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c 76 The Labour Relations Amendment Act, 1975

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CHAPTER 76

An Act to amend The Labour Relations Act

Assented to July 18th, 1975

HE 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 Labour Relations Act, being chapter 232 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clauses:

(ga) "dependent contractor" means a person, whether or not employed under a contract of employment, and whether or not furnishing his own tools, vehicles, equipment, machinery, material, or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;

(gb) "employee" includes a dependent contractor.

(2) Subsection 4 of the said section 1 is repealed and the following substituted therefor:

(4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

(5) Where, in an application made pursuant to subsection 4, it is alleged that more than one corporation, individual,
2. Clause f of section 2 of the said Act is repealed and the following substituted therefor:

(f) to a teacher as defined in The School Boards and Teachers Collective Negotiations Act, 1975, except as provided in that Act.

3.—(1) Subsection 1 of section 6 of the said Act is amended by adding at the commencement thereof “Subject to subsection 1a”.

(2) The said section 6 is amended by adding thereto the following subsection:

(la) Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union’s right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit.

(3) Subsection 2 of the said section 6 is repealed and the following substituted therefor:

(2) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft, and the Board may include in such unit persons who according to established trade union practice are commonly associated in their work and bargaining with such group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

(4) The said section 6 is further amended by adding thereto the following subsection:

(4) A bargaining unit consisting solely of dependent contractors shall be deemed by the Board to be a unit of
employees appropriate for collective bargaining but the Board may include dependent contractors in a bargaining unit with other employees if the Board is satisfied that a majority of such dependent contractors wish to be included in such bargaining unit.

4.—(1) Subsection 2 of section 7 of the said Act is amended by striking out "35" in the first line and inserting in lieu thereof "45" and by striking out "65" in the second line and in the fourth line and inserting in lieu thereof in each instance "55".

(2) Subsection 3 of the said section 7 is amended by striking out "65" in the third line and inserting in lieu thereof "55".

(3) Subsection 4 of the said section 7 is repealed.

(4) This section does not apply in respect of applications for certification made before this section comes into force.

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

7a. Where an employer or employers' organization contravenes this Act so that the true wishes of the employees of the employer or of a member of the employers' organization are not likely to be ascertained, and, in the opinion of the Board, a trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board pursuant to section 6 to be appropriate for collective bargaining, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.

6. Section 12 of the said Act is amended by adding after "ancestry" in the fifth line "age, sex".

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

34a.—(1) Where, at any time during the operation of a collective agreement, the Minister considers that it will promote more harmonious industrial relations between the parties, he may appoint a special officer to confer with the parties and assist them in an examination and discussion of their current relationship or the resolution of anticipated bargaining problems.
(2) A special officer appointed under subsection 1 shall confer with the parties and shall report to the Minister within thirty days of his appointment and upon the filing of his report his appointment shall terminate unless it is extended by the Minister.

(3) Any person knowledgeable in industrial relations may be appointed a special officer, whether or not he is an employee of the Crown.

34b.—(1) The Minister may appoint a Disputes Advisory Committee composed of one or more representatives of employers and one or more representatives of employees.

(2) At any time during the course of bargaining, either before or after the commencement of a strike or lock-out, where it appears to the Minister that the normal conciliation and mediation procedures have been exhausted, the Minister may request that the Disputes Advisory Committee be convened to confer with, advise and assist the bargaining parties.

34c.—(1) Notwithstanding any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 13 or 45, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 6, 7, 9, 10 and 11 of section 37 apply mutatis mutandis to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

(3) For the purposes of section 53 and section 112, an irrevocable agreement in writing referred to in subsection 1 shall have the same effect as a collective agreement.

34d. Where, at any time after the commencement of a strike or lock-out, the Minister is of the opinion that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may, on such terms as he considers necessary, direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith.
8. (1) Subsection 1 of section 35 of the said Act is amended by inserting after “shall” in the first line “be deemed to”.

(2) Subsection 2 of the said section 35 is amended by inserting after “shall” in the second line “be deemed to”.

