School Boards and Teachers Collective Negotiations Act

Ontario
CHAPTER 464

School Boards and Teachers Collective Negotiations Act

PART I

GENERAL

1. In this Act,

(a) "affiliate" means one of the following bodies:

1. L'Association des Enseignants Franco-Ontariens.

2. The Federation of Women Teachers' Associations of Ontario.

3. The Ontario English Catholic Teachers' Association.

4. The Ontario Public School Men Teachers' Federation.

5. The Ontario Secondary School Teachers' Federation;

(b) "agreement" means a written collective agreement made after the 18th day of July, 1975 and pursuant to this Act between a board and a branch affiliate or branch affiliates or between two or more boards and two or more branch affiliates covering matters negotiable under this Act;

(c) "board" means a board of education, public school board, secondary school board, Roman Catholic separate school board or Protestant separate school board and includes a divisional board of education;

(d) "branch affiliate" means an organization composed of all the teachers employed by a board who are members of the same affiliate;
(e) "Commission" means the Education Relations Commission;

(f) "Council" means the Ontario School Trustees' Council;

(g) "Federation" means the Ontario Teachers' Federation;

(h) "lock-out" means the suspension of employment of, or the refusal to assign work to, teachers other than principals and vice-principals in a school or schools by a board with the view to compelling the cessation of a strike or preventing the resumption of a strike or with the view to inducing or persuading the branch affiliate that represents the teachers to enter into or renew an agreement;

(i) "member association" means one of the following bodies:

4. Ontario Separate School Trustees' Association;

(j) "party" means a board or a branch affiliate;

(k) "principal" means a principal as defined in the Education Act;

(l) "strike" includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed to curtail, restrict, limit or interfere with the operation or functioning of a school program or school programs or of a school or schools including, without limiting the foregoing,

(i) withdrawal of services,

(ii) work to rule,

(iii) the giving of notice to terminate contracts of employment;
Sec. 4 (1)  BOARDS & TEACHERS NEGOTIATIONS  Chap. 464

(m) "teacher" means a person,

(i) who holds a valid certificate of qualification as a teacher in an elementary or secondary school in Ontario,

(ii) who holds a letter of standing granted by the Minister under the Education Act, R.S.O. 1980, c. 129

(iii) in respect of whom the Minister has granted a letter of permission under the Education Act,

and who is employed by a board under a contract of employment as a teacher in the form of contract prescribed by the regulations under the Education Act, but does not include a supervisory officer as defined in the Education Act, an instructor in a teacher-training institution or a person employed to teach in a school for a period not exceeding one month;

(n) "vice-principal" means a vice-principal within the meaning of the regulations under the Education Act;

(o) "vote by secret ballot" means a vote by ballots cast in such a manner that a person expressing his choice cannot be identified with the choice expressed. 1975, c. 72, s. 1.

2. The purpose of this Act is the furthering of harmonious relations between boards and teachers by providing for the making and renewing of agreements and by providing for the relations between boards and teachers in respect of agreements. 1975, c. 72, s. 2.

3.—(1) This Act applies to all collective negotiations between boards and teachers in respect of any term or condition of employment put forward by either party for the purpose of making or renewing an agreement.

(2) No such collective negotiations shall be carried on except in accordance with this Act. 1975, c. 72, s. 3.

4.—(1) In negotiations and procedures under this Act to make or renew an agreement or agreements, two or more boards may act jointly as a party and two or more branch affiliates may act jointly as a party, where both the boards
and branch affiliates involved so agree, to make or renew an agreement between the boards and the branch affiliates or to make or renew a separate agreement between each of the boards and a branch affiliate that represents teachers employed by the board.

(2) A separate agreement between a board and a branch affiliate made pursuant to subsection (1) may include terms and conditions of employment in addition to and consistent with those terms and conditions which are part of the agreement between all the boards acting as a party and all the branch affiliates acting as a party.

(3) Notwithstanding subsection (1), two or more branch affiliates may act as one party in negotiations and procedures under this Act to make or renew an agreement or agreements with the same board.

(4) Where two or more boards act jointly as a party and two or more branch affiliates act jointly as a party pursuant to subsection (1), any negotiations and proceedings and resulting agreement pursuant to subsection (2) between one of the boards and a branch affiliate shall be deemed to be part of the joint negotiations and agreement in accordance with subsection (1).

(5) A board or branch affiliate that agrees to act jointly with another board or branch affiliate pursuant to subsection (1), shall continue to act jointly with such other board or branch affiliate until an agreement is made or renewed between the parties. 1975, c. 72, s. 4.

5. A branch affiliate shall, in negotiations and procedures under this Act, represent all the teachers composing its membership. 1975, c. 72, s. 5.

6. In negotiations to make or renew an agreement, a party shall be represented by only one group of persons but may at any time increase, decrease or change the composition of the group. 1975, c. 72, s. 6.

7. At any time during negotiations or procedures under this Act,

(a) a board that is a party may obtain assistance from the Council, a member association or another board;
(b) a branch affiliate that is a party may obtain assistance from the Federation, an affiliate or another branch affiliate; and

(c) a party may obtain assistance from one or more advisors, agents, counsel or solicitors. 1975, c. 72, s. 8.

PART II

NEGOTIATIONS

8. Negotiations shall be carried out in respect of any term or condition of employment put forward by either party. 1975, c. 72, s. 9.

9. Where there is no agreement in force between a board and a branch affiliate, the branch affiliate may give to the board or the board may give to the branch affiliate written notice of its desire to negotiate with the view to making an agreement. 1975, c. 72, s. 10, revised.

