



PROTECTING OUR WORK FROM PRIVATIZATION

HOW TO FIGHT
CONTRACTING OUT
AT THE BARGAINING
TABLE

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INTRODUCTION

The Canadian Union of Public Employees (CUPE) is at the forefront of the fight against the privatization of public services and has been since our union was founded in 1963. The collective power of CUPE members is our best defence against privatization, and CUPE collective agreements are a powerful tool in that fight. When CUPE members organize to achieve, and strictly enforce, contract language that prevents or restricts our employers from contracting out work, we can protect public sector union jobs and public services. CUPE collective agreements are far more likely than other union contracts to have some type of protection against contracting out. CUPE locals regularly use their collective agreement language to stop privatization in its tracks.

Contracting out is the most common form of privatization that CUPE members face. It is a threat in every sector. Contracting out involves a public sector employer (like a municipality, school board, or health authority) paying a private, for-profit corporation or non-profit organization to deliver a service that was previously provided by public sector workers. Some employers contract out to use non-union labour and lower working conditions. Sometimes the term “outsourcing” is used when it affects an entire system or department. Other forms of privatization include public-private partnerships (P3s), social impact bonds (SIBs) and alternative service delivery (ASD).

It is critical for CUPE locals to negotiate specific provisions against contracting out if they don't have any. Locals should also review and work to strengthen existing provisions in every round of collective bargaining, and bargain contracting in language that positions the local to bring work into the bargaining unit.

OVERVIEW

This guide can be used by CUPE national representatives and local bargaining committees to develop collective agreement language to stop contracting out.

CUPE locals should take a multi-faceted approach that includes:

- Placing restrictions on the employer's ability to contract out.
- Getting ahead of contracting out with notice, disclosure, and consultation requirements.
- Negotiating standards for contractors that deter privatization and contracting out.
- Establishing a process to reverse privatization by contracting work back into the bargaining unit.

Each section of this guide includes examples of recommended CUPE contract language that has been negotiated or arbitrated. The example may not present the contract clause or LOU in its entirety. While this guide contains examples, CUPE national representatives and researchers are well-equipped to support CUPE locals in negotiating the best language for their particular situation.

BARGAINING CONSIDERATIONS

Strong collective agreements have various provisions that work together to prevent harmful employer actions like contracting out. One strategy that can help limit the impacts of contracting out is to negotiate comprehensive layoff measures. This also protects jobs in many other situations and can discourage employers from contracting out work by making the layoff process a costly and disruptive decision. Strong layoff provisions protect CUPE members and CUPE bargaining units. Such measures can include:

- Advance notice to the union.
- The opportunity to jointly explore alternatives to layoff and for the employer to consider proposals from the union.
- Advance notice to affected workers.
- Redeployment and/or reassignment requirements.
- "Chain bumping" (the right to bump someone with less seniority).
- Supplemental unemployment benefits for laid-off workers.

There is significant sectoral and regional variation for layoff and recall provisions. Consult with your CUPE national representative for the recommended layoff and recall language for your circumstances.

Language on contracting out is strongest when it's contained in the body of the collective agreement, as these articles or clauses roll over into future agreements unless they are changed during bargaining.

Letters of intent can be useful when dealing with a particular or one-time event, like contracting back in a specific service, shift, or classification. Letters of intent can also cover a new practice or procedure being introduced on a trial basis for the duration of the collective agreement, such as disclosure and meetings regarding privatization issues. Letters of intent should be reviewed for renewal in a subsequent round of bargaining for their effectiveness, fine tuned and brought into the body of the collective agreement.

THE CONSEQUENCES OF CONTRACTING OUT

Collective agreement language that places restrictions on contracting out is fundamental to job security, union security and strong public services.

Without collective agreement limitations, employers can contract out work to undermine the wages, benefits, seniority provisions and other rights entrenched in our collective agreements. This poses dire consequences for CUPE members' livelihoods.

Employers usually award contracts to the company offering the lowest price for the work, which typically relies on lower-wage, non-union workers. This often drives down wages and working conditions across an entire sector. Contracting out work and bringing in private contractors also creates a fragmented workforce. Workers performing similar work in the same workplace could have significantly different wages, benefits, and union protection.

Contracting out also means fewer bargaining unit jobs and weakens the union's bargaining position. Job actions like strikes are less effective because contractors can be used as replacement workers. Contracting out also means fewer people contributing to our pension plans and reduces the pool of union dues available to defend our working conditions.

Public services suffer when our work is contracted out. Services become less accountable and responsive, as the community has little to no influence over the actions of private companies. Involving a private operator distorts the goals of delivering public services. The public interest takes a back seat to maximizing profits or cutting costs.

