



BILL NO. 102

Government Bill

*3rd Session, 61st General Assembly
Nova Scotia
60 Elizabeth II, 2011*

**An Act to Prevent Unnecessary Labour Disruptions
and Protect the Economy
by Amending Chapter 475
of the Revised Statutes, 1989,
the Trade Union Act**

CHAPTER 71
ACTS OF 2011

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 15, 2011**

The Honourable Marilyn More
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Prevent Unnecessary Labour Disruptions
and Protect the Economy
by Amending Chapter 475
of the Revised Statutes, 1989,
the Trade Union Act**

Be it enacted by the Governor and Assembly as follows:

1 Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, is amended by adding immediately after Section 25 the following Section:

25A Where the Board has certified a bargaining agent, a conciliation officer shall contact both parties within fourteen days of the certification to provide information and education on the collective bargaining process to assist in the settlement of a first collective agreement.

2 Section 38 of Chapter 475 is amended by adding immediately after subsection (2) the following subsections:

(3) Where the appointment of a conciliation officer under Section 37 is in respect of a first collective agreement and, after conferring with the parties, the conciliation officer

(a) is satisfied that the parties have made reasonable efforts to conclude a collective agreement; and

(b) is of the opinion that the parties are not likely to conclude a collective agreement,

the conciliation officer, for the purpose of subsection (1) of Section 40A, may, after the expiry of ninety days and before the expiry of one hundred and twenty days from the day of the appointment, notify the Board and the parties in writing that the parties, after making reasonable efforts, have not been able to conclude a first collective agreement.

(4) Where the Board has been notified pursuant to subsection (3), the notice constitutes a report to the Minister within the meaning of and for the purpose of sub-clause 35(b)(iii) and clause 47(1)(c).

3 Chapter 475 is further amended by adding immediately after Section 40 the following Section:

40A (1) Where

(a) an employer or bargaining agent for a unit is required, by notice given under Section 33 after the coming into force of this Section, to commence collective bargaining with a view to the conclusion of a first collective agreement between the employer and the bargaining agent in respect of the unit;

(b) a conciliation officer appointed under Section 37 has notified the Board and the parties under subsection (3) of Section 38, or one hundred and twenty days have expired since the appointment;

(c) a period of ninety days after the certification of the bargaining agent has expired; and

(d) the bargaining agent and the employer have not concluded a first collective agreement,

the bargaining agent or the employer may apply in writing to the Board to settle the provisions of a first collective agreement between the parties and, where a party so applies, the Board shall as soon as practicable serve notice on the parties of receipt of the application.

(2) Within ten days after being served with notice under subsection (1), the bargaining agent and employer may serve notice on the Board of

(a) the agreement of the bargaining agent and employer to conclude the first collective agreement by arbitration; and

(b) the name of a person who has agreed to act as arbitrator.

(3) Within sixty days after a notice is served on the Board under subsection (2), the arbitrator shall settle the provisions of the first collective agreement.

(4) The provisions of this Act respecting arbitration apply *mutatis mutandis* to an arbitrator acting under this Section.

(5) Where an application is made under subsection (1) and the parties do not agree to proceed by arbitration under subsection (2), the Board shall inquire into the negotiations between the parties and, where the parties do not conclude a first collective agreement within sixty days after the date of the application, the Board shall, within a further three days,

(a) settle the provisions of a first collective agreement between the parties; or

(b) notify the parties in writing that, in the opinion of the Board, the parties might possibly, either through their own endeavours or with the assistance of the conciliation officer, conclude a first collective agreement within thirty days after the date of the notice under this clause and that therefore the Board declines to settle the provisions of a first collective agreement between the parties.

(6) The Board may extend the time period referred to in clause (b) of subsection (5) by a further period of time, not to exceed sixty days if

(a) the Board determines that the extension may result in the conclusion of a first collective agreement between the parties; or

(b) the parties advise the Board in writing that they agree to a further extension.

(7) Where the Board sends a notice to the parties under clause (b) of subsection (5) and the parties fail to conclude a first collective agreement within the period referred to therein, the Board shall, within a further thirty days, settle the provisions of a first collective agreement between the parties.

(8) Where an application under subsection (1) is made during a strike by, or a lockout of, employees in the unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lockout, as the case may be, and the employer shall reinstate the employees in the unit in the employment they had at the time the strike or lockout commenced

(a) in accordance with any agreement between the employer and the bargaining agent respecting reinstatement of the employees in the unit; or

(b) where no agreement respecting reinstatement of the employees in the unit is reached between the employer and the bargaining agent, on the basis of the service standing of each employee in relation to the service of the other employees in the unit employed at the time the strike or lockout commenced, except as may be directed by an order of the Board made for the sole purpose of allowing the employer at a totally shut-down workplace to resume normal operations in stages.

(9) In settling the provisions of a first collective agreement under this Section, the Board or arbitrator shall accept, without amendment, any provisions agreed upon in writing by the parties and shall give the parties an opportunity to present evidence and make representations, and the Board or arbitrator may take into account

(a) the terms and conditions of employment, if any, negotiated through collective bargaining for employees performing the same or similar functions in the same or similar circumstances as the employees in the unit; and

(b) such other matters as the Board or arbitrator considers will assist in arriving at provisions of a first collective agreement between the parties that are fair and reasonable in the circumstances.

(10) Where the Board or an arbitrator settles the provisions of a first collective agreement under this Section, the collective agreement is effective for a period one year from the date on which the Board or arbitrator settles the provisions thereof, and the collective agreement is binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties, except to the extent that any of its provisions may be amended by the parties by subsequent agreement in writing.

(11) The parties may by agreement in writing extend any time limit set out in this Section, and the agreement of the parties becomes effective once it is filed with the Board.

(12) The Board or arbitrator shall commit to writing every collective agreement settled under this Section and file a copy of the collective agreement with the Minister.

4 Section 93 of Chapter 475, as amended by Chapter 35 of the Acts of 1994 and Chapter 61 of the Acts of 2005, is further amended by striking out “and Sections” in the second line and substituting “, subsection (3) of Section 38 and Sections 40A.”.

5 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