10.—(1) Either party to an agreement may give written notice to the other party within the month of January in the year in which the agreement expires of its desire to negotiate with the view to the renewal, with or without modification, of the agreement then in operation.

(2) Where an agreement exists between a board or boards and a branch affiliate or branch affiliates and no party to the agreement gives notice in accordance with this Act of its desire to negotiate with the view to the renewal of the agreement, the agreement continues in operation and is renewed from year to year, with each yearly period expiring on the 31st day of August, until the year, if any, in which notice is given in accordance with this Act of desire to negotiate with the view to the renewal, with or without modification, of the agreement.

(3) Where notice has been given of desire to negotiate to make or renew an agreement, the terms and conditions of the agreement, other than a term or condition that prevents a strike, that was in force at the time of giving the notice shall not be altered until either,

(a) an agreement or a new agreement comes into force or the agreement is renewed, as the case may be; or
(b) subject to subsection 27 (2) and subsection 68 (5), sixty days have elapsed after the Commission has made public the report of the fact finder as provided in section 26, whichever first occurs. 1975, c. 72, s. 11.

11. The parties shall meet within thirty days from the giving of the notice and they shall negotiate in good faith and make every reasonable effort to make an agreement or to renew the agreement, as the case requires. 1975, c. 72, s. 12 (1).

12.—(1) The parties, at any time during negotiations to make or renew an agreement, may agree to,

(a) request the Commission to assign a person to assist the parties to make or renew the agreement;

(b) request the Commission to appoint a fact finder as provided in Part III; or

(c) refer all matters remaining in dispute between them that may be provided for in an agreement to,

(i) an arbitrator or a board of arbitration for determination as provided in Part IV, or

(ii) a selector for determination as provided in Part V.

(2) Where the parties refer all matters remaining in dispute between them to an arbitrator or a board of arbitration or to a selector pursuant to clause (1) (c), no teacher who is a member of a branch affiliate that is a party shall engage in a strike against the board that is a party and the board shall not lock out or declare a state of lock-out to exist against members of the branch affiliate that is a party. 1975, c. 72, s. 13.

13. The Commission may, in the exercise of its own discretion, at any time assign a person to assist the parties to make or renew an agreement. 1975, c. 72, s. 14.

PART III

FACT FINDING

14. The Commission shall appoint forthwith a person as a fact finder during negotiations to make or renew an agreement if the parties have not referred all matters remaining in dispute between them to an arbitrator or board of arbitration
as provided in Part IV or a selector as provided in Part V and,

(a) one or both of the parties gives notice to the Commission that an impasse has been reached in the negotiations and requests the appointment of a fact finder, and the Commission approves the request;

(b) the Commission is of the opinion that an impasse has been reached in the negotiations; or

(c) the agreement that was in operation in respect of the parties expires during negotiations between the parties to make or renew an agreement, and fact finding has not taken place as provided in this Part. 1975, c. 72, s. 15, revised.

15. The parties to negotiations to make or renew an agreement may, notwithstanding the appointment of a fact finder,

(a) make or renew the agreement; or

(b) agree to refer all matters remaining in dispute between them to,

(i) an arbitrator or a board of arbitration for determination as provided in Part IV, or

(ii) a selector for determination as provided in Part V,

and upon the giving of notice to the Commission by the parties that they have so acted, the appointment of the fact finder is terminated. 1975, c. 72, s. 16.

16. No person shall be appointed a fact finder who has a direct pecuniary interest in the matters coming before him or who is acting or has, within the period of six months immediately before the date of his appointment, acted as solicitor, counsel, negotiator, advisor or agent of either of the parties, but no person shall be deemed to have a direct pecuniary interest by reason only of being a ratepayer within the area of jurisdiction of the board that is a party. 1975, c. 72, s. 17.

17. Where a fact finder ceases to act by reason of withdrawal, death or otherwise before submitting his report to the Commission, the Commission shall appoint another person in his stead and such person shall commence the work of the fact finder de novo. 1975, c. 72, s. 18.
18. Where the Commission appoints a fact finder, the Commission shall give written notice to each of the parties of the appointment of and the name and address of the fact finder. 1975, c. 72, s. 19.

19.—(1) Within seven days after the receipt of notice from the Commission of the appointment of the fact finder, each party shall give written notice to the fact finder and to the other party setting out all the matters that the parties have agreed upon for inclusion in an agreement and all the matters remaining in dispute between the parties.

(2) Where a party fails to comply with subsection (1), the fact finder may make a determination of the matters mentioned in subsection (1) and may then proceed pursuant to this Part. 1975, c. 72, s. 20.

20.—(1) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report setting out the matters agreed upon by the parties for inclusion in an agreement and the matters remaining in dispute between the parties.

(2) A fact finder may, in his report, include his findings in respect of any matter that he considers relevant to the making of an agreement between the parties and recommend terms of settlement of the matters remaining in dispute between the parties. 1975, c. 72, s. 21.

21. In inquiring into and ascertaining the matters remaining in dispute between the parties, the fact finder may inquire into and consider any matter that the fact finder considers relevant to the making of an agreement between the parties including, without limiting the foregoing,

(a) the conditions of employment in occupations outside the public teaching sector;

(b) the effect of geographic or other local factors on the terms and conditions of employment;

(c) the cost to the board of the proposal of either party;

(d) the interests and welfare of the public. 1975, c. 72, s. 22.

22. The fact finder shall determine his own procedure under guidelines established by the Commission and, where
the fact finder requests information from a party, the party shall provide the fact finder with full and complete information. 1975, c. 72, s. 23.

