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c 152 The Hospital Labour Disputes Arbitration Amendment Act, 1972

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CHAPTER 152

**An Act to amend
The Hospital Labour Disputes Arbitration Act**

*Assented to December 15th, 1972
Session Prorogued December 15th, 1972*

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

1.—(1) Subsection 1 of section 1 of *The Hospital Labour Disputes Arbitration Act*, being chapter 208 of the Revised Statutes of Ontario, 1970, is amended by relettering clause *a* as clause *aa* and by adding thereto the following clause:

(a) "Commission" means The Ontario Labour-Management Arbitration Commission.

(2) Subsection 3 of the said section 1 is repealed and the following substituted therefor:

(3) A laundry that is operated exclusively for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act.

(4) A stationary power plant as defined in *The Operating Engineers Act* that is operated principally for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act.

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 Section 3 of the said Act is repealed and the following substituted therefor:

3. Where a conciliation officer appointed under section 15 of *The Labour Relations Act* is unable to effect a collective agreement within the time allowed under section 17 of that Act, the Minister shall forthwith by notice in writing inform each of the parties that the conciliation officer has been unable to effect a collective agreement, and sections 16 and 18 of *The Labour Relations Act* shall not apply.

s. 4.
re-enacted

3. Section 4 of the said Act is repealed and the following substituted therefor:

Arbitration

4. Where the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, the matters in dispute between the parties shall be decided by arbitration in accordance with this Act.

Appointment
of single
arbitrator

4a.—(1) Where the parties agree to have the matters in dispute between them decided by a single arbitrator, they shall, within the time set out in subsection 1 of section 5, jointly appoint a person who has indicated his willingness to act.

Single
arbitrator's
powers

(2) The person so appointed shall constitute the board of arbitration for the purposes of this Act and he shall have the powers and duties of a chairman of a board of arbitration.

Notice to
Minister

(3) As soon as the parties appoint a person to act as a single arbitrator, they shall notify the Minister of the name and address of the person appointed.

s. 5 (1-6, 10),
re-enacted

4.—(1) Subsections 1, 2, 3, 4, 5, 6 and 10 of section 5 of the said Act are repealed and the following substituted therefor:

Appointment
of board of
arbitration

(1) Within seven days after the day upon which the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, each of the parties shall appoint to a board of arbitration a member who has indicated his willingness to act.

Extension
of 7 day
period

(2) The parties by a mutual agreement in writing may extend the period of seven days mentioned in subsection 1 for one further period of seven days.

Failure
to appoint
member

(3) Where a party fails to appoint a member of a board of arbitration within the period or periods mentioned in subsection 1, the Minister, upon the written request of either of the parties, shall appoint such member.

Third
member

(4) Within ten days after the day on which the second of the members was appointed, the two members appointed by or on behalf of the parties shall appoint a third member who has indicated his willingness to act, and such third member shall be the chairman.

(5) Where the two members appointed by or on behalf of the parties fail within ten days after the appointment of the second of them to agree upon the third member, notice of such failure shall be given forthwith to the Minister by the parties, the two members or either of them and the Minister shall appoint as a third member a person who,

(a) is employed as an arbitrator by the Commission;

(b) is approved to act as an arbitrator by the Commission and whose name is on the register of arbitrators maintained by the Commission; or

(c) is, in the opinion of the Minister, qualified to act.

(6) As soon as one of the parties appoints a member to a board of arbitration, that party shall notify the other party and the Minister of the name and address of the member appointed.

(6a) As soon as the two members appoint a third member, they shall notify the Minister of the name and address of the third member appointed.

(10) If the person appointed jointly by the parties as a single arbitrator dies before he has completed his work or is unable to enter on or to carry on his duties so as to enable him to render a decision within a reasonable time after his appointment, the Minister may, upon notice or complaint to him by either of the parties and after consulting the parties, inform the parties in writing that the arbitrator is unable to enter on or to carry on his duties and the provisions of this section relating to the appointment of a board of arbitration shall thereupon apply *mutatis mutandis*.

(2) The said section 5 is further amended by adding thereto the following subsections:

(11a) The chairman of the board of arbitration shall fix the time and place of the first or any subsequent hearing and shall give notice thereof to the Registrar of the Commission and the Registrar shall notify the parties and the members of the board of arbitration thereof.

