

Construction Projects Labour Relations Act

CHAPTER 18 OF THE ACTS OF 2016



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**An Act to Provide for the Stabilization
of Labour Relations Affecting
Certain Construction Projects**

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Short title

1 This Act may be cited as the *Construction Projects Labour Relations Act*. 2016, c. 18, s. 1.

Interpretation

2 In this Act,

(a) “accredited employers’ organization” means an organization of employers that is accredited under the *Trade Union Act* to bargain collectively for a bargaining unit of unionized employers in the construction industry;

(b) “bargaining agent” means a trade union that acts on behalf of employees

(i) in collective bargaining,

(ii) as a party to a voluntary recognition agreement with their employer, or

- (iii) as a party to a collective agreement with their employer;
- (c) “Board” means the Labour Board established by the *Labour Board Act*;
- (d) “collective agreement” means a signed agreement in writing between an employer or an accredited employers’ organization acting on behalf of an employer and a certified bargaining agent of its employees on behalf of the employees containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;
- (e) “construction contractor” means a person who undertakes a designated construction project, whether for the benefit of the construction contractor or for the benefit of another, or who enters into a contract, agreement or other arrangement whereby the construction contractor agrees to undertake a designated construction project;
- (f) “construction industry” means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipelines, tunnels, shafts, bridges, wharves, piers, canals or other works;
- (g) “construction subcontractor” means a person who enters into a contract, agreement or other arrangement with a construction contractor, or with another construction subcontractor, for the performance of any construction work on a designated construction project;
- (h) “council of trade unions” means a council that is formed for the purpose of representing, or that according to established bargaining practice represents, trade unions;
- (i) “designated construction project” means
- (i) a construction project that
 - (A) involves the on-site construction of a natural gas liquefaction plant in Guysborough County or Richmond County and, subject to the regulations, may include the construction of any related infrastructure,
 - (B) has a total projected cost or value in excess of \$2,000,000,000, and
 - (C) is expected to involve the employment of persons who are represented by three or more trade unions, or
 - (ii) an industrial construction project designated by the regulations;
- (j) “employee” means an employee as defined in Part II of the *Trade Union Act* who is employed or engaged by an employer;
- (k) “employer” means a construction contractor or construction subcontractor who employs, or in the preceding 12 months has employed, more than one employee;
- (l) “lockout” includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of its employees for the purpose of compelling its employees, or to

aid another employer in compelling its employees, to agree to terms or conditions of employment;

(m) “Minister” means the Minister of Labour and Advanced Education;

(n) “project agreement” means an agreement concerning a designated construction project that

(i) contains the terms and conditions of employment, including provisions respecting rates of pay and hours of work, for the unionized employees in any trade that is or may reasonably be expected to be involved in the designated construction project, and

(ii) is declared by the Board to be a project agreement;

(o) “proponent” means a person for whose benefit a designated construction project is being undertaken;

(p) “strike” includes a cessation of work, or refusal to work or continue to work, by employees, in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

(q) “trade union” means a trade union that, according to established trade union practices, pertains to the construction industry, and includes a council of trade unions;

(r) “work stoppage” means any discontinuance or cessation of all or any part of the normal work or activity carried on by an employer and its employees on a designated construction project, except termination of all or any part of the designated construction project or a stoppage in work that is

(i) agreed upon by the employer and its employees,

(ii) permitted by this Act, the *Occupational Health and Safety Act* or any provision respecting occupational health and safety contained in another enactment, or

(iii) required by or under any enactment. 2016, c. 18, s. 2.

Conflict with Trade Union Act

3 In the event of a conflict between this Act and the *Trade Union Act*, this Act prevails. 2016, c. 18, s. 3.

Supervision and management of Act

4 The Minister is responsible for the supervision and management of this Act. 2016, c. 18, s. 4.

Project agreement reached before Act comes into force

5 (1) Where

(a) a proposed project agreement between the accredited employers’ organizations and the bargaining agents for the unionized employees in all of the trades that are or may reasonably be expected to be involved in the construction of a designated construction pro-

ject, other than a designated construction project referred to in sub-clause 2(i)(ii),

(i) is reached before the coming into force of this Act, or

(ii) is reached before or after the coming into force of this Act and supersedes a proposed project agreement that was reached before the coming into force of this Act but not ratified; and

(b) the agreement is ratified, whether before or after the coming into force of this Act, by the accredited employers' organizations and the bargaining agents for the unionized employees in at least 85 per cent of the trades that are or may reasonably be expected to be involved in the construction referred to in clause (a),

the proponent may provide a copy of the agreement and written notice of the ratification of the agreement to the Board and request that the Board declare the agreement to be a project agreement and declare the project agreement in effect.