23. The fact finder shall submit his report to the Commission within thirty days after the date of his appointment or—within such longer period of time as the Commission, with the agreement of the parties, may direct and the Commission shall forthwith give a copy of the report to each of the parties. 1975, c. 72, s. 24.

24. The report of the fact finder is not binding on the parties but is made for the advice and guidance of the parties and upon receipt of the report the parties shall endeavour, in good faith, to make an agreement or to renew the agreement, as the case may be. 1975, c. 72, s. 25.

25.—(1) Where the Commission has given a copy of the report of the fact finder to each of the parties and the Commission is of the opinion that the parties will or are likely to benefit from assistance, the Commission may assign a person to assist the parties to make or renew, as the case may be, the agreement.

(2) Where the Commission has given a copy of the report of the fact finder to each of the parties and both of the parties request assistance from the Commission, the Commission shall assign a person to assist the parties to make or renew, as the case may be, the agreement. 1975, c. 72, s. 26.

26.—(1) If the parties make or renew, as the case may be, an agreement within fifteen days after the Commission has given a copy of the report to each of the parties, the report shall not be made public by the Commission, either of the parties or by any person.

(2) If the parties do not make an agreement, or renew the agreement, as the case may be, within the period of time specified in subsection (1), the Commission shall make public the report of the fact finder.

(3) Notwithstanding subsections (1) and (2), where both parties agree and the Commission approves, the Commission may defer making public the report of the fact finder for an additional period of not more than five days. 1975, c. 72, s. 27.

27.—(1) If the parties do not make or renew, as the case may be, an agreement within fifteen days after the Com-
mission has given a copy of the report of the fact finder to each of the parties, the parties may agree to refer all matters in dispute between them that may be provided for in an agreement to,

(a) an arbitrator or a board of arbitration for determination as provided in Part IV; or

(b) a selector for determination as provided in Part V.

(2) Where, pursuant to subsection (1), the parties refer all matters remaining in dispute between them that may be provided for in an agreement to an arbitrator or a board of arbitration or refer all such matters to a selector and either of the parties submits its final offer to the selector,

(a) the terms of the agreement, if any, in force between the parties at the time of the giving of notice of desire to negotiate pursuant to subsection 10(1) or (2), shall not be altered until an agreement is made or renewed between the parties; and

(b) no teacher who is a member of a branch affiliate that is a party shall engage in a strike against the board that is a party and the board shall not lock out or declare a state of lock-out to exist against members of the branch affiliate that is a party.

1975, c. 72, s. 28, revised.

PART IV

VOLUNTARY BINDING ARBITRATION

28.—(1) Where the parties agree to refer all matters remaining in dispute between them that may be provided for in an agreement to an arbitrator or a board of arbitration, the parties shall jointly give written notice to the Commission that they have so agreed and the notice shall state,

(a) that the parties agree to refer the matters to an arbitrator and,

(i) the date of appointment and the name and address of the arbitrator, or

(ii) that the parties have not appointed the arbitrator and that the parties request the Commission to appoint the arbitrator; or
(b) that the parties agree to refer the matters to a board of arbitration and,

(i) that the parties have each appointed a person as a member of the board of arbitration and shall set out the names and addresses of the two members so appointed, or

(ii) that both of the parties or one of them, as the case may be, has not appointed a person as a member of the board of arbitration and that the parties request the Commission to appoint the members or member, as the case may be, of the board,

and the notice shall state that the decision of the arbitrator or board of arbitration will be accepted by the parties as binding upon them.

(2) Except as provided in section 56, a party shall not withdraw from arbitration proceedings under this Part after notice is given to the Commission in accordance with subsection (1).

(3) Where the parties, in the notice mentioned in subsection (1), request the Commission to appoint the arbitrator or the members or one of the members of the board of arbitration, the Commission shall make the appointment or appointments and shall forthwith thereafter give notice thereof to the parties setting out the name and address of the appointee or the names and addresses of the appointees, as the case may be, together with the date of the appointment or appointments.

(4) Where the parties agree to refer all matters remaining in dispute between them to a board of arbitration, the two members of the board of arbitration shall, within ten days after the giving of notice of their appointment by the parties or by the Commission, as the case may be, appoint a third person to be chairman of the board of arbitration and the chairman shall forthwith give written notice to the Commission of his appointment.

(5) Where the two members of the board of arbitration are unable to appoint or to agree on the appointment of the chairman of the board of arbitration within the period of time set out in subsection (4), the Commission shall appoint the chairman and shall give notice of the appointment to the two members and to the parties and the notice shall set out
the name and address of the person appointed and the date of the appointment. 1975, c. 72, s. 29.

29. No person shall be appointed an arbitrator or member or chairman of a board of arbitration who has a direct pecuniary interest in the matters coming before him or who is acting or has, within the period of six months immediately before the date of his appointment, acted as solicitor, counsel, negotiator, advisor or agent of either of the parties, but no person shall be deemed to have a direct pecuniary interest by reason only of being a ratepayer within the area of jurisdiction of the board that is a party. 1975, c. 72, s. 30.

30.—(1) Where a member of a board of arbitration is unable to enter on or to carry on his duties so as to enable a decision to be rendered within the period of time required by subsection (2) or ceases to act by reason of withdrawal or death before the board of arbitration has completed its work, a replacement shall be appointed by the body that appointed the member, and the board of arbitration shall continue to function as if such member were a member of the board of arbitration from the beginning.

