

ACCEPTED

Commissioner _____ Date 12-16-2021

EA No. ESA00032-2021



ESSENTIAL SERVICES AGREEMENT

Between:
 The Governors of the University of Lethbridge (the "Board")

-and-

The University of Lethbridge Faculty Association ("ULFA")

POSTED

File No. _____ Support Doc No. _____

Date 12/09/2021 Posted By _____

The Parties agree to the following definitions and conditions for the Essential Services Agreement for the academic staff of the University of Lethbridge.

This Agreement deals with the provision of Essential Services as defined in §95.1 of the Code.

While full operations are not continued during Job Action, Essential Services will continue to be provided and maintained at the University of Lethbridge.

The Parties agree their objectives are to establish bargaining unit positions to perform Essential Services to meet or exceed the requirements of the Code.

1. DEFINITIONS

- 1.1. **Agreement** – this Essential Services Agreement.
- 1.2. **Bargaining Unit Member(s) or Member(s)** – those employees who are designated as Academic Staff and represented as active Members by the University of Lethbridge Faculty Association but does not include inactive Members as set out in section 9.1 herein.
- 1.3. **Board** – refers to the Board of Governors of the University of Lethbridge.
- 1.4. **Code** – refers to the *Labour Relations Code*, RSA 2000, c. L-1 of Alberta.
- 1.5. **Collective Agreement** – refers to the University of Lethbridge Academic Staff Collective Agreement effective July 1, 2018 between the Board and ULFA.
- 1.6. **Commissioner** – means the Essential Services Commissioner of Alberta and has the same meaning as defined in the *Code*.
- 1.7. **Designated Essential Services Worker** – means a Bargaining Unit Member who is required to work in accordance with this Agreement during those times set out herein and has the same meaning as defined in the *Code*.
- 1.8. **Eligibility List** – means the list of the names, position titles, classifications, and contract information for all Bargaining Unit Members who have the qualifications and training to perform Essential Services duties as identified in this Agreement.
- 1.9. **Emergency** – means a present or imminent event that, in the opinion of the Board and ULFA, requires prompt action, coordination of action, and/or special regulation of persons or property to protect the safety and health of the public.
- 1.10. **Essential Services** – as defined in Division 15.1 §95.1 of the Code as those services which, if interrupted would endanger the life, personal safety or health of the public, or are necessary to the maintenance and administration of the rule of law or public security. Essential Services at the University of Lethbridge shall be determined by the duties and

research activities of Bargaining Unit Members. Essential Services and Designated Essential Services Workers shall be as agreed to by the Parties in this Agreement.

- 1.11. **Job Action** – means a lockout or strike permitted under the Code.
- 1.12. **Lockout** – shall have the same meaning as defined in the Code.
- 1.13. **Parties or Party** – means the Board and/or ULFA.
- 1.14. **Strike** – shall have the same meaning as defined in the Code.
- 1.15. **ULFA** – The University of Lethbridge Faculty Association
- 1.16. **ULFA Worksite Representative** – shall mean a person designated by ULFA to act in that capacity.
- 1.17. **Umpire** – means the person(s) identified in Article 3.3.2 of this Agreement.
- 1.18. **Work Site** – the place of operations (or “Worksite”) includes all places where Bargaining Unit Members would ordinarily perform their work, including the Lethbridge and Calgary campuses.
- 1.19. **Worksite Manager** – shall mean a representative of the Board who is designated as the manager of a particular worksite for the duration of the Job Action.

2. AMENDMENTS TO ESSENTIAL SERVICES AGREEMENT

- 2.1. Amendments to this Agreement may be made in writing from time to time as mutually agreed upon between Parties and subject to the approval of the Commissioner in order to reflect changes to Essential Services duties required during Job Action, or to adjust to unexpected events that arise during Job Action.

3. ENFORCEMENT OF AGREEMENT

- 3.1. This Agreement is made in accordance with the Code.

3.2. Term of the Essential Services Agreement

- 3.2.1. This Agreement shall continue in force until a new Collective Agreement between the Parties is ratified.

3.3. Dispute Resolution

- 3.3.1. The Parties will make every reasonable effort to resolve disputes under this Agreement through negotiations between ULFA and the Board. Should the Parties be unable to reach agreement, either Party may refer the matter to an Umpire. Either Party may apply to the Commissioner, within 10 days of the Umpire’s award, for a review of the Umpire’s decision on the grounds that such decision was unreasonable.
- 3.3.2. The Parties agree to jointly retain **Mia Norrie** (norrieco.com/) to resolve disputes in a timely manner on the interpretation, application or implementation of this Agreement, or any allegations that the terms of this Agreement have been breached.
- 3.3.3. When a dispute arises during the implementation or application of this Agreement, the dispute will be referred to the Umpire to be heard within forty-eight (48) hours of the referral. Notice will also be provided to the other Party. A decision will be rendered as

quickly as possible, but in no event longer than seventy-two (72) hours from the time of the referral.

