

1974

## c 135 The Crown Employees Collective Bargaining Amendment Act, 1974

Ontario

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## CHAPTER 135

**An Act to amend  
The Crown Employees Collective  
Bargaining Act, 1972**

*Assented to February 14th, 1975*

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

- 1.**—(1) Clause *a* of subsection 1 of section 1 of *The Crown Employees Collective Bargaining Act, 1972*, being chapter 67, is repealed. s. 1 (1) (a),  
repealed
- (2) Subclauses *v* and *viii* of clause *g* of subsection 1 of the said section 1 are repealed and the following substituted therefor: s. 1 (1) (g)  
(v, viii),  
re-enacted
- (v) a student employed during the student's regular vacation period or on a co-operative educational training program or a person not ordinarily required to work more than one-third of the normal period for persons performing similar work except where the person works on a regular and continuing basis,
- (viii) a person employed in the office of the Provincial Auditor.
- (3) Clause *g* of subsection 1 of the said section 1 is amended by striking out "or" at the end of subclause *vii*, by adding "or" at the end of subclause *viii* and by adding thereto the following subclause: s. 1 (1) (g),  
amended
- (ix) a person employed by or under the Tribunal or the Grievance Settlement Board.

s. 1 (1) (c).  
repealed

(4) Clause *c* of subsection 1 of the said section 1 is repealed.

s. 4a.  
enacted

2. The said Act is amended by adding thereto the following section:

Pre-hearing  
vote

4a. (1) Upon an application for representation rights, the employee organization may request that a pre-hearing representation vote be taken.

Voting  
constituency

(2) Upon such a request being made, the Tribunal may, subject to subsection 2 of section 3, determine a voting constituency and, if it appears to the Tribunal on an examination of the records of the employee organization and the records of the employer that not less than 35 per cent of the employees in the voting constituency are members of the employee organization at the time the application was made, the Tribunal may direct that a representation vote be taken among the employees in the voting constituency.

Sealing of  
ballot boxes

(3) The Tribunal shall direct that the ballot box containing the ballots cast in a representation vote taken under subsection 2 shall be sealed and that the ballots shall not be counted until the parties have been given full opportunity to present their evidence and make their submissions.

Effect  
of vote

(4) After a representation vote has been taken under subsection 2, the Tribunal shall determine the unit of employees that is appropriate for collective bargaining and, if it is satisfied that not less than 35 per cent of the employees in the bargaining unit are members of the employee organization at the time the application was made, the representation vote taken under subsection 2 shall be deemed to be a representation vote taken under subsection 2 of section 4.

s. 6.  
re-enacted

3. Section 6 of the said Act is repealed and the following substituted therefor:

Bargaining  
authority

6. Upon being granted representation rights, the employee organization is authorized to bargain with the employer on terms and conditions of employment, except as to matters that are exclusively the function of the employer under subsection 1 of section 17, and, without limiting the generality of the foregoing, including rates of remuneration, hours of work, overtime and other premium allowance for work performed, the mileage rate payable to an employee for miles travelled when he is required to use his own automobile on the employer's business, benefits pertaining to time not worked by employees including paid holidays, paid vaca-

tions, group life insurance, health insurance and long-term income protection insurance, promotions, demotions, transfers, lay-offs or reappointments of employees, the procedures applicable to the processing of grievances, the classification and job evaluation system, and the conditions applicable to leaves of absence for other than any elective public office or political activities or training and development.

4. Sections 8 and 9 of the said Act are repealed and the following substituted therefor: ss. 8, 9, re-enacted

8.—(1) Where notice has been given under section 7 or 20, Mediation following consultation with the parties, the Tribunal may, when advised in writing by either party that the parties are unable to reach agreement, prescribe such mediation procedure as the Tribunal decides will be most effective to realize a collective agreement.

(2) In the exercise of its power under subsection 1, the Appointment Tribunal may appoint such person or persons as it may determine to be appropriate in order to give effect to the procedure prescribed by the Tribunal.