(2) Where the chairman of a board of arbitration is unable to enter on or to carry on his duties so as to enable a decision to be rendered within sixty days after his appointment or within such longer period of time as may be provided in writing by the board of arbitration and consented to by the Commission or ceases to act by reason of withdrawal or death, the Commission shall give notice thereof to the members of the board of arbitration who shall within seven days of the giving of the notice appoint a person to be the chairman and if the appointment is not so made by the members it shall be made by the Commission, and after the chairman is appointed the arbitration shall begin de novo.

(3) Where an arbitrator is unable to enter on or to carry on his duties so as to enable a decision to be rendered within sixty days after his appointment or within such longer period of time as may be provided in writing by the arbitrator and consented to by the Commission or ceases to act by reason of withdrawal or death, the Commission shall give notice thereof to the parties who shall within seven days of the giving of the notice appoint a person to be the arbitrator and if the appointment is not so made it shall be made by the Commission and after the arbitrator is appointed the arbitration shall begin de novo. 1975, c. 72, s. 31.

31. Within seven days after the giving of notice that the arbitrator or the chairman of the board of arbitration,
Sec. 33 (2) (b) BOARDS & TEACHERS NEGOTIATIONS Chap. 464

as the case may be, has been appointed, each party shall give written notice to the arbitrator or chairman and to the other party setting out all the matters that the parties have agreed upon for inclusion in an agreement and all the matters remaining in dispute between the parties. 1975, c. 72, s. 32.

32.—(1) The arbitrator or board of arbitration shall determine his or its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions.

(2) If the members of a board of arbitration are unable to agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs.

(3) The decision of a majority of a board of arbitration is the decision of the board, but if there is no majority, the decision of the chairman is the decision of the board. 1975, c. 72, s. 33.

33.—(1) The arbitrator or board of arbitration has power, (a) to summon any person, (i) to give oral or written evidence on oath or affirmation to the arbitrator or board of arbitration, or (ii) to produce in evidence for the arbitrator or board of arbitration such documents and other things as the arbitrator or board of arbitration may specify; (b) to administer oaths and affirmations; (c) to accept for or exclude from consideration any oral testimony, document or other thing, whether admissible in a court of law or not.

(2) Where any person without lawful excuse, (a) on being duly summoned under subsection (1) as a witness before the arbitrator or board of arbitration, as the case may be, makes default in so attending; (b) being in attendance as a witness before the arbitrator or board of arbitration, as the case may be,
refuses to take an oath or to make an affirmation legally required by the arbitrator or board of arbitration to be taken or made, or to produce any document or thing in his power or control legally required by the arbitrator or board of arbitration to be produced to him or it, or to answer any question to which the arbitrator or board of arbitration may legally require an answer; or

(c) does any other thing that would, if the arbitrator or board of arbitration had been a court of law having power to commit for contempt, have been contempt of that court,

the arbitrator or board of arbitration may state a case to the Divisional Court setting out the facts and that court may, on the application of the arbitrator or board of arbitration, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. 1975, c. 72, s. 34.

34.—(1) The arbitrator or board of arbitration shall inquire into, consider and decide on all matters remaining in dispute between the parties.

(2) In the conduct of proceedings before him or it and in reaching a decision in respect of a matter in dispute, the arbitrator or board of arbitration may inquire into and consider any matter that the arbitrator or board of arbitration considers relevant to the making of an agreement between the parties. 1975, c. 72, s. 35.

35.—(1) The arbitrator or board of arbitration shall complete the consideration of all matters in dispute between the parties and shall report in writing his or its decision on the matters to the parties and to the Commission within sixty days after the giving of notice of the appointment of the arbitrator or of the appointment of the chairman of the board of arbitration, as the case may be, or within such longer period of time as may be provided in writing by the arbitrator or board of arbitration and consented to by the Commission.

(2) The decision of the arbitrator or board of arbitration is binding upon the parties and they shall comply in good faith with the decision. 1975, c. 72, s. 36.
36.—(1) Within thirty days after receipt by the parties of the report of the arbitrator or board of arbitration, as the case may be, the parties shall prepare a document giving effect to all matters agreed upon by the parties and the decision of the arbitrator or board of arbitration and shall execute the document and thereupon it constitutes an agreement.

(2) If the parties fail to execute the document within the period of time mentioned in subsection (1), the arbitrator or board of arbitration, as the case may be, shall prepare the document and submit it to the parties and shall fix the time within which and the place where the parties shall execute the document.

(3) If the parties or either of them fail to execute the document within the time fixed by the arbitrator or the board of arbitration, the document shall be deemed to be in effect as though it had been executed by the parties and the document thereupon constitutes an agreement. 1975, c. 72, s. 37.

PART V

FINAL OFFER SELECTION

37.—(1) Where the parties agree to refer all matters remaining in dispute between them that may be provided for in an agreement to a selector, the parties shall jointly give written notice to the Commission that they have so agreed and the notice shall state that the parties agree to refer the matters to a selector and,

(a) the date of appointment and the name and address of the selector; or

(b) that the parties have not appointed the selector and that the parties request the Commission to appoint the selector.

(2) The parties shall, together with the notice mentioned in subsection (1), give to the Commission a written statement signed by the parties setting out that neither party will withdraw from the proceedings after the final offers of the parties have been submitted to the selector and that the decision of the selector will be accepted by the parties as binding upon them.

(3) Except as provided in section 56, where the parties give to the Commission a written statement in accordance with subsection (2), a party shall not withdraw from the proceedings
after the final offer of either of the parties has been submitted to the selector.