3.3.4.If the agreed-upon Umpire is unavailable, the parties will refer the issue to the next available Umpire from the following list:

- a. Deborah Howes
- b. John Moreau
- c. David Jones

3.3.5.All costs for the Umpire will be paid for in equal parts by the Board and ULFA.

4. QUALIFICATIONS OF BARGAINING UNIT MEMBERS WHO PERFORM ESSENTIAL SERVICES WORK

4.1. A Bargaining Unit Member can be deemed to be qualified to perform specific Essential Services work if s/he satisfies the following criteria:

- a) s/he is currently performing the work in the position;
- b) s/he possesses the required credentials, license(s), or certificate(s) required by statute, regulation or governing body; and
- c) is agreed to be eligible by the Parties.

4.2. If for any reason a position remains unfilled after applying criteria (a) and (b) and (c), then the Parties will attempt to negotiate how to fill the position, failing which the Parties agree to the use of an Umpire to mediate and, if necessary, to settle any dispute.

4.3. In compliance with §95.41(3) of the *Code*, the Board shall not use during Job Action the services of a person, whether paid or not, a) who is hired by the Board for the purpose of, or b) who is supplied to the Board by another person for the purpose of, performing the work of an employee in the bargaining unit that is on lockout or strike.

5. ESSENTIAL SERVICES IDENTIFICATION

The following services shall be deemed Essential Services for the purpose of this Agreement

5.1. The Faculty of Arts and Science, Department of Chemistry and Biochemistry Members who are responsible for emergency response actions

5.1.1.Essential Services duties include emergency response to hazardous materials spills or releases or the danger of potential hazardous materials spills or releases including actions to avert a hazardous material spill or release or dangerous hazardous material reaction during a power outage, equipment malfunction (ie heating or cooling systems), or other unexpected acts putting the health, safety, and security of the University community or public in danger.

5.1.2.Position of Bargaining Unit Members: Faculty Members in the department of Chemistry and Biochemistry with the necessary knowledge and expertise to handle hazardous materials of concern and whose assigned duties include response to adverse hazardous materials spills, releases or emergencies.

5.1.3.Approximate number of Bargaining Units Members: 3

5.2. Cryogens MRI/NMR

- 5.2.1. Essential Services duties include emergency response to alarms or incidents resulting in or potentially resulting in a dangerous or an unsafe workplace involving any University owned or maintained MRI or NMR machine.
- 5.2.2. Routine filling of liquid helium and/or liquid nitrogen in the MRI and NMR machines to comply with safety protocol
- 5.2.3. Position of Bargaining Unit Member: MR Facility Manager, MRI physicist
- 5.2.4. Approximate number of bargaining unit members: 2

- 5.3. Supervision of Clinical Practicums
 - 5.3.1. Essential Duties include the continued supervision of Masters of Counselling or Masters of Education (Counselling Psychology) practicum students in the Faculty of Education who identify high-risk clients they are counselling in their practicums to their clinical (field) supervisor if the clinical (field) supervisor advises, in writing, to the practicum (faculty) supervisor and the Dean of the Faculty of Education that neither the clinical (field) supervisor, nor the clinic where the student is placed, can provide the necessary service to the identified high risk client without the continued assistance of the student under the supervision of the practicum (faculty) supervisor.
 - 5.3.2. In such an instance the student shall remain in their practicum under the supervision of the practicum (faculty) supervisor (i.e., Designated Essential Services Worker) who will continue to provide guidance, advice, and oversight of the student, when such assistance is requested and required by the student while in their Masters of Counselling or Masters of Education (Counselling Psychology) practicum to those clients identified in paragraph 5.3.1 above.
 - 5.3.3. Position of Bargaining Unit Members: Faculty members in the Faculty of Education who provide supervision of Masters of Counselling or Masters of Education (Counselling Psychology) students counselling practicums.
 - 5.3.4. Approximate number of bargaining unit members: 4

- 5.4. Principal Investigators for clinical / therapeutic trials
 - 5.4.1. Essential Service duties include the continued oversight, including responding to reports of adverse outcomes or breaches of clinical ethics protocols, over research projects that involve drug trials, drug tests, or other therapeutics that the interruption of which would endanger the life, personal safety or health of the public if discontinued on 72 hours notice or less.
 - 5.4.2. Reporting to relevant authorities covered in federal or other regulatory oversight of clinical trials and to other members of the clinical trial including principal investigators at external sites and relevant health care providers.
 - 5.4.3. Position of Bargaining Unit Members: Faculty members in Neuroscience and in the Faculty of Health Sciences.
 - 5.4.4. Approximate number of bargaining unit members: 2

6. CREATING AN ESSENTIAL SERVICES ELIGIBILITY LIST

- 6.1. The Parties shall create an Eligibility List in which they identify which individual employees will be designated as essential to provide the Essential Services as set out in paragraph 5.

