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c 17 Labour Relations Amendment Act, 1986

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CHAPTER 17

An Act to amend the Labour Relations Act*Assented to May 26th, 1986*

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

1. The *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

40a.—(1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration. First
agreement
arbitration

(2) The Board shall consider and make its decision on an application under subsection (1) within thirty days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 15 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of, Duty of
Board

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant.

(3) Where a direction is given under subsection (2), the first collective agreement between the parties shall be settled by a board of arbitration unless within seven days of the giv- Choice of
arbitrator

ing of the direction the parties notify the Board that they have agreed that the Board arbitrate the settlement.

Arbitration
by Board

(4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,

- (a) shall appoint a date for and commence a hearing within twenty-one days of the giving of the notice to the Board; and
- (b) shall determine all matters in dispute and release its decision within forty-five days of the commencement of the hearing.

Private
arbitration

(5) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within ten days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chairman.

Idem

(6) If a party fails to make an appointment as required by subsection (5) or if the appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister upon the request of either party.

Idem

(7) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 108 applies to the board of arbitration, its decision and proceedings as if it were the Board.

Idem

(8) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:

1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.
2. Each party shall pay one-half of the remuneration and expenses of the chairman.

Idem
R.S.O. 1980,
c. 205

(9) Subsections 6 (8), (9), (10), (12), (13), (14), (17) and (18) of the *Hospital Labour Disputes Arbitration Act* and subsections 44 (8) and (10) of this Act apply with necessary modifications to a board of arbitration established under this section.

(10) The date of the first hearing of a board of arbitration appointed under this section shall not be later than twenty-one days after the appointment of the chairman. Idem

(11) A board of arbitration appointed under this section shall determine all matters in dispute and release its decision within forty-five days of the commencement of its hearing of the matter. Idem

(12) The Minister may appoint a mediator to confer with the parties and endeavour to effect a settlement. Mediation

(13) The employees in the bargaining unit shall not strike and the employer shall not lock out such employees where a direction has been given under subsection (2) and, where such a direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced, Effect of direction on strike or lock-out

(a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or

(b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lock-out commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations.

(14) The requirement to reinstate employees set out in subsection (13) applies notwithstanding that replacement employees may be performing the work of employees in the bargaining unit, but the said subsection does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out. Non-application

(15) Where a direction has been given under subsection (2), the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 14 shall continue in effect, Working conditions not to be altered

or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled.

Non-application

(16) Subsection (15) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union.

Matters to be accepted or considered

(17) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment.

Effect of settlement

(18) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to such day as the Board may fix, but not earlier than the day on which notice was given under section 14.

Extension of time

(19) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, notwithstanding the expiration of such time.

Non-application

(20) This section does not apply to the negotiation of a first collective agreement,

(a) where one of the parties is an employers' organization accredited under section 127 as a bargaining agent for employers; or

(b) where the agreement is a provincial agreement within the meaning of section 137.

Application

(21) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after the coming into force of this section and the bargaining rights have been acquired since the 1st day of January, 1984 and continue to exist at the time of an application under subsection (1).

Application for termination, etc.

(22) Notwithstanding subsection (2), where an application under subsection (1) has been filed with the Board and a final decision on the application has not been issued by it and there has also been filed with the Board, either or both,

(a) an application for a declaration that the trade union no longer represents the employees in the bargaining unit; and

- (b) an application for certification by another trade union as bargaining agent for employees in the bargaining unit,

the Board shall consider the applications in the order that it considers appropriate and if it grants one of the applications, it shall dismiss any other application described in this section that remains unconsidered.

(23) An application for a declaration that a trade union no longer represents the employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 57 (2). Idem

(24) An application for certification by another trade union as bargaining agent for employees in the bargaining unit filed with the Board after the Board has given a direction under subsection (2) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 5 (4), (5) and (6). Idem

(25) The *Arbitrations Act* does not apply to an arbitration under this section. R.S.O. 1980, c. 25 does not apply

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Labour Relations Amendment Act, 1986*. Short title