There's a growing movement to reverse contracting out and bring work back in house. Services are often contracted in because public sector employers and governments realize that contracted out services are poor quality and in-house services cost less and offer more value.

Whether it's preventing privatization before it takes hold, or working to bring services back in house, protecting and improving public services benefits workers and communities. This guide will help locals assess their collective agreement and develop a bargaining agenda that ensures their contract provides the best possible protection for jobs and services.

Note regarding translation: This document is available in English and French. The narrative sections have been translated. However, the collective agreement articles in the English document are taken from English language agreements and the French document contains articles taken from French language collective agreements.

PREVENTING PRIVATIZATION: RESTRICTIONS ON CONTRACTING OUT

CUPE locals should not rely exclusively on “work of the bargaining unit” provisions to prevent contracting out. While these provisions may be used to prevent non-bargaining unit employees or management from performing the work of the bargaining unit, the prevailing view of arbitrators has been that specific restrictions are necessary to prevent the employer from contracting out work.

The strongest collective agreement defence is a complete ban on contracting out bargaining unit work. CUPE has negotiated this language in various sectors and jurisdictions across the country:

In order to provide job security for the members of the bargaining unit, the employer agrees that no work or services performed by the employees shall be subcontracted, transferred, leased, assigned, or conveyed, in whole or in part, to any other plant, person, company, or non-unit employee.

If it's not possible to get a complete ban on contracting out in the current round of bargaining, CUPE locals can restrict contracting out by limiting the extent to which, and the circumstances in which, it can be done. The next best options, in order, are:

1. No contracting out if bargaining unit members can perform the work.

28.01 In order to provide job security for the members of the bargaining unit, the Employer agrees that work or services presently performed or hereafter assigned to the collective bargaining unit shall not be subcontracted, transferred, leased, assigned, or conveyed, in whole or in part, to any other plant, person, company or non-unit employee if the members of the collective bargaining unit are available and able to do the work or service.

*CUPE 1652, Township of Brock (Roads) – ON
April 1, 2019–March 31, 2023*

2. No contracting out except in an emergency situation.

33.01 The Employer agrees that the normal work or services performed by the Employees shall not be assigned to persons outside the Bargaining Unit except in the case of emergency. In the event such an emergency should happen, no Employee shall be laid off or displaced during this period.

*CUPE 1431, Halifax Regional Water Commission (Inside) – NS
November 1, 2018–October 31, 2023*

3. No contracting out if it reduces the size of the bargaining unit, reduces the number of hours, or results in layoffs.

5.04 The Employer agrees that there shall be no reduction in the number of bargaining unit members, no Employees shall be laid off, fail to be called back by the Employer, or have their hours of work reduced as a result of contracting out work or soliciting the help of volunteers.

*CUPE 4838, Resort Village of Candle Lake – SK
January 1, 2020–December 31, 2022*

LETTER OF UNDERSTANDING RE: JOB SECURITY

During the term of this Agreement, the Employer shall not contract out any municipal work that would result in the loss of bargaining unit jobs, a decrease in the number of scheduled hours of work or the reduction of the regular earnings of the Employees in the bargaining unit effective the date of ratification of this Collective Agreement.

*CUPE 417, Town of Three Hills – AB
January 1, 2021–December 31, 2023*

Note: Language should protect bargaining unit work and bargaining unit positions, not just current bargaining unit members. If only present members are protected (for example, no reduction in hours or layoffs), it may not prevent an employer from reducing the bargaining unit through attrition by not replacing retired and terminated employees, while at the same time contracting out bargaining unit work.

4. No contracting out if it results in a layoff of certain employees.

One approach is to specify a group of members based on length of service or seniority:

34.01 It is the declared intention of the Employer to provide for the job security of the employees covered by the terms of this Agreement to the extent consistent with the obligation of the Employer to undertake the operations and administration of the University of Toronto in the most efficient and economic manner possible in order that it may satisfactorily discharge its public responsibilities.

It is agreed that any employee who was employed by the Employer with one (1) year of service or more shall not be laid off by reason of the Employer contracting out the work being performed by such employee. However, in such event, the Employer agrees that the employee will be placed in another job with a similar rate and be re-trained. All employees who have less than one (1) year of seniority must attain one year of seniority prior to being entitled to the terms of this job security clause.

