

BILL

No. 128

An Act to amend *The Saskatchewan Employment Act* and to repeal *The Public Service Essential Services Act*

(Assented to _____)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Saskatchewan Employment Amendment Act, 2013*.

S.S. 2013, c.S-15.1 amended

2 *The Saskatchewan Employment Act* is amended in the manner set forth in this Act.

Section 2-18 amended

3 **Section 2-18 is amended:**

(a) **in subsection (4):**

(i) **in the portion preceding clause (a) by adding “, but subject to subsection (5)” after “section 2-19”; and**

(ii) **in clause (a) by striking out “40” and substituting “30”; and**

(b) **by adding the following subsection after subsection (4):**

“(5) If employees have a union as their bargaining agent and the employer and the union have agreed respecting the number of hours in a day or week that are to be worked before overtime is paid:

(a) subsection (4) does not apply to those employees; and

(b) the employer shall pay those employees overtime in accordance with the agreement”.

Section 2-99 amended

4 **The following clauses are added after clause 2-99(g):**

“(g.1) subject to any other Act, fixing the minimum age at which employees may be employed in any class of employment;

“(g.2) requiring every employer in any class of employment to provide, repair and launder without charge to his or her employee any uniform or special article of wearing apparel that the employer requires the employee to wear;

“(g.3) requiring that, if an employer grants a rest period to an employee, the employee shall be deemed to have worked during the whole of the period;

“(g.4) fixing the maximum price to be charged to an employee by an employer, or the maximum deduction from the wages of an employee to be made by an employer, for living quarters in circumstances where the employer furnishes permanent or temporary living quarters to an employee:

- (i) whether or not the living quarters are self-contained; and
- (ii) whether or not the living quarters are in the general possession and custody of the employer;

“(g.5) requiring that, if an employee or a member of a class of employees is required or permitted to finish work between the hours of half past twelve o’clock in the morning and seven o’clock in the morning local time, the employer shall provide the employee with free transportation to the employee’s place of residence”.

Section 3-73 amended

5 Subsection 3-73(3) is amended by striking out “*The Public Inquiries Act*” and substituting “sections 11, 15 and 25 of *The Public Inquiries Act, 2013*”.

Section 6-28 amended

6 Clause 6-28(2)(a) is amended by striking out “*The Public Inquiries Act*” and substituting “sections 11, 15 and 25 of *The Public Inquiries Act, 2013*”.

Section 6-29 amended

7 Clause 6-29(4)(a) is amended by striking out “*The Public Inquiries Act*” and substituting “sections 11, 15 and 25 of *The Public Inquiries Act, 2013*”.

New Part VII

8 Part VII is repealed and the following substituted:

“PART VII

Essential Services

“DIVISION 1

Preliminary Matters for Part

“Interpretation of Part

7-1(1) In this Part:

- (a) **‘collective bargaining’** means collective bargaining as defined in Part VI and includes collective bargaining with a view to concluding an essential services agreement;
- (b) **‘employee’** means an employee, as defined in Part VI, of a public employer who is represented by a union;
- (c) **‘essential services’** means, with respect to a public employer, services provided by the public employer that are necessary to enable a public employer to prevent:
 - (i) danger to life, health or safety;
 - (ii) the destruction or serious deterioration of machinery, equipment or premises;
 - (iii) serious environmental damage; or
 - (iv) disruption of any of the courts of Saskatchewan;

-
- (d) **'essential services agreement'** means an agreement concluded pursuant to section 7-3 and includes an agreement mentioned in subsection (2);
- (e) **'essential services employee'** means an employee who is described in section 7-24;
- (f) **'last collective agreement'** means the collective agreement last in effect between a public employer and a union before a work stoppage;
- (g) **'public employer'** means:
- (i) an employer that:
 - (A) is defined in Part VI; and
 - (B) provides an essential service to the public; or
 - (ii) any employer, person, agency or body, or class of employers, persons, agencies or bodies, that:
 - (A) is prescribed; and
 - (B) provides an essential service to the public;
- (h) **'union'** means a union, as defined in Part VI, that represents employees of a public employer;
- (i) **'work schedule'** means a work schedule or modified work schedule provided by a public employer to a union in accordance with this Part;
- (j) **'work stoppage'** means a lockout or strike as defined in Part VI.
- (2) Every essential services agreement within the meaning of *The Public Service Essential Services Act*, as that Act existed on the day before the coming into force of this Part, that is in effect on the day that this Part comes into force:
- (a) remains in effect; and
 - (b) may be dealt with pursuant to this Part as if it were concluded pursuant to this Part.

"Application of Part

- 7-2(1)** This Part applies to every public employer, every union and every employee.
- (2) This Part prevails if there is any conflict between this Part and:
- (a) any other Part of this Act;
 - (b) any other Act, regulation or law;
 - (c) any arbitral or other award or decision; or
 - (d) any obligation, right, claim, collective agreement or other agreement or arrangement of any kind.