(2) Where the proposed project agreement has been ratified in accordance with clause (1)(b), every accredited employers' organization and bargaining agent that entered into the agreement is a party to the agreement, irrespective of whether it ratified the agreement.

(3) As soon as practicable after receiving the proponent's request and a copy of the proposed project agreement and written notice of the ratification of the agreement, the Board shall issue an order declaring the agreement to be a project agreement and declaring the project agreement to be in effect. 2016, c. 18, s. 5.

Notice of request for project agreement

6 (1) A proponent who wishes to have a project agreement shall provide a notice in writing of its request to have a project agreement to

(a) every accredited employers' organization;

(b) the bargaining agent for the unionized employees in any trade that is or may reasonably be expected to be involved in the designated construction project;

(c) every council of trade unions to which a bargaining agent referred to in clause (b) is a member;

(d) any entity prescribed by the regulations; and

(e) the Board.

(2) The notice must include

(a) a general description of the designated construction project, including the geographic area of the designated construction project and any related infrastructure to be constructed;

(b) sufficient information to indicate the various kinds of work that may reasonably be expected to be involved in the designated construction project; and

(c) a list of the trades that are or may reasonably be expected to be involved in the designated construction project.

(3) The proponent shall provide the Board with evidence, in such form as the Board may require, that the notice has been provided to every accredited employers' organization, bargaining agent, council of trade unions and other entity referred to in clauses (1)(a) to (d).

(4) The Board shall publish the notice on its website as soon as practicable after receiving the notice and the evidence referred to in subsection (3).
2016, c. 18, s. 6.

Powers of Board re notice

7 (1) Subject to subsection (2), upon application by a recipient of the notice referred to in subsection 6(1) or by an accredited employers' organization or bargaining agent that the Board determines should have been provided with the notice, the Board may issue an order declaring that

(a) the construction project referred to in the notice is not a designated construction project;

(b) a recipient of the notice is not a potential participant in the designated construction project;

(c) an accredited employers' organization or bargaining agent that was not provided with the notice is a potential participant in the designated construction project;

(d) a trade not included in the list of trades referred to in clause 6(2)(c) is a trade that is or may reasonably be expected to be involved in the designated construction project;

(e) a trade included in the list of trades referred to in clause 6(2)(c) is not a trade that is or may reasonably be expected to be involved in the designated construction project;

(f) infrastructure described in the general description of the designated construction project is not related infrastructure.

(2) The Board may not consider an application under subsection (1) made more than 15 business days after the day on which the Board publishes the notice on its website.

(3) The parties to an application under subsection (1) are the applicant, the proponent and such other persons as the Board may specify.

(4) Upon the expiry of the period during which applications may be made under subsection (2) and the conclusion of any applications made under subsection (1), the Board shall provide notice thereof in writing and a copy of any orders issued under subsection (1) to

(a) the proponent;

(b) every recipient of the notice referred to in subsection 6(1), other than a recipient whom the Board has declared to be not a potential participant in the designated construction project; and

(c) any accredited employers' organization or bargaining agent that was not provided with the notice referred to in subsection 6(1) and whom the Board has declared to be a potential participant in the designated construction project. 2016, c. 18, s. 7.

Negotiations for project agreement

8 (1) Subject to subsection (2),

(a) within 15 business days of receiving the notice referred to in subsection 7(4), the accredited employers' organizations and bargaining agents that received the notice shall enter into negotiations for a project agreement; and

(b) no employer shall commence or continue work on the designated construction project in respect of which the project agreement is sought until

(i) the project agreement is in effect, or

(ii) the proponent provides notice in writing to the recipients of the notice referred to in subsection 7(4) that the proponent is rescinding its request to have a project agreement.

(2) Where the Board has issued an order declaring that the construction project referred to in the notice referred to in subsection 7(1) is not a designated construction project, subsection (1) does not apply.

(3) The proponent may facilitate the negotiations for a project agreement.