*CUPE 1230, University of Toronto Library (Full-Time and Part-Time) – ON
July 1, 2017–June 30, 2020*

Another approach is to specify a group of members based on employment status (such as permanent employees):

27.01 In order to provide job security for present employees, the Board agrees not to contract out work that would result in the loss of employment or reduction in the regular hours of work of permanent employees actively employed by the Board.

*CUPE 1202, Renfrew County Catholic District School Board – ON
September 1, 2014–August 31, 2019*

Note: This language could create tiers in the bargaining unit, where some members have inferior job security rights. CUPE locals with this type of two-tiered contracting out language should work to upgrade their language to a restriction on contracting out that protects all members of the bargaining unit. To learn more read CUPE’s policy, *Collective Bargaining: Resisting Concessions and Two-Tier Proposals, and Defending Free Collective Bargaining – Moving Forward*.

5. The employer can contract out but must take certain measures to mitigate the impact on employees who will be displaced.

22.01 The College agrees that in the event it becomes necessary to contract out any of the work or services presently performed by an Employee covered by this Agreement, the College shall notify the Union at least ninety (90) calendar days in advance of such change and every effort will be made to absorb affected Employees into other jobs within the bargaining unit.

22.02 Employees who are transferred by the College to a lower paid position shall continue to receive their previous rate of pay as per Article 30.04.

22.03 Employees who are not absorbed into other jobs within the bargaining unit shall be subject to lay-off as per Article 21.

*CUPE 1445, Red Deer College (Clerical) – AB
July 1, 2017–June 30, 2019*

Remember, some level of protection against contracting out is better than none and this language can be upgraded in subsequent rounds of bargaining.

CUPE national representatives can point you to negotiated language restricting contracting out in your sector and/or jurisdiction.

PREVENTING PRIVATIZATION: NOTICE, CONSULTATION AND DISCLOSURE

Bargaining a requirement for the employer to share information and engage the union in advance about plans to privatize can help CUPE and our community allies organize and challenge any privatization. The longer the notice period, the more time a local has to communicate with members, do corporate research, build coalitions, lobby politicians, and expose the false claims and hidden costs in the contractor's pitch. Together, these steps are part of a winning campaign to keep services public. Contract language covering notice of privatization plans can include:

- All information about a service members currently provide that is under review for potential privatization.
- All information about a new service or facility that would normally be included in the range of services provided by the organization and CUPE members.

32.01 The Board agrees to notify the Union in writing three (3) months in advance of any contracting out of work and further agrees to notify the Union of their intent to extend, renew or re-tender any existing contracts, sixty (60) days prior to expiration of those contracts, so as to allow the Union to make submissions to contract back in that work. In the event employees are on lay off, the Board will meet with the Union to discuss the new, extended, renewed, or retendered contracts.

*CUPE 4948, Toronto Public Library – ON
January 1, 2020–December 31, 2024*

In addition to a notice period, CUPE locals should negotiate a requirement to consult that gives the local an opportunity to engage with the employer about their intention to contract out bargaining unit work.

26.02 Six months prior to the "contracting out" of any position in the bargaining unit, the County of Middlesex shall:

- Discuss with the Union the nature and rationale of the action; and**
- Discuss any alternate means of achieving the necessary level of efficiency and economies.**

Prior to work being "contracted out", should the Union deem it advisable, the Union will be allowed to address County Council with respect to the work to be "contracted out".

*CUPE 101-05, County of Middlesex – ON
January 1, 2020–December 31, 2021*

26.09 (a) In the event that the Employer is considering contracting out work currently performed by members of the bargaining unit, which would result in the layoff of bargaining unit employees, it shall so notify the Union at least six (6) months prior to issuing the Request for Proposal or Tender. In these circumstances, the appropriate Directors for the Employer shall meet with the Union no later than two (2) months after the notification and provide the rationale and the documentation supporting the rationale and underlying objectives regarding the issue. The Union then shall be invited to provide its own information, comments and analysis relating to the issue. This information could include, among other things, Union proposals which may eliminate the necessity for a layoff and/or the contracting out of the work.

*CUPE 855, City of Kawartha Lakes (Inside and Outside) – ON
January 1, 2016–December 31, 2019*

Contracting out is often used to privatize public services. Notice, disclosure, and consultation clauses can cover other forms of privatization the employer may pursue, such as public-private partnerships (P3s), social impact bonds or alternative service delivery. These provisions can include requiring that:

- The employer must notify the union about any P3 proposal within a specified time.
- The employer must disclose all information about a P3 proposal to the union within a specified time.
- The employer must consult with the union about the P3 proposal prior to its adoption, including providing the union an opportunity to formally respond to the proposal in writing.