**“DIVISION 2
Essential Services Agreements**

“Negotiation of essential services agreement

7-3(1) If a public employer and union have not concluded an essential services agreement and the minister and the parties have received a report from a labour relations officer, special mediator or conciliation board pursuant to clause 6-33(3)(c) that a dispute between the parties has not been settled, the public employer and the union shall engage in collective bargaining with a view to concluding an essential services agreement as soon as is reasonably possible after receiving that report.

(2) On beginning to engage in collective bargaining pursuant to this section to conclude an essential services agreement, a public employer shall advise the union of those services of the public employer that the public employer considers as essential services for the purposes of an essential services agreement.

(3) For the purpose of facilitating collective bargaining to conclude an essential services agreement, the public employer shall provide to the union a notice containing the information required to be provided pursuant to subsection 7-6(2) if:

- (a) the public employer considers it appropriate to give the notice; or
- (b) the union requests the notice.

(4) Nothing in this section is to be interpreted as preventing a public employer and union from concluding an essential services agreement at any time.

“Contents of essential services agreement

7-4(1) An essential services agreement must consist of at least the following:

- (a) provisions that identify the essential services that are to be maintained;
- (b) provisions that set out the classifications of employees who must work during a work stoppage to maintain essential services;
- (c) provisions that set out the number of positions in each classification mentioned in clause (b);
- (d) provisions that set out the manner of determining the locations where the positions mentioned in clause (c) are required to work;
- (e) provisions that set out the manner of identifying and informing the employees who must work during a work stoppage;
- (f) provisions that set out the procedures that must be followed to respond to an unanticipated increase or decrease in the need for essential services during a work stoppage;
- (g) provisions that set out the procedures that must be followed to respond to an emergency during a work stoppage;
- (h) provisions that set out the procedures that must be followed to resolve disputes respecting changes to the agreement;
- (i) any other prescribed provisions.

(2) For the purposes of clause (1)(c), the number of positions is to be determined having regard to the availability of other qualified persons who are in the employ of the public employer and who are not members of the bargaining unit.

“Prohibition on work stoppage without essential services agreements, etc.

7-5 Notwithstanding Part VI, no public employer shall engage in a lockout and no union shall engage in a strike unless:

- (a) there is:
 - (i) an essential services agreement between the parties;
 - (ii) a decision of a single arbitrator issued pursuant to section 7-11 or 7-15;
 - (iii) a decision of an arbitration board issued pursuant to section 7-11 or 7-15; or
 - (iv) an order of the board issued pursuant to section 7-12 or 7-15; or
- (b) the union is providing the essential services in accordance with Division 3.

“DIVISION 3

**Provision of Essential Services if
no Essential Services Agreement**

“Notice if no essential services agreement

7-6(1) A public employer shall serve a notice on the union in accordance with this section if:

- (a) notice of a strike or lockout has been served in accordance with section 6-34; and
 - (b) there is no essential services agreement concluded between the public employer and the union.
- (2) A notice served pursuant to subsection (1) must set out the following as determined by the public employer:
- (a) provisions that identify the essential services that are to be maintained;
 - (b) provisions that set out the classifications of employees who must work during the work stoppage to maintain essential services;
 - (c) provisions that set out the number of positions in each classification mentioned in clause (b);
 - (d) provisions that identify the locations where the positions mentioned in clause (c) are required to work.
- (3) The public employer shall provide the union with a work schedule that identifies:
- (a) the times during which the positions mentioned in clause (2)(c) are required to work during a work stoppage to maintain essential services;
 - (b) the number of positions mentioned in clause (2)(c) who must work during the times mentioned in clause (a); and
 - (c) the locations where the positions mentioned in clause (2)(c) are required to work.

(4) On receipt of the work schedule from the public employer, the union shall immediately:

- (a) identify the employees within each classification mentioned in clause (2)(c) who must work during the work stoppage to maintain essential services;
- (b) provide to each employee identified in clause (a) his or her work schedule; and
- (c) provide to the public employer a list containing the name and the classification of each employee who is identified pursuant to clause (a) and the location where each employee will work.

“Changing information provided in notice

7-7(1) If, at any time after a work stoppage has commenced, the public employer determines that a change to a notice served pursuant to section 7-6 or a further notice pursuant to this section is necessary and there is no essential services agreement concluded between the public employer and the union, the public employer may serve a further notice on the union setting out all or any of the following:

- (a) if the public employer determines that more or fewer classifications of employees must work during the work stoppage to maintain essential services, the change respecting classifications;
- (b) if the public employer determines that more or fewer positions in a classification must work during the work stoppage to maintain essential services, the change in the number of positions;
- (c) if the public employer determines that the locations where positions are required to work must be changed to maintain essential services or that more or fewer locations are required to maintain essential services, the change in locations or the change in the number of locations.