9. If a collective agreement is not realized pursuant to the procedure prescribed by the Tribunal within thirty days after the appointment of the person or persons under subsection 2 of section 8, or such longer period as the Tribunal may direct or the parties may agree upon, or if the Tribunal decides that the establishment of such procedure will not be effective, all matters in dispute coming within the scope of collective bargaining under this Act shall be decided by a board of arbitration in accordance with this Act. When matters may be determined by arbitration board

5. Subsections 1 to 8 of section 10 of the said Act are repealed and the following substituted therefor: s. 10 (1-7), re-enacted; s. 10 (8), repealed

(1) Upon written notification by the Tribunal, each of the parties shall, within ten days of the notification, appoint to a board of arbitration a member who has indicated his willingness to act and shall each notify in writing the other party and the Tribunal of the name and address of the member so appointed. Appointment of members of board by parties

(2) Where a party fails to appoint a member of a board within the period of ten days mentioned in subsection 1, the Tribunal shall appoint as a member such person as the Tribunal considers suitable. Appointment by Tribunal upon failure of party to appoint representative

(3) The two members so appointed shall, within five days after the appointment of the second of them, appoint a third person to act as chairman of the board of arbitration Appointment of chairman

and shall notify the Tribunal of the name and address of the chairman, and where no chairman is agreed upon within such time, the members or either of them, shall notify the Tribunal which shall appoint the chairman.

Disqualifica-  
tion

(4) No person shall be appointed a member of a board who has any direct pecuniary interest in the matters coming before it or who is acting or has, within a period of six months immediately preceding the date of his appointment, acted as solicitor, counsel or agent of either of the parties.

Vacancy

(5) Where a member appointed under subsection 1 or 2 ceases to act by reason of resignation, death or otherwise before the board has completed its work, the party whose point of view the member represented shall, within ten days of the member so ceasing to act, appoint a replacement and notify in writing the other party and the Tribunal of the name and address of the replacement, and where the party fails to so appoint a replacement or to notify the Tribunal, the Tribunal shall appoint as a replacement such person as the Tribunal considers suitable and the board of arbitration shall continue to function as if the replacement member were a member of the board from the beginning.

Chairman  
unable to act

(6) Where the chairman of a board is unable to enter on or to carry on his duties so as to enable the board to render a decision within a reasonable time after its establishment, the Tribunal shall appoint a person to act as chairman in his place and the arbitration shall begin *de novo*.

Remunera-  
tion

(7) The chairman and the members of a board shall be paid such remuneration and allowance for expenses as the Lieutenant Governor in Council may determine.

Continuance  
of board  
established  
under  
1972, c. 67

6. Where a board of arbitration established under *The Crown Employees Collective Bargaining Act, 1972*, being chapter 67, has not completed its duties under that Act before the coming into force of this Act, the board of arbitration shall continue to exercise its powers and duties under that Act and the provisions of this Act, other than this section, shall not apply in respect of the Board.

s. 11 (2) (c),  
re-enacted

7. Clause *c* of subsection 2 of section 11 of the said Act is repealed and the following substituted therefor:

(c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and

s. 16 (2),  
re-enacted

8. Subsection 2 of section 16 of the said Act is repealed and the following substituted therefor:

(2) If the parties fail to agree on the term of a collective agreement, the board shall determine its term of operation. Where board to determine term of agreement

9. Sections 17 and 18 of the said Act are repealed and the following substituted therefor: ss. 17, 18, re-enacted

17.—(1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine, Functions of employer

(a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions; and

(b) merit system, training and development, appraisal and superannuation, the governing principles of which are subject to review by the employer with the bargaining agent,

and such matters will not be the subject of collective bargaining nor come within the jurisdiction of a board.