PUBLIC-PRIVATE PARTNERSHIPS

The City shall advise the Union in writing at least thirty (30) days before the City officials make a recommendation to any Committee of Council or to Council that the City of Guelph enter into any joint arrangement with any public sector or private sector entity for the provision of public services at a facility, property or service in which the City has any present or future equity.

The City shall make available to the Union any technical or other information in its possession or that it may reasonably be able to obtain that may be required by the Union to evaluate the contract proposal and the work to be undertaken.

Within five (5) working days of advising the Union the City shall meet with the Union to fully discuss the details of the work or service to be undertaken or the joint arrangement with any public sector or private sector entity, in order to afford the Union an sufficient opportunity to make a presentation to management, the relevant Committee or to Council in order to evaluate whether such work or service can be performed by employees of the City.

*CUPE 241, City of Guelph (Outside) – ON
February 1, 2020–January 31, 2022*

*CUPE 973, City of Guelph (Inside) – ON
February 1, 2016–January 31, 2020*

If the employer has contracted out work, CUPE locals should negotiate language requiring a periodic joint review of contracted out work that could be covered under the collective agreement. This should include disclosure of information about the contractor, the length and cost of the contract, as well as the cost of negotiating, administering and supervising the contract. This information can help CUPE prepare a case to bring the contracted-out work back in house.

Making a case to contract work in should demonstrate the value of the service being delivered in house. CUPE locals should not participate in a competitive bidding process as this would conflict with our role as a bargaining agent. Submitting a bid for service delivery undermines the collective bargaining process by placing pressure on unions to reduce service costs and make concessions.

31.02 The University shall annually notify the Union of contracted out services which are within the scope of the jobs performed in University service departments by regular members of the bargaining unit and provide the Union with the opportunity to present alternatives. The University shall meet quarterly with the Union to review contracting out decisions and shall review contracting in issues pursuant to the Letter of Agreement.

*CUPE 917, University of Victoria (Outside) – BC
April 1, 2014–March 31, 2019*

4.02 LABOUR-MANAGEMENT COMMITTEE

(c) A standing item on the agenda of all Labour Management meetings shall be contracting out/contracting in of CUPE 504 work. The Employer shall provide as part of the agenda items mentioned in b), a list of all contracting out/contracting in examples known at that time.

*CUPE 504, City of Peterborough (Outside) – ON
January 1, 2020–December 31, 2023*

PREVENTING PRIVATIZATION: CONTRACTOR OBLIGATIONS

Where locals haven't achieved a complete ban on contracting out, collective agreement language mandating contractor obligations can be a significant roadblock to privatization and contracting out.

One approach is to bind the employer to require the contractor to employ displaced CUPE members, and in doing so recognize the CUPE local as the bargaining agent for its employees and apply the collective agreement that covered the workers before privatization.

10.02 Notwithstanding the foregoing, the hospital may contract out work usually performed by members of the bargaining unit without such contracting-out constituting a breach of this provision if the hospital provides in its commercial arrangement contracting out the work that the contractor to whom the work is being contracted, and any subsequent such contractor, agrees:

(1) to employ the employees thus displaced from the hospital; and

(2) in doing so to stand, with respect to that work, in the place of the hospital for the purposes of the hospital's collective agreement with the Union, and to execute into an agreement with the Union to that effect.

In order to ensure compliance with this provision, the hospital agrees that it will withdraw the work from any contractor who has failed to meet the aforesaid terms of the contracting-out arrangement.

*Ontario Council of Hospital Unions (OCHU)
Combined Full-Time/Part-Time Central Agreement – ON
September 28, 2017–September 28, 2021*

Another approach is to require that the employer mandate any contractor to provide a certain level of pay and benefits in order to maintain a uniform standard of compensation.

25.01 The Employer agrees that should any town service now performed by Town employees be contracted out, all employees negatively affected will be guaranteed similar positions at no loss in salary or benefits with the contractor assuming the service.

*CUPE 2019, The Town of Happy Valley-Goose Bay – NL
January 1, 2019–December 31, 2022*

43.1 In the event that the Employer enters into an agreement with a corporation, person or other entity with respect to a school to be owned and operated by that corporation, person or entity, the Employer shall, provided that Employees in the bargaining unit were providing services at the school(s) replaced by the school owned and operated by such person, corporation, or other entity:

(a) agree with such corporation, person, or other entity that Employees in the bargaining unit will provide custodial services at such school; or

(b) require that such corporation, person or other entity hire such persons as it requires for custodial services from the Employees affected on such terms and conditions as to wages and benefits that are no less favourable than those provided in this Agreement; and

(c) any custodial Employees affected who are not hired by the corporation, person or other entity shall be entitled to exercise their rights under this Agreement.