(3) Subsection 3 of the said section 35 is repealed.

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

36a.—(1) Except in the construction industry, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision that at the written request of an employee in the bargaining unit the employer shall deduct from the wages of the employee the amount of the regular union dues payable by members of the trade union and remit the amount to the trade union.

(2) In subsection 1, “regular union dues” means,

(a) in the case of an employee who is a member of the trade union, the dues uniformly and regularly paid by a member of the trade union in accordance with the constitution and by-laws of the trade union; and

(b) in the case of an employee who is not a member of the trade union, the dues referred to in clause (a), excluding any amount in respect of pension, superannuation, sickness insurance or any other benefit available only to members of the trade union.

10. Section 37 of the said Act is amended by adding thereto the following subsection:

(5a) Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, notwithstanding the expiration of such time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension.
11. Subsection 4 of section 38 of the said Act is amended by striking out “65” in the sixth line and inserting in lieu thereof “55”.

12. Clause b of section 40 of the said Act is amended by inserting after “ancestry” in the second line “age, sex”.

13. Subsection 2 of section 44 of the said Act is repealed and the following substituted therefor:

(2) Notwithstanding subsection 1, the parties may, in a collective agreement or otherwise and before or after the collective agreement has ceased to operate, agree to continue the operation of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit and the continuation of the collective agreement may be terminated by either party upon thirty days notice to the other party.

14. Subsection 3 of section 49 of the said Act is amended by striking out “50” in the third line and in the seventh line and inserting in lieu thereof in each instance “45”.

15.—(1) Subsection 3 of section 55 of the said Act is repealed and the following substituted therefor:

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 13 or 45, sells his business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 13 or 45, as the case requires.

(2) The said section 55 is amended by adding thereto the following subsection:
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13. Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation.

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

60a. Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith.

17. Subsection 2 of section 63 of the said Act is repealed and the following substituted therefor:

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

(a) seven days have elapsed after the day the Minister has released or is deemed pursuant to subsection 3 of section 102 to have released to the parties the report of a conciliation board or mediator, or

(b) fourteen days have elapsed after the day the Minister has released or is deemed pursuant to subsection 3 of section 102 to have released to the parties a notice that he does not consider it advisable to appoint a conciliation board.

18. Subsection 2 of section 70 of the said Act is repealed and the following substituted therefor:

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, 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 or the employees until,

(a) the trade union has given notice under section 13, in which case subsection 1 applies; or
(b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

19. Section 76 of the said Act is amended by adding thereto the following subsection:

(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing such particulars as the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under The Public Accountancy Act or a firm whose partners are licensed under that Act.

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

76a.--(1) In this section, "administrator" means any trade union, trustee or person responsible for the control, management or disposition of moneys received or contributed to a vacation pay fund or a welfare benefit or pension plan or fund for the members of a trade union or their survivors or beneficiaries.

(2) Every administrator shall file annually with the Minister not later than the 1st day of June in each year or at such other time or times as the Minister may direct, a copy of the audited financial statement certified by a person licensed under The Public Accountancy Act or a firm whose partners are licensed under that Act of a vacation pay fund, or a welfare benefit or pension plan or fund setting out its financial condition for the preceding fiscal year and disclosing:

(a) a description of the coverage provided by the fund or plan;

(b) the amount contributed by each employer;

(c) the amounts contributed by the members and the trade union, if any;
(d) a statement of the assets, specifying the total amount of each type of asset;

(e) a statement of liabilities, receipts and disbursements;

(f) a statement of salaries, fees and commissions charged to the fund or plan, to whom paid, in what amount and for what purposes; and

(g) such further information as the Minister may require.

(3) The administrator, upon the request in writing of any member of the trade union whose employer has made payments or contributions into the fund or plan, shall furnish to the member without charge a copy of the audited financial statement required to be filed by subsection 2.

(4) Where an administrator has failed to comply with subsection 2 or 3, upon a certificate of failure so to comply signed by the Minister or upon complaint by the member, the Board may direct the administrator to comply within such time as the Board may determine.