(2) If the public employer serves a further notice pursuant to subsection (1), the public employer shall provide the union with a work schedule that identifies:

- (a) the times during which the positions in each classification are required to work during a work stoppage to maintain essential services;
- (b) the number of positions in each classification who must work during the times mentioned in clause (a); and
- (c) the locations where the positions mentioned in clause (b) are required to work.

(3) On receipt of the work schedule from the public employer pursuant to subsection (2), the union shall immediately:

- (a) identify the employees within each classification mentioned in the work schedule who must work during the work stoppage to maintain essential services;
- (b) provide to each employee identified pursuant to clause (a) his or her work schedule; and
- (c) provide to the public employer a list containing the name and the classification of each employee who is identified pursuant to clause (a) and the location where each employee will work.

“Dispute re essential services, classifications or number of positions, etc.

7-8(1) The union may dispute a determination made by a public employer pursuant to section 7-6 or 7-7 if the union believes all or any of the following:

(a) in the case of essential services identified by a public employer pursuant to clause 7-6(2)(a), that some or all of the identified services are not necessary to prevent:

- (i) danger to life, health or safety;
- (ii) the destruction or serious deterioration of machinery, equipment or premises;
- (iii) serious environmental damage; or
- (iv) disruption of any of the courts of Saskatchewan;

(b) that the essential services can be maintained without certain classifications of employees set out in the notice provided pursuant to clause 7-6(2)(b) or 7-7(1)(a);

(c) that the essential services can be maintained using fewer positions than the number set out in the notice provided pursuant to clause 7-6(2)(c) or 7-7(1)(b);

(d) that the essential services can be maintained at fewer locations or at locations other than those set out in the notice provided pursuant to clause 7-6(2)(d) or 7-7(1)(c).

(2) If the union disputes a determination mentioned in subsection (1), the union may:

(a) apply to the board for an order to do all or any of the following:

- (i) vary the services identified as essential services;
- (ii) vary the classifications of employees who must work during the work stoppage;
- (iii) vary the number of positions in one or more classifications who must work during the work stoppage;
- (iv) vary the locations or the number of locations where work must be performed during the work stoppage;

(b) notify the public employer that it intends to resolve the dispute by submitting it to arbitration pursuant to section 7-9; or

(c) enter into a written agreement with the public employer to resolve the dispute by submitting it to arbitration pursuant to section 7-10.

(3) The public employer and the union shall file a copy of every written agreement mentioned in clause (2)(c) with the minister promptly after executing the written agreement.

“Arbitration of disputes re essential services—single arbitrator

7-9(1) If the union intends to resolve a dispute mentioned in subsection 7-8(1) by arbitration pursuant to this section, the union shall notify the public employer in writing of its intention.

(2) The notice mentioned in subsection (1) must contain:

(a) the name of the person whom the union is willing to accept as a single arbitrator; or

(b) a list of names of persons any of whom the union is willing to accept as a single arbitrator.

(3) Within three days after receiving the notice mentioned in subsection (1), the public employer shall:

(a) inform the union whether or not it agrees to submit the matter to arbitration; and

(b) if the public employer agrees pursuant to clause (a):

(i) notify the union that it accepts the name of the single arbitrator set out in the notice or the name of a person from the list of the names set out in the notice, and the dispute shall proceed to arbitration; or

(ii) if the public employer does not accept the name of the single arbitrator set out in the notice or the name of a person from the list of the names set out in the notice, notify the union and send the union a list of names of persons any of whom it is willing to accept as a single arbitrator.

(4) If the public employer and the union agree to the name of the single arbitrator, they shall promptly inform the minister, in writing, of the single arbitrator that they have agreed to.

(5) If the public employer notifies the union within three days after receiving the notice mentioned in subsection (1) that it does not agree with submitting the dispute to arbitration or if the public employer and the union cannot agree to the name of a single arbitrator within a further period of three days after the date the public employer sends its notice pursuant to subclause (3)(b)(ii), either party or that party's lawyer or agent may:

(a) inform the minister, in writing; and

(b) apply to the board:

(i) in the case of the union, for an order described in clause 7-8(2)(a); or

(ii) in the case of the public employer, for an order confirming the public employer's determinations that are the subject of the dispute.

(6) No person is eligible to be appointed as a single arbitrator or shall act as a single arbitrator if the person:

(a) has a pecuniary interest in a matter before the single arbitrator; or

(b) is acting or has, within a period of one year before the date on which the dispute is submitted to arbitration, acted as lawyer or agent of any of the parties to the arbitration.