(2) In addition to any other rights of grievance under a collective agreement, an employee claiming, Grievances

(a) that his position has been improperly classified;

(b) that he has been appraised contrary to the governing principles and standards; or

(c) that he has been disciplined or dismissed or suspended from his employment without just cause,

may process such matter in accordance with the grievance procedure provided in the collective agreement, and failing final determination under such procedure, the matter may be processed in accordance with the procedure for final determination applicable under section 18.

18. (1) Every collective agreement shall be deemed to provide that in the event the parties are unable to effect a settlement of any differences between them arising from the interpretation, application, administration or alleged contravention of the agreement, including any question as to whether a matter is arbitrable, such matter may be referred for arbitration to the Grievance Settlement Board and the Board after giving full opportunity to the parties to present their evidence and to make their submissions, shall Arbitration of disputes under agreement

decide the matter and its decision is final and binding upon the parties and the employees covered by the agreement.

## Powers

(2) The Grievance Settlement Board has the same powers as a board of arbitration under subsections 12 and 13 of section 10.

## Penalty where employee disciplined, etc.

(3) Where the Grievance Settlement Board determines that a disciplinary penalty or dismissal of an employee is excessive, it may substitute such other penalty for the discipline or dismissal as it considers just and reasonable in all the circumstances.

## Enforcement of arbitration decisions

(4) Where a party or an employee has failed to comply with any of the terms of the decision of the Grievance Settlement Board, any party or employee affected by the decision may, after the expiration of fourteen days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the office of the Registrar of the Supreme Court a copy of the decision, exclusive of the reasons therefor, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such.

## Composition of Grievance Settlement Board

18a.—(1) There shall be a Grievance Settlement Board composed of a chairman, one or more vice-chairmen and an equal number, that shall be determined by the Lieutenant Governor in Council, of members representing the employees that are represented by a bargaining agent and members representing the employer.

## Appointment of chairman and vice-chairman

(2) The Lieutenant Governor in Council shall appoint, for a term of not more than two years and may reappoint for one or more subsequent terms of not more than two years each, the chairman and the vice-chairman or vice-chairmen after requesting and considering the views, if any, of each bargaining agent.

## Appointment of members

(3) The members who are representative of the employer shall be appointed by the Lieutenant Governor in Council and the members who are representative of the interests of employees shall be appointed by the Lieutenant Governor in Council after requesting and considering the views, if any, of each bargaining agent and such appointments shall be for a term of not more than two years and a member may be reappointed for one or more subsequent terms of not more than two years each.

## Sittings of Grievance Settlement Board

(4) The Grievance Settlement Board may sit in two or more panels as decided and assigned by the chairman so long as a quorum is present in each panel.

(5) The chairman or a vice-chairman, one member representative of employee interest and one member representative of employer interest constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Grievance Settlement Board.

(6) The decision of a majority of the members present and constituting a quorum is the decision of the Grievance Settlement Board, and, if there is no majority, the decision of the chairman or vice-chairman governs.

(7) Where a member of the Grievance Settlement Board resigns, he may carry out and complete any duties or responsibilities and exercise any powers that he would have had if he had not ceased to be a member in connection with any matter in respect of which there was any proceeding in which he participated as a member of the Grievance Settlement Board.

(8) The Grievance Settlement 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 Grievance Settlement Board may, subject to the approval of the Lieutenant Governor in Council, make regulations governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

(9) The Lieutenant Governor in Council may appoint a registrar, such other officers and such staff and persons as are required for the purposes of the Grievance Settlement Board and they shall exercise such powers and perform such duties as are conferred upon them by the Grievance Settlement Board.

(10) The chairman, the vice-chairman or vice-chairmen and the members, the officers and staff of the Grievance Settlement Board shall be paid such remuneration and allowance for expenses as the Lieutenant Governor in Council may determine.

(11) The Grievance Settlement Board shall have an official seal.

(12) The office of the Grievance Settlement Board shall be in the City of Toronto, but the Grievance Settlement Board may sit at such other places as it considers expedient.