Failure of
member
to attend

(11*b*) Where a member of a board of arbitration appointed by a party or by the Minister is unable to attend the first hearing at the time and place fixed by the chairman, the party shall, upon the request in writing of the chairman, appoint a new member in place of such member and where such appointment is not made within five days of the date of the request, the Minister shall, upon the written request of the chairman, appoint a new member in place of such member.

s. 5 (12),
re-enacted

(3) Subsection 12 of the said section 5 is repealed and the following substituted therefor:

Order to
expedite
proceedings

(12) Where a board of arbitration has been established, the chairman shall keep the Registrar of the Commission advised of the progress of the arbitration and where the Registrar advises the Minister that the board has failed to render a decision within a reasonable time, the Minister may, after consulting the parties and the board, issue whatever order he considers necessary in the circumstances to ensure that a decision will be rendered without delay.

ss. 5*a*, 5*b*,
enacted

5. The said Act is amended by adding thereto the following sections:

Appointment
or
proceedings
of board
not subject
to review

5*a*. Where a person has been appointed as a single arbitrator or the three members have been appointed to a board of arbitration, it shall be presumed conclusively that the board has been established in accordance with this Act and no application shall be made, taken or heard for judicial review or to question the establishment of the board or the appointment of the member or members, or to review, prohibit or restrain any of its proceedings.

Single
arbitration
of several
disputes

5*b*.—(1) Where there are matters in dispute between parties to be decided by more than one arbitration in accordance with this Act, the parties may agree in writing that the matters in dispute shall be decided by one board of arbitration.

Parties

(2) For the purposes of section 5, the trade unions and councils of trade unions that are the bargaining agents for or on behalf of any hospital employees to whom this Act applies shall be one party and the employers of such employees shall be the other party.

Powers
of board

(3) In an arbitration to which this section applies, the board may, in addition to the powers conferred upon a board of arbitration by this Act,

- (a) make a decision on matters of common dispute between all of the parties; and
- (b) refer matters of particular dispute to the parties concerned for further bargaining.

(4) Where matters of particular dispute are not resolved ^{Idem} by further collective bargaining pursuant to clause b of subsection 3, the board shall decide the matters.

6. Subsections 2, 3, 4, 5, 6, 7 and 8 of section 7 of the ^{s. 7 (2-8), re-enacted} said Act are repealed and the following substituted therefor:

(2) If the parties fail to put the terms of all the matters ^{Failure to make agreement} agreed upon by them in writing or if having put the terms of their agreement in writing either of them fails to execute the document within seven days after it was executed by the other of them, they shall be deemed not to have made a collective agreement, and the provisions of sections 3 and 4 or sections 5 and 6, as the case may be, shall apply.

(3) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties have agreed upon some matters to be included in the collective agreement and have notified the board in writing of the matters agreed upon, the decision of the board shall be confined to the matters not agreed upon by the parties and to such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties. ^{Decision of board}

(4) Where the parties have not notified the board of ^{Idem} arbitration in writing that, during the bargaining under this Act or during the proceedings before the board of arbitration, they have agreed upon some matters to be included in the collective agreement, the board shall decide all matters in dispute and such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties.

(5) Within five days of the date of the decision of the ^{Execution of agreement} board of arbitration or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute a document giving effect to the decision of the board and any agreement of the parties, and the document thereupon constitutes a collective agreement.

Preparation
of agreement
by board

(6) If the parties fail to prepare and execute a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties within the period mentioned in subsection 5, the parties or either of them shall notify the chairman of the board in writing forthwith, and the board shall prepare a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties and submit the document to the parties for execution.

Failure
to execute
agreement

(7) If the parties or either of them fail to execute the document prepared by the board within a period of five days from the day of its submission by the board to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes a collective agreement under *The Labour Relations Act*.

R.S.O. 1970,
c. 232

Effective
date

(8) Except in arbitrations under section 5*b*, the date the board of arbitration gives its decision is the effective date of the document that constitutes a collective agreement between the parties.

Idem

(9) The date the board of arbitration gives its decision under section 5*b* upon matters of common dispute shall be deemed to be the effective date of the document that constitutes a collective agreement between the parties.

Term of
agreement

(10) Except where the parties agree to a longer term of operation, any document that constitutes a collective agreement between the parties shall remain in force for a period of one year from the effective date of the document.

Idem

(11) Notwithstanding the provisions of subsection 10 and except where the parties agree to a longer term of operation, a document that constitutes a collective agreement shall cease to operate on the expiry of a period of two years,

(a) from the day upon which notice was given under section 13 of *The Labour Relations Act*;
or

(b) from the day upon which the previous collective agreement ceased to operate where notice was given under section 45 of *The Labour Relations Act*.