(4) Where the parties request the Commission to appoint the selector, the Commission shall make the appointment and give notice of the appointment of the selector to the parties and the notice shall set out the name and address of the person appointed and the date of the appointment. 1975, c. 72, s. 38.

38. No person shall be appointed a selector who has a direct pecuniary interest in the matters coming before him or who is acting or has, within the period of six months immediately before the date of his appointment, acted as solicitor, counsel, negotiator, advisor or agent of either of the parties, but no person shall be deemed to have a direct pecuniary interest by reason only of being a ratepayer within the area of jurisdiction of the board that is a party. 1975, c. 72, s. 39.

39. Where a selector is unable to enter on or to carry on his duties so as to enable a decision to be rendered within the time specified by this Act or such longer period of time as may be provided in writing by the selector and consented to by the Commission or ceases to act by reason of withdrawal or death, the Commission shall give notice thereof to the parties who shall within seven days of the giving of the notice appoint a person to be the selector, and if the appointment is not so made by the parties it shall be made by the Commission, and after the selector is appointed, the selection procedure shall begin de novo. 1975, c. 72, s. 40.

40. Within seven days after the giving of notice that the selector has been appointed, the parties shall jointly give written notice to the selector setting out all the matters that the parties have agreed upon for inclusion in an agreement and all the matters remaining in dispute between the parties. 1975, c. 72, s. 41.

41. Within fifteen days after the giving of notice that the selector has been appointed, each party shall give written notice to the selector setting out the final offer of the party on all the matters remaining in dispute between the parties and may submit with the notice a written statement in support of the final offer set out in the notice. 1975, c. 72, s. 42.

42. Upon receiving the notices of the parties setting out the final offer of each party, the selector shall forthwith give to each party a copy of the notice setting out the final offer of the opposite party on all the matters remaining
in dispute between the parties together with a copy of the statement, if any, of the opposite party submitted in support of the final offer of the opposite party. 1975, c. 72, s. 43.

**43.** Each party may, within ten days after being given a copy of the final offer and supporting statement, if any, of the opposite party, give to the selector a written reply and the selector shall forthwith give a copy of the reply of each party to the opposite party. 1975, c. 72, s. 44.

**44.** Within fifteen days after each party has been given a copy of the final offer and supporting statement, if any, of the opposite party, or within such longer period of time as may be provided in writing by the selector and consented to by the Commission, the selector shall hold a hearing in respect of the matters remaining in dispute between the parties and may, before making a selection, hold a further hearing or hearings. 1975, c. 72, s. 45.

**45.** The parties may agree to dispense with a hearing by the selector and in such case may jointly give written notice to the selector that they have so agreed, and the selector, upon receipt of the notice, shall not hold a hearing but shall proceed to his decision. 1975, c. 72, s. 46.

**46.**—(1) The selector shall determine his own procedure but, in holding a hearing, shall give full opportunity to the parties to present their evidence and make their submissions.

(2) The selector has power,

(a) to summon any person,

(i) to give oral or written evidence on oath or affirmation to the selector, or

(ii) to produce in evidence for the selector such documents and other things as the selector may specify;

(b) to administer oaths and affirmations;

(c) to accept for or exclude from consideration any oral testimony, document or other thing, whether admissible in a court of law or not.

(3) Where any person without lawful excuse,

(a) on being duly summoned under subsection (2) as a witness before the selector makes default in so attending;

(b) being in attendance as a witness before the selector, refuses to take an oath or to make an affirmation
legally required by the selector to be taken or made, or to produce any document or thing in his power or control legally required by the selector to be produced to him, or to answer any question to which the selector may legally require an answer; or

(c) does any other thing that would, if the selector had been a court of law having power to commit for contempt, have been contempt of that court,

the selector may state a case to the Divisional Court setting out the facts and that court may, on the application of the selector, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. 1975, c. 72, s. 47.

47. The selector shall, within fifteen days after the conclusion of the hearing or hearings or within fifteen days after the giving of the notice by the parties that they have agreed to dispense with a hearing, as the case may be, or within such longer period of time as may be provided in writing by the selector and consented to by the Commission, make a decision selecting all of one of the final offers on all matters remaining in dispute between the parties given to the selector by one or the other of the parties. 1975, c. 72, s. 48.

48. The decision of the selector is binding upon the parties and they shall comply in good faith with the decision. 1975, c. 72, s. 49.

49.—(1) Within thirty days after receipt of notice of the decision of the selector, the parties shall prepare a document giving effect to all matters agreed upon by the parties and the decision of the selector and shall execute the document and thereupon it constitutes an agreement.

(2) If the parties fail to execute the document within the period of time mentioned in subsection (1), the selector shall prepare the document and submit it to the parties and shall fix the time within which and the place where the parties shall execute the document.

(3) If the parties or either of them fail to execute the document within the time fixed by the selector, the document shall be deemed to be in effect as though it had been executed by the parties and the document thereupon constitutes an agreement. 1975, c. 72, s. 50.
50. Every agreement shall,

(a) provide for a term of operation of not less than one year;

(b) state that it is effective on and after the 1st day of September in the year in which it is to come into operation; and

(c) state that it expires on the 31st day of August in the year in which it ceases to operate. 1975, c. 72, s. 51 (1).

51.—(1) Where a conflict appears between a provision of an agreement and a provision of an Act or regulation, the provision of the Act or regulation prevails.

(2) The provisions of this Act shall not be construed as to prejudice the rights and privileges with respect to the employment of teachers enjoyed by Roman Catholic and Protestant separate school boards under The British North America Act, 1867. 1975, c. 72, s. 52.