21.—(1) Subsections 1, 2, 3 and 4 of section 79 of the said Act are repealed and the following substituted therefor:

(1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act.

(2) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(3) The labour relations officer shall report the results of his inquiry and endeavours to the Board.

(4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such
Burden of proof

5. (79) amended

Declaration and direction by Board in respect of unlawful strike

(a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;

(b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or

(c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate in lieu of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally.

(4a) On an inquiry by the Board into a complaint under subsection 4 that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

(2) Subsection 6 of the said section 79 is amended by striking out "field" in the second line and inserting in lieu thereof "labour relations" and by striking out "clause a, b or c of subsection 1, as the case may be" in the eleventh and twelfth lines and inserting in lieu thereof "subsection 1".

22. Sections 82 and 83 of the said Act are repealed and the following substituted therefor:

82. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened to engage in an unlawful strike or that employees engaged in or threatened to engage in an unlawful strike, the Board may so declare and, in addition, in its discretion,
it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

83. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that an employer or employers' organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out.

83a. The Board shall file in the office of the Registrar of the Supreme Court a copy of a direction made under section 82 or 83, exclusive of the reasons therefor, whereupon the direction shall be entered in the same way as a judgment or order of that court and is enforceable as such.

23. Section 89 of the said Act is amended by inserting after "section" in the fifth line "82, 83 or".

24. Section 91 of the said Act is amended by adding thereto the following subsection:

(11a) Notwithstanding subsections 9, 10 and 11, and where in his opinion it is advisable to do so, the chairman, or in the case of his absence or inability to act the alternate chairman, may sit alone to hear and determine or may authorize a vice-chairman to sit alone to hear and determine any application, request, complaint, matter or thing in respect of section 60 or 60a or section 82, 83 or 123, and to exercise all of the jurisdiction and powers of the Board when so sitting.

25. Section 98 of the said Act is repealed and the following substituted therefor:

98. Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil suit or in any proceeding before the
Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

26. Subsection 6 of section 100 of the said Act is repealed and the following substituted therefor:

(6) No information or material furnished to or received by a labour relations officer under this Act and no report of a labour relations officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no labour relations officer is a competent or compellable witness in proceedings before a court, the Board or other tribunal respecting any such information, material or report.

27. Subsection 4 of section 102 of the said Act is amended by inserting after "section" in the fourth line "82, 83 or".

28. (1) Clause d of section 105 of the said Act is repealed and the following substituted therefor:

(d) prescribing amounts for the expense of proceedings under section 112a and providing for the adjustment of such amounts in exceptional circumstances.

(2) Clause e of the said section 105 is amended by inserting after "81" in the third line "83a".

29. Clause e of section 106 of the said Act is amended by striking out "sewers, tunnels" in the fourth line and inserting in lieu thereof "sewers".

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

112a.—(1) Notwithstanding the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 37, either party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination.

(2) A referral under subsection 1 may be made in writing in the prescribed form by a party at any time after delivery of the written grievance to the other party, and
the Board shall appoint a date for and hold a hearing within fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing.

(3) Upon a referral under subsection 1, the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and the provisions of subsections 5a, 7, 8, 9, 10 and 11 of section 37 apply mutatis mutandis to the Board and to the enforcement of the decision of the Board.

(4) The expense of proceedings under this section, in the amount fixed by the regulations, shall be jointly paid by the parties to the Board for payment into the Consolidated Revenue Fund.

31. Subsection 5 of section 115 of the said Act is amended by inserting after “ancestry” in the fifth line “age, sex”.

32. Subsection 3 of section 123 of the said Act is amended by adding at the end thereof “and is enforceable as such”.

33.—(1) This Act, except subsection 1 of section 1, subsection 4 of section 3 and sections 6, 12 and 31, comes into force on the day it receives Royal Assent.

(2) Subsection 1 of section 1, subsection 4 of section 3 and sections 6, 12 and 31 come into force on a day to be named by proclamation of the Lieutenant Governor.

34. This Act may be cited as The Labour Relations Amendment Act, 1975.