6.2. Where Parties cannot agree on the Eligibility List, they will immediately refer the dispute to the Umpire, who shall rule on any and all disputes over the Eligibility List. The Umpire's ruling is binding upon the Parties.

6.3. The agreed upon or arbitrated Eligibility List shall be appended to this Agreement.

7. FINAL REVISION OF ELIGIBILITY LIST FOR JOB ACTION

7.1. Immediately prior to any Job Action, the Board and ULFA will review the Eligibility List to commence the final verification of Bargaining Unit Members eligible to fill essential positions.

7.2. ULFA will accurately and fairly schedule eligible Bargaining Unit Members to perform Essential Services as needed during Job Action. ULFA will notify the Board of the 2 week schedule of Essential Service workers a minimum of 48 hours prior to the commencement of the 2 week schedule.

7.3. ULFA will ensure Designated Essential Services Workers report for all scheduled duties and, in the event of unanticipated absence for legitimate reasons, ULFA will find an alternate Bargaining Unit Member who is eligible to perform the Essential Services duties as soon as reasonably possible and update the Board.

7.4. Designated Essential Services Workers shall only perform duties that are deemed Essential Services and shall cease to work once the Essential Services duties are completed.

7.5. When Bargaining Unit Members are not at work performing Essential Services, they are able to participate on the picket line(s).

8. UNION OFFICIALS

8.1. When the final selection of Essential Services employees takes place, local union officers, bargaining team members and Executive members employed in the Bargaining Unit (collectively referred to as "Union Officials") may be designated as Designated Essential Services Workers if they meet the requirements set out in paragraph 5 herein. Union Officials shall be designated as a last resort, unless ULFA otherwise chooses, only when other Members are not available to, or cannot, perform the Essential Service set out in paragraph 5 of this Agreement.

9. INACTIVE MEMBERS

9.1. Inactive Members as defined in Article 4.02 of the Collective Agreement are considered neither designated as Essential Services nor exempt from performing Essential Services. Rather, inactive Members make managerial decisions and may conduct business as per management rights.

10. REMUNERATION

- 10.1. Remuneration for work performed pursuant to this Agreement will be in accordance with the Collective Agreement, except as modified in this Agreement. The computation of an hourly salary for a Designated Essential Services Worker will be based on a forty (40) hour work week.
- 10.2. During Job Action, Designated Essential Services Workers will submit manual timesheets to Human Resources (AH135) indicating the number of hours worked and the associated tasks completed in that period of time. They will only be paid for hours worked on designated essential service responsibilities. The Designated Essential Services Workers will be paid monthly in arrears for all worked performed during Job Action.
- 10.3. The health benefits coverage set out in Schedule B.03 of the Collective Agreement shall continue for Designated Essential Services Workers during the Job Action with both the employer and employee portions of such benefit premiums being paid by the Board and the Board being reimbursed an equivalent sum by ULFA within 30 days of notification from the Board. Any outstanding payment by ULFA to the Board (ie starting on day 31 after notification) shall be deducted from the dues payable to ULFA by the Board pursuant to 10.4 below and Article 5.04.1 or any equivalent article in a new Collective Agreement reached between the Board and ULFA. The Board shall not seek reimbursement from ULFA for the pro rata amount of employer portion benefit premiums based on the hours worked, using the 40 hour work week as established in 10.1 above, during the Job Action by Designated Essential Services Workers under this Agreement.
- 10.4. ULFA dues are remitted as a percentage of hours worked, using a 40 hour work week as established in 10.1 above, at the mill rate established by ULFA for the purposes of Job Action.

11. WORK ASSIGNMENT AND LOCATION

- 11.1. All Designated Essential Services Workers shall be required to perform work in accordance with this Agreement and at the location designated by the Board.

