c 205 Hospital Labour Disputes Arbitration Act

Ontario
CHAPTER 205

Hospital Labour Disputes Arbitration Act

1.—(1) In this Act,

(a) "hospital" means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged;

(b) "hospital employee" means a person employed in the operation of a hospital;

(c) "Minister" means the Minister of Labour;

(d) "party" means the trade union that is the bargaining agent for a bargaining unit of hospital employees, on the one hand, or the employers of such employees, on the other hand, and "parties" means the two of them. R.S.O. 1970, c. 208, s. 1 (1); 1972, c. 152, s. 1 (1), revised.

(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as in the Labour Relations Act. R.S.O. 1970, c. 208, s. 1 (2).

(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. 1972, c. 152, s. 1 (2).
2.—(1) This Act applies to any hospital employees to whom the Labour Relations Act applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees.

(2) Except as modified by this Act, the Labour Relations Act applies to any hospital employees to whom this Act applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees. R.S.O. 1970, c. 208, s. 2.

3. Where a conciliation officer appointed under section 16 of the Labour Relations Act is unable to effect a collective agreement within the time allowed under section 18 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 17 and 19 of the Labour Relations Act shall not apply. 1972, c. 152, s. 2.

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. 1972, c. 152, s. 3, part.

5.—(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 6 (1), jointly appoint a person who has indicated his willingness to act.

(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.

(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. 1972, c. 152, s. 3, part.

6.—(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.

(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.
(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.

(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 is, in the opinion of the Minister, qualified to act. 1972, c. 152, s. 4 (1), part, revised.

(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.

(7) 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. 1972, c. 152, s. 4 (1), part.

(8) If a person ceases to be a member of a board of arbitration by reason of his resignation, death or otherwise before it has completed its work, the Minister shall appoint a member in his place after consulting the party whose point of view was represented by such person.

(9) If, in the opinion of the Minister, a member of a board of arbitration has failed to enter on or to carry on his duties so as to enable it to render a decision within a reasonable time after its establishment, the Minister may appoint a member in his place after consulting the party whose point of view was represented by such person.

(10) If the chairman of a board of arbitration is unable to enter on or to carry on his duties so as to enable it to render a decision within a reasonable time after its establishment, the Minister may appoint a person to act as chairman in his place. R.S.O. 1970, c. 208, s. 5 (7-9).
Where single arbitrator unable to act

(11) 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 with necessary modifications. 1972, c. 152, s. 4 (1), part.

Idem

(12) No person shall be appointed a member of a board of arbitration under this Act who has any pecuniary interest in the matters coming before it or who is acting or has, within a period of six months preceding the date of his appointment, acted as solicitor, counsel or agent of either of the parties. R.S.O. 1970, c. 208, s. 5 (11).

Chairman to fix hearings

(13) 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 Minister and the Minister shall notify the parties and the members of the board of arbitration thereof. 1972, c. 152, s. 4 (2), part, revised.

Failure of member to attend

(14) 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. 1972, c. 152, s. 4 (2), part.

Order to expedite proceedings

(15) Where a board of arbitration has been established, the chairman shall keep the Minister advised of the progress of the arbitration and where the Minister is advised 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. 1972, c. 152, s. 4 (3), revised.

Procedure

(16) A board of arbitration shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions.
(17) 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.

(18) The decision of a majority of the members 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.

(19) The chairman and the other members of a board of arbitration established under this Act have, respectively, all the powers of a chairman and the members of a board of arbitration under the Labour Relations Act. R.S.O. 1970, c. 208, s. 5 (13-16).

7. 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. 1972, c. 152, s. 5, part.

8.—(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.

(2) For the purposes of section 6, 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.

(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 by further collective bargaining pursuant to clause (3) (b), the board shall decide the matters. 1972, c. 152, s. 5, part.

9.—(1) The board of arbitration shall examine into and decide on matters that are in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement between the parties, but the board shall not decide any matters that come within the jurisdiction of the Ontario Labour Relations Board.

(2) The board of arbitration shall remain seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between the parties.

(3) The Arbitrations Act does not apply to arbitrations under this Act. R.S.O. 1970, c. 208, s. 6.

10.—(1) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties agree on all the matters to be included in a collective agreement, they shall put them in writing and shall execute the document, and thereupon it constitutes a collective agreement under the Labour Relations Act. R.S.O. 1970, c. 208, s. 7 (1).

