or after work.
- Step 3. Answer the questions on the template for each essential or emergency service. (Keep reference notes for your records)
- Step 4. Send the completed form to [UnifiedOPSBargaining@opseu.org](mailto:UnifiedOPSBargaining@opseu.org). If you have any questions, contact your Bargaining Team representative.

## **7. What should you expect from the employer?**

The objective of the employer is to keep every workplace running as usual in the event of a strike or lockout. The employer goes into EES bargaining trying to achieve this objective. Don't be too surprised if managers start asking questions when you start canvassing members. They may try to harass you. They may try to interfere with your answers. Don't let them.

Article 3 of the Collective Agreement is clear: management shall not discriminate against you or harass you because of union activity. As a member of the Local Executive Committee, (this includes stewards), it is your right to communicate with your members about union matters. You cannot disrupt the employers operation while you do this. Contact members about their work over lunch, on break or after work.

Completed EES forms must be sent to [UnifiedOPSBargaining@opseu.org](mailto:UnifiedOPSBargaining@opseu.org)