-
- (7) Within seven days after the minister receives notification of the selection of a single arbitrator pursuant to subsection (4), the single arbitrator shall commence the arbitration.
- (8) The single arbitrator shall:
- (a) hear:
 - (i) evidence presented relating to the dispute; and
 - (ii) argument by the parties or their lawyers or agents; and
 - (b) make a decision respecting the matters mentioned in section 7-11 that are the subject of the dispute.
- (9) A single arbitrator may exercise all or any of the powers mentioned in subsection 6-49(3).
- (10) The decision of the single arbitrator pursuant to this section is final.
- (11) The public employer and the union shall:
- (a) bear their own costs of the arbitration; and
 - (b) pay an equal share of the remuneration and expenses of the single arbitrator.

“Arbitration of disputes re essential services—arbitration board

- 7-10(1)** In a written agreement filed with the minister pursuant to subsection 7-8(3), each party shall name the person it intends to appoint to the arbitration board.
- (2) Within three days after the members of the arbitration board have been appointed by the parties, the two appointees shall appoint a third member of the arbitration board, who is to be the chairperson of the arbitration board.
- (3) If the two appointees named by the parties fail to agree on the appointment of a third member of the arbitration board within the three-day period mentioned in subsection (2), the minister, on the request of a party, shall appoint the third member.
- (4) The member of the arbitration board appointed pursuant to subsection (3) is the chairperson of the arbitration board.
- (5) No person is eligible to be appointed as a member of an arbitration board or shall act as a member of an arbitration board if the person:
- (a) has a pecuniary interest in a matter before the arbitration board; or
 - (b) is acting or has, within a period of one year before the date on which the dispute is submitted to arbitration, acted as lawyer or agent of any of the parties to the arbitration.
- (6) Within seven days after the appointment of the third member of the arbitration board, the arbitration board shall commence the arbitration.
- (7) The arbitration board shall:
- (a) hear:
 - (i) evidence presented relating to the dispute; and
 - (ii) argument by the parties or their lawyers or agents; and
 - (b) make a decision respecting the matters mentioned in section 7-11 that are the subject of the dispute.

-
- (8) The decision of the majority of the members of an arbitration board or, if there is no majority decision, the decision of the chairperson of the arbitration board is the decision of the arbitration board.
- (9) A arbitration board may exercise all or any of the powers mentioned in subsection 6-49(3).
- (10) The decision of the arbitration board pursuant to this section is final.
- (11) The public employer and the union shall:
- (a) bear their own costs of the arbitration; and
 - (b) pay an equal share of the remuneration and expenses of a person appointed pursuant to subsection (2) or (3) as the third member of an arbitration board.

“Period within which single arbitrator or arbitration board must make decision

7-11 Within 14 days after the conclusion of the arbitration pursuant to section 7-9 or 7-10, the single arbitrator or arbitration board shall issue a decision confirming or varying all or any of the following:

- (a) the identification of services as essential services;
- (b) the classifications of employees who must work during the work stoppage;
- (c) the number of positions in one or more classifications who must work during the work stoppage;
- (d) the locations or the number of locations where work must be performed during the work stoppage.

“Period within which board must commence hearing and make an order

7-12(1) Within seven days after receiving an application pursuant to clause 7-8(2)(a) or subsection 7-9(5), the board shall commence hearing the dispute.

(2) Within 14 days after the conclusion of its hearing, the board shall issue an order confirming or varying all or any of the following:

- (a) the identification of services as essential services;
- (b) the classifications of employees who must work during the work stoppage;
- (c) the number of positions in one or more classifications who must work during the work stoppage;
- (d) the locations or the number of locations where work must be performed during the work stoppage.

“Matters respecting decision of single arbitrator or arbitration board or order of board

7-13(1) The single arbitrator or the arbitration board shall cause a copy of every decision issued pursuant to section 7-11 to be served on the public employer, the union and the minister.

(2) The board shall cause a copy of every order issued pursuant to section 7-12 to be served on the public employer, the union and the minister.

-
- (3) The public employer, the union and the employees are bound by:
- (a) any decision of the single arbitrator or the arbitration board issued pursuant to section 7-11; and
 - (b) any order of the board issued pursuant to section 7-12.
- (4) If the single arbitrator, the arbitration board or the board varies all or any of the following, the public employer shall modify the last work schedule provided pursuant to this Division to reflect those variations:
- (a) the identification of services as essential services;
 - (b) the classifications of employees who must work during the work stoppage;
 - (c) the number of positions in one or more classifications who must work during the work stoppage;
 - (d) the locations or the number of locations where work must be performed during the work stoppage.
- (5) The public employer shall provide the work schedule as modified pursuant to subsection (4) to the union.
- (6) On receipt of a work schedule from the public employer pursuant to subsection (5), the union shall immediately:
- (a) identify the employees within each classification mentioned in the work schedule who must work during the work stoppage to maintain essential services;
 - (b) provide to each employee identified pursuant to clause (a) his or her work schedule; and
 - (c) provide to the public employer a list containing the name and the classification of each employee who is identified pursuant to clause (a) and the location where each employee will work.