(12) Where under subsection 11, the period of two years ^{Idem} has expired on or will expire within a period of less than ninety days from the date the board of arbitration gives its decision, the document that constitutes a collective agreement shall continue to operate for a period of ninety days from the date the board of arbitration gives its decision for the purposes of subsection 4 of section 5, subsection 1 of section 45 and subsection 2 of section 49 of *The Labour Relations Act*. ^{R.S.O. 1970, c. 232}

(13) In making its decision upon matters in dispute between the parties, the board of arbitration may provide, ^{Idem}

(a) where notice was given under section 13 of *The Labour Relations Act*, that any of the terms of the agreement except its term of operation shall be retroactive to such day as the board may fix, but not earlier than the day upon which such notice was given; or

(b) where notice was given under section 45 of *The Labour Relations Act*, that any of the terms of the agreement except its term of operation shall be retroactive to such day as the board may fix, but not earlier than the day upon which the previous agreement ceased to operate.

7. Subsections 2 and 3 of section 8 of the said Act are repealed and the following substituted therefor: ^{s. 8 (2), re-enacted; s. 8 (3), repealed}

(2) Sections 65 and 66, subsection 1 of section 67 and sections 68, 82, 83 and 84 of *The Labour Relations Act* as amended or re-enacted from time to time apply *mutatis mutandis* under this Act as if such sections were enacted in and form part of this Act. ^{Application of R.S.O. 1970, c. 232}

8.—(1) Subsection 1 of section 9 of the said Act is amended ^{s. 9 (1), amended} by striking out "or mediator" in the fifth and sixth lines.

(2) Subsection 2 of the said section 9 is amended ^{s. 9 (2), amended} by striking out "or mediator" in the fifth line and in the thirteenth line.

9. The said Act is further amended by adding thereto the following sections: ^{ss. 11a-11d, enacted}

11a. A notice by the Minister that a conciliation officer has been unable to effect a collective agreement if sent by mail to a party addressed to the party at its ^{Mailed notice}

last known address shall be deemed to have been received on the second day after the day on which the notice was so mailed.

Filing of decisions

11b. Every chairman of a board of arbitration shall file a copy of every decision of the board with the Registrar of the Commission.

Surveys and research programs

11c.—(1) The Minister may require such surveys and research programs to be conducted as he considers advisable or necessary for the assistance of parties and boards of arbitration.

Idem

(2) A copy of any survey or research program conducted under subsection 1 or of the results thereof shall be admissible in evidence before a board of arbitration established under this Act.

Application of 1971, c. 47

11d. Part I of *The Statutory Powers Procedure Act, 1971* does not apply to proceedings before a board of arbitration established under this Act.

Current strikes and lock-outs

10.—(1) Where persons employed in the operation of a stationary power plant that is deemed to be a hospital pursuant to subsection 4 of section 1 of *The Hospital Labour Disputes Arbitration Act* are on strike or locked out before or after this Act comes into force, the strike or lock-out shall be terminated immediately and such persons shall return to work, and the matters in dispute between the parties shall be determined by arbitration in accordance with *The Hospital Labour Disputes Arbitration Act*.

Current disputes

(2) Where, before or after the coming into force of this Act, the Minister, by a notice in writing pursuant to the provisions of section 18 of *The Labour Relations Act*, informs the parties to a dispute in respect of persons employed in the operation of,

R.S.O. 1970, c. 232

R.S.O. 1970, c. 333

(a) a stationary power plant as defined in *The Operating Engineers Act* that is operated principally for one or more than one hospital; or

R.S.O. 1970, c. 208

(b) a stationary power plant that is deemed to be a hospital pursuant to subsection 4 of section 1 of *The Hospital Labour Disputes Arbitration Act*,

that he does not consider it advisable to appoint a conciliation board, the notice shall be deemed to be a notice pursuant to section 3 of *The Hospital Labour Disputes Arbitration Act* and the matters in dispute shall be decided by arbitration in accordance with *The Hospital Labour Disputes Arbitration Act*.

(3) The provisions of sections 85, 86, 87, 88 and 90 of *The Labour Relations Act* shall apply, *mutatis mutandis*, to a contravention of subsection 1. Application of R.S.O. 1970, c. 232

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

12. This Act may be cited as *The Hospital Labour Disputes Arbitration Amendment Act, 1972*. Short title