10.-(1) Where any procedure has been commenced to process any matter referred to in subsection 2 of section 17 of *The R.S.O. 1970, c. 386*



*Crown Employees Collective Bargaining Act, 1972*, being chapter 67, in accordance with the procedures under *The Public Service Act* and the procedure is not completed before the coming into force of this Act, the procedures under *The Public Service Act* shall continue to apply in respect of the matter and the provisions of this Act, other than this section, shall not apply in respect of the matter.

Continuance  
of matter  
before Public  
Service  
Grievance  
Board

- (2) Where the Public Service Grievance Board has not completed its duties in respect of any matter under *The Crown Employees Collective Bargaining Act, 1972*, being chapter 67, before the coming into force of this Act, the Public Service Grievance Board shall continue to exercise its powers and duties under that Act in respect of the matter and the provisions of this Act, other than this section, shall not apply in respect of the Board and the matter.

s. 20,  
amended

- 11.** Section 20 of the said Act is amended by adding thereto the following subsection:

Obligation  
to bargain

(2) The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to renew the collective agreement.

s. 24,  
re-enacted

- 12.** Section 24 of the said Act is repealed and the following substituted therefor:

Persuasion  
at place  
of work

24. No person shall attempt at the employee's place of employment to persuade him to become or refrain from becoming a member of an employee organization except as the employer and a bargaining agent may otherwise agree.

s. 36,  
re-enacted

- 13.** Section 36 of the said Act is repealed and the following substituted therefor:

Tribunal  
established

36.—(1) There is hereby established a tribunal to be known as the Ontario Public Service Labour Relations Tribunal.

Composition  
of  
Tribunal

(2) The Tribunal shall be composed of a chairman, one or more vice-chairmen and an equal number, that shall be determined by the Lieutenant Governor in Council, of members representing employees and members representing the employer.

Appointment  
of chairman  
and vice-  
chairmen

(3) The Lieutenant Governor in Council shall appoint, for a term of not more than two years and may reappoint for one or more subsequent terms of not more than two years

each, the chairman and the vice-chairman or vice-chairmen after requesting and considering the views, if any, of each bargaining agent.

(4) The members of the Tribunal who are representative of the employer shall be appointed by the Lieutenant Governor in Council and the members who are representative of the interests of employees shall be appointed by the Lieutenant Governor in Council after requesting and considering the views, if any, of each bargaining agent and such appointments shall be for a term of not more than two years and a member may be reappointed for one or more subsequent terms of not more than two years each. <sup>Appointment of members</sup>

(5) The Lieutenant Governor in Council shall designate one of the vice-chairmen as the alternate chairman. <sup>Alternate chairman</sup>

(6) The chairman or, in the case of his absence from the office of the Tribunal or his inability to act, the alternate chairman shall from time to time assign the members of the Tribunal to its various divisions and may change any such assignment at any time. <sup>Assignment of members</sup>

(7) Vacancies in the membership of the Tribunal from any cause may be filled by the Lieutenant Governor in Council after requesting and considering the views, if any, of representatives of each bargaining agent. <sup>Vacancy</sup>

(8) Where the chairman, a vice-chairman or a member of the Tribunal resigns, he may carry out and complete any duties or responsibilities and exercise any powers that he would have had if he had not resigned in connection with any matter in respect of which there was any proceeding in which he participated as the chairman, a vice-chairman or a member of the Tribunal. <sup>Completion of duties</sup>

(9) The chairman, each vice-chairman and each member of the Tribunal shall, before entering upon his duties, take and subscribe before the Clerk of the Executive Council and file in the office of the Clerk an oath of office in the following form: <sup>Oath</sup>

I do solemnly swear that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of chairman, (or vice-chairman, or member) of the Ontario Public Service Labour Relations Tribunal and I will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Tribunal. So help me God.