“Public employer or union may apply for further decisions or orders

7-14(1) If there is a change in circumstances after a decision or order pursuant to this Division has been issued, the public employer or the union may submit the matter to arbitration for a decision, or apply to the board for an order, to amend, vary, rescind or rescind and replace:

- (a) any decision by a single arbitrator or an arbitration board issued pursuant to this Division; or
 - (b) any order of the board issued pursuant to this Division.
- (2) Sections 7-9 and 7-10 apply, with any necessary modification, to an arbitration pursuant to this section.

“Period within which further decision or order must be made

7-15(1) If the matter mentioned in section 7-14 is submitted to arbitration by a single arbitrator:

- (a) within seven days after the minister receives notification of the selection of a single arbitrator, the single arbitrator shall commence the arbitration; and

-
- (b) within 14 days after the conclusion of the arbitration, the single arbitrator shall issue a decision:
- (i) confirming the decision or order issued pursuant to this Division; or
 - (ii) amending, varying, rescinding or rescinding and replacing the decision or order issued pursuant to this Division.
- (2) If the matter mentioned in section 7-14 is submitted to arbitration by an arbitration board:
- (a) within seven days after the third member of the arbitration board has been appointed, the arbitration board shall commence the arbitration; and
 - (b) within 14 days after the conclusion of the arbitration, the arbitration board shall issue a decision:
 - (i) confirming the decision or order issued pursuant to this Division; or
 - (ii) amending, varying, rescinding or rescinding and replacing the decision or order issued pursuant to this Division.
- (3) If the matter mentioned in section 7-14 is submitted to the board:
- (a) within seven days after receiving the application, the board shall commence hearing the application; and
 - (b) within 14 days after the conclusion of its hearing, the board shall issue an order:
 - (i) confirming the decision or order issued pursuant to this Division; or
 - (ii) amending, varying, rescinding or rescinding and replacing the decision or order issued pursuant to this Division.

“Matters respecting further decision or order

7-16(1) The single arbitrator, the arbitration board or the board shall cause a copy of every decision or order issued pursuant to section 7-15 to be served on the public employer, the union and the minister.

(2) The public employer, the union and the employees are bound by a decision or order issued pursuant to section 7-15.

“Effect of decision or order

7-17(1) If the single arbitrator, the arbitration board or the board, pursuant to section 7-15, varies all or any of the following, the public employer shall modify the last work schedule provided pursuant to this Division to reflect those variations:

- (a) the identification of services as essential services;
- (b) the classifications of employees who must work during the work stoppage;
- (c) the number of positions in one or more classifications who must work during the work stoppage;
- (d) the locations or the number of locations where work must be performed during the work stoppage.

(2) The public employer shall provide the work schedule as modified pursuant to subsection (1) to the union.

(3) On receipt of a work schedule from the public employer pursuant to subsection (2), the union shall immediately:

(a) identify the employees within each classification mentioned in the work schedule who must work during the work stoppage to maintain essential services;

(b) provide to each employee identified pursuant to clause (a) his or her work schedule; and

(c) provide to the public employer a list containing the name and the classification of each employee who is identified pursuant to clause (a) and the location where each employee will work.

“When decision or order is effective

7-18 A decision of the single arbitrator or the arbitration board or an order of the board issued pursuant to this Division is effective 48 hours after the public employer and the union are served with the decision or order.

“DIVISION 4

If Lockout or Strike is Ineffective

“Procedures if lockout or strike action is ineffective

7-19(1) Subject to section 7-23, on the application of the public employer or the union, the board may issue an order determining whether the level of activity to be continued in compliance with an essential services agreement, or a decision or order issued pursuant to Division 3, renders ineffective the exercise of the right to strike or lock out.

(2) The board shall cause a copy of its order pursuant to subsection (1) to be served on the public employer, the union and the minister.

(3) No public employer or union that is subject to an order pursuant to subsection (1) shall fail, on being served with a copy of the order, to immediately cease any work stoppage.

(4) If the board determines that the level of activity to be continued in compliance with an essential services agreement, or a decision or order issued pursuant to Division 3, renders ineffective the exercise of the right to strike or lock out, the minister shall give notice to the public employer and the union that all matters in dispute respecting the collective agreement that is the subject of the strike or lockout must be resolved by arbitration.

(5) Within seven days after receipt of the notice mentioned in subsection (3), the public employer and the union may provide the minister with:

(a) the name of a jointly recommended person to be appointed as a single arbitrator for the purpose of the arbitration; or

(b) a written agreement in which the parties have agreed to submit the matters in dispute to an arbitration board in accordance with section 7-21.

“Arbitration to conclude a collective agreement—single arbitrator

7-20(1) If the public employer and union cannot agree on a single arbitrator within the seven-day period mentioned in subsection 7-19(5), and have not entered into a written agreement pursuant to clause 7-19(5)(b) within that seven-day period, the minister shall, within 24 hours after the expiry of that seven-day period, appoint the single arbitrator.

