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c 52 Toronto Transit Commission Labour Disputes Settlement Act, 1989

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CHAPTER 52

**An Act respecting the
Toronto Transit Commission Labour Disputes**

Assented to October 16th, 1989

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WHEREAS the Toronto Transit Commission and Local 113, Amalgamated Transit Union, Lodge 235, International Association of Machinists and Aerospace Workers and the Canadian Union of Public Employees, Local No. 2 were parties to collective agreements which have expired; and whereas the parties have bargained for new collective agreements and have exhausted the conciliation process under the *Labour Relations Act*; and whereas the parties have not settled the disputes and negotiations have reached an impasse; and whereas the disputes have adversely affected public transit service, and whereas the public interest and welfare requires that a means be provided to address the matters in dispute so that new collective agreements may be concluded and full public transit service can be restored;

Preamble

R.S.O. 1980,
c. 228

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“employees” means the employees of the employer in the bargaining units represented by the unions;

“employer” means the Toronto Transit Commission;

“expiry date” means, in the case of the collective agreement between the employer and,

- (a) Local 113, Amalgamated Transit Union, the 30th day of June, 1989,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, the 31st day of March, 1989, and
- (c) the Canadian Union of Public Employees, Local No. 2, the 31st day of March, 1989;

“parties” means the employer and the unions;

“unions” means,

- (a) Local 113, Amalgamated Transit Union,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, and
- (c) Canadian Union of Public Employees, Local No. 2.

Idem
R.S.O. 1980,
c. 228

(2) Unless a contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act*.

Application
of Act

2.—(1) This Act applies to the parties and to the employees.

Application
of
R.S.O. 1980,
c. 228

(2) Except as modified by this Act, the *Labour Relations Act* applies to the parties and to the employees.

Strike or
lock-out
to be
terminated

3.—(1) Any strike or lock-out shall be terminated by the parties and the employees immediately upon the coming into force of this Act.

Work
assignments

(2) Every employee shall report to work and shall perform his or her duties in accordance with his or her work assignment.

Normal
operations

(3) The employer shall operate and continue to operate its undertakings to their normal extent, scope and capacity.

No strike or
lock-out

(4) No person shall engage in, declare, authorize, counsel, threaten or acquiesce in any lock-out, strike or picketing or in any activity contrary to any provision of this Act.

(5) The employer shall not, except in accordance with this Act or with the consent of the unions, alter the rates of wages of the employees or any other term or condition of employment, or any right, privilege or duty of the unions or the employees, that was in operation on the expiry date.

Terms of employment not to be altered

(6) The unions shall not, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the unions or the employees, that was in operation on the expiry date.

Idem

(7) Any dispute between the parties as to whether subsections (5) and (6) have been complied with may be referred to arbitration by either party as if the collective agreements that were in force on the expiry date were still in operation, and sections 44 and 45 of the *Labour Relations Act* apply with necessary modifications thereto.

Compliance with subss. (5) and (6)

R.S.O. 1980, c. 228

4.—(1) The Lieutenant Governor in Council, upon the advice of the Minister of Labour, shall appoint,

Appointment of fact-finder and arbitrator

- (a) a fact-finder who shall have exclusive jurisdiction to investigate and report on the matters referred to in section 5; and
- (b) an arbitrator who shall have exclusive jurisdiction to hear and determine the matters referred to in section 6.

(2) The Lieutenant Governor in Council may appoint the person who is appointed to be the fact-finder to also act as the arbitrator.

Idem

(3) If the fact-finder is unable to perform his or her duties so as to enable a report to be made within the period of time mentioned in subsection 5 (6), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as fact-finder and the process, except for any agreement or decision made under subsection 5 (2), shall begin anew.

Replacement of fact-finder

(4) If the arbitrator is unable to perform his or her duties so as to make an award within the period of time mentioned in subsection 6 (4), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as arbitrator and the process shall begin anew.

Replacement of arbitrator

(5) The fact-finder shall determine his or her own procedure but, in respect of a decision under subsection 5 (2), shall permit the parties to present evidence and make submissions.

Procedure, fact-finder

Procedure,
arbitrator

(6) The arbitrator shall determine his or her own procedure but shall permit the parties to present evidence and make submissions.

Powers

(7) The fact-finder and the arbitrator each has power,

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as he or she considers requisite to the full investigation and consideration of the matters referred to him or her in the same manner as a court of record in civil cases;
- (b) to administer oaths and affirmations;
- (c) to accept such oral or written evidence as he or she considers proper, whether or not admissible in a court of law;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to him or her, and inspect and view any work, material, machinery, appliance or article therein, and to ask employees questions;
- (e) to authorize any person to do anything that he or she may do under clause (d) and to report to him or her thereon.

Remuneration
and expenses

(8) The arbitrator and the fact-finder shall be paid such remuneration and expenses as the Lieutenant Governor in Council may decide.

Fact-finding

5.—(1) The fact-finder shall conduct a comprehensive investigation of all matters relevant to the staffing dispute, including the use of part-time workers, between the employer and Local 113, Amalgamated Transit Union and the fact-finder shall make a report together with any recommendations thereon to the parties and to the Minister of Labour.

Scope of
investigation

(2) Within thirty days after his or her appointment, the fact-finder and the parties shall attempt to define which issues related to the staffing dispute, including the use of part-time workers, are to be investigated by the fact-finder, failing which the fact-finder, within fourteen additional days or within such longer period as the Minister of Labour may permit, shall decide the issues to be investigated.

(3) The decision of the fact-finder under subsection (2) is final and binding on the employer, the Local and the arbitrator.

Decision

(4) The fact-finder shall notify the Minister of Labour of any agreement under subsection (2) and the fact-finder shall notify the Minister, the employer and the Local of a decision under that subsection.