(10) The chairman or a vice-chairman, one member representative of the employer and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Tribunal. <sup>Quorum</sup>

Sittings (11) The Tribunal may sit in two or more divisions as decided and assigned by the chairman so long as a quorum is present in each division.

Decision (12) A decision of the majority of the members of the Tribunal present and constituting a quorum is the decision of the Tribunal, but, if there is no majority, the decision of the chairman or vice-chairman presiding governs.

Procedure (13) The Tribunal 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 Tribunal may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

Appointment of officers (14) The Lieutenant Governor in Council may appoint a registrar, such other officers and such staff and persons as are required for the purposes of the Tribunal and they shall exercise such powers and perform such duties as are conferred or imposed upon them by the Tribunal.

Remuneration (15) The chairman, vice-chairman or vice-chairmen and the members, officers and staff of the Tribunal shall be paid such remuneration and allowance for expenses as the Lieutenant Governor in Council may determine.

Official seal (16) The Tribunal shall have an official seal.

Office and sittings (17) The office of the Tribunal shall be in the City of Toronto, but the Tribunal may sit at such other places as it considers expedient.

Hearing under 1972, c. 87 **14.** Where the Ontario Public Service Labour Relations Tribunal, established under *The Crown Employees Collective Bargaining Act, 1972*, being chapter 67, proposed to hold or commenced but did not complete a matter or did not make a decision or declaration thereon, immediately before this section comes into force, the matter shall be continued by the Tribunal and the Tribunal shall continue and complete the matter and make a decision or declaration thereon that shall be effective for all purposes under *The Crown Employees Collective Bargaining Act, 1972*.

s. 38, amended **15.** Section 38 of the said Act is amended by adding thereto the following subsection:

Question as to bargaining authority (2) If, in the course of bargaining for a collective agreement or during proceedings before a board of arbitration,

a question arises as to whether a matter comes within the scope of collective bargaining under this Act, either party or the board of arbitration may refer the question to the Tribunal and its decision thereon is final and binding for all purposes.

- 16.** Clauses *c* and *d* of subsection 1 of section 39 of the said Act are repealed and the following substituted therefor: s. 39 (1) (c),  
re-enacted;  
s. 39 (1) (d),  
repealed

(c) to authorize any persons to do anything that the Tribunal may do under clauses *a* and *b* and to inquire into any application, request, complaint, matter or thing within the jurisdiction of the Tribunal, or any part of any of them, and to report to the Tribunal thereon.

- 17.** Section 47 of the said Act is repealed and the following substituted therefor: s. 47,  
re-enacted

47. No chairman, vice-chairman or member of the Tribunal or of a board or of the Grievance Settlement Board and no person appointed thereby shall be required to give evidence in any civil action, suit or other proceeding respecting information obtained in the discharge of his duties under this Act. Testimony  
in civil suit

- 18.** Subsection 5 of section 49 of the said Act is repealed and the following substituted therefor: s. 49 (5),  
re-enacted

(5) The chairman, vice-chairman or vice-chairmen or any member of the Tribunal or of a board or of the Grievance Settlement Board is not a competent or compellable witness in proceedings before a court or other tribunal respecting, Idem

- (a) any information or material furnished to or received by him;
- (b) any evidence or representation submitted to him; or
- (c) any statement made by him,

in the course of his duties under this Act.

- 19.** The said Act is further amended by adding thereto the following sections: ss. 49a-49c,  
enacted

49a. Where, upon an application by a bargaining agent for recognition of a change in the name of the bargaining agent, the Tribunal is satisfied that the change has been made in conformity with the charter or constitution of the Change of  
name of  
bargaining  
agent

employee organization, the Tribunal shall make an affirmative declaration and the bargaining agent shall be conclusively presumed to have retained all rights, privileges, duties and obligations whether under a collective agreement or otherwise, and the employer and the employees concerned shall recognize such status in all respects.