(2) No person is eligible to be appointed as a single arbitrator or shall act as a single arbitrator if the person:

- (a) has a pecuniary interest in a matter before the arbitrator; or
- (b) is acting or has, within a period of one year before the date on which the dispute is submitted to arbitration, acted as lawyer or agent of any of the parties to the arbitration.

(3) Within seven days after a single arbitrator is appointed, the public employer and the union shall each:

- (a) submit to the single arbitrator a notice in writing setting out:
 - (i) a list of the matters agreed on by both parties; and
 - (ii) a list of the matters remaining in dispute; and
- (b) provide a copy of the written notice to the other party.

(4) Within five days after receiving a written notice pursuant to subsection (3), the other party shall provide its written response to the single arbitrator and the party submitting the written notice.

(5) The single arbitrator shall commence the arbitration when the single arbitrator:

- (a) has received the written notices pursuant to subsection (3); and
- (b) has received the written responses pursuant to subsection (4) or the five-day period mentioned in that subsection has expired.

(6) The single arbitrator may engage the services of any person that the single arbitrator considers necessary to assist in the arbitration.

(7) The single arbitrator shall determine the procedures to be followed, while ensuring that the public employer and the union are given full opportunity to:

- (a) present evidence;
- (b) make submissions; and
- (c) be represented by counsel.

(8) A single arbitrator may exercise all or any of the powers mentioned in subsection 6-49(3).

(9) If the public employer and the union have settled all the matters set out in the notices and responses received by the single arbitrator pursuant to this section and entered into a new collective agreement, the single arbitrator, on being so notified in writing by both the public employer and the union, shall:

- (a) discontinue the arbitration; and
- (b) notify the minister of the agreement.

(10) The arbitration is terminated when the single arbitrator notifies the minister pursuant to subsection (9) of the new collective agreement entered into by the public employer and the union.

(11) If the public employer and the union agree on some of the matters set out in the notices and responses received by the single arbitrator pursuant to this section and the single arbitrator is notified in writing by both the public employer and the union of the matters agreed on, the single arbitrator shall confine the award to:

- (a) the matters set out in the notices and responses that are not agreed on; and
- (b) any other matters that appear to the single arbitrator to be necessary to be decided in order to make an award.

(12) With respect to the matters set out in the notices and responses received by the single arbitrator pursuant to this section on which the public employer and the union have not agreed, the arbitrator shall make an award in writing within:

- (a) 30 days after the conclusion of the hearing of the arbitration; or
- (b) any further period that the minister, by order, may specify.

(13) The public employer and the union shall:

- (a) bear their own costs of the arbitration; and
- (b) pay an equal share of the remuneration and expenses of the single arbitrator.

(14) The award of the single arbitrator pursuant to this section is final.

(15) When the single arbitrator has made an award pursuant to this section, the single arbitrator shall cause a copy of the award to be served on the public employer, the union and the minister.

(16) When the single arbitrator has made an award pursuant to this section, the public employer and the union shall immediately conclude a new collective agreement incorporating any provisions, terms and conditions that may be necessary to give full effect to the single arbitrator's award.

“Arbitration to conclude a collective agreement—arbitration board

7-21(1) In the written agreement filed with the minister pursuant to clause 7-19(5)(b), each party shall name the person it intends to appoint to the arbitration board.

(2) Within three days after the members of the arbitration board have been appointed by the parties, the two appointees shall appoint a third member of the arbitration board, who is to be the chairperson of the arbitration board.

(3) If the two appointees named by the parties fail to agree on the appointment of a third member of the arbitration board within the three-day period mentioned in subsection (2), the minister, on the request of a party, shall appoint the third member.

(4) The member of the arbitration board appointed pursuant to subsection (3) is the chairperson of the arbitration board.

- (5) No person is eligible to be appointed as a member of an arbitration board or shall act as a member of an arbitration board if the person:
- (a) has a pecuniary interest in a matter before the arbitration board; or
 - (b) is acting or has, within a period of one year before the date on which the dispute is submitted to arbitration, acted as lawyer or agent of any of the parties to the arbitration.
- (6) Within seven days after the third member of the arbitration board is appointed, the public employer and the union shall each:
- (a) submit to the arbitration board a notice in writing setting out:
 - (i) a list of the matters agreed on by both parties; and
 - (ii) a list of the matters remaining in dispute; and
 - (b) provide a copy of the written notice to the other party.
- (7) Within five days after receiving a written notice pursuant to subsection (6), the other party shall provide its written response to the arbitration board and the party submitting the written notice.
- (8) The arbitration board shall commence the arbitration when the arbitration board:
- (a) has received the written notices pursuant to subsection (6); and
 - (b) has received the written responses pursuant to subsection (7) or the five-day period mentioned in that subsection has expired.
- (9) The arbitration board may engage the services of any person that the arbitration board considers necessary to assist in the arbitration.
- (10) The arbitration board shall determine the procedures to be followed, while ensuring that the public employer and the union are given full opportunity to:
- (a) present evidence;
 - (b) make submissions; and
 - (c) be represented by counsel.
- (11) An arbitration board may exercise all or any of the powers mentioned in subsection 6-49(3).
- (12) If the public employer and the union have settled all matters set out in the notices and responses received by the arbitration board pursuant to this section and entered into a new collective agreement, the arbitration board, on being so notified in writing by both the public employer and the union, shall:
- (a) discontinue the arbitration; and
 - (b) notify the minister of the agreement.
- (13) The arbitration is terminated when the arbitration board notifies the minister pursuant to subsection (12) of the new collective agreement entered into by the public employer and the union.