52.—(1) Unless an agreement otherwise provides for the final and binding settlement of all differences between the parties arising from the interpretation, application, administration or alleged contravention of the agreement, the agreement is deemed to include the following provision:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, or where an allegation is made that this agreement has been contravened, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party either that it accepts the other party's appointee as a single arbitrator or inform the other party of the name of its appointee to the arbitration board. Where two appointees are so selected they shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman. If the recipient of the notice fails to appoint an arbitrator or if the
(2) Where a party or a teacher fails to comply with any of the terms of a decision of an arbitrator or arbitration board, any party or any teacher affected by the decision may file in the office of the Registrar of the Supreme Court a copy of the decision of the arbitrator or arbitration board, exclusive of the reasons therefor and certified by the arbitrator or the chairman of the arbitration board to be a true copy of the decision, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1975, c. 72, s. 53.

53.—(1) Every agreement shall provide that there will be no strike or lock-out during the term of the agreement or of any renewal of the agreement.

(2) If an agreement does not contain the provision mentioned in subsection (1), the agreement shall be deemed to contain the following provision:

“There shall be no strike or lock-out during the term of this agreement or of any renewal of this agreement”. 1975, c. 72, s. 54 (1, 2).

54.—(1) An agreement between a board and a branch affiliate shall be deemed to form part of the contract of employment between the board and each teacher who is a member of the branch affiliate.

(2) Where a conflict appears between a provision of any other part of a contract of employment and a provision of the agreement referred to in subsection (1), the provision of the agreement prevails, but no agreement shall conflict with the form of contract prescribed by the regulations under the Education Act. 1975, c. 72, s. 55.
55. Where the parties agree on all the matters to be included in an agreement, whether during or at the conclusion of negotiations or other proceedings under this Act, the chief executive officer of the board or of each of the boards, as the case may be, that is a party shall forthwith give notice thereof to the Commission. 1975, c. 72, s. 56.

56. Where the parties agree on all the matters to be included in an agreement, whether during or at the conclusion of negotiations or other proceedings under this Act, they shall prepare a document incorporating all the matters agreed upon and shall execute the document and the document thereupon constitutes an agreement. 1975, c. 72, s. 57.

57. Upon the execution of an agreement, each party to the agreement shall forthwith give notice thereof, together with a copy of the agreement, to the Commission. 1975, c. 72, s. 58.

58. An agreement is binding upon the board and upon the branch affiliate that is a party to it and upon the teachers employed by the board who are members of the branch affiliate. 1975, c. 72, s. 59.

PART VII

EDUCATION RELATIONS COMMISSION

59.—(1) There shall be a commission to be known as the Education Relations Commission composed of five persons who shall be appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman from among the members of the Commission.

(3) In the case of the absence or inability to act of the chairman or of there being a vacancy in the office of the chairman, the vice-chairman shall act as and have all the powers of the chairman and in the absence of the chairman and vice-chairman from any meeting of the Commission, the members of the Commission present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting.

(4) The members of the Commission shall be appointed for a term of one, two or three years so that as nearly as possible one-third of the members shall retire each year.
Vacancy

(5) Every vacancy on the Commission caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

Reappointment

(6) Each of the members of the Commission is eligible for reappointment upon the expiration of his term of office.

Quorum

(7) Three members of the Commission constitute a quorum and are sufficient for the exercise of all the authority of the Commission.

Exercising powers

(8) The powers of the Commission shall be exercised by resolution and the Commission may pass resolutions governing the calling of and the proceedings at meetings and specifying the powers and duties of employees of the Commission and generally dealing with the carrying out of its duties.

Remuneration

(9) The members of the Commission shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

Officers, staff, etc.

(10) Subject to the approval of the Lieutenant Governor in Council, the Commission may,

(a) establish job classifications, salary ranges and terms and conditions of employment for its employees; and

(b) appoint and pay such employees as are considered proper.

R.S.O. 1980, c. 419, applicable

(11) The Public Service Superannuation Act applies to the permanent employees of the Commission as though the Commission had been designated by the Lieutenant Governor in Council under section 28 of that Act.

Professional and other assistance

(12) The Commission may engage persons other than those employed pursuant to subsection (10) to provide professional, technical or other assistance to or on behalf of the Commission, and may prescribe the terms of engagement and provide for payment of the remuneration and expenses of such persons. 1975, c. 72, s. 60.

Duties of Commission

60.—(1) It is the duty of the Commission,

(a) to carry out the duties imposed on it by this Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;
(b) to maintain an awareness of negotiations between teachers and boards;

c) to compile statistical information on the supply, distribution, professional activities and salaries of teachers;

d) to provide such assistance to parties as may facilitate the making or renewing of agreements;

e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators or selectors;

(f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;

g) to determine the manner of conducting and to supervise votes by secret ballot pursuant to this Act; and

(h) to advise the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of a school or schools will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the school or schools.

(2) The Commission may request a board to provide information necessary to compile the statistical information referred to in subsection (1) and a board shall comply with such a request within a reasonable period of time.

(3) The Commission shall annually prepare a report on the affairs of the Commission for the preceding year and the report shall be tabled in the Legislature. 1975, c. 72, s. 61.

61. No member of the Commission shall be required to give testimony in any proceeding under this Act with regard to information obtained by him in the discharge of his duties as a member of the Commission. 1975, c. 72, s. 62.