12. WORKSITE VISITS

- 12.1. Representatives designated by ULFA shall be provided with on-site access, accompanied by campus security personnel or other Board designated personnel during Job Action to verify that work is being carried out consistent with the terms of this Agreement.
- 12.2. The access rights hereby conferred are not to be utilized to harass officers of the Board or individual employees working at any sites.
- 12.3. ULFA may request information on the hours worked by employees performing Essential Services. The Board shall provide the information in writing within four (4) days of a request, and up to twice per pay period.

13. OCCUPATIONAL HEALTH AND SAFETY

13.1. The Parties acknowledge the application of the Alberta *Occupational Health and Safety Act*, SA 2017, c. O-2.1 (“OH&S Act”).

14. WORK REFUSAL PROTOCOL

14.1. Where any Bargaining Unit employee working under this Agreement exercises the right to refuse unsafe work under Part 4, Dangerous work and Discriminatory Action of the OH&S Act, the following shall apply:

14.1.1. The Board and the affected employee(s) shall follow the procedures prescribed by the OH&S Act and procedures set out by the Board so long as such procedures do not contravene the OH&S Act;

14.1.2. The Board procedures for the Right to Refuse Dangerous Work can be found here: <http://www.uleth.ca/risk-and-safety-services/right-refuse-dangerous-work>.

14.2. Where an employee has refused to perform work on this basis, and the Board investigates and remedies the situation, either party can apply to the Umpire for determination as to whether the remedy is appropriate.

15. UNANTICIPATED EMERGENCY SITUATIONS THAT ARISE DURING LOCKOUT OR STRIKE

15.1. EMERGENT SITUATIONS

15.1.1. It is understood that situations may arise during the course of a Job Action that may call for immediate action because otherwise it may endanger the life, personal safety or health of the University community or public on an emergent basis. These situations are inherently unplanned and unscheduled and it would be impossible to foresee every situation that may give rise to such an emergency. It is recognized, however, that the Board and ULFA have a responsibility to ensure emergencies are dealt with in an expeditious manner under the provisions of this Essential Services Agreement.

15.1.2. Emergent situations may include, but are not limited to, the following:

- a) the discovery of compromised equipment or uncontained hazardous material containers in the laboratories of Academic Staff where no other bargaining unit is responsible for its maintenance;
- b) an unforeseen and novel situation that arises otherwise not addressed by this Agreement;
- c) Other situations as arise and as described herein this Agreement.

16. NOTIFICATION TO ULFA

16.1. Where an emergent situation arises at a place of operation as identified above, the Board will immediately inform ULFA and will provide the following information:

- a) a description of the emergency;
- b) the positions, number and names of employees returning to work;
- c) the anticipated duration of the emergency; and
- d) the work to be performed and location, if known.

16.2. The Board acknowledges that by invoking this clause, it will carry the burden of proof in establishing a *bona fide* emergency has taken place.

16.3. Representatives designated by ULFA shall be provided with on-site access to verify the conditions of the emergency and the application of the response plan, and continuing access for the duration of the emergency. This clause in no way limits the ability of the Board to respond to any emergency situation immediately upon its incurrence.

17. NOTIFICATION TO DESIGNATED ESSENTIAL SERVICE WORKERS IN EMERGENT SITUATIONS

17.1. The Designated Essential Services Worker(s) will perform the emergency work as required by this Agreement.

17.2. With respect to limited and extreme emergent situations, the Board may be entitled to require other employees to perform such work with disclosure to ULFA.

17.3. ULFA has the right to challenge the Board's decision in this respect by referring the matter to an umpire as set out in paragraph 3.3 herein pursuant to s. 95.7 of the *Code* seeking orders to stop the performance of the unspecified emergency work or to preclude the Board from repeating such a requirement, or for any other remedial relief appropriate to the circumstances. Should the umpire conclude that the Board is abusing this power in any respect, it can take the necessary steps, including amending this Agreement to prevent the continuation of such abuse.

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18. REPORT FOLLOWING EMERGENCY

18.1. At the conclusion of the emergency, Members shall return to their previous status and the Worksite Manager will provide ULFA Worksite Representatives within twenty-four (24) hours with a verbal report and within one (1) week of the emergency a written report of the following:

- a) the Members utilized;
- b) a description of the work completed;
- c) the hours worked; and
- d) any other services provided.

<i>The Governors of the University of Lethbridge</i>	<i>The University of Lethbridge Faculty Association</i>
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*Per: Dr. Erasmus Okine
Provost and Vice President (Academic)*

*Per: Dr. Robert Sutherland
ULFA Representative*

December 9, 2021
Date

Dec 8 / 21
Date

Essential Services Agreement (ESA) between the Governors of the University of Lethbridge and the University of Lethbridge Faculty Association

Appendix A

Eligibility List to be determined