*CUPE 964, Tri-County Regional School Board – NS
April 1, 2015–March 31, 2021*

REVERSING PRIVATIZATION: LANGUAGE ON CONTRACTING IN

Contracting work back in house is another way of fighting privatization and contracting out.

Negotiating a process for contracting in typically involves securing:

- An obligation for the employer to disclose all information on currently contracted out services.
- A commitment to a joint review of contracted out work that could be performed by members of the bargaining unit.
- A commitment to consider proposals from the union to bring work back in house.

27.04 Prior to the City contracting out any work not presently performed by the members of the bargaining unit, the City shall attempt to negotiate with the Union to “contract in” the work within the bargaining unit. The Union shall be given the opportunity within a reasonable amount of time to make presentation to the City upon completion of the negotiations prior to the City contracting out.

*CUPE 768, City of Corner Brook – NL
January 1, 2017–December 31, 2020*

LETTER OF UNDERSTANDING (4) Contracting In/Out

During the term of the collective agreement, the parties agree to review the feasibility of contracting in work which is currently contracted out and which would otherwise be bargaining unit work.

The Board agrees to share all relevant information with the Union for the purpose of completing the review.

*CUPE 4154, English Catholic District School Board of Eastern Ontario – ON
September 1, 2019–August 31, 2022*

“SCHEDULE “D” LETTER OF COMMITMENT

DLC:01 The Parties agree to meet following 2016 negotiations to discuss the implementation of a trial to conduct waste collection in areas currently serviced by contractors. The focus of these meetings will be to prepare a business case for increased collection by CGS crews by contracting in work previously performed by contractors.

*CUPE 4705, The City of Greater Sudbury (Outside - Service and Maintenance) – ON
April 1, 2019–March 31, 2023*

In some jurisdictions, work can also be contracted into the bargaining unit by expanding the scope, or bargaining unit recognition, clause. For example, a new subsection of the scope clause could be negotiated to include a new or expanded facility or service, or to introduce a new shift, classification or additional number of members who will perform contracted-in work. This approach must be compatible with existing certification, and what’s possible will depend on the relevant legislation.

LETTER OF UNDERSTANDING

Staffing of Newly Owned University Buildings

The University agrees that newly owned University buildings for which an occupancy permit has been received during the term of the Collective Agreement (“new buildings”) will be covered by the certificates issued by the Ontario Labour Relations Board dated March 1, 1971 and August 19, 1998.

The Union agrees that, in staffing the new buildings, new classifications may be created for bargaining unit positions. Wages for these new classifications may be different than the wages for any classifications outside of the new buildings in accordance with Article 23.04.

The Union agrees that the University has the right to contract with outside firms to manage University facilities and that these firms will have all the rights of the University under the terms of the Collective Agreement to manage CUPE staff.

*CUPE 1356, York University (Maintenance Services, Plant Operations) – ON
September 1, 2014–August 31, 2018*

CUPE strongly encourages locals to consult with their national representative to make sure the scope of their certification is compatible with the language to be negotiated.

CONCLUSION

A strong collective agreement is an essential tool in our work to protect and improve public services, and to safeguard good union jobs. Preventing and reversing privatization is an important part of the bargaining cycle for CUPE locals. It's also part of our daily work as union activists. Every member has a role to play in protecting good jobs and quality public services.

Defending and enforcing our contracts in between rounds of bargaining is just as important as winning strong collective agreement language. Members must be on the lookout, enforcing their collective agreement and filing grievances when there are violations. Stewards play a key role in defending agreements by communicating with their local about any threats to their contract and ways to strengthen it.

Strictly enforcing no contracting out clauses and other language preventing privatization sends a strong message to employers: CUPE members will always defend good jobs and strong public services.

Ultimately, the strongest contracts have community support. CUPE members must keep building a culture of member political engagement, strengthening coalitions, and participating in campaigns with community allies to defend and promote public services. This approach builds the solidarity CUPE members need when they mobilize to use their collective agreements to fight privatization and contracting out.

RESOURCES

For collective bargaining courses and resources to take on privatization, contact CUPE's union education staff in your area at cupe.ca/union-education.

You'll also find news and resources at cupe.ca/privatization, including background on the different forms of privatization, tools to help spot and act on the early warning signs of privatization, and examples of work being brought back in house. Key resources include:

Privatization: P3, SIB, ASD.... huh?!

Guide: Early warning signs of privatization

Back in house: Why local governments are bringing services home