62. The moneys required for the purposes of the Commission shall be paid out of the moneys appropriated therefor by the Legislature. 1975, c. 72, s. 63, revised.
63. No teacher shall take part in a strike against the board that employs the teacher unless,

(a) there is no agreement in operation that is deemed under this Act to form part of the contract of employment between the board and the teacher;

(b) notice of desire to negotiate to make or renew an agreement has been given by either party;

(c) all the matters remaining in dispute between the board and the branch affiliate that represents the teacher have been referred to a fact finder and fifteen days have elapsed after the Commission has made public the report of the fact finder;

(d) the offer of the board in respect of all matters agreed upon by the parties and in respect of all matters remaining in dispute between the parties last received by the branch affiliate that represents the teacher is submitted to and rejected by the teachers composing the branch affiliate by a vote by secret ballot conducted under the supervision of and in the manner determined by the Commission;

(e) the teachers composing the branch affiliate that represents the teacher have voted, not earlier than the vote referred to in clause (d) and not before the end of the fifteen-day period referred to in clause (c), in favour of a strike by a vote by secret ballot conducted under the supervision of and in the manner determined by the Commission; and

(f) after a vote in favour of a strike in accordance with clause (e), the branch affiliate that represents the teacher gives to the board written notice of the strike and of the date on which the strike will commence at least five days before the commencement of the strike. 1975, c. 72, s. 64 (1).
(2) Notwithstanding subsection (1), in the event of a strike by the members of a branch affiliate each principal and vice-principal who is a member of the branch affiliate shall remain on duty during the strike or any related lock-out or state of lock-out or closing of a school or schools. 1975, c. 72, s. 65.

65.—(1) The Federation shall not and no affiliate or branch affiliate shall call or authorize or threaten to call or authorize an unlawful strike.

(2) No officer, official or agent of the Federation, an affiliate or a branch affiliate or member of a branch affiliate shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike. 1975, c. 72, s. 66.

66.—(1) The Council shall not and no member association or board shall call or authorize or threaten to call or authorize an unlawful lock-out.

(2) No officer, official or agent of the Council, a member association or a board or member of a board shall counsel, procure, support or encourage an unlawful lock-out or threaten an unlawful lock-out. 1975, c. 72, s. 67.

67.—(1) Where the Federation, an affiliate or a branch affiliate calls or authorizes a strike or teachers take part in a strike against a board that the board, a member association, the Council or any person normally resident within the jurisdiction of the board alleges is unlawful, the board, member association, Council or person may apply to the Ontario Labour Relations Board for a declaration that the strike is unlawful, and the Board may make the declaration.

(2) Where the Council, a member association or a board calls or authorizes a lock-out of members of a branch affiliate that the branch affiliate, an affiliate, the Federation or any person normally resident within the jurisdiction of the board alleges is unlawful, the branch affiliate, affiliate, Federation or person may apply to the Ontario Labour Relations Board for a declaration that the lock-out is unlawful, and the Board may make the declaration.

(3) Where the Ontario Labour Relations Board makes a declaration under subsection (1) or (2), the Board in its discretion may, in addition, direct what action, if any, a person, teacher, branch affiliate, affiliate, the Federation, a board, member association or the Council and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or unlawful lock-out.
(4) The Ontario Labour Relations Board shall file in the
office of the Registrar of the Supreme Court a copy of a
direction made under subsection (3), exclusive of the reasons
therefor, whereupon the direction shall be entered in the same
way as a judgment or order of the court and is enforceable
as such. 1975, c. 72, s. 68.

68.—(1) Where a lawful strike takes place against a board,
the board may lock out or declare a state of lock-out to
exist against all members, other than principals or vice-
 principals, of the branch affiliate that represents teachers
engaged in the strike.

(2) No board shall lock out or declare a state of lock-out
to exist or close a school or schools unless and until the
proposal of the branch affiliate in respect of all matters
agreed upon by the parties and in respect of all matters
remaining in dispute between the parties last received
by the board has been presented to a meeting of the board
in public session.

(3) Except as provided in subsection (1), a board shall not
lock out a teacher.

(4) Where a lawful strike takes place against a board,
the board may close a school or schools where the board is of
the opinion that,

(a) the safety of students may be endangered;

(b) the school building or the equipment or supplies
therein may not be adequately protected during
the strike; or

(c) the strike will substantially interfere with the
operation of the school.

(5) A teacher shall not be paid his salary in respect of
the days on which,

(a) he takes part in a strike, other than a strike as
defined in subclause 1 (l) (ii);

(b) he is locked out; or

(c) the school in which he is employed is closed
pursuant to subsection (4).

(6) Where a lawful strike is terminated without an
agreement coming into effect, no teacher shall take part in
Sec. 73 (a)  BOARDS & TEACHERS NEGOTIATIONS  Chap. 464  261

a resumption of the strike or take part in a new strike except after the provisions of clauses 63 (1)(d), (e) and (f) have again been complied with in respect of such resumption or new strike.

(7) The provisions of this section apply notwithstanding any provision of the Education Act. 1975, c. 72, s. 69.

69. The contract of employment or position of a teacher shall not be terminated by reason of his participation in a lawful strike. 1975, c. 72, s. 70.

70. Nothing in this Act precludes a teacher,

(a) from terminating his employment with a board in good faith in accordance with the provisions of his contract of employment;

(b) from withdrawing a voluntary service in good faith on an individual basis. 1975, c. 72, s. 71.

PART IX
MISCELLANEOUS

71. Where, under this Act, a party is required to give notice to another party, the party giving the notice shall also within the same time limit, if any, give a copy of the notice to the Commission. 1975, c. 72, s. 72.