(4) A proposed project agreement is ratified when, for at least 85 per cent of the trades that are or may reasonably be expected to be involved in the designated construction project, the bargaining agent for the unionized employees in the trade and the accredited employers' organization that bargains collectively for the employers of the unionized employees notify the proponent in writing of their ratification of the proposed project agreement.

(5) Where a proposed project agreement has been ratified, every accredited employers' organization and bargaining agent that received the notice referred to in subsection 7(4) is a party to the agreement, irrespective of whether it assented to the agreement.

(6) The proponent may provide a copy of the proposed project agreement and written notice of the ratification of the agreement to the Board and request that the Board declare the agreement to be a project agreement and declare the project agreement to be in effect.

(7) As soon as practicable after receiving the proponent's request and a copy of the proposed project agreement and written notice of the ratification of the agreement required under subsection (4), the Board shall issue an order declaring the agreement to be a project agreement and declaring the project agreement to be in effect. 2016, c. 18, s. 8.

Effect of project agreement

9 (1) Once declared by the Board to be in effect, a project agreement is binding upon the accredited employers' organizations and bargaining agents that are parties to the project agreement, the unionized employees in the trades to which the project agreement applies and the employers of the unionized employees.

(2) Where a project agreement purports to supersede the collective agreements otherwise applicable to the designated construction project to which the project agreement applies, the project agreement is deemed to be a collective agreement and, once declared by the Board to be in effect, applies in respect of the designated construction project and, to that extent, notwithstanding any other enactment, prevails over any other collective agreement that would otherwise govern the employment relationship between the employers and their employees in respect of work related to the designated construction project.

(3) Where a project agreement purports to modify the collective agreements otherwise applicable to the designated construction project to which the project agreement applies, the project agreement, once declared by the Board to be in effect, modifies the collective agreements to the extent provided for in the project agreement and the collective agreements, as modified, apply in respect of the designated construction project.

(4) For greater certainty, a project agreement does not apply in respect of any work not related to the designated construction project and

(a) where the project agreement purports to supersede the collective agreements otherwise applicable to the designated construction project, the collective agreements apply for the purpose of the work not related to the designated construction project; or

(b) where the project agreement purports to modify the collective agreements otherwise applicable to the designated construction project, the unmodified collective agreements apply for the purpose of the work not related to the designated construction project. 2016, c. 18, s. 9.

Amendment of project agreement

10 A project agreement may be amended

(a) in accordance with clause 11(3)(a) or Section 13; or

(b) with the consent of all parties to the project agreement. 2016, c. 18, s. 10.

Application by dissenting bargaining agent

11 (1) A bargaining agent that did not ratify a project agreement to which the bargaining agent is a party may apply to the Board for an amendment to the project agreement if the project agreement would result in a reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent that is larger, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that ratified the project agreement.

(2) The Board may not consider an application under subsection (1) made more than 10 business days after the day on which the Board declares the project agreement to be in effect.

(3) Within 30 business days of an application being made under subsection (1), the Board shall hear the application and may

(a) make an order amending the project agreement so that the amount of the reduction in the total wages and benefits, expressed as a rate, of an employee represented by the applicant bargaining agent is

(i) greater than or equal to the largest reduction that would apply to an employee represented by a bargaining agent that ratified the project agreement, and

(ii) less than the amount of the reduction that the employee represented by the applicant bargaining agent would otherwise be subject to under the project agreement in the absence of the order; or

(b) dismiss the application. 2016, c. 18, s. 11.

Expiry of project agreement

12 Upon being declared by the Board to be in effect, a project agreement remains in effect, subject to any amendments made under this Act, until the completion or abandonment of the designated construction project, notwithstanding any provision in the project agreement or in any enactment to the contrary. 2016, c. 18, s. 12.

Amendment to provide for additional trade

13 Where a designated construction project is the subject of a project agreement and the proponent identifies a trade to which the project agreement does not apply as being a trade that is or may reasonably be expected to be involved in the designated construction project,

(a) the project agreement may, in accordance with the regulations, be amended to

(i) provide for the involvement of the trade in the designated construction project, and

(ii) include the bargaining agent for the unionized employees in the trade and the accredited employers' organization that bargains collectively for the employers of the unionized employees as parties to the project agreement; and

(b) no construction contractor or construction subcontractor who has been notified by the proponent that the trade is or may reasonably be expected to be involved in the designated construction project shall cause an employee in that trade to commence or continue work on the designated construction project until the project agreement has been amended to provide for the involvement of the trade. 2016, c. 18, s. 13.