Application  
for successor  
bargaining  
rights

49b.—(1) Where an employee organization claims that by reason of a merger or a transfer of jurisdiction it is the successor of a bargaining agent, the employee organization may, notwithstanding the provisions of subsections 2 and 3 of section 2 and subsection 1 of section 19, make application to the Tribunal for recognition as the successor bargaining agent and for the Tribunal to conduct a vote of employees to determine if they are in favour of the employee organization being granted representation rights as the successor bargaining agent for the bargaining unit concerned.

Tribunal  
inquiry

(2) The Tribunal may make such inquiry, including requiring the production of such evidence and the doing of such things, as it may consider appropriate.

Vote

(3) Following its inquiry under subsection 2, the Tribunal may dismiss the application or direct that a vote be taken of the employees in the bargaining unit to determine whether they favour the employee organization being granted representation rights as the successor bargaining agent.

Declaration  
of successor  
rights

(4) Where, on the taking of a vote, more than 50 per cent of the ballots cast are in favour of the employee organization, the Tribunal shall declare that the employee organization has acquired representation rights as successor bargaining agent of the employees in the bargaining unit.

Status of  
successor  
bargaining  
agent

(5) Where the Tribunal makes an affirmative declaration under subsection 4, the successor bargaining agent shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges, duties and obligations of its predecessor whether under a collective agreement or otherwise, and the employer, the successor bargaining agent and the employees concerned shall recognize such status in all respects.

Bargaining  
rights on  
merger of  
units or  
creation of  
new unit

49c.—(1) Where two or more existing bargaining units are merged either partially or completely, or where employees represented by a bargaining agent are transferred into a bargaining unit represented by another bargaining agent or into a unit of employees for which there is no bargaining agent, the Tribunal, on the application to it by a bargaining

agent affected, may make such inquiry, including requiring the production of such evidence and the doing of such things as it may consider appropriate.

(2) Where, following the inquiry under subsection 1, the Tribunal determines that the merged or enlarged unit of employees is appropriate for collective bargaining purposes and is satisfied that more than 50 per cent of the employees in the merged or enlarged unit of employees are members of a bargaining agent and that application has not been made by another bargaining agent affected and representing 35 per cent or more of the employees, as members, in the merged or enlarged unit of employees, it shall determine that the bargaining agent has acquired or retained, as the case may be, representation rights as the bargaining agent of the employees in the bargaining unit concerned. Declaration of successor rights

(3) Where, following the inquiry under subsection 1, the Tribunal determines that the merged or enlarged unit of employees is appropriate for collective bargaining purposes and is satisfied that a bargaining agent represents not less than 35 per cent and not more than 50 per cent, of the employees in the merged or enlarged unit of employees as members, it shall direct that a representation vote be taken. Representation vote

(4) Where an employee organization is declared to be the bargaining agent under subsection 3 and it is not already bound by a collective agreement with the employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement, and such notice has the same effect as a notice under section 7. Notice to bargain

(5) Where the employee organization is declared to retain representation rights by the Tribunal it shall continue to be bound by the collective agreement with the employer with respect to the employees for whom it is declared to be the bargaining agent. Successor bound by existing agreement

(6) Where an application is made under this section, notwithstanding that a notice has been given by an employee organization, the employer is not required to bargain with that employee organization concerning the employees to whom the application relates until the Tribunal has disposed of the application and has declared which employee organization, if any, has the right to bargain with the employer on behalf of the employees concerned in the application. Employer not required to bargain pending Tribunal decision

Bargaining  
rights of  
successor  
bargaining  
agent

(7) A declaration made by the Tribunal under subsection 3 has the same effect as the granting of representation rights under subsection 2 of section 4, except as provided in subsection 5 of this section.

s. 51 (c),  
repealed

**20.** Clause *c* of section 51 of the said Act is repealed.

Commence-  
ment

**21.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**22.** This Act may be cited as *The Crown Employees Collective Bargaining Amendment Act, 1974*.