72. Except in respect of section 51, no decision, order, determination, direction, declaration or ruling of the Commission, a fact finder, an arbitrator or board of arbitration, a selector or the Ontario Labour Relations Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, application for judicial review or otherwise, to question, review, prohibit or restrain the Commission, fact finder, arbitrator or board of arbitration, selector or the Ontario Labour Relations Board or the proceedings of any of them. 1975, c. 72, s. 73.

73. Any notice or document required or authorized by this Act to be given shall,

(a) where it is to be given to the Commission, be delivered to the office of the Commission;
(b) where it is to be given to a board, be delivered to the office of the board;

(c) where it is to be given to a branch affiliate, be delivered to an officer of the branch affiliate;

(d) where it is to be given to an affiliate, the Council, the Federation or a member association, be delivered to the office of the affiliate, the Council, the Federation or the member association, as the case requires;

(e) where it is to be given to an arbitrator or selector, be delivered to the arbitrator or selector; and

(f) where it is to be given to a board of arbitration, be delivered to the chairman or either of the other two members of the board of arbitration. 1975, c. 72, s. 74.

Costs

74.—(1) The expenditures incurred by a party in respect of a person appointed or retained by the party for the purpose of making or renewing an agreement shall be borne by the party and all other expenses, including fees for a single arbitrator, a selector or a chairman of a board of arbitration shall be shared equally by the parties and such expenditures and fees shall be paid within sixty days after the agreement or renewal of agreement is executed or is deemed in effect as though it had been executed by the parties.

(2) The fees and expenses, if any, of persons assigned by the Commission to assist parties to make or renew an agreement and of fact finders appointed by the Commission shall be paid by the Commission. 1975, c. 72, s. 75.

75. Where the Commission so directs, a branch affiliate shall file with the Commission, within the time prescribed in the direction, a statement signed by its president or secretary setting out the names and addresses of its officers. 1975, c. 72, s. 76.

76.—(1) Subject to subsection (2), a vote conducted by a branch affiliate to give approval to the terms of an agreement shall be a vote by secret ballot.

(2) A vote conducted by a branch affiliate for the purposes of subsection 63 (1) or for the purpose of giving approval to the terms of an agreement after the commencement of a strike
shall be a vote by secret ballot conducted under the supervision of
and in the manner determined by the Commission. 1975, c. 72,
s. 77.

77—(1) Every person who contravenes any provision of this
Act is guilty of an offence and on conviction is liable to a fine of not
more than $500 for each day upon which the contravention occurs
or continues.

(2) The Council and every member association and every
board and the Federation and every affiliate and every branch
affiliate that contravenes any provision of this Act is guilty
of an offence and on conviction is liable to a fine of not more than
$10,000 for each day upon which such contravention occurs or
continues.

(3) The contravention of a decision, order, determination,
direction, declaration or ruling made under this Act is deemed
for the purposes of this section, to be a contravention of this
Act.

(4) Where the Council or a member association or the
Federation or an affiliate or a branch affiliate is guilty of an
offence under this Act, every officer or representative thereof,
and where a board is guilty of an offence under this Act every
member of the board, who assents to the commission of the
offence shall be deemed to be a party to and guilty of the
offence and is liable to a fine under subsection (1) as if he had been
convicted of an offence under subsection (1).

(5) An information in respect of a contravention of any
provision of this Act may be for one or more offences and no
information, warrant, conviction or other proceedings in any
such prosecution is objectionable or insufficient by reason
of the fact that it relates to two or more offences.

(6) No prosecution for an offence under this Act shall be
instituted except with the consent of the Ontario Labour
Relations Board which may only be granted after affording
an opportunity to the person or body seeking the consent
and the person or body sought to be prosecuted to be heard.

(7) The Ontario Labour Relations Board shall determine
its own practice and procedure but shall give full opportunity
to the parties to any proceedings to present their evidence
and to make their submissions, and the Ontario Labour
Relations Board may, subject to the approval of the Lieuten-
ant Governor in Council, make rules governing its practice
and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

(8) The decision of the majority of the members of the Ontario Labour Relations Board present and constituting a quorum is the decision of the Ontario Labour Relations Board, but, if there is no majority, the decision of the chairman or vice-chairman governs. 1975, c. 72, s. 78.

78. A prosecution for an offence under this Act may be instituted against any body, association or organization in the name of the body, association or organization whether or not the body, association or organization is a body corporate and, for the purposes of any such prosecution, any unincorporated body, association or organization shall be deemed to be a body corporate. 1975, c. 72, s. 79.

79. Any act or thing done or omitted by an officer, official or agent of the Federation, an affiliate, a branch affiliate, the Council, a member association or a board or by a member of a board within the apparent scope of his authority to act on behalf of the Federation, affiliate, branch affiliate, Council, member association or board shall be deemed to be an act or thing done or omitted by the Federation, affiliate, branch affiliate, Council, member association or board, as the case may be. 1975, c. 72, s. 80.

80. The Arbitrations Act does not apply to proceedings under this Act.

(2) The Statutory Powers Procedure Act does not apply to proceedings under this Act other than in respect of a determination referred to in clause 60 (1) (f).

(3) Notwithstanding subsection (2), but subject to section 72, the Statutory Powers Procedure Act applies to proceedings before the Ontario Labour Relations Board under this Act. 1975, c. 72, s. 81.

81. Notwithstanding any other provision of this Act,

(a) the Minister of Education;

(b) the Deputy Minister of Education;

(c) the chairman, a vice-chairman or a member of the Ontario Labour Relations Board;

(d) an arbitrator or member or chairman of a board of arbitration; or
(e) a selector,

is not a compellable witness in any proceeding under this Act. 1975, c. 72, s. 82.