Jurisdiction of Board

14 (1) The Board may, upon application by any person, decide any question that arises

- (a) under this Act;
 - (b) respecting the interpretation or application of this Act;
 - (c) respecting whether a person has contravened this Act;
- or
- (d) respecting the scope of a designated construction project.

(2) The Board may determine a question that is the subject of an application and may make any order it considers necessary to give effect to the intent and purpose of this Act including, where the Board concludes that a person has contravened this Act, an order requiring the person to comply with this Act in any manner specified in the order. 2016, c. 18, s. 14.

Prohibition of work stoppage

15 (1) No employer, accredited employers' organization, trade union, officer or agent of a trade union, employee or other person shall call, declare, direct, authorize, engage in or otherwise aid, abet, counsel or procure a work stoppage by any means, including the picketing of the site of a designated construction project, in respect of a designated construction project for which a project agreement has been declared by the Board to be in effect.

- (2)** For greater certainty, subsection (1) does not affect
- (a) the right to strike of an employee who performs work to which the project agreement does not apply; or
 - (b) the right of an employer to lockout an employee who performs work to which the project agreement does not apply.

(3) Section 102 of the *Trade Union Act* does not apply in respect of a designated construction project for which a project agreement has been declared by the Board to be in effect.

(4) For greater certainty, Section 102 of the *Trade Union Act* does not preclude the negotiation and conclusion of a project agreement in accordance with this Act. 2016, c. 18, s. 15.

Board proceedings and powers

16 (1) In any application to the Board under this Act, the rules, regulations and practices applicable to applications and other proceedings before the Board under the *Trade Union Act* apply *mutatis mutandis*.

- (2)** Where an application is made under this Act, the Board
- (a) may make or cause to be made any examination of records or other inquiries and hold any hearings it considers necessary;

(b) may prescribe the nature of the evidence to be furnished to the Board; and

(c) has all of the powers and privileges conferred on the Board under the *Labour Board Act* and the *Trade Union Act*, which may be exercised in relation to this Act *mutatis mutandis*. 2016, c. 18, s. 16.

Order of Board final

17 An order of the Board made under this Act is final and cannot be questioned or reviewed in any court or tribunal. 2016, c. 18, s. 17.

Effect on employers of non-unionized employees

18 Nothing in this Act precludes

(a) a contractor or subcontractor in the construction industry who employs non-unionized employees from performing any aspect of the construction of a natural gas liquefaction plant in Guysborough County or Richmond County, including any related infrastructure; or

(b) the performance of any construction work on a designated construction project by a construction subcontractor who employs non-unionized employees. 2016, c. 18, s. 18.

Offence and penalty

19 (1) A person who contravenes

(a) subsection 8(1), Section 13 or subsection 15(1); or

(b) an order of the Board made under subsection 14(2),

is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 in the case of an individual or \$10,000 in any other case.

(2) Where an offence under this Section is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed.

(3) A prosecution for an offence under this Section may be brought against an accredited employers' organization or a trade union in the name of the accredited employers' organization or trade union and, for the purpose of the prosecution,

(a) the accredited employers' organization or trade union is deemed to be a person; and

(b) any act or thing done or omitted by an officer or agent of the accredited employers' organization or trade union within the scope of the officer or agent's authority to act on behalf of the accredited employers' organization or trade union is deemed to be an act or thing done or omitted by the accredited employers' organization or trade union. 2016, c. 18, s. 19.

Regulations

- 20** (1) The Governor in Council may make regulations
- (a) subject to subsection (2), designating industrial construction projects that the Governor in Council considers to be economically significant as designated construction projects;
 - (b) prescribing entities to whom a notice referred to in subsection 6(1) must be provided;
 - (c) respecting the amendment of a project agreement under clause 13(a);
 - (d) defining any word or expression used but not defined in this Act;
 - (e) further defining any word or expression defined in this Act;
 - (f) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The Governor in Council may only exercise the authority contained in clause (1)(a) if the Minister has conducted a public consultation in respect of the industrial construction project.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2016, c. 18, s. 20.

Repeal

21 Chapter 90 of the Revised Statutes, 1989, the *Construction Projects Labour-management Relations Act*, is repealed. 2016, c. 18, s. 21.