(14) If the public employer and the union agree on some of the matters set out in the notices and responses received by the arbitration board pursuant to this section and the arbitration board is notified in writing by both the public employer and the union of the matters agreed on, the arbitration board shall confine the award to:

- (a) the matters set out in the notices and responses that are not agreed on; and
- (b) any other matters that appear to the arbitration board to be necessary to be decided in order to make an award.

(15) With respect to the matters set out in the notices and responses received by the arbitration board pursuant to this section on which the public employer and the union have not agreed, the arbitration board shall make an award in writing within:

- (a) 30 days after the conclusion of the hearing of the arbitration; or
- (b) any further period that the minister, by order, may specify.

(16) The decision of the majority of the members of an arbitration board or, if there is no majority decision, the decision of the chairperson of the arbitration board is the award of the arbitration board.

(17) The award of the arbitration board pursuant to this section is final.

(18) The public employer and the union shall:

- (a) bear their own costs of the arbitration; and
- (b) pay an equal share of the remuneration and expenses of a person appointed pursuant to subsection (2) or (3) as the third member of an arbitration board.

(19) When the arbitration board has made an award pursuant to this section, it shall cause a copy of the award to be served on the public employer, the union and the minister.

(20) When the arbitration board has made an award pursuant to this section, the public employer and the union shall immediately conclude a new collective agreement incorporating any provisions, terms and conditions that may be necessary to give full effect to the arbitration board's award.

“Matters to be considered by single arbitrator or arbitration board

7-22 In making an award pursuant to this Division, a single arbitrator or an arbitration board:

- (a) shall consider, for the period with respect to which the collective agreement between the public employer and the union will be in force, the following:
 - (i) wages and benefits in private and public, and unionized and non-unionized, employment;

- (ii) the continuity and stability of private and public employment, including:
 - (A) employment levels and incidence of layoffs;
 - (B) incidence of employment at less than normal working hours; and
 - (C) opportunity for employment;
- (iii) the general economic conditions in Saskatchewan; and
- (b) may consider, for the period with respect to which the collective agreement between the public employer and union will be in force, the following:
 - (i) the terms and conditions of employment in similar occupations outside the public employer's employment taking into account any geographic, industrial or other variations that the single arbitrator or the arbitration board considers relevant;
 - (ii) the need to maintain appropriate relationships in terms and conditions of employment between different classification levels within an occupation and between occupations in the public employer's employment;
 - (iii) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
 - (iv) any other factor that the single arbitrator or the arbitration board considers relevant to the matter in dispute.

“Multi-employer bargaining units

7-23(1) In this section, ‘**multi-employer bargaining units**’ means bargaining units established pursuant to Division 14 of Part VI.

(2) An application to the board pursuant to section 7-19 with respect to a dispute involving one or more bargaining units within the multi-employer bargaining units:

- (a) must be made with respect to all bargaining units within the multi-employer bargaining units for which the union is engaged in collective bargaining; and
- (b) may be made by a person that is the bargaining agent for public employers in the multi-employer bargaining units.

(3) This Division applies, with any necessary modification, to multi-employer bargaining units.

“DIVISION 5

General Matters re Part

“Determination of essential services employees

7-24 Every employee who is required to work in accordance with an essential services agreement, or who is identified as an employee who must work during a work stoppage by his or her union in accordance with the provisions of this Part, is deemed to be an essential services employee during those times that the employee is scheduled to work.

“Obligations of public employers

7-25 No public employer shall authorize, declare or cause a lockout of essential services employees.

“Obligations of unions

7-26(1) No union shall authorize, declare or cause a strike of essential services employees.

(2) No union and no person acting on behalf of the union shall, in any manner:

- (a) discipline any essential services employee for the reason that the essential services employee complies with this Part; or
- (b) direct, authorize or counsel another person to discipline any essential services employee for the reason that the essential services employee complies with this Part.

“No person or union to prevent compliance with this Part

7-27 No person or union shall in any manner impede or prevent or attempt to impede or prevent any essential services employee from complying with this Part.

“No person or union to aid, abet or counsel non-compliance with this Part

7-28 No person or union shall do or omit to do anything for the purpose of aiding, abetting or counselling any essential services employee not to comply with this Part.