(2) If the parties fail to put the terms of all the matters 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 6 and 9, 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.

(4) Where the parties have not notified the board of 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 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.

(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.

(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 \textit{Labour Relations Act}.

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

(9) The date the board of arbitration gives its decision under section 8 upon matters of common dispute shall be deemed to be the effective date of the document that constitutes a collective agreement between the parties.

(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.

(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,

\begin{itemize}
\item[(a)] from the day upon which notice was given under section 14 of the \textit{Labour Relations Act}; or
\end{itemize}
(b) from the day upon which the previous collective agreement ceased to operate where notice was given under section 53 of the *Labour Relations Act*.

(12) Where under subsection (11), the period of two years 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 5 (4); subsection 53 (1) and subsection 57 (2) of the *Labour Relations Act*.

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

(a) where notice was given under section 14 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 53 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. 1972, c. 152, s. 6.

11. — (1) Notwithstanding anything in the *Labour Relations Act*, no hospital employees to whom this Act applies shall strike and no employer of such employees shall lock them out.  R.S.O. 1970, c. 208, s. 8 (1).

(2) Sections 74 and 75, subsection 76 (1) and sections 77, 92, 93 and 95 of the *Labour Relations Act* as amended or re-enacted from time to time apply with necessary modifications under this Act as if such sections were enacted in and form part of this Act. 1972, c. 152, s. 7, *part*.

12. — (1) Notwithstanding section 61 of the *Labour Relations Act*, where a trade union that has been certified as bargaining agent for a bargaining unit of employees of a hospital has given to the employer of such employees notice under section 14 of that Act and the Minister has appointed a conciliation officer, an application for a declaration that the trade union no longer represents the employees in the bargaining unit determined in the certificate may be made only in accordance with subsection 57 (2) of the *Labour Relations Act*.  R.S.O. 1970, c. 208, s. 9 (1); 1972, c. 152, s. 8 (1).
(2) Notwithstanding section 61 of the *Labour Relations Act*, where notice has been given under section 53 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of employees of a hospital to or by the employer of such employees and the Minister has appointed a conciliation officer, an application for certification of a bargaining agent of any of the employees of the hospital in the bargaining unit defined in the collective agreement or an application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit defined in the agreement shall not be made after the day upon which the agreement ceased to operate or the day upon which the Minister appointed a conciliation officer, whichever is later, except in accordance with section 5 or subsection 57 (2) of the *Labour Relations Act*, as the case may be. R.S.O. 1970, c. 208, s. 9 (2); 1972, c. 152, s. 8 (2).

13. Notwithstanding subsection 79 (1) of the *Labour Relations Act*, where notice has been given under section 14 or 53 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of hospital employees to which this Act applies to or by the employer of such employees and no collective agreement is in operation, no such employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, and no such trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, until the right of the trade union to represent the employees has been terminated. R.S.O. 1970, c. 208, s. 10.

14. Except where inconsistent with this Act, sections 96, 97, 98, 99 and 101 of the *Labour Relations Act*, as amended or re-enacted from time to time, apply with necessary modifications under this Act as if such sections were enacted in and form part of this Act. R.S.O. 1970, c. 208, s. 11.

15. 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 last known address shall be deemed to have been received on the second day after the day on which the notice was so mailed. 1972, c. 152, s. 9, *part*.

16. Every chairman of a board of arbitration shall file a copy of every decision of the board with the Minister. 1972, c. 152, s. 9, *part, revised*. 
17.—(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.

(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. 1972, c. 152, s. 9, "part."

18. Part I of the *Statutory Powers Procedure Act* does not apply to proceedings before a board of arbitration established under this Act. 1972, c. 152, s. 9, "part."

19. The expenses incurred in the administration of this Act shall be paid out of such moneys as are appropriated therefor by the Legislature. R.S.O. 1970, c. 208, s. 12.

20. The Lieutenant Governor in Council may make regulations,

(a) providing for and regulating the engagement of experts, investigators and other assistants by boards of arbitration;

(b) providing for and fixing the remuneration and expenses of chairmen and other members of boards of arbitration;

(c) prescribing rules of practice and procedure;

(d) prescribing forms and providing for their use;

(e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 208, s. 13.