Notice

(5) The fact-finder may attempt to mediate a settlement of the issues under investigation at any time during the investigation.

Mediation

(6) Subject to subsection (7), the fact-finder shall submit his or her report and recommendations, if any, to the Minister, the employer and the Local by the 30th day of June, 1990, or such later date as the Minister may permit.

Time-limit

(7) The fact-finder shall terminate the investigation and shall not be required to make a report if the employer and the Local agree on a settlement of the issues under investigation.

End of investigation

(8) If the fact-finder issues a report, the employer and the Local shall bargain in good faith and make every reasonable effort to settle the unresolved issues in the staffing dispute, including the use of part-time workers.

Attempt to settle

(9) An agreement between the employer and the Local on any issue that is or was the subject of the fact-finder's investigation or report shall be deemed to be part of the collective agreement between the employer and the Local expiring on the 30th day of June, 1991.

Effect of agreement

(10) Section 89 of the *Labour Relations Act* applies with necessary modifications to the enforcement of subsection (8).

Application of R.S.O. 1980, c. 228, s. 89

(11) In addition to the issues that are the subject of the investigation, the fact-finder, as part of the investigation and report, may consider any other matter related to or contained in any collective agreement between the employer and the Local that he or she considers relevant to the settlement of the issues under investigation and may make recommendations thereon.

Additional matters

6.—(1) Subject to subsection (2), the arbitrator shall determine all matters remaining in dispute between the employer and the unions immediately before the coming into force of this Act, including any matter that may be a subject of dispute as to agreement thereon and any other matters that

Arbitration

appear to the arbitrator to be necessary to be decided in order to conclude collective agreements between the parties.

Exception

(2) The arbitrator, in his or her role as arbitrator, shall not deal with any issue in dispute between the employer and Local 113, Amalgamated Transit Union, related to staffing, including the use of part-time workers, that is the subject of the fact-finder's investigation as agreed or decided under subsection 5 (2).

Agreement of parties incorporated

(3) If the parties reach agreement on any terms or conditions before the rendering of an award by the arbitrator and the arbitrator is informed in writing, the award of the arbitrator shall be confined to those issues which remain in dispute and to those matters which, in the opinion of the arbitrator, must be decided in order to conclude collective agreements between the parties.

Time-limit

(4) The arbitrator shall make an award within sixty days after the day the notice is given to the Minister under subsection 5 (4), or within such further period of time as the Minister may permit.

Arbitrator remains seized

(5) The arbitrator remains seized of and may deal with all matters within his or her jurisdiction until collective agreements between the parties are in effect.

Terms of agreements

(6) The collective agreements between the parties shall be for periods in each case commencing on the day immediately following the expiry date and expiring on the second anniversary of the expiry date.

Award final and binding

(7) The award of the arbitrator is final and binding upon the parties and the employees.

Execution of agreement

(8) Within seven days after the date of the award of the arbitrator, or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute documents giving effect to the award, and the documents thereupon constitute collective agreements.

Preparation of agreement by arbitrator

(9) If the parties fail to prepare and execute documents in the form of collective agreements giving effect to the award of the arbitrator within the period mentioned in subsection (8), they shall notify the arbitrator in writing forthwith, and the arbitrator shall prepare documents in the form of collective agreements giving effect to his or her award and submit the document to the parties for execution.

(10) If the parties or any of them fail to execute the documents prepared by the arbitrator within a period of seven days from the day the arbitrator submits the documents to them, the documents shall come into effect as though they had been executed by the parties and the documents thereupon constitute collective agreements.

Failure to execute agreement

7.—(1) The basic hourly rates of wages for the employees are hereby increased by 5 per cent over the basic hourly wage rates in effect on the expiry date, retroactive to the day immediately following the expiry date, and the award of the arbitrator shall include such increase.

Wage increase

(2) Nothing in this section prevents the parties from agreeing or the arbitrator from granting increases in the basic wage rates in excess of those established by this section.

Idem

8.—(1) The *Arbitrations Act* does not apply to arbitration proceedings under this Act.

R.S.O. 1980, c. 25 not to apply

(2) Part I of the *Statutory Powers Procedure Act* does not apply to arbitration proceedings or to any decision-making process or investigation of the fact-finder under this Act.

Idem
R.S.O. 1980, c. 484

9. Sections 92, 93, 94, 95, 97, 98, 99 and 100 of the *Labour Relations Act* apply to the parties and to the employees with necessary modifications.

Application of
R.S.O. 1980, c. 228

10.—(1) A person or union who contravenes any provision of this Act is guilty of an offence and on conviction is liable,

Offence and penalties

(a) if an individual, to a fine of not more than \$1,000; or

(b) if the employer or a union, to a fine of not more than \$10,000.

(2) Each day that a person or the union contravenes any provision of this Act constitutes a separate offence.

Continuing offences

(3) No prosecution for an offence under this Act shall be instituted except with the written consent of the Minister of Labour.

Consent to prosecute

(4) Section 101 of the *Labour Relations Act* does not apply to a prosecution for an offence under this Act.

R.S.O. 1980, c. 228, s. 101 not to apply

(5) In a prosecution for an offence under this Act, a copy of a consent purporting to have been signed by the Minister of

Evidence of consent

Labour is sufficient evidence of the Minister's consent without proof of the signature.

Costs

11. The employer and the union shall assume their own costs of the proceedings under this Act, and the remuneration and expenses of the arbitrator and the fact-finder shall be paid out of the Consolidated Revenue Fund.

Commence-
ment

12.—(1) This Act comes into force when it receives Royal Assent.

Repeal

(2) This Act is repealed on the 31st day of March, 1991.

Short title

13. The short title of this Act is the *Toronto Transit Commission Labour Disputes Settlement Act, 1989*.