“Unfair labour practices re Part

7-29(1) It is an unfair labour practice for a public employer or a union to fail or refuse to engage in collective bargaining with a view to concluding an essential services agreement.

(2) It is an unfair labour practice for a public employer to not take into consideration qualified persons who are in the employ of the public employer and who are not members of the bargaining unit when determining the number of positions in a classification who must work during the work stoppage to maintain essential services.

(3) It is an unfair labour practice for a union to not identify qualified employees when identifying the employees who must work during the work stoppage to maintain essential services.

(4) Part VI applies, with any necessary modification, to an unfair labour practice pursuant to this section.

“Essential services employees to continue or resume duties

7-30(1) If there is a work stoppage:

(a) every essential services employee shall, during those times that the essential services employee is scheduled to work, continue or resume the duties of his or her employment with the public employer in accordance with the terms and conditions of the last collective agreement, if any;

(b) the public employer shall, during those times that the essential services employee is scheduled to work, permit each of its essential services employees to continue or resume the duties of his or her employment in accordance with the terms and conditions of the last collective agreement, if any; and

(c) every person who is authorized on behalf of the union to bargain collectively with the public employer shall give notice to the essential services employees that they must, during those times that the essential services employee is scheduled to work, continue or resume the duties of their employment in accordance with the terms and conditions of the last collective agreement, if any.

(2) If there is a work stoppage, no essential services employee shall, without lawful excuse, fail, during those times that the essential services employee is scheduled to work, to continue or resume the duties of his or her employment with the public employer.

(3) Neither the public employer nor any person acting on behalf of the public employer shall, without lawful excuse, refuse to permit or authorize, or direct or authorize another person to refuse to permit or authorize, any essential services employee, during those times that the essential services employee is scheduled to work, to continue or to resume the duties of his or her employment as required by this Part.

“Copies of essential services agreements to be filed with minister

7-31(1) Each of the parties to an essential services agreement shall file one copy of the agreement with the minister.

(2) Section 6-44 applies, with any necessary modification, for the purposes of this section.

“Termination of essential services agreement

7-32(1) An essential services agreement continues until it is terminated in accordance with this section.

(2) A party to an essential services agreement may terminate the essential services agreement only if:

(a) the parties have a collective agreement; and

(b) there are at least 120 days left before the expiry of the collective agreement.

(3) A party may terminate an essential services agreement pursuant to subsection (2) by giving the other party written notice.

(4) Nothing in this section affects the obligation of a public employer and a union to engage in collective bargaining with a view to concluding an essential services agreement in accordance with section 7-3.

“Requirements for work schedules

7-33 Each work schedule must cover at least one week.

“The Arbitration Act, 1992 not to apply

7-34 *The Arbitration Act, 1992* does not apply to any arbitration pursuant to this Part.

“Powers of board re Part

7-35(1) If an application is made to the board pursuant to this Part:

(a) the application to the board must be conducted in accordance with Part VI; and

(b) the board has all the powers conferred on it by Part VI.

(2) For the purposes of subsection (1), Part VI applies with any necessary modification.

“Offences and penalties re Part

7-36(1) No public employer, union, essential services employee or other person shall fail to comply with this Part, the regulations made pursuant to this Part, a decision or award of an arbitrator or an arbitration board or an order of the board made pursuant to this Part.

(2) Every public employer, union, essential services employee or other person who contravenes any provision of this Part, the regulations made pursuant to this Part, a decision or award of an arbitrator or an arbitration board or an order of the board made pursuant to this Part is guilty of an offence and liable on summary conviction:

(a) in the case of an offence committed by a public employer or a union or by a person acting on behalf of a public employer or a union, to a fine of not more than \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day or part of a day during which the offence continues; and

(b) in the case of an offence committed by any person other than one described in clause (a), to a fine of not more than \$1,000 and, in the case of a continuing offence, to a further fine of \$400 for each day or part of a day during which the offence continues.

“Regulations for Part

7-37 The Lieutenant Governor in Council may make regulations:

(a) prescribing any employer, person, agency or body, or class of employers, persons, agencies or bodies, for the purposes of paragraph 7-1(1)(g)(ii)(A);

(b) for the purposes of clause 7-4(1)(i), prescribing other provisions that must be included in an essential services agreement, including prescribing the contents of those provisions;

(c) prescribing any other matter or thing that is authorized or required by this Part to be prescribed in the regulations;

(d) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part”.

S.S. 2008, c.P-42.2 repealed

9 *The Public Service Essential Services Act* is repealed.

Coming into force

10 This Act comes into force on proclamation.

THIRD SESSION

**Twenty-seventh
Legislature**

SASKATCHEWAN

B I L L

No. 128

An Act to amend *The Saskatchewan Employment Act*
and to repeal *The Public Service Essential
Services Